

REPORT OF THE VIRGINIA CODE COMMISSION

**RECODIFICATION OF TITLES 2.1
AND 9 OF THE CODE OF
VIRGINIA**

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



SENATE DOCUMENT NO. 57

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**

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Division of Legislative Services

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Rhonda Dyer, Senior Operations Staff Assistant

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**Report of the
Virginia Code Commission
on
The Recodification of Titles 2.1 and 9
of the Code of Virginia
to
The Governor and the General Assembly of Virginia**

**Richmond, Virginia
May 2000**

**To: The Honorable James S. Gilmore, III, Governor of Virginia,
and
The General Assembly of Virginia**

INTRODUCTION

In accordance with § 9-77.10, the Virginia Code Commission, in 1998, undertook three-year recodification of Titles 2.1 and 9. Title 2.1 was last recodified in 1965 and Title 9 has never been recodified until now. Because both Titles have undergone many changes since the publication of the Code of Virginia of 1950, and the laws concerning the administration of state government and its commissions, boards and institutions have been changed substantially during the past three decades, the need arose to (i) organize the laws in a more logical manner, (ii) delete obsolete and duplicative provisions, and (iii) improve the structure and clarity of Titles 2.1 and 9.

In undertaking the recodification of these two Titles and because the Titles selected for recodification impacted principally the executive branch of government, the Virginia Code Commission contacted each Secretary in the Governor's cabinet and invited his/her participation in identifying obsolete or archaic provisions and/or that require the codification of actual practice for those agencies within each secretariat. Additionally, the Virginia Code Commission requested that each Secretary designate a contact person for the secretariat to facilitate the work of the Code Commission on this project.

An exposure draft of the proposed Titles 2.2 and 9.1, complete with drafting notes, was released in the spring of 2000 for further comment by affected agencies in the executive branch of state government. The culmination of the process begun in the spring of 1998 will be the introduction of legislation to implement the recodification of Titles 2.1 and 9 into the newly organized Titles 2.2 and Title 9.1.

This report details the work of the Virginia Code Commission between June 1998 and December 2000. It **does not** contain amendments to Titles 2.1 and 9, enacted by the 2000 Session of the General Assembly, nor has this report been edited by the editorial staff at the

Division of Legislative Services. Amendments to Titles 2.1 and 9, enacted by the 2000 Session of the General Assembly as well as the renumbering of sections and the publication of comparative tables between Title 2.1 and proposed Title 2.2 and Title 9 and proposed Title 9.1, will be incorporated during the exposure draft phase of this process and will be reflected in the recodification bill introduced in the 2001 Session of the General Assembly.

SUMMARY

In the recodification of Titles 2.1 and 9, the Virginia Code Commission has rewritten and combined sections or parts of sections to clarify provisions and to eliminate archaic, obsolete or redundant language. Drafting notes highlighting changes or reorganizations appear throughout this report, some preceding chapters where significant revisions were made and others following key sections in the Titles 2.2 and 9.1 draft.

The general reorganization of Title 2.1 distinguishes the *organization* of state government (Subtitle I--Organization of State Government) from the *operation* of state government (Subtitle II--Transaction of Public Business). In addition, the concept of a "Part" has been introduced as an organizational tool to separate functional areas within the Title. Generally, a "Part" is used to group related chapters. For example, the Governor and his cabinet secretaries have been consolidated into Part A--Office of the Governor--of Subtitle I. The Department of Law is Part B of Subtitle I. Further, state agencies related to the general operation of government have been consolidated into Part C of Subtitle I, and so on. The reorganization of Title 2.1 also includes many chapters from Title 9, Commissions, Boards and Institutions, now consolidated into Part D--State Authorities, Boards, Councils, Commissions and Other Collegial Bodies--because they were created in the executive branch of state government. Several chapters from Title 9 that were boards, councils, etc., created in the legislative branch have been moved to Title 30--General Assembly.

Title 9 has been substantially reorganized and moves executive branch commissions and boards, etc., into proposed Title 2.2. As noted above, several chapters from Title 9 that were boards, councils, etc., created in the legislative branch have been moved to Title 30--General Assembly. The effect of this substantial reorganization is the creation of proposed Title 9.1--Commonwealth's Public Safety. As its name indicates, this proposed Title contains chapters relative to the Department of Criminal Justice Services and fire and police protection generally, taken exclusively from Titles 2.1 and 9.

The challenge of the recodification of Titles 2.1 and 9 lay in limiting the reorganization to those Titles. Because Title 2.1 has been titled "Administration of State Government" and its proposed reorganization into Title 2.2 has been titled "Organization of State Government," it would be easy to assume that all agencies of state government as well as the totality of the law governing the executive branch of state government would be located in this single title. This, however, is not and, historically, has not been the case. For example, the Department of Environmental Quality, which is an executive branch agency, is located in Title 10.1. There are numerous other examples. It is important to note that the proposed reorganization of Title 2.1 has been limited to the law currently found in Titles 2.1 and 9 exclusively, except for the

inclusion of the Virginia Public Procurement Act in Subtitle II (Transaction of Public Business) of proposed Title 2.2.

The Virginia Code Commission made one substantive change in the law during the recodification of Title 2.1. That change was to existing § 2.1-111. Currently, § 2.1-111 provides that if a person leaves the service of the Commonwealth for service in any of the armed forces of the United States, he shall be entitled to be restored to such position upon the termination of his service with the armed forces under certain conditions. The substantive change was to limit the applicability of this section to persons conscripted by the Selective Service System into active military service of the United States. (See Subtitle I, Part E, State officers and employees generally).

The Commission is grateful to those agency representatives who devoted their time and expertise to this project by identifying sections that were in need of amendment or deletion and by offering comments on exposure drafts issued by the Commission.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 2001 Session to implement the revisions proposed in this report.

Respectfully submitted,

Joseph V. Gartlan, Jr., *Chairman*
W. Tayloe Murphy, Jr., *Vice Chairman*
Robert L. Calhoun
Bernard S. Cohen
Jay W. DeBoer
Frank S. Ferguson
J. Randy Forbes
James E. Kulp
E. M. Miller, Jr.
James B. Wilkinson

I. TITLE 2.2

TITLE 2.2---ADMINISTRATION OF STATE GOVERNMENT

SUBTITLE I. ORGANIZATION OF STATE GOVERNMENT

Part A—Office of the Governor

- Chapter 1—The Governor
- Chapter 2—Governor’s Secretaries; General Provisions
- Chapter 3—Secretary of Administration
- Chapter 4—Secretary of Commerce and Trade
- Chapter 5—Secretary of Education
- Chapter 6—Secretary of Finance
- Chapter 7—Secretary of Health and Human Resources
- Chapter 8—Secretary of Natural Resources
- Chapter 9—Secretary of Public Safety
- Chapter 10—Secretary of Technology
- Chapter 11—Secretary of Transportation
- Chapter 12—Virginia Liaison Office
- Chapter 13—Secretary of the Commonwealth
 - Article 1—General Provisions
 - Article 2—Registration of Insignias
 - Article 3—Registration of Lobbyists

Part B—Department of Law

- Chapter X—Office of the Attorney General
 - Article 1—General Provisions
 - Article 2—Division of Consumer Counsel
 - Article 3—Division of Debt Collection

Part C—State Agencies Related to the General Operation of Government

- Chapter X—General Provisions
- Chapter X---Department for the Aging
- Chapter X---Department of Accounts
- Chapter X—Department of Business Assistance
- Chapter X—Department of Employee Relations Counselors
- Chapter X—Department of General Services
- Chapter X—Department of Information Technology
- Chapter X—Department of Minority Business Enterprise
- Chapter X—Department of Personnel and Training
- Chapter X—Department of Planning and Budget
- Chapter X—Department of the State Internal Auditor
- Chapter X—Department of Technology Planning

Chapter X— Department of the Treasury
Chapter X—Department of Veterans' Affairs
Chapter X—Governor's Employment and Training Department

Part D—State Authorities, Boards, Councils, Commissions and Other Collegial Bodies

Authorities

Commercial Space Flight Authority
Innovative Technology Authority
Small Business Financing Authority
Virginia Economic Development Partnership Authority
Virginia Information Providers Network
Virginia Public Building Authority
Virginia Tourism Authority

Boards

Art and Architectural Review Board
Chief Information Officers Advisory Board
Design-Build/Construction Management Review Board
Migrant and Seasonal Workers Board
Personnel Advisory Board
Public Guardian and Conservator Advisory Board
Small Business Advisory Board
Treasury Board
Veterans' Affairs, Board on
Virginia Geographic Information Network Advisory Board
Virginia-Israel Board
Virginia Public Broadcasting Board
Virginia Public Buildings Board
Virginia Veterans' Care Center Board of Trustees
Virginia Veterans' Cemetery Board

Commissions

Southside Virginia Business and Education Commission
Special Advisory Commission on Mandated Health Insurance Benefits
Virginia Advisory Commission on Intergovernmental Relations
Virginia Commission for the Arts

Councils

Advisory Council on Virginia Business-Education Partnership Program
Blue Ridge Economic Development Advisory Council
Blue Ridge Regional Education and Training Council
Blue Ridge Regional Tourism Council
Capital Square Preservation Council
Citizen Advisory Council on Furnishing and Interpreting the Executive Mansion

Commonwealth Attorney Services Council
Commonwealth Competition Council
Commonwealth Council on Aging
Council on Indians
Council on the Status of Women
Human Rights Council
Interagency Coordinating Council on Housing for the Disabled
Maternal and Child Health Council
Specialized Transportation Council
State Executive Council for Comprehensive Services for At-Risk Youth and Families
State Health Benefits Advisory Council
Technology Service, Council on
Virginia Advisory Council for Adult Education
Virginia Equal Employment Opportunity Council
Virginia Council on Coordinating Prevention
Virginia Interagency Coordinating Council
Virginia Military Advisory Council
Virginia Recycling Markets Development Council
Virginia Workforce Council

Foundations and other Collegial Bodies

Virginia Arts Foundation
Virginia War Memorial Foundation
World Trade Alliance for the Blue Ridge
Debt Capacity Advisory Committee
Boating Advisory Committee

Part E—State officers and employees generally

General Provisions (disability to hold office; health plans, restrictions on state employee access to information infrastructure, etc.)
Personnel Act
Grievance Procedure
Conflicts of Interest Act
Workforce Transition Act of 1995

SUBTITLE II
ADMINISTRATION OF STATE GOVERNMENT

Part A—General Provisions (state holidays; special days; interpreters for deaf in agency proceedings; information technology access act; volunteers act)

Part B—Transaction of Public Business

- Chapter X--Freedom of Information Act
- Chapter X--Personal Privacy Act of 1976
- Chapter X--Virginia Human Rights Act
- Chapter X--Administrative Process Act
- Chapter X--Virginia Register Act
- Chapter X--Fair Employment Contracting Act
- Chapter X--Virginia Public Procurement Act
- Chapter X--Virginia Security for Public Deposits Act
- Chapter X--Investment of Public Funds
- Chapter X--Local Government Investment Pools
- Chapter X--Government Non-Arbitrage Investment Act
- Chapter X--Virginia Debt Collection Act
- Chapter X--Public Debt
- Chapter X--Interest on Obligations of Government
- Chapter X--Virginia Investment Partnership Act
- Chapter X--Virginia Technology Infrastructure Fund
- Chapter X--Comprehensive Services Act
- Chapter X--Early Intervention Services System
- Chapter X--Community Action Act
- Chapter X--Virginia Biotech Research Act

Part C—Interstate Compact/Agreements (from Title 2.1)

- Chapter 1—Southern Growth Policy Agreement
- Chapter 2—Southern State Energy Compact
- Chapter 3—Delmarva Peninsula Compact

SUBTITLE I.
ORGANIZATION OF STATE GOVERNMENT.

PART A.
OFFICE OF THE GOVERNOR.

Chapter 1.
Governor.
Article 1.
General Provisions.

§ ~~2.1-38.2-1XX~~. (Effective October 1, 1998) Salaries of Governor and other officers; administrative assistants.

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

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

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

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-38.3 2.2-1XX~~. (Effective October 1, 1998) Clerical forces and office expenses of Governor.

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

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-40 2.2-1XX~~. Personal staff as commander in chief.

The personal staff of the Governor and commander in chief shall consist of the Adjutant General of the Commonwealth and ~~such any~~ additional aides ~~as may be detailed by the Governor and commander in chief~~ from the commissioned personnel of the National Guard of Virginia, the officers reserve corps or the naval reserve corps, or officers of the army or navy of the United States, retired or former officers of the army or navy of the United States, which detail shall operate for the time being as a commission to each officer so detailed as aide-de-camp. Commissions as military aides to the Governor shall be issued by the Secretary of the Commonwealth ~~with such with~~ the rank ~~as the Governor may deem deems~~ appropriate and shall continue in effect at the pleasure of the Governor during his term in office. ~~Such~~ The commissions shall be honorary in nature and shall not constitute a commission in the militia of the Commonwealth or entitle the recipient to any pay or benefits. The insignia to be worn by aides when performing their duties shall be prescribed by the Governor. No officer so detailed shall be compelled to serve, ~~nor shall any officer so detailed who consents to serve be entitled to or receive any compensation as such aide.~~ Officers so detailed shall not be relieved from their ordinary duties, except when actually on duty with the Governor ~~and commander in chief~~. No officer shall be detailed under this section unless he is a qualified voter of the Commonwealth. In addition ~~to the officers above detailed~~, the Governor may appoint

and commission with the rank of colonel as a personal aide, the Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-41. Civil contingent fund.~~

~~Out of the sum annually appropriated as a civil contingent fund, there may be paid all expenses in the execution of any law for which there is no special appropriation, and any other sums which the Governor may deem necessary or proper. No payment shall be made out of such contingent fund, except upon the order of the Governor, directed to the Comptroller.~~

DRAFTING NOTE: Technical corrections. This section has been deleted because the economic contingency fund created in the appropriation act supercedes the fund created by this section.

~~§ 2.1-41.1 2.2-1XX. Authority to formulate executive branch policies; chief officer for personnel administration and planning and budget.~~

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

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

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

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

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

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

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of the following existing sections: subsection A is § 2.1-41.1; subsection B is §§ 2.1-113 and 2.1-114.2; and subsection C is § 2.1-387.

~~§ 2.1-387. Chief planning and budget officer; deputy.~~

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

DRAFTING NOTE: Technical corrections only. This section was moved from existing Chapter 27 - Planning and Budget System and now appears as new subsection B in proposed § 2.2-XXX (§ 2.1-41.1).

~~§ 2.1-114.2. Powers and duties of Governor.~~

~~The Governor shall have the following powers and duties:~~

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

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

~~C. Promulgate such rules, not in conflict with this chapter, as he may consider necessary to provide for the administration of the duties imposed by this chapter, and to govern minimum hours of work, attendance regulations, leaves of absences for employees and the order and manner in which layoffs shall be made.~~

DRAFTING NOTE: Technical corrections only. This section was now appears as part of new subsection B in proposed § 2.2-XXX

~~§ 2.1-39.1~~ 2.2-1XX. Delegation of powers.

~~The Governor is authorized to may designate and empower any secretary or other officer in the executive branch of state government who is required to be confirmed by the General Assembly or either house thereof, to perform without approval, ratification, or other action by the Governor any function which is vested in the Governor by law, or which such officer is required or authorized by law to perform only with or subject to the approval, ratification of the Governor; provided, however, that. ~~However~~, nothing contained herein in this section shall relieve the Governor of his responsibility in office for the acts of any such secretary or officer designated by him to perform such functions. Any designation or authorization under this section shall be (i) in the form of a written executive order, ~~shall be (ii)~~ subject to ~~such the~~ terms, conditions, and limitations as ~~the Governor may deem~~ deems advisable, and ~~shall be (iii)~~ revocable in whole or in part at any time by the Governor.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-39~~ 2.2-1XX. Appointments to office; effect of refusal to confirm by the General Assembly.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-41.2~~ 2.2-1XX. Appointment of agency heads; chief of staff.

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

1. Executive Director of the Virginia Port Authority, ~~the;~~
2. Director of the State Council of Higher Education for Virginia, ~~the;~~
3. Executive Director of the Department of Game and Inland Fisheries, ~~the;~~

4. Executive Director of the Jamestown-Yorktown Foundation, ~~the~~;
5. Executive Director of the Motor Vehicle Dealer Board, ~~the~~;
6. Executive Director of the Virginia Higher Education Tuition Trust Fund, ~~and the~~;
7. Librarian of Virginia;
8. Administrator of the Commonwealth's Attorneys' Services Council.

However, the manner of selection of those heads of agencies chosen by election as of January 1, 1976, or as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, shall (ii) have ~~such the~~ professional qualifications as may be prescribed by law, and shall (iii) serve at the pleasure of the Governor.

~~The chief of staff who may be appointed by the Governor pursuant to § 2.1-38 shall be confirmed by a majority of the members of each house of the General Assembly.~~

For the purpose of this section, "agency" shall ~~include~~ includes all administrative units established by law or by executive order which are not (i) arms of the legislative or judicial branches of government, ~~which are not~~; (ii) educational institutions as classified under ~~§§ 9-84(xref)~~, 22.1-346, 23-14, and 23-252, ~~which are not~~; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and ~~which are not~~ (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Chapter 5.1 (§ 2.1-51.7 xref et seq.) of this title.

DRAFTING NOTE: Technical corrections. All references to the appointment of a chief of staff have been deleted as duplicative of proposed § 2.2-XXX (§ 2.1-38). Additionally, the Administrator of the Commonwealth's Attorneys' Services Council has been added to this list because the Administrator is not appointed by the Governor.

~~§ 2.1-42.1 2.2-1XX. Commission, board, etc., appointments~~ Appointment of members of commissions, boards, and other collegial bodies.

Except as provided in the Constitution of Virginia, or where the manner of selection of members of boards and commissions is by election by the General Assembly, or as provided in Title 3.1 ~~as of January 1, 1977~~, or § 54.1-901, but notwithstanding any other provision of law to the contrary, the Governor shall appoint all members of boards, commissions, councils or other collegial bodies created by the General Assembly in the executive branch of state government to terms of office as prescribed by law. Each member ~~so~~ appointed pursuant to this section shall be subject to confirmation by the General Assembly, and shall have ~~such the~~ professional qualifications as may be prescribed by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-43 2.2-1XX.~~ Removal of members of certain boards, commissions, etc.

A. Notwithstanding any provision of law to the contrary, the Governor ~~is authorized to may~~ remove from office for malfeasance, misfeasance, ~~incompetency~~ incompetence, or gross neglect of duty, ~~or for unlawful or willful neglect of duty,~~ any member of the board of any ~~state college, university, public institution of higher education~~ or other educational institution, and ~~to~~ fill the vacancy resulting from ~~such the~~ removal. Each appointment to fill a vacancy shall be subject to confirmation by the General Assembly.

B. Notwithstanding any provision of law to the contrary, the Governor ~~is authorized to may~~ remove from office for malfeasance, misfeasance, ~~incompetency~~ incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by

the General Assembly, or refusal to carry out a lawful directive of the Governor any member of any board, commission, council or other collegial body established by the General Assembly in the executive branch of state government except those boards provided for in subsection A-above, and to fill the vacancy resulting from ~~such~~ the removal subject to confirmation by the General Assembly.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-44~~ 2.2-1XX. Requiring appearances by officers, etc., and production of records, etc.; issuance of subpoenas and other writs; employment of accountants.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-42~~ 2.2-1XX. Officers of Commonwealth and its institutions to make reports to Governor.

The officers of the executive department ~~at the seat of government,~~ branch of state government and superintendents and boards of state institutions, shall make to the Governor ~~in writing, under oath, written~~ reports ~~at such the times as may be prescribed by law, and they shall also make in writing, under oath, reports or~~ at any time ~~that~~ the Governor may require ~~upon~~ on any subject relating to their respective offices and institutions. The reports shall be in ~~such a~~ form and ~~with such particulars~~ contain such information as the Governor may require. ~~They~~ The reports shall be filed in the office of the Secretary of the Commonwealth, and under his supervision, summarized and recorded in ~~proper~~ books kept for the purpose.

DRAFTING NOTE: Technical corrections. The requirement for written reports to be made under oath has been deleted to reflect current practice.

~~§ 2-1-49~~ 2.2-1XX. Suits, actions, etc., by Governor.

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-50~~ 2.2-1XX. To whom return on warrant of Governor to be made.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.5:4~~ 2.2-1XX. Temporary suspension of state mandates.

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

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

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

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

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-38.2~~ 2.2-1XX. Coordination of official communications with federal and foreign governments.

The Governor may ~~promulgate rules and adopt~~ regulations for coordination of official communications on behalf of the Commonwealth by any officer, agency or employee of the Commonwealth with the government of the United States, ~~and other another state and or foreign states nation~~ and or foreign states nation. Subject to the ultimate authority of the General Assembly to prescribe the policies of the Commonwealth and within the framework of policy established by the General Assembly, all ~~such~~ communications shall be at the policy direction of the Governor; ~~provided, however, that~~ However, communications by the General Assembly or the Supreme Court of Virginia with the legislature or the judiciary, respectively, of the United States, ~~or other another state and or foreign states nation~~ shall be at the discretion of the General Assembly and the Supreme Court of Virginia. Actions taken under ~~§ 2.1-3 2.2-(xref)~~ shall be subject to the provisions of this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.6:5~~ 2.2-XXX. Governor's Development Opportunity Fund.

A. There is ~~hereby~~ created the Governor's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the ~~comptroller~~ Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the ~~general fund~~ but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to

the chairmen of the House Committees on Appropriations, House and Finance, and the Senate Committee on Finance Committees as funds are awarded ~~hereunder~~ in accordance with this section.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. Loans shall be approved by the Governor and made in accordance with procedures established by the Virginia Economic Development Partnership and approved by the ~~comptroller~~ Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the general fund of the state treasury. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the ~~state treasurer~~ State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the ~~comptroller~~ Comptroller as required.

C. Funds may be used for public and private utility extension or capacity development on and off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly owned buildings; grants or loans to an ~~Industrial Development Authority, Housing and Redevelopment Authority~~ industrial development authority, housing and redevelopment authority, or other political subdivision pursuant to its duties or powers; training; or anything else permitted by law.

D. Except as provided in this subsection, no grant or loan shall be awarded from the Fund unless the project involves a minimum private investment of \$10,000,000 and creates 100 jobs. In localities with a population between 50,000 and 100,000, the minimum private investment shall be \$5,000,000, creating 50 jobs. In localities with a population of 50,000 or less, the minimum private investment shall be \$2,500,000, creating 25 jobs. Central cities or urban cores shall be treated for eligibility purposes the same as communities of 50,000 to 100,000 population. For projects where the average wage of the new jobs created is at least twice the prevailing wage, excluding benefits, for that locality or region, the Governor shall have the discretion to require no less than one-half the number of jobs as set forth for that locality in this subsection.

E. The Virginia Economic Development Partnership shall assist the Governor in developing objective guidelines and criteria which shall be used in awarding grants or making loans from the Fund. No grant or loan shall be awarded until the Governor has provided copies of ~~such the~~ the guidelines and criteria to the chairmen of the House Committees on Appropriations, House and Finance, and the Senate Committee on Finance Committees. The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. In developing the guidelines and criteria, the Virginia Economic Development Partnership shall use the Fiscal Stress cited in the Index published by the Commission on Local Government for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund.

F. Within thirty days of each six-month period ending June 30 and December 30, the Governor shall provide a report to the chairmen of the House Committees on Appropriations, House and Finance, and the Senate Committee on Finance Committees which shall include, but is not limited to, the following information: the name of the company and the type of business in which it engages in; the location (county, city, or town) of the project; the amount of the grant or loan made or committed from the Fund and the purpose for which it ~~shall~~ will be used; the number of jobs created or projected to be created; the amount of the company's investment in the project; and the timetable for the completion of the project and jobs created.

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

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-47~~ 2.2-1XX. Powers with respect to state-owned motor vehicles.

~~(1)-A.~~ The Governor may prescribe, by general or special executive orders, rules and orders, regulations for the purchase, use, storage, maintenance and repair of all motor vehicles owned by the Commonwealth, and in the possession of any state department, institution or agency thereof, where his supervision over which is not forbidden by the Constitution. ~~If in his judgment considerations of economy or convenience indicate the expediency thereof, he may require all such vehicles, or such of them as he may designate, to be kept in such garages, or other places of storage, and to be made available in such manner and under such terms for the official use of such departments, institutions, agencies, officers, agents and employees of the Commonwealth, as he may designate in any such general or special order.~~

~~(2)~~ If any such state officer, agent or employee fails to comply with any rule, regulation or order of the Governor made pursuant to the provisions of this section, the Comptroller shall, upon order of the Governor, refuse to issue any warrant or warrants on account of expenses incurred, or to be incurred in the purchase, operation, maintenance, or repair of any motor vehicle now or to be in the possession or under the control of such officer, agent or employee, or the Governor may order some officer or agent of the Commonwealth to take possession of any such vehicle and to transfer it to some other department, institution, agency, officer, agent or employee, or to make such other disposition thereof as the Governor may direct.

~~(3)-B.~~ The Governor may utilize use any building or land owned by the Commonwealth and not required to be used for other purposes, for the storing and garaging of such state-owned motor vehicles. He may provide for the employment of employ watchmen or guards, and also mechanics and other labor to repair and service such vehicles, and provide for the purchase of gasoline, oil and other supplies for use in connection therewith such vehicles, and provide for the allocation allocate among the various departments and agencies utilizing same of using such vehicles their proper proportionate part of the cost of ~~such~~ repairs, servicing, gasoline, oil, and other supplies.

~~(4)-C.~~ The Governor is hereby authorized to may create in the State Treasurer's office a special fund to be reflected on the books of the Comptroller, out of which all costs and expenses incurred pursuant to this section shall be paid. All allocations of costs and charges for repairing and servicing motor vehicles made against any institution, agency, or department shall, when approved by the department head against which same is made, be paid into ~~such~~ the special fund by interdepartmental transfers on the Comptroller's books. All funds so paid or transferred into ~~such~~ the special fund are hereby appropriated for the purposes of this section and shall be paid out on warrants of the Comptroller issued upon vouchers signed by ~~such~~ the state officer or employee of the Commonwealth as designated by the Governor may designate.

~~(5)-D.~~ The Governor is authorized may, by executive order or regulation to impose upon the Director of the Division of the Department of Planning and Budget, or any other agency of the Executive Department executive branch of the state government, any or all administrative duties pertaining to the administration of this section.

~~(6)~~ All proper charges for repairing and servicing motor vehicles which have heretofore been incurred by any department, agency or institution in connection with the garaging, servicing and repairing of state cars under any former executive order and the regulations incident thereto, shall be paid by every such department, institution or agency into the special fund provided for in subsection (4) hereof when same is established by the Governor.

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

DRAFTING NOTE: Technical corrections only. Former subdivision 2 has been moved as new subsection F in this section. Former subdivision 6 has been deleted as obsolete.

§ ~~2.1 48~~ 2.2-1XX. Approval of purchase of passenger-type automobile; transfer and valuation of surplus vehicles.

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

DRAFTING NOTE: Technical corrections only.

§ ~~2.1 51.6~~ 2.2-1XX. Governor to administer highway safety program and secure benefits to Commonwealth under federal Highway Safety Act of 1966.

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

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

DRAFTING NOTE: Technical corrections only.

§ ~~2.1 51.6:3~~ 2.2-1XX. Governor to administer anti-crime partnership program.

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

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

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

DRAFTING NOTE: Technical corrections only.

§ ~~2.1 51.6:4~~ 2.2-1XX. Commercial use of seals of the Commonwealth.

A. ~~The Notwithstanding the provisions of § 7.1-31.1, the~~ Governor may authorize the use of the seals of the Commonwealth for commercial purposes upon a finding that such use promotes an appropriate image of the Commonwealth, its heritage and its history, and that such use is carried out in accordance with the laws of the Commonwealth. In considering whether the use of the seals in association with a product promotes an appropriate image of the Commonwealth, preference shall be given to products which (i) preserve traditional methods of production, including handcrafting techniques, (ii) enhance public appreciation of the Commonwealth's aesthetic values, and (iii) incorporate workmanship and materials of the highest quality. A prospective licensee shall be deemed qualified to protect and promote the image of the Commonwealth if it holds licenses to produce products associated with museums and sites of major historical importance in the Commonwealth, including but not limited to homes of Presidents of the United States and restored historical areas.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-46~~ 2.2-1XX. Authority over rooms and space in public buildings.

Rooms and space in ~~the State Office Building and other~~ public buildings at the seat of government, other than the Capitol, whether ~~such the~~ rooms or space ~~be are~~ occupied or not, may be vacated, assigned, and reassigned by the Governor to such departments, divisions, agencies, and officers of the Commonwealth as the Governor ~~shall deem~~ deems proper. ~~Nothing herein contained, however, shall authorize the~~ The Governor ~~to shall~~ not vacate, assign or reassign any rooms or space ~~now~~ occupied by the Supreme Court ~~and the justices thereof, the General Assembly, the State Corporation Commission or other independent agencies,~~ without the consent and approval of ~~that body~~ such bodies.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-114.2:12~~ 2.2-1XX. ~~Additional powers and duties of Governor~~ Regulation of athletic leaves of absence.

The Governor shall ~~have the following powers and duties:~~

A. ~~Establish~~ establish rules to provide for the regulation of athletic leaves of absence for state employees as follows:

1. ~~Definitions. The following words and terms, when used in this section, shall have the following meanings:~~

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

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

(c) ~~"International or Olympic competition" means any athletic competition involving athletes from two or more nation states.~~

2. ~~Leave of absence to participate in athletic competition on the international or Olympic level.—1. A public employee who qualifies as a member of the United States team for athletic competition on the Pan American or~~

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

~~3. Notification of employer.~~ ~~2.~~ A ~~state public~~ employee who qualifies and applies for an athletic leave of absence under the provisions of this subdivision shall notify his employer of his desire for such leave at least thirty days before the effective date of the leave; however, if the official training camp for international or Olympic games commences less than thirty days after the employee's selection as a member of the United States team, the employee shall notify his employer of his desire for athletic leave immediately upon his selection as a member of such team.

~~4. Cancellation of leave.~~ ~~3.~~ All or any portion of the approved athletic leave of absence provided for in this subdivision may be canceled retroactively by the employer if the employee does not participate in the training or competition for approved reasons or for reasons that are unrelated to the physical and/or mental ability to compete.

~~5. Reimbursement of costs for substitute.~~ ~~4.~~ If the absence of a state employee necessitates the hiring of a substitute during the employee's absence, the Commonwealth shall reimburse the governmental branch, department, agency, board, institution, or commission of ~~this the~~ Commonwealth for actual costs incurred in employing the substitute.

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

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

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 9-84.1 2.2-XXX.~~ Governor authorized to accept certain property from Confederate Memorial Literary Society.

~~A.~~ The Governor ~~is hereby authorized to~~ may accept, in the name of the Commonwealth, the property known as The White House of the Confederacy, any building ~~or buildings~~ which may be erected by the Confederate Memorial Literary Society, and the property known as The Lee House, located at 707 East Franklin Street in the City of Richmond, together with any moneys or other assets, including items being housed and displayed in such buildings or any of them, belonging to the Confederate Memorial Literary Society.

The buildings and their contents thereof shall thereafter be preserved and maintained for historic purposes by the Commonwealth. Upon the transfer of title to the property to the Commonwealth, the Governor shall appoint a board of trustees consisting of thirteen persons appointed from the Commonwealth at large, which shall thereafter be charged with the preservation and maintenance of the properties and the administration of any funds which may be received or donated by the Confederate Memorial Literary Society or from any other source. The

members of the board first appointed shall be appointed as follows: four for terms of four years, four for terms of three years, four for terms of two years, and one for a term of one year. Subsequent appointments shall be for terms of four years except appointments to fill vacancies, which shall be for the unexpired terms.

The board shall appoint a treasurer, who shall have custody of its funds and shall be bonded in such amount as the board may determine. Expenditures from such funds shall be made by the treasurer as the board directs, for any purpose, in the discretion of the board, consonant with the purpose for which the same are donated.

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

DRAFTING NOTE: This proposed section represents a merger of the following existing sections: Subsection A is § 9-84.1; B is § 9-84.2; C is § 9-84.3; and D is § 9-84.4. The existing sections relating to the White House of the Confederacy were added to the Code by Chapter 412 of the 1966 Act.

~~§ 9-84.2. Preservation and maintenance of such property; board of trustees.~~

~~Such buildings and the contents thereof shall thereafter be preserved and maintained for historic purposes by the Commonwealth. Upon the transfer of title to such property to the Commonwealth, the Governor shall appoint a board of trustees consisting of thirteen persons appointed from the Commonwealth at large, which shall thereafter be charged with the preservation and maintenance of such properties and the administration of any funds which may be received or donated by the Confederate Memorial Literary Society or from any other source. The members of such board first appointed shall be appointed four for terms of four years, four for terms of three years, four for terms of two years, and one for a term of one year. Subsequent appointments shall be for terms of four years except appointments to fill vacancies, which shall be for the unexpired terms.~~

DRAFTING NOTE: This section has been merged into proposed § 2.2-XXX (existing § 9-84.2) as new subsection B.

~~§ 9-84.3. Treasurer of board; bond; expenditures.~~

~~The board shall appoint a treasurer, who shall have custody of its funds and shall be bonded in such amount as the board may determine. Expenditures from such funds shall be made by the treasurer as the board directs, for any purpose, in the discretion of the board, consonant with the purpose for which the same are donated.~~

DRAFTING NOTE: This section has been merged into proposed § 2.2-XXX (existing § 9-84.3) as new subsection C.

~~§ 9-84.4. Admission fees.~~

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

DRAFTING NOTE: This section been merged into proposed § 2.2-XXX (existing § 9-84.4) has as new subsection D.

~~§ 2-1 45 2.2-1XX. Disposition of official correspondence.~~

~~A. The Governor preceding Before the end of his term of office, the Governor shall have delivered to The Library of Virginia for safekeeping all correspondence and other records of his office during his term; provided that this section shall not apply to correspondence or other records of a personal or private nature, or active files necessary for the transaction of business by the Office of the Governor, the decision thereon to be made by the~~

Governor. Records delivered to The Library of Virginia shall be made accessible to the public, once appropriate cataloging has been completed.

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

DRAFTING NOTE: Technical corrections only.

Article 2.

Executive Reorganization.

§-2-1-8-1 2.2-2XX. Purpose.

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

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

B. ~~To reduce~~ Reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government;

C. ~~To increase~~ Increase the efficiency of the operations of state government to the fullest extent practicable;

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

E. ~~To reduce~~ Reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof ~~as may not be~~ which are not necessary for the efficient conduct of the state government;

F. ~~To eliminate~~ Eliminate overlapping and duplication of effort.

DRAFTING NOTE: Technical corrections only.

§-2-1-8-2 2.2-2XX. Definitions.

For the purpose of this chapter—:

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

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

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-8-3~~ 2.2-2XX. Reorganization plans.

When the Governor, after investigation, finds that ~~the~~:

- A. ~~The transfer~~ Transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;
- B. ~~The abolition~~ Abolition of all or a part of the functions of an agency;
- C. ~~The transfer~~ Transfer or abolition of the whole or a part of the responsibilities of a board;
- D. ~~The abolition~~ Abolition of a board;
- E. ~~The consolidation~~ Consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;
- F. ~~The consolidation~~ Consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;
- G. ~~The abolition~~ Abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions; or
- H. ~~The authorization~~ Authorization for the exercise of functions or responsibilities by an agency, board, or officer to whom such functions or responsibilities have been transferred;

is necessary to accomplish one or more of the purposes of ~~§ 2-1-8-1~~ (xref), he shall prepare a plan for reorganization and transmit ~~such the~~ plan to each house of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-8-4~~ 2.2-2XX. Contents of reorganization plans.

A reorganization plan transmitted by the Governor under ~~§ 2-1-8-3~~ (xref)-

- 1. May change the name or title of any agency, agency head, or board, council, commission or other collegial body affected by a reorganization, and shall designate the name or title of any new agency, agency head, or collegial body resulting from a reorganization;
- 2. May provide for the appointment of the head of any agency affected by, or resulting from, a reorganization, for an initial term not to exceed the balance of the term of the incumbent Governor, and for four-year terms thereafter;
- 3. May provide for the compensation of the head of an agency, not to exceed the rate found by the Governor to be applicable to comparable officers in the executive branch;
- 4. Shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;
- 5. Shall provide for the transfer of such unexpended balances of appropriations, and other funds, available for use in connection with a function or agency affected by a reorganization, or for the use of the agency which ~~shall have~~ has the functions after the reorganization plan is effective. However, the unexpended balances so transferred may be used only for the purposes for which the appropriation was originally made; and
- 6. Shall provide for terminating the affairs of an agency which is abolished.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-8.5~~ 2.2-2XX. Limitation on powers.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-8.6~~ 2.2-2XX. Approval by the General Assembly; effective date; publication.

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

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

DRAFTING NOTE: Technical corrections only. This section is comprised of § 2.1-8.6 as subsection A and § 2.1-8.7 as subsection B.

~~§ 2.1-8.7. Publication of effective reorganization plan.~~

~~A reorganization plan which is effective shall be printed in the Acts of Assembly and in the Code of Virginia.~~

DRAFTING NOTE: Technical corrections only. This section was merged into proposed § 2.2-XXX with § 2.1-8.6 and appears as new subsection B.

~~§ 2.1-8.8~~ 2.2-2XX. Effect on other laws, pending legal proceedings, and unexpended appropriations.

A. A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

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

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

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

DRAFTING NOTE: Technical corrections only.

Article 3.

Gubernatorial Commissions.

~~§ 2.1-51.35. Definition of gubernatorial commission.~~

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

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing

§ 2.1-51.36) as subsection B.

~~§ 2.1-51.36~~ 2.2-XXX. Authority to create gubernatorial commissions.

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

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

DRAFTING NOTE: This proposed section represents a merger of existing §§ 2.1-51.36 and 2.1-51.35 as proposed subsections A and B, respectively.

~~§ 2.1-51.37~~ 2.2-XXX. Limitations and requirements.

~~The following limitations and requirements shall apply to all gubernatorial commissions:~~

~~4A.~~ Each gubernatorial commission shall be created by executive order. The executive order shall specify: (i) the specific duties of the commission; (ii) the date of creation; (iii) date of expiration; (iv) the sources from which staff support are to be provided and a reasonable estimate of the amount of staff support expected over the lifetime of the commission; (v) an estimate of the costs to be incurred; and (vi) the source of funding.

~~2B.~~ Funding for gubernatorial commissions shall be provided only from funds (i) appropriated for the Governor's discretionary use ~~or by funds~~, (ii) appropriated for the purposes for which the task force was established, ~~or from funds~~ (iii) contributed by the private sector for the purposes for which the task force was established. Staff support for gubernatorial commissions may be provided by agencies or institutions with ~~closely and definitely-related~~ purposes.

~~3C.~~ Gubernatorial commissions shall be created for a period not to exceed one year. Upon reevaluation, a commission may be extended one time by issuance of a new executive order for a period not to exceed one additional year. A commission ~~may~~ shall not extend beyond the term of the Governor under whom it is created.

~~4D.~~ The Governor shall make a report every six months to the Senate Committee on Finance and House Committee on Appropriations ~~Committees~~ specifying for each gubernatorial commission the amount and costs of staff support provided and the sources of ~~such~~ the staff support.

DRAFTING NOTE: Technical corrections only.

Chapter 2.

Governor's Secretaries; general provisions.

§ 2.2-XXX. Appointment of Governor's Secretaries; general powers.

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

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

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

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

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

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

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

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

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

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

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

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

D. As used in this chapter, "Governor's Secretaries" means the Secretary of Administration, the Secretary of Commerce and Trade, the Secretary of Education, the Secretary of Finance, the Secretary of Health and Human Resources, the Secretary of Natural Resources, the Secretary of Public Safety, the Secretary of Technology, and the Secretary of Transportation.

DRAFTING NOTE: This new section represents the consolidation of the various, repetitive existing sections dealing with the appointment of each Secretary and their general powers, except the Secretary of Education whose general powers and duties are set out separately in proposed § 2.2-XXX (existing § 2.1- 51.20). New subsection D in this proposed section was added to define the Governor's Secretaries.

~~§ 2.1-51.10. Compensation.~~

~~Each Secretary shall be paid such compensation as the Governor may fix.~~

DRAFTING NOTE: This section now appears as subsection B in proposed § 2.2-XXX (existing 2.1-51.10:1).

~~§ 2.1-51.10:1 2.2-XXX. Secretaries; general; compensation.~~

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

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

DRAFTING NOTE: Technical corrections. This section represents a merger of existing §§ 2.1-51.10:1 and 2.1-51.10 as subsections A and B, respectively.

~~§ 2.1-51.12~~ 2.2-XXX. Payment of expenses of office.

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

DRAFTING NOTE: Technical corrections only.

Chapter 3.

Secretary of Administration.

~~§ 2.1-51.25~~ 2.2-XXX. Position established; ~~appointment; term; oath~~ agencies for which responsible.

The position of Secretary of Administration (the "Secretary") is hereby created. ~~The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office.~~ The Secretary shall be responsible to the Governor for the following agencies and boards: Department of Personnel and Training, Department of General Services, Department for the Rights of Virginians with Disabilities, Compensation Board, Secretary of the Commonwealth, Department of Employee Relations Counselors, Department of Veterans' Affairs, Virginia Veterans Care Center Board of Trustees, Commission on Local Government, Charitable Gaming Commission, and Virginia Public Broadcasting Board. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language comes from existing § 2.1-51.27, with the deletion of the reference to the Council on Information Management which was abolished by Chapter 412 of the 1999 Acts of Assembly, and the Department of Information Technology which was reassigned to the Secretary of Technology also by Chapter 412 of the 1999 Acts of Assembly. On the recommendation of the Secretary of Health and Human Resources, the Department for the Rights of Virginians with Disabilities was added to the agencies under the Secretary of Administration since the Governor transferred the Department for the Rights of Virginians with Disabilities from the Secretary of Health and Human Resources to the Secretary of Administration.

~~§ 2.1-51.26~~. Subject to supervision by Governor; powers and duties

~~A. The Secretary of Administration shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

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

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

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

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

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

~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~

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

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

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

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

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions.

~~§ 2.1-51.27. Agencies for which responsible.~~

~~The Secretary of Administration shall be responsible to the Governor for the following agencies and boards: Department of Personnel and Training, Department of General Services, Compensation Board, Secretary of the Commonwealth, Department of Employee Relations Counselors, Department of Veterans' Affairs, Virginia Veterans Care Center Board of Trustees, Commission on Local Government, Charitable Gaming Commission, and Virginia Public Broadcasting Board. The Governor may, by executive order, assign any other state executive agency to the Secretary of Administration, or reassign any agency listed above to another secretary.~~

DRAFTING NOTE: Technical corrections only. This section now appears in proposed § 2.2-XXX (existing § 2.1-51.25) as the new language at the end of that section.

Chapter 4.

Secretary of Commerce and Trade.

~~§ 2.1-51.38 2.2-XXX. Position established; appointment; term; oath agencies for which responsible; additional duties.~~

~~The position of Secretary of Commerce and Trade, formerly known as Secretary of Economic Development, is hereby continued, and wherever "Secretary of Economic Development" is used in this Code, it shall mean the Secretary of Commerce and Trade (the "Secretary") is created. The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties the Secretary shall take an oath to faithfully execute the duties of the office. The Secretary shall be responsible to the Governor for the following agencies: Department of Business Assistance, Department of Forestry, Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Milk Commission, Department of Agriculture and Consumer Services, Department of Housing and Community~~

Development, Department of Minority Business Enterprise, Virginia Agricultural Council, Commission for the Arts, and Virginia Marine Products Board. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.1-769 et seq.) (xref).

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.40. The second paragraph comes from existing § 2.1-39:2.

~~§ 2.1-51.39. Subject to supervision by Governor; powers and duties:~~

~~A. The Secretary of Commerce and Trade shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

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

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

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

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

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

~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~

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

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

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

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

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions.

~~§ 2.1-51.39:1~~ 2.2-XXX. Economic development policy for the Commonwealth.

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

by the Secretary and the committee and approved by the Governor, it shall be submitted to the General Assembly for its consideration.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.39:3.~~ Urban issues; report; identifying nonstate resources; impact of state policies; responsibilities of the Secretary.

A. In order to evaluate and promote the economic potential and development of the urban areas in the Commonwealth, the Secretary shall present biennially in even-numbered years to the General Assembly a report summarizing the major state programs and policies affecting economic growth and stability in these urban areas. The report shall include results related to the Regional Competitiveness Act (§ 15.2-1306 et seq.). All agencies and institutions of the Commonwealth that have responsibility for urban affairs shall assist in the preparation of this report upon request by the Secretary of Commerce and Trade.

B. The Secretary, with the support of the Virginia Liaison Office, shall identify and provide information in the biennial report on federal and private sector sources of funding for projects and programs directed to conditions and opportunities in fiscally stressed urban areas.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.40.~~ Agencies for which Secretary of Commerce and Trade responsible.

~~The Secretary shall be responsible to the Governor for the following agencies: Department of Business Assistance, Department of Forestry, Virginia Economic Development Partnership, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Milk Commission, Department of Agriculture and Consumer Services, Department of Housing and Community Development, Department of Minority Business Enterprise, Virginia Agricultural Council, Commission for the Arts, and Virginia Marine Products Board.~~

~~The Governor, by executive order, may assign any state executive agency to the Secretary of Commerce and Trade, or reassign any agency listed in this section to another secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions.

~~§ 2.1-51.39:2.~~ Virginia Biotechnology Research Act; responsibilities of the Secretary.

~~The Secretary of Commerce and Trade shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.1-769 et seq.).~~

DRAFTING NOTE: Technical corrections only. This section has been moved as the last paragraph in proposed § 2.2-XXX (existing § 2.1-38).

~~§ 2.1-51.40:4~~ 2.2-XXX. Annual legislative report.

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

DRAFTING NOTE: Technical corrections only.

Chapter 5.

Secretary of Education.

~~§ 2.1-51.19 2.2-XXX. Position established; appointment; term; oath agencies for which responsible; powers and duties.~~

~~The position of Secretary of Education (the "Secretary") is hereby created. He shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. He shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until his successor shall be appointed and qualified. Before entering upon the discharge of his duties, he shall take an oath that he will faithfully execute the duties of the office. The Secretary shall be responsible to the Governor for the following agencies: Department of Education, State Council of Higher Education, Virginia Student Assistance Authorities, Virginia Museum of Fine Arts, The Science Museum of Virginia, Frontier Culture Museum of Virginia, The Library of Virginia, Jamestown-Yorktown Foundation, Board of Regents of Gunston Hall, and the Virginia Advisory Council for Adult Education and Literacy. The Governor may, by executive order, assign any other state executive agency to the Secretary, or resign any agency listed above to another Secretary.~~

~~Unless the Governor expressly reserves such a power to himself, the Secretary is empowered to resolve administrative, jurisdictional or policy conflicts between any agencies or officers for which he is responsible and to provide policy direction for programs involving more than a single agency. He is authorized to direct the preparation of alternative policies, plans and budgets for education for the Governor and, to that end, may require the assistance of the agencies for which he is responsible. He shall direct the formulation of a comprehensive program budget for cultural affairs encompassing the programs and activities of the agencies involved in cultural affairs.~~

DRAFTING NOTE: Technical corrections. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.21. The powers listed in the last paragraph of this proposed section comes from existing § 2.1-51.20 and are powers granted specifically to the Secretary of Education

~~§ 2.1-51.20. Subject to supervision by Governor; powers and duties.~~

~~The Secretary of Education shall be subject to direction and supervision by the Governor. Unless the Governor expressly reserves such a power to himself, the Secretary is empowered to resolve administrative, jurisdictional or policy conflicts between any agencies or officers for which he is responsible and to provide policy direction for programs involving more than a single agency. He is authorized to direct the preparation of alternative policies, plans and budgets for education for the Governor and, to that end, may require the assistance of the agencies for which he is responsible. He shall direct the formulation of a comprehensive program budget for cultural affairs encompassing the programs and activities of the agencies involved in cultural affairs.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.19) as the last full paragraph.

~~§ 2.1-51.21. Agencies for which responsible.~~

~~The Secretary of Education shall be responsible to the Governor for the following agencies: Department of Education, State Council of Higher Education, Virginia Museum of Fine Arts, The Science Museum of Virginia, Frontier Culture Museum of Virginia, The Library of Virginia, Jamestown Yorktown Foundation, Board of Regents of Gunston Hall, the Virginia Advisory Council for Adult Education and Literacy, and the Virginia Workforce Council. The Governor may, by executive order, assign any other state executive agency to the Secretary of Education, or reassign any agency listed above to another secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.19) as the new language in the first paragraph.

~~§ 2.1-51.21:1~~ 2.2-XXX. Program established; objectives.

The Virginia Business-Education Partnership Program is hereby established within the Office of the Secretary of Education and shall be referred to in this chapter as the Program. The include the following primary objectives of the Program shall include the following for the:

1. Expansion of business participation and involvement in public education, development of strategic education reform partnerships in support of World Class Education, and enhancement of existing partnerships between the public and private sectors to improve public education in the Commonwealth;
2. Creation of a statewide resource and referral center for the dissemination of information regarding educational innovations, strategic, reform-based business and education partnerships, and other public and private sector education initiatives;
3. Provision of training and consultation services for school divisions as appropriate;
4. Development and implementation of a challenge grants program to provide assistance for the establishment of business and education partnership initiatives;
5. Administration of statewide recognition programs acknowledging exemplary business and education partnership initiatives and business-education community certification programs as may be developed by the Secretary of Education; and
6. Establishment of standards of excellence for effective business and education partnerships and provision of technical assistance for these partnerships.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.21:2~~ 2.2-XXX. Annual legislative report.

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

DRAFTING NOTE: Technical corrections only.

Chapter 6.

Secretary of Finance.

~~§ 2.1-51.32~~ 2.2-XXX. Position established; ~~appointment; term; oath~~ agencies for which responsible; additional powers.

A. The position of Secretary of Finance (the "Secretary") is hereby created. ~~The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is~~

~~made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office. The Secretary shall be responsible for the following agencies: Department of Accounts, Department of Planning and Budget, Department of Taxation, Department of the Treasury and Department of the State Internal Auditor. The Governor, by executive order, may assign any other state executive agency to the Secretary of Finance, or reassign any agency listed.~~

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

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.34. The powers listed in the last paragraph of this proposed section comes from subdivision A 4 of existing § 2.1-51.33 and are powers granted specifically to the Secretary of Finance.

~~§ 2.1-51.33. Subject to supervision by Governor; powers and duties:~~

~~A. The Secretary of Finance shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

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

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

~~3. Forward all reports to the Governor through the Secretary; and~~

~~4. To the greatest extent practicable, pay all amounts due and owing by the Commonwealth through electronic transfers of funds from the general fund or appropriate special fund to the bank account of the payee or a party identified by law to receive funds on behalf of the payee. All wire transfer costs associated with the electronic transfer shall be paid by the payee subject to exemptions authorized by the State Treasurer affecting the investment, debt, and intergovernmental transactions of the Commonwealth and its agencies, institutions, boards, and authorities.~~

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

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

~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of the agencies assigned for consideration by the Governor;~~

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

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

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

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

DRAFTING NOTE: Technical corrections only. With the exception of subdivision A4, the stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions. Subdivision A4 has been moved to proposed § 2.2-XXX (existing § 2.1-51.32) as the last full paragraph because this is a power granted specifically to the Secretary of Finance.

~~§ 2.1-51.34. Agencies for which responsible.~~

~~The Secretary of Finance shall be responsible for the following agencies: Department of Accounts, Department of Planning and Budget, Department of Taxation, Department of Treasury and Department of the State Internal Auditor. The Governor, by executive order, may assign any other state executive agency to the Secretary of Finance, or reassign any agency listed.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.32) as the new language in the first paragraph.

Chapter 7.

Secretary of Health and Human Resources.

~~§ 2.1-51.13~~ 2.2-XXX. Position established; appointment; term; oath; agencies for which responsible; additional powers.

~~The position of Secretary of Health and Human Resources (the “Secretary”) is hereby created. The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Visually Handicapped, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, the Council on Indians, Governor’s Employment and Training Department, Child Day-Care Council, Virginia Department for the Deaf and Hard-of-Hearing, and the Virginia Council on Coordinating Prevention. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.~~

Unless the Governor expressly reserves such power to himself, the Secretary may coordinate the work of state agencies to implement the long-term care policy of the Commonwealth.

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.15. The power listed in the last paragraph of this proposed section comes from subdivision A 7 of existing § 2.1-51.14 and is a power granted specifically to the Secretary of Health and Human Resources.

~~§ 2.1-51.14. Subject to supervision by Governor; powers and duties.~~

~~A. The Secretary of Health and Human Resources shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

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

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

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

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

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

~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~

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

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

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

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

~~7. Coordinate the work of state agencies to implement the long-term care policy of the Commonwealth.~~

DRAFTING NOTE: Technical corrections only. Except for subdivision A7, the stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. Subdivision A7 has been moved to proposed § 2.2-XXX (existing § 2.1-51.13) as the last full paragraph because this is a power granted specifically to the Secretary of Health and Human Resources.

~~§ 2.1-51.15. Agencies for which responsible.~~

~~The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Visually Handicapped, Department of Health Professions, Department for the Aging, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services, Department for Rights of Virginians With Disabilities, Department of Medical Assistance Services, the Council on Indians, Governor's Employment and Training Department, Child Day Care Council, Virginia Department for the Deaf and Hard of Hearing, and the Virginia Council on Coordinating Prevention. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.13) as the new language in the first paragraph.

~~§ 2.1-51.15:1 2.2-XXX. Secretary of Health and Human Resources to develop certain criteria.~~

In order to respond to the needs of substance abusing women and their children, the Secretary ~~of Health and Human Resources~~ shall develop criteria for (i) enhancing access to publicly funded substance abuse treatment programs in order to effectively serve pregnant substance abusers; (ii) determining when a drug-exposed child may be referred to the early intervention services and tracking system available through Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq.; (iii) determining the appropriate circumstances for contact between hospital discharge planners and local departments of social services for referrals for family-oriented prevention services, when such services are available and provided by the local social services agency; and (iv) determining when the parent of a drug-exposed infant, who may be endangering a child's health by failing to follow a discharge plan, may be referred to the child protective services unit of a local department of social services.

The Secretary shall consult with the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of Social Services, the Commissioner of Health, community services boards, local departments of social services, and local departments of health in developing the criteria required ~~herein~~ by this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.14:1~~ 2.2-XXX. Responsibility of certain agencies within the Secretariat; review of regulations.

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

DRAFTING NOTE: Technical corrections only.

Chapter 8.

Secretary of Natural Resources.

~~§ 2.1-51.7~~ 2.2-XXX. Position established; ~~appointment; term; oath~~ agencies for which responsible.

The position of Secretary of Natural Resources (the "Secretary") is hereby created. ~~The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor shall be appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office.~~ The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, Chippokes Plantation Farm Foundation, Chesapeake Bay Local Assistance Department, Virginia Museum of Natural History and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural Resources, or reassign any agency listed above to another Secretary.

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language comes from existing § 2.1-51.9.

~~§ 2.1-51.8:1. Subject to supervision by Governor; powers and duties.~~

~~A. The Secretary of Natural Resources shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

- ~~1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;~~
- ~~2. Provide such assistance to the Governor or the Secretary as may be required; and~~
- ~~3. Forward all reports to the Governor through the Secretary.~~

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

- ~~1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;~~
- ~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~
- ~~3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;~~
- ~~4. Direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government;~~
- ~~5. Sign documents on behalf of the Governor which originate with agencies assigned to the Secretary; and~~
- ~~6. Employ such personnel and to contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by statute or executive order.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions.

~~§ 2.1-51.9. Agencies for which Secretary of Natural Resources responsible.~~

~~The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, Chippokes Plantation Farm Foundation, Chesapeake Bay Local Assistance Department, Virginia Museum of Natural History and the Department of Environmental Quality.~~

~~The Governor may, by executive order, assign any state executive agency to the Secretary of Natural Resources, or reassign any agency listed above to another secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.19) as the new language in the first paragraph.

~~§ 2.1-51.8:2 2.2-XXX. Duty to monitor and report on water and resources of Chesapeake Bay and its tributaries.~~

The Secretary of Natural Resources shall cooperate with appropriate state and federal agencies in the development and implementation of a comprehensive program to monitor the quality of the waters and the living resources of the Chesapeake Bay and its tributaries. The Secretary shall report biennially in even-numbered years to the General Assembly on the results of this monitoring program and the status of the resources of the Chesapeake Bay and its tributaries.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-51.8:3~~ 2.2-XXX. Friend of the Bay Award.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-51.12:1~~ 2.2-XXX. Development of strategies to restore the water quality and living resources of the Chesapeake Bay and its tributaries.

The Secretary of ~~Natural Resources~~ shall coordinate the development of tributary plans designed to improve water quality and restore the living resources of the Chesapeake Bay and its tributaries. ~~Such plans~~ Each plan shall be tributary specific in nature and prepared for the Potomac, Rappahannock, York, and James River Basins as well as the western coastal basins (comprising the small rivers on the western Virginia mainland that drain to the Chesapeake Bay, not including the Potomac, Rappahannock, York and James Rivers) and the eastern coastal basin (encompassing the creeks and rivers of the Eastern Shore of Virginia that are west of U.S. Route 13 and drain to the Chesapeake Bay). Each plan shall (i) address the reduction of nutrients and suspended solids, including sediments, entering the Chesapeake Bay and its tributaries. ~~Each plan shall also and (ii)~~ summarize other existing programs, strategies, goals and commitments for reducing toxics; the preservation and protection of living resources; and the enhancement of the amount of submerged aquatic vegetation, for each tributary basin and the Bay. The plans shall be developed in consultation with affected stakeholders, including, but not limited to, local government officials; wastewater treatment operators; seafood industry representatives; commercial and recreational fishing interests; developers; farmers; local, regional and statewide conservation and environmental interests; the Virginia Chesapeake Bay Partnership Council; and the Virginia delegation to the Chesapeake Bay Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-51.12:2~~ 2.2-XXX. Tributary plan content; development timelines.

A. Each tributary plan developed pursuant to ~~§ 2-1-51.12:1~~ 2.2-XXX shall include the following:

1. Recommended specific strategies, goals, commitments and methods of implementation designed to achieve the nutrient goals of the 1987 Chesapeake Bay Agreement and the 1992 amendments to that agreement signed by the Governors of Virginia, Maryland, and Pennsylvania, the Mayor of the District of Columbia, the Administrator of the United States Environmental Protection Agency and the Chairman of the Chesapeake Bay Commission, collectively known as the Chesapeake Executive Council.

2. Recommended specific strategies, goals, commitments and methods of implementation to achieve sediment and suspended solids reductions from nonpoint sources sufficient to achieve living resource goals, particularly those related to habitat conditions necessary to support submerged aquatic vegetation.

3. A report on progress made pursuant to the "Chesapeake Bay Basinwide Toxics Reduction and Prevention Strategy" signed by the Chesapeake Executive Council on October 14, 1994, that is applicable to the tributary for which the plan is prepared.

4. A report on progress on the "Submerged Aquatic Vegetation Restoration Goals" signed by the Chesapeake Executive Council on September 15, 1993, that is applicable to the tributary for which the plan is prepared.

5. A report on progress related to the objectives of the "Local Government Partnership Initiative" signed by the Chesapeake Executive Council on November 30, 1995.

6. Specifically identified recommended state, local and private responsibilities and actions, with associated timetables, for implementation of the plan, to include the (i) person, official, governmental unit, organization or other responsible body; (ii) specific programmatic and environmental benchmarks and indicators for tracking and evaluating implementation and progress; (iii) opportunities, if appropriate, to achieve nutrient reduction goals through nutrient trading; (iv) estimated state and local benefits derived from implementation of the proposed alternatives in the plan; (v) state funding commitments and specifically identified sources of state funding as well as a method for considering alternative or additional funding mechanisms; (vi) state incentives for local and private bodies for assisting with implementation of the plans; and (vii) estimate and schedule of costs for the recommended alternatives in each plan.

7. Scientific documentation to support the recommended actions in a plan and an analysis supporting the documentation if it differs from the conclusions used by the Chesapeake Bay Program.

8. An analysis and explanation of how and when the plan is expected to achieve the elements of subdivisions 1, 2, 3 and 4 of this subsection.

9. A process for and schedule of adjustment of the plan if reevaluation concludes that the specific nutrient reduction goals will not be met.

10. An analysis of the cost effectiveness and equity of the recommended nutrient reduction alternatives.

11. An opportunity for public comment and a public education and information program that includes but is not limited to information on specific assignments of responsibility needed to execute the plan.

B. Tributary plans shall be developed by the following dates for the:

1. Potomac River Basin, January 1, 1997.

2. Rappahannock River Basin, January 1, 1999.

3. York River Basin, July 1, 1998.

4. James River Basin, July 1, 1998.

5. Eastern and western coastal basins, January 1, 1999.

C. In developing tributary plans, the Secretary shall consider, among other factors: (i) studies relevant to the establishment of nutrient, sediment and suspended solids reduction goals; (ii) the relative contributions and impacts of point and nonpoint sources of nutrients; (iii) the scientific relationship between nutrient, sediment and suspended solids controls and the attainment of water quality goals; and (iv) estimates of costs for each publicly owned treatment works affected by point source nutrient reduction goals and estimates of costs for nonpoint source nutrient, sediment and suspended solids reduction goals.

D. In any tributary plan reevaluation, the Secretary shall consider, among other factors: (i) whether all publicly owned treatment works in the basin under consideration have either installed biological nutrient removal technology or achieved equivalent nutrient reduction by other means; (ii) total nutrient reductions achieved by nonpoint sources to the tributary; (iii) the need for additional nutrient controls for the attainment of water quality goals; (iv) a comparison between nutrient reductions achieved by point source controls and nonpoint source controls in order to equitably allocate any additional reductions; and (v) the cost effectiveness, including nutrient trading options, of any additional nutrient reduction controls.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.12:3~~ 2.2-XXX. Annual reporting.

The Secretary of ~~Natural Resources~~ shall report by November 1 of each year to the House Committee on Chesapeake and Its Tributaries, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, the Senate Committee on Finance, the Virginia delegation to the Chesapeake Bay Commission and the Virginia Chesapeake Bay Partnership Council on progress made in the development and implementation of each plan. The annual report shall include, but not be limited to:

1. An analysis of actions taken and proposed and their relation to the timetables and programmatic and environmental benchmarks and indicators.
2. The results and analyses of quantitative or qualitative tests or studies, including but not limited to water quality monitoring and submerged aquatic vegetation surveys, which relate to actual resource improvements in each tributary. The results and analyses are to be clearly related to designated portions of each tributary.
3. A complete summary of public comments received on each plan.
4. The current or revised cost estimates for implementation of the plans.
5. The status of Virginia's strategies as compared to the development, content and implementation of tributary strategies by the other jurisdictions that are signatories to the Chesapeake Bay Agreement.

DRAFTING NOTE: Technical corrections only.

Chapter 9.

Secretary of Public Safety.

~~§ 2.1-51.16~~ 2.2-XXX. Position continued; ~~appointment; term; oath;~~ agencies for which responsible; annual report.

The position of Secretary of ~~Transportation and Public Safety~~ (the "Secretary") is ~~continued as the Secretary of Public Safety created.~~ The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor is appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office. The Secretary shall be responsible to the Governor for the following agencies: Department of Alcoholic Beverage Control, Department of Corrections, Department of Juvenile Justice, Department of Correctional Education, Department of Criminal Justice Services, Virginia Parole Board, Department of Emergency Services, Department of Military Affairs, Department of State Police, Department of Fire Programs and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

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

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.18. The requirement for an annual in the last paragraph of this proposed section comes from subsection C of existing § 2.1-51.17 and is a duty granted specifically to the Secretary of Public Safety.

~~§ 2.1-51.17. Subject to supervision by Governor; powers and duties.~~

~~A. The Secretary of Public Safety shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

- ~~1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;~~
- ~~2. Provide such assistance to the Governor or the Secretary as may be required; and~~
- ~~3. Forward all reports to the Governor through the Secretary.~~

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

- ~~1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;~~
- ~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~
- ~~3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;~~
- ~~4. Direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government;~~
- ~~5. Sign documents on behalf of the Governor which originate with agencies assigned to the Secretary; and~~
- ~~6. Employ such personnel and contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by statute or executive order.~~

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

DRAFTING NOTE: Technical corrections only. Except for subsection C, the stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. Subsection C has been moved to proposed § 2.2-XXX (existing § 2.1-51.16) as the last full paragraph because this is a duty required specifically of the Secretary of Public Safety.

~~§ 2.1-51.18. Agencies for which responsible.~~

~~The Secretary of Public Safety shall be responsible to the Governor for the following agencies: Department of Alcoholic Beverage Control, Department of Corrections, Department of Juvenile Justice, Department of Correctional Education, Department of Criminal Justice Services, Virginia Parole Board, Department of Emergency Services, Department of Military Affairs, Department of State Police, Department of Fire Programs and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary of Public Safety, or reassign any agency listed above to another secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.16) as the new language in the first paragraph.

~~§ 2.1-51.18:3~~ 2.2-XXX. Interagency Drug Offender Screening and Assessment Committee.

The Secretary of ~~Public Safety~~ shall establish and chair an Interagency Drug Offender Screening and Assessment Committee to oversee the drug screening, assessment and treatment provisions of §§ 16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 for defendants convicted in the criminal courts of the Commonwealth. The Committee shall include the Directors or Commissioners of the Department of Corrections; Department of Criminal Justice Services; Department of Juvenile Justice; Department of Mental Health, Mental Retardation and Substance Abuse Services; the Virginia Alcohol Safety Action Program; and the Virginia Criminal Sentencing Commission. The Committee shall have ~~as its responsibilities~~ the responsibility to: (i) assist and monitor agencies in implementing the above-listed Code of Virginia sections of the ~~Virginia Code~~, (ii) ensure quality and consistency in the screening and assessment process, (iii) promote interagency coordination and cooperation in the identification and treatment of drug abusing or drug dependent offenders, (iv) implement an evaluation process and conduct periodic program evaluations, and (v) make recommendations to the Governor and General Assembly regarding proposed expenditures from the Drug Assessment Fund. The Committee shall report on the status and effectiveness of offender drug screening, assessment and treatment to the Virginia State Crime Commission and the House Committees on Courts of Justice and Appropriations, and the Senate Committees on Courts of Justice, House Appropriations, and Senate Finance Committees by January 1 of each year.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.17:04~~ 2.2-XXX. Secretary of Public Safety to publish certain list.

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

DRAFTING NOTE: Technical corrections only.

Chapter 10.

Secretary of Technology.

~~§ 2.1-51.44. Position established; appointment; term; oath~~ agencies for which responsible; additional powers.

~~The position of Secretary of Technology (the "Secretary") is created. The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor is appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office. The Secretary shall be responsible to the Governor for the following agencies and boards: Department of Information Technology, Department of Technology Planning, Innovative Technology Authority, Virginia Geographic Information Network Advisory Board, and Virginia Information Providers Network Authority. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.~~

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

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

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

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

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

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language in the first paragraph comes from existing § 2.1-51.46. The powers listed in the last paragraph of this proposed section comes from subdivision B7 of existing § 2.1-51.45, with the appropriate renumbering, and are powers granted specifically to the Secretary of Technology.

~~§ 2.1-51.45. Subject to supervision by Governor; powers and duties.~~

~~A. The Secretary of Technology shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

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

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

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

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

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

~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~

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

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

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

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

~~7. Have the following powers and duties concerning strategy development, planning and budgeting for technology programs in the Commonwealth:~~

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

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

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

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

DRAFTING NOTE: Technical corrections only. Except for subdivision B 7, the stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. Subdivision B7, with the appropriate renumbering, has been moved to proposed § 2.2-XXX (existing § 2.1-51.44) as the last full paragraph because it is a power granted specifically to the Secretary of Technology.

~~§ 2.1-51.46. Agencies for which Secretary of Technology responsible.~~

~~The Secretary of Technology shall be responsible to the Governor for the following agencies and boards: Department of Information Technology, Department of Technology Planning, Innovative Technology Authority, Virginia Geographic Information Network Advisory Board, and Virginia Information Providers Network Authority. The Governor, by executive order, may assign any other state executive agency to the Secretary of Technology, or reassign any agency listed in this section to another Secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.44) as the new language in the first paragraph.

~~§ 2.1-51.47. § 2.2-XXX. Secretary to function as Chief Information Officer; powers and duties.~~

~~A. The Secretary of Technology shall function as the Chief Information Officer (CIO) of the Commonwealth. In addition to his powers and duties as Secretary of Technology, the CIO shall have the following general powers:~~

~~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 his duties and execution of his powers, including but not limited to contracts with the United States, other state agencies, institutions of higher education, and political subdivisions of the Commonwealth.~~

~~3.2. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the CIO shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable.~~

~~4.3. Prescribe rules and regulations necessary or incidental to the performance of his duties or execution of his powers.~~

5.4. Exercise such powers and perform such duties as are conferred or imposed upon him by law or required of him by the Governor.

B. The CIO shall have the following powers and duties concerning the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth:

1. Monitor trends and advances in information technology; direct and approve a comprehensive, statewide, four-year planning process; and plan for the acquisition, management, and use of information technology. The statewide plan shall be updated annually and submitted to the Governor, the Speaker of the House of Delegates, and the President Pro Tempore of the Senate. In developing and updating such plans, the CIO shall consider, at a minimum, the advice and recommendations of the Council on Technology Services created in ~~§ 2.1-51.48~~ pursuant to § 2.2-XXX xref.

2. Require state agencies and institutions of higher education to prepare and submit information technology plans to the CIO. The CIO shall have the authority to approve and recommend amendments to such plans upon review and recommendation by the Department of Technology Planning (DTP). All state agencies and institutions of higher education shall maintain current information technology plans that have been approved by the CIO.

3. Direct the formulation and promulgation of policies, standards, specifications, and guidelines for information technology in the Commonwealth, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies and (ii) concerning the development of electronic transactions including the use of electronic signatures as provided in § 59.1-469.

4. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, which are integrated into the Commonwealth's strategic planning and performance budgeting processes, and which state agencies and institutions of higher education shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and institutions of higher education in preparing budget requests.

5. Review budget requests for information technology from state agencies and institutions of higher education and recommend budget priorities to the Department of Planning and Budget.

6. Direct the development of policies and procedures for review by the Department of Technology Planning of technology procurements, agreements, or contracts for amounts exceeding \$100,000. The Department of Technology Planning shall report monthly to the Secretary on all such reviews. The Secretary may delegate approval of such procurements to the Department of Technology Planning; however, approval of procurements in excess of one million dollars shall not be delegated by the Secretary.

7. Disapprove procurements that, on the recommendation of the Department of Technology Planning, do not conform to the statewide information technology plan or to the individual plans of state agencies or institutions of higher education.

8. Direct the development of policies and procedures for the effective management of technology investments throughout their entire life cycle, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the Secretary of the execution of agency and institution of higher education technology projects estimated to cost one million dollars or more. The Secretary shall be authorized to direct the modification, suspension, or cessation of any such project which, as the result of a periodic review, has not met the milestones and performance measures agreed to by the Secretary and the

sponsoring agency or institution. This shall not supersede the responsibility of a board of visitors for the management and operation of an institution of higher education.

9. Direct the establishment of statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth.

10. Oversee and administer the Virginia Technology Infrastructure Fund created in ~~§ 9-145.52~~ pursuant to § 2.2-XXX xref.

11. Undertake or cause to be undertaken a periodic benchmarking analysis of data center and telecommunications resources and services performed at or provided by agencies and institutions.

12. Evaluate the feasibility of outsourcing information technology resources and services and outsource those resources and services which would be beneficial to the Commonwealth.

13. Report annually to the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by state agencies and institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government and to assist the Commission in its effort to stimulate, encourage, and promote the development of technology in the Commonwealth and sound public policies related thereto.

C. As used in this chapter, "information technology" includes telecommunications, automated data processing, word processing, the global information system known as the Internet, management information systems, and related information, equipment, goods, and services. It is in the interest of the Commonwealth that its public institutions of higher education be in the forefront of developments in technology. Therefore the provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

DRAFTING NOTE: Technical corrections only.

Chapter 11.

Secretary of Transportation.

~~§ 2.1-51.41~~ 2.2-XXX. Position established; ~~appointment; term; oath~~ agencies for which responsible.

The position of Secretary of Transportation (the "Secretary") is hereby created. ~~The Secretary shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. The Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor is appointed and qualified. Before entering upon the discharge of duties, the Secretary shall take an oath to faithfully execute the duties of the office.~~ The Secretary shall be responsible to the Governor for the following agencies: Department of Transportation, Department of Rail and Public Transportation, Department of Aviation, Department of Motor Vehicles, the Virginia Port Authority, and the Motor Vehicle Dealer Board. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor's Secretaries; general provisions. The new language comes from existing § 2.1-51.43. On the recommendation of the Secretary of Transportation, the Virginia Port Authority and the Motor Vehicle Dealer Board were included as agencies under the Secretary of Transportation.

~~§ 2.1-51.42. Subject to supervision by Governor; powers and duties.~~

~~A. The Secretary of Transportation shall be subject to direction and supervision by the Governor. The agencies assigned to the Secretary shall:~~

- ~~1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;~~
- ~~2. Provide such assistance to the Governor or the Secretary as may be required; and~~
- ~~3. Forward all reports to the Governor through the Secretary.~~

~~B. Unless the Governor expressly reserves such power to himself, the Secretary is empowered to:~~

- ~~1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;~~
- ~~2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.1-398 encompassing the services of agencies assigned for consideration by the Governor;~~
- ~~3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;~~
- ~~4. Direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government;~~
- ~~5. Sign documents on behalf of the Governor which originate with agencies assigned to the Secretary; and~~
- ~~6. Employ such personnel and contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by statute or executive order.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX, which is located at the beginning of Chapter X—Governor’s Secretaries; general provisions.

~~§ 2.1-51.43. Agencies for which Secretary of Transportation responsible.~~

~~The Secretary shall be responsible to the Governor for the following agencies: Department of Transportation, Department of Rail and Public Transportation, Department of Aviation, and the Department of Motor Vehicles.~~

~~The Governor, by executive order, may assign any state executive agency to the Secretary of Transportation, or reassign any agency listed in this section to another Secretary.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been moved to proposed § 2.2-XXX (existing § 2.1-51.41) as the new language in the first paragraph.

Chapter X.

Virginia Liaison Office.

~~§ 2.1-564~~ 2.2-XXX. Office created; appointment of Director.

There is hereby created in the Office of the Governor, the Virginia Liaison Office, hereinafter referred to in this chapter as (“the Office.”). The Office shall consist of a Director. ~~The Director who~~ shall be appointed by the

Governor, subject to confirmation by the General Assembly as provided in ~~§ 2.1-41.2 (xref)~~. Hereinafter in this chapter, such officer shall be referred to as "the Director." The Director shall preferably, by reason of professional experience, be familiar with the structure and operations of the federal government and of the Commonwealth of Virginia.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-565~~ 2.2-XXX. Duties of Director, staff, office location.

A. The Director shall be responsible for the general management of the Office and for the tasks assigned to it by law or by the Governor.

B. The Director may hire staff, and accept offers of service from volunteers on a full or part-time basis.

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

DRAFTING NOTE: Technical corrections. This proposed section is comprised of existing § 2.1-565 as subsection A, and § 2.1-566 as subsections B and C.

~~§ 2.1-566. Office location; staff.~~

~~The Director is hereby authorized to obtain, either in the City of Washington, D. C., or at some location within the Commonwealth within twenty five miles of Washington, D. C., such office space as he shall deem necessary for the carrying out of the duties imposed on him by this chapter. He shall also be authorized to hire staff, and to accept offers of service from volunteers on a full or part time basis.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing § 2.1-565) as new subsections B and C.

~~§ 2.1-567~~ 2.2-XXX. Responsibilities of Office.

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

1. Monitoring and tracking the development of federal legislation which is of interest to the Commonwealth;
2. Conducting in-depth analyses of federal legislation and regulations as to their impact upon the Commonwealth;
3. Providing state agencies with up-to-date information on the status of federal legislation and regulations;
4. Influencing the development of federal legislation by keeping the State Congressional Delegation informed about the Governor's priorities;
5. Alerting state agencies and local governments to early opportunities for federal grants;
6. Joining in cooperative efforts with other states, through their Washington offices, on issues of mutual concern;

7. Maintaining personal contacts with Congressional staffs, key federal agency officials, public interest groups, etc.;

8. Writing, or advising upon, testimony to be presented by the Governor or state agency heads before Congressional committees;

9. Assisting state agency officials in resolving administrative problems which occur between the state and federal agencies;

10. Monitoring and tracking the status of federal grant applications submitted by state agencies;

11. Assisting state agencies in obtaining needed information from the federal government;

12. Serving as a base office for state officials traveling to Washington;

13. Arranging meetings between federal and state officials;

14. Serving as an information source about the Commonwealth when called upon by another state's Congressional delegate's staff;

15. Preparing analyses of legislation and initiatives which originate with the federal government, other states and interstate groups, including preparing statements of their potential impact on the Commonwealth, and coordinating state positions on such legislation and initiatives;

16. Maintaining liaison with other states and interstate groups;

17. Supporting state agencies in monitoring and influencing the development of federal ~~rules and~~ regulations of interest to the Commonwealth; and

18. Reporting twice yearly to the members of the Senate Committee on Finance-Committee, the House Committee on Appropriations-Committee, and the Governor all federal mandates and regulations which may have an effect on the Commonwealth. These reports shall be presented by January 15 and July 15 of each year. ~~Such reports and~~ shall contain the names of those Virginia congressional members who voted for the legislation resulting in ~~such the~~ mandates.

DRAFTING NOTE: Technical corrections only.

§ 2-1-568 2.2-XXX. Cooperation with Department of Planning and Budget; supplemental assistance.

~~In addition to the foregoing, the~~ The Office shall be charged with the coordination of its work with that of the Virginia Department of Planning and Budget. The Department of Planning and Budget shall provide the Office with such support, beyond that provided for in § 2-1-565 (xref), as may prove necessary.

DRAFTING NOTE: Technical corrections only.

Chapter 12.

Secretary of the Commonwealth.

Article 1.

General Provisions.

§ 2-1-65 2.2-XXX. Appointment and term of office; filling vacancies; oath.

A. The Governor, shall appoint, subject to confirmation by the General Assembly, ~~shall appoint a~~ Secretary of the Commonwealth for a term commencing on the Monday after the third Wednesday in January after

his inauguration. The appointment shall be for a term of four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-66~~ 2.2-XXX. Ex officio Secretary to Governor; in charge of division of records.

The Secretary of the Commonwealth, who shall be ex officio Secretary to the Governor, shall be in direct charge of the division of records.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-67. Oath of Secretary.~~

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

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (§ 2.1-65) as new subsection

B.

~~§ 2.1-68~~ 2.2-XXX. Keeper of seals of Commonwealth; duties generally.

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

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

The Secretary of the Commonwealth shall make an annual report to the Governor, ~~embracing identifying~~ the following: (i) the boards of visitors of all public institutions, and other boards appointed by the Governor; (ii) all commissions issued under appointments made by the Governor, except commissions to notaries public; ~~and~~ (iii) all departments, boards, councils, commissions, and other collegial bodies created in the executive branch of state government; and (iv) such other matters as the Governor requires. The reports shall be transmitted by the Governor to the General Assembly, printed as other ~~such~~ annual reports are printed, bound in a separate volume, and disposed of according to law.

The Secretary of the Commonwealth shall collect all fees ~~mentioned~~ described in ~~§ 2.1-71.2~~ 2.2-XXX, and all other fees of office and commissions, accruing and pay them into the state treasury.

The Secretary of the Commonwealth shall include information and photographs of the members of the General Assembly in such annual report; these materials shall be maintained for the Secretary's use in the annual report by the Clerks of the House of Delegates and the Senate.

DRAFTING NOTE: The second sentence in third paragraph of this section was added to give the Secretary of the Commonwealth the duty to maintain a list of all executive branch departments, state boards,

councils, commissions, and other collegial bodies since the proposed title revision will no longer contain the lists currently found in Titles 2.1 and 9 (i.e., state departments, § 2.1-1.1; state councils, § 2.1-1.7; state commissions § 2.1-1.9; state advisory, policy and supervisory boards, §§ 9-6.25:1,9-6.25:2.and 9-6.25:3, respectively). Otherwise, this section contains technical corrections.

~~§ 2-1-68-4 2.2-XXX~~. Compilation of compacts; and related records and reports ~~relating thereto~~.

The Secretary of the Commonwealth shall prepare and maintain a compilation of all of the compacts to which the Commonwealth of Virginia is now or has been a party, commencing with the compact entered into with the state of North Carolina which is referenced in chapter XXIX of the October Session of the 1778 Acts of the General Assembly. ~~Such~~ The compilation shall contain the dates on which ~~such the~~ compacts were confirmed by ~~this the~~ Commonwealth and the complete texts of the terms of ~~such the~~ compacts.

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-69 2.2-XXX~~. Certifying records for use in other states.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-42-2 2.2-XXX~~ Secretary of Commonwealth to present list of vacancies to arise on commissions, boards, etc.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-42-3 2.2-XXX~~. (~~Effective January 1, 1998~~) Secretary of Commonwealth to report list of interim appointments requiring confirmation; other appointments.

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

B. The Secretary of the Commonwealth shall report to the General Assembly by December 1 of each year, the number of persons appointed to any state board, commission, agency or authority, categorized by race, gender and national origin. Information on the race, gender and national origin of appointees shall be obtained through voluntary self-identification following appointment. Such information shall be used solely for the purpose of compiling the statistical information required under this section and any personally identifiable information collected under this section shall be confidential and shall be exempt from disclosure under the Freedom of Information Act (§ 2-1-340 ~~xref~~ et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-74~~ 2.2-XXX. Filing of information by certain political subdivisions; inspection and publication of such information.

Each county, city, and town, and each authority, commission, district, or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any county, city or town or which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes, or other obligations under authority of any statute or expends public moneys derived from any revenue-producing activity or derived from the Commonwealth shall annually on or before June 30 file with the Secretary of the Commonwealth, on forms prescribed by him, a list of all bonds, notes, or other obligations issued by such county, city, town, authority, commission, district, or other political subdivision of the Commonwealth, the date and amount ~~thereof of such obligations, the balance-outstanding thereon~~ balance, and the type of ~~project or projects~~ project or projects financed ~~thereby which by such bonds, notes or other obligations, such list~~ shall be kept available for public inspection but need not be published.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-74.4~~ 2.2-XXX. Collection of information relevant to boundary changes from governmental subdivisions of Commonwealth.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-74.2~~ 2.2-XXX. (Effective October 1, 1998) Secretary of the Commonwealth.

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

For a testimonial, including seal tax	\$10.00
For a copy of any paper, if on one sheet	1.00
And for each sheet after the first75
For issuing a commission to a commissioner in another state	7.00
For power of attorney for nonresident insurers, contractors	3.00
For service of process on parties, each defendant	19.00
For service of process on reciprocal insurers	7.00
For registration of name, badge and insignia	7.50
For affixing the Seal of the Commonwealth	2.00
For issuing a commission to a notary for the Commonwealth at large, including seal tax	25.00

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-72 2.2-XXX.~~ Appointment of clerks; ~~chief clerk~~ assistants; deputy to act in absence of Secretary; notice to Governor.

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

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

DRAFTING NOTE: Technical corrections. This proposed section is comprised of existing § 2.1-72 as subsection A and existing § 2.1-73 as subsection B. The terms "clerk" and "chief clerk" have been updated to assistants and Deputy Secretary, respectively.

~~§ 2.1-73.~~ Chief clerk to act in absence of Secretary; notice to Governor.

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

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing § 2.1-72) as new subsection B.

Article 2

Registration of Names or Insignia of Certain Organizations.

~~§ 2.1-74 2.2-XXX.~~ Registration of names or insignia of certain societies, organizations or associations; alteration or cancellation of name.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-75 2.2-XXX.~~ Application for such registration, alteration or cancellation.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-76 2.2-XXX.~~ Registration for benefit of associated branches, etc.

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-77~~ 2.2-XXX. Record of registration; certification of registration; fees.

A. The Secretary of the Commonwealth shall keep a properly indexed record of the registration provided for by § 2.1-74(xref), which record shall also show any altered or canceled registration.

B. Upon granting registration provided in § 2.2-XXX (2.1-74), the Secretary of the Commonwealth shall issue his certificate to the petitioners, setting forth the fact of such registration.

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

DRAFTING NOTE: Technical corrections. The proposed section is comprised of the following existing sections: subsection A is § 2.1-77, subsection B is § 2.1-79, and subsection C is § 2.1-81.

~~§ 2.1-78~~ 2.2-XXX. Names or insignia not to be imitative.

No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of § 2.1-74 (xref).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-79~~. Certificate of registration.

~~Upon granting registration as aforesaid, the Secretary of the Commonwealth shall issue his certificate to the petitioners, setting forth the fact of such registration.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing

§ 2.1-77) as new subsection B.

~~§ 2.1-81~~. Fees.

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

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing § 2.1-77) as new subsection C.

~~§ 2.1-81.4~~ 2.2-XXX. Registration of mottoes or slogans of state departments, etc; exemptions.

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

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

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-81.2 2.2-XXX.~~ Use of registered motto or slogan or recognizable variation thereof, penalty for violation.

A. Upon registration of a motto or slogan as provided in § 2.1-81.4 (xref), no individual, partnership, association or corporation shall employ such motto or slogan or a recognizable variation thereof on any article offered for sale to the public at a price above the actual cost of production of the article without the express consent of the registrant, which, if it approved of such use, may require payment of a reasonable fee or royalty for the use of its motto or slogan and, in addition, may impose restrictions upon such use.

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

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

DRAFTING NOTE: Technical corrections. This proposed section is comprised of existing § 2.1-81.2 as subsection A and existing § 2.1-81.3 as subsection B.

~~§ 2.1-81.3. Penalty for violation of § 2.1-81.2.~~

~~Violation of § 2.1-81.2 shall be a misdemeanor punishable by a fine of no more than \$1,000 as shall be the continued use of a registered motto or slogan or a recognizable variation thereof pursuant to § 2.1-81.2 following withdrawal of consent to such use by the registrant, and in either event, each day of such use shall be a separate offense.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing

§ 2.1-81.2) as new subsection B.

~~§ 2.1-81.4. Registration of slogan "Virginia Is for Lovers."~~

~~The slogan "Virginia Is for Lovers" shall be registered with the Secretary of the Commonwealth as the slogan of the Virginia Division of Tourism within five days of April 5, 1972.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete since the slogan "Virginia is for Lovers" has, in fact, been registered with the Secretary of the Commonwealth and continues to be registered as of this writing.

Article 3.

Registration of Lobbyists.

§ ~~2.1-779~~ 2.2-XXX. Statement of intent and purposes.

The General Assembly finds and declares the following:

1. The operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislative and executive actions.
2. The identity and expenditures of certain persons who attempt to influence legislative and executive actions with respect to legislation and executive orders should be publicly identified to preserve and maintain the integrity of government.

DRAFTING NOTE: This article is existing Chapter 49 (§ 2.1-779 et seq.) which has been moved as an article under the chapter dealing with the Secretary of the Commonwealth because the Secretary is responsible for the registration of lobbyists.

§ ~~2.1-780~~ 2.2-XXX. Definitions.

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

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;
2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;
3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;
4. A stock, bond, note, or other investment interest in an entity;
5. A receipt given for the payment of money or other property;
6. A right in action;
7. A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;
8. A loan or forgiveness of indebtedness;
9. A work of art, antique, or collectible;
10. An automobile or other means of personal transportation;
11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;
12. An honorarium or compensation for services;
13. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive or legislative official, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;
14. A promise or offer of employment; or

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

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2.

"Compensation" means:

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

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

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

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

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

"Executive official" means:

1. The Governor;

2. The Lieutenant Governor;

3. The Attorney General;

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

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

6. Members of supervisory and policy boards, commissions and councils, as defined in § 9-6-25 (xref), however selected.

"Expenditure" means:

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

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

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

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

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

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

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

"Expenditure" does not mean a campaign contribution properly received and reported pursuant to Chapter 9 (§ 24.2-900 et seq.) of Title 24.2.

"Gift" means anything of value to the extent that a consideration of equal or greater value is not received.

"Gift" does not mean:

1. Printed informational or promotional material;

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

3. A gift, devise, or inheritance from an individual's spouse, child, parent, grandparent, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of that individual, if the donor is not acting as the agent or intermediary for someone other than a person covered by this subdivision; or

4. A gift of a value of twenty-five dollars or less.

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

"Legislative action" means:

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

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

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

"Legislative official" means:

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

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

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

"Lobbying" means:

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

"Lobbying" does not mean:

1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;
2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;
3. The solicitation of an association by its members to influence legislative or executive action; or
4. Communications between an association and its members and communications between a principal and its lobbyists.

"Lobbyist" means:

1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;
2. An individual who represents an organization, association, or other group for the purpose of lobbying; or
3. A local government employee who lobbies.

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

"Local government" means:

1. Any county, city, town, or other local or regional political subdivision;
2. Any school division;
3. Any organization or entity which exercises governmental powers which is established pursuant to an interstate compact; or
4. Any organization composed of members representing entities listed in subdivisions 1, 2, or 3 of this definition.

"Local government employee" means a public employee of a local government.

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

"Value" means the retail cost or fair market worth of an item or items, whichever is greater.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1781~~ 2.2-XXX. Exemptions.

The registration and reporting provisions of this ~~chapter~~ article shall not apply to:

1. The Governor, Lieutenant Governor, Attorney General, and their immediate staffs or the Governor's Secretaries and their immediate staffs, acting in an official capacity;
2. Members of the General Assembly and other legislative officials and legislative employees acting in an official capacity;
3. Local elected officials acting in an official capacity;
4. Any employee of a state executive agency acting in an official capacity;
5. A duly elected or appointed official or employee of the United States acting in an official capacity;
6. An individual who limits lobbying solely to (i) formal testimony before a public meeting of an executive agency or legislative body and registers the appearance in the records of the agency or body and (ii) testimony and information compelled by action of an executive agency or legislative body;
7. A person who receives \$500 or less in compensation and reimbursements, excluding personal living and travel expenses, in a calendar year for his lobbying activities;
8. A person who receives no compensation or anything of value for lobbying, and does not expend more than \$500, excluding personal living and travel expenses, in lobbying in the calendar year; or
9. An employee of a business, other entity, or local government whose job duties do not regularly include influencing or attempting to influence legislative or executive action.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1781.4~~ 2.2-XXX. Reporting requirements for certain state agencies.

A. The chief administrative officer of each board, department, institution, or agency of the Commonwealth shall file a registration statement with the Secretary of the Commonwealth on behalf of the officers and employees who will be engaged in lobbying as defined in ~~§ 2-1780(xref)~~ and shall comply with the provisions of this ~~chapter~~ article that require lobbyists to register with the Secretary of the Commonwealth. No fee shall be collected for registrations required by this section.

B. Any state governmental body required to file a registration under this section shall comply with the provisions of this ~~chapter~~ article relating to registration.

C. The registration requirements of this section shall not apply to:

1. The Governor, Lieutenant Governor, Attorney General and their immediate staffs, or the Governor's Secretaries and their deputies and immediate staffs, acting in an official capacity;
2. Members of the General Assembly and other legislative officials and legislative employees acting in an official capacity;

3. The chief administrative officer of each department or division of state government listed in § ~~2-1-1.1~~ (xref);

4. The chief administrative officer of each division of the State Corporation Commission; or

5. Any state government employee acting in an official capacity.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-782~~ 2.2-XXX. Registration requirements.

A. A lobbyist shall register with the Secretary of the Commonwealth prior to engaging in lobbying. A lobbyist who engages in lobbying entirely outside the capital city shall comply with this section by registering with the Secretary within fifteen days after first engaging in lobbying. Registration shall be required annually and expire May 1 of each year.

B. The chief administrative officer of each local government shall register with the Secretary of the Commonwealth and file a statement pursuant to § ~~2-1-783~~ (xref) if any local government employees will act as lobbyists on its behalf. No registration fee shall be required. Each local government shall file a consolidated report in accordance with the reporting requirements of § ~~2-1-786~~ (xref) and shall maintain locally a copy of the report which is available for inspection and copying during regular business hours.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-783~~ 2.2-XXX. Contents of registration statement.

A. The registration statement shall be on a form provided by the Secretary of the Commonwealth and include the following information:

1. The name and business address and telephone number of the lobbyist;

2. The name and business address and telephone number of the person who will keep custody of the lobbyist's and the lobbyist's principal's accounts and records required to comply with this ~~chapter~~ article, and the location and telephone number for the place where the accounts and records are kept;

3. The name and business address and telephone number of the lobbyist's principal;

4. The kind of business of the lobbyist's principal;

5. For each principal, the full name of the individual to whom the lobbyist reports;

6. For each principal, a statement whether the lobbyist is employed or retained and whether exclusively for the purpose of lobbying;

7. The position held by the lobbyist if he is a part-time or full-time employee of the principal;

8. The full name and business address and telephone number of each lobbyist employed by or representing the lobbyist's principal;

9. An identification of the subject matter (with as much specificity as possible) with regard to which the lobbyist or lobbyist's principal will engage in lobbying; and

10. The signed statement by the lobbyist that the information contained on the registration statement is true and correct.

B. Whenever any change, modification or addition to his status as a lobbyist is made, the lobbyist shall, within one week of such change, modification or addition, furnish full information regarding the same to the Secretary of the Commonwealth on forms provided by the Secretary.

C. The Secretary of the Commonwealth shall furnish a copy of this ~~chapter article~~ to any individual offering to register as a lobbyist and shall mail by certified mail a copy of this ~~chapter article~~ and a copy of the information furnished by the lobbyist to the person whom the lobbyist represents to be his principal.

D. If the principal to whom the information is sent under subsection C ~~of this section~~ does not, within ten days of such mailing, file an affidavit, signed by the person or duly authorized agent of the person, denying that the lobbyist appears on his behalf, such person shall be deemed to have appointed the Secretary of the Commonwealth his agent for service of process in any prosecution arising for violation of this ~~chapter article~~. If such affidavit is filed, the Secretary shall notify the attorney for the Commonwealth of the City of Richmond.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-784 2.2-XXX.~~ Registration fees.

The Secretary shall collect an annual registration fee of fifty dollars from the lobbyist for each principal for whom, or on whose behalf, the lobbyist will act.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-785 2.2-XXX.~~ Registration information to be recorded in legislative docket; list of executive officials.

A. The Secretary of the Commonwealth shall maintain in a legislative docket the information filed under § ~~2-1-783(xref)~~ pertaining to lobbying involving legislative actions during any session of the General Assembly. The Secretary shall furnish current, complete lists thereof to the clerk of each house and to each member of the General Assembly once every two weeks during the session of the General Assembly beginning with the convening of the General Assembly.

B. The Secretary of the Commonwealth shall prepare a list of executive officials, their positions and names, to be revised at least semi-annually and made available to lobbyists to assist them in complying with the provisions of this ~~chapter article~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-786 2.2-XXX.~~ Lobbyist reporting.

A. Each lobbyist shall file a separate annual report of expenditures, including gifts, for each principal for whom he lobbies by July 1 for the preceding twelve-month period ending May 1.

B. Each principal who expends more than \$500 to employ or compensate multiple lobbyists shall be responsible for filing a consolidated lobbyist report pursuant to this section in any case in which the lobbyists are each exempt under the provisions of subdivision 7 or 8 of § ~~2-1-784(xref)~~ from the reporting requirements of this section.

C. The report shall be on a form provided by the Secretary of the Commonwealth which shall be substantially as follows and shall be accompanied by instructions provided by the Secretary.

LOBBYIST'S DISCLOSURE STATEMENT

PART I:

(1) PRINCIPAL:

In Part I, item 2a, provide the name of the individual

authorizing your employment as a lobbyist. The lobbyist filing this statement MAY NOT list his name in item 2a. THE INDIVIDUAL LISTED IN PART I, ITEM 2A, MUST SIGN THE PRINCIPAL'S STATEMENT.

- (2a) Name:
- (2b) Permanent Business Address:
- (2c) Business Telephone:
- (3) Provide a list of executive and legislative actions (with as much specificity as possible) for which you lobbied and a description of activities conducted.
.....
.....
.....
- (4) INCORPORATED FILINGS: If you are filing an incorporated disclosure statement, please complete the following:
Individual filing financial information:
Individuals to be included in the filing:
.....
- (5) Please indicate which schedules will be attached to your disclosure statement:
[] Schedule A: Entertainment Expenses
[] Schedule B: Gifts
[] Schedule C: Other Expenses
- (6) EXPENDITURE TOTALS:
a) ENTERTAINMENT.....\$.....
b) GIFTS.....\$.....
c) OFFICE EXPENSES.....\$.....
d) COMMUNICATIONS.....\$.....
e) PERSONAL LIVING AND TRAVEL EXPENSES.....\$.....
f) COMPENSATION OF LOBBYISTS.....\$.....
g) HONORARIA.....\$.....
h) REGISTRATION COSTS.....\$.....
i) OTHER.....\$.....
TOTAL.....\$.....

PART II:

- (1a) NAME OF LOBBYIST:
- (1b) Permanent Business Address:
- (1c) Business Telephone:
- (2) As a lobbyist, you are (check one)
[] EMPLOYED (on the payroll of the principal)
[] RETAINED (not on the payroll of the principal, however compensated)
[] NOT COMPENSATED (not compensated; expenses may be reimbursed)
- (3) List all lobbyists other than yourself who registered to represent your principal.
.....
.....
.....
- (4) If you selected "EMPLOYED" as your answer to Part II, item 2, provide your job title.
.....
- (5) If you selected "NOT COMPENSATED" as your answer to Part II, item 2, please indicate why you received no compensation.

.....
.....
.....
PLEASE NOTE: Some lobbyists are not individually compensated for lobbying activities. This may occur when several members of a firm represent a single principal. The principal, in turn, makes a single payment to the firm. If this describes your situation, do not answer Part II, items 6a and 6b. Instead, complete Part III, items 1 and 2.

(6a) What was the DOLLAR AMOUNT OF YOUR COMPENSATION as a lobbyist? (If you have job responsibilities other than those involving lobbying, you may have to prorate to determine the part of your salary attributable to your lobbying activities.) Transfer your answer to this item to Part I, item 6f.

(6b) Explain how you arrived at your answer to Part II, item 6a.
.....
.....
.....

PART III:

PLEASE NOTE: If you answered Part II, items 6a and 6b, you WILL NOT complete this section.

(1) List all members of your firm, organization, association, corporation, or other entity who furnished lobbying services to your principal.
.....
.....
.....

(2) Indicate the total amount paid to your firm, organization, association, corporation or other entity for services rendered. Transfer your answer to this item to Part I, item 6f.

SCHEDULE A
ENTERTAINMENT EXPENSES

PLEASE NOTE: Any single entertainment event included in the expense totals of the principal, with a value greater than \$50, should be itemized below. Transfer any totals from this schedule to Part I, item 6a. (Please duplicate as needed.)

Date and Location of Event:
.....
.....

Description of Event:
.....
.....

Number of Legislative and Executive Officials Invited:
.....

Number of Legislative and Executive Officials Attending:
.....

Names of Legislative and Executive Officials Attending:
(List names only if the average value for each person attending the event was greater the \$50.)
.....
.....

items are mandatory and if they are not properly completed, the entire filing will be rejected and returned to the lobbyist:

- (1) All signatures on the statement must be ORIGINAL. No facsimiles, stamps, or other reproductions of the individual's signature will be accepted.
- (2) An individual MAY NOT sign the disclosure statement as lobbyist and principal officer.

STATEMENT OF LOBBYIST

I, the undersigned registered lobbyist, do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto is, to the best of my knowledge and belief, complete and accurate.

.....
 Signature of lobbyist

 Date

STATEMENT OF PRINCIPAL

I, the undersigned principal (or an authorized official thereof), do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto is, to the best of my knowledge and belief, complete and accurate.

.....
 Signature of principal

 Date

D. A person who signs the disclosure statement knowing it to contain a material misstatement of fact shall be guilty of a Class 5 felony.

E. Each lobbyist shall send to each legislative and executive official who is required to be identified by name on Schedule A or B of the Lobbyist's Disclosure Form a copy of Schedule A or B or a summary of the information pertaining to that official. Copies or summaries shall be provided to the official twice a year: by July 1 for the preceding five-month period ending May 1; and by January 5 for the preceding seven-month period ending December 31.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-787~~ 2.2-XXX. Filings; inspection.

Registration statements and lobbying reports shall be open to public inspection and copying during the regular business hours of the office of the Secretary of the Commonwealth.

Such statements and reports shall be deemed to have been filed only when actually received in the office of the Secretary or mailed to the Secretary by registered, certified, or regular mail with the sender retaining sufficient proof of mailing, which may be a United States Postal Certificate of Mailing.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-787.1~~ 2.2-XXX. Standards for automated preparation and transmittal of lobbyists' disclosure statements; database.

~~A. By January 1, 1998, the Secretary of the Commonwealth shall review or cause to be developed and shall approve standards for the preparation, production, and transmittal by computer or electronic means of the~~

~~lobbyists' disclosure statements required by § 2.1-786. The Secretary may prescribe the method of execution and certification of electronically filed statements and the procedures for receiving statements in the office of the Secretary.~~

~~B. Prior to January 1, 1999, the Secretary may accept, and after January 1, 1999, the Secretary shall accept, any lobbyist's disclosure statement required by § 2.2-xxx (2.1-786) filed by computer or electronic means in accordance with the standards approved by the Secretary and using software meeting standards approved by the Secretary. The Secretary may provide software to filers without charge or at a reasonable cost. The Secretary may prescribe the method of execution and certification of electronically filed statements and the procedures for receiving statements in the office of the Secretary.~~

~~C. After January 1, 1999, the Secretary shall enter or cause to be entered into that database information from required disclosure statements filed by other methods.~~

DRAFTING NOTE: Technical corrections. Subsection A has been deleted as obsolete since standards for electronic filings have been developed by the Secretary of the Commonwealth.

~~§ 2.1-788 2.2-XXX.~~ Retention of records by a lobbyist or lobbyist's principal.

A lobbyist and a lobbyist's principal shall preserve for a period of two years all accounts, bills, books, papers, receipts, and other documents and records necessary to substantiate the expenditure reports submitted under this ~~chapter~~ article.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-789 2.2-XXX.~~ Termination.

A lobbyist may terminate a lobbyist registration by filing a report required under § 2.1-786 ~~(xref)~~ including information through the last day of lobbying activity. A termination report ~~must~~ shall indicate that the lobbyist intends to use the report as the final accounting of lobbying activity.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-790 2.2-XXX.~~ Penalties; filing of substituted statement.

A. Every lobbyist failing to file the statement prescribed by § 2.1-786 ~~(xref)~~ within the time prescribed therein shall be assessed a civil penalty of fifty dollars, and every individual failing to file the statement within ten days after the time prescribed herein shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. ~~Such~~ The penalties shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

B. Every lobbyist's principal whose lobbyist fails to file the statement prescribed by § 2.1-786 ~~(xref)~~ shall be assessed a civil penalty of fifty dollars, and shall be assessed an additional civil penalty of fifty dollars per day from the eleventh day of such default until the statement is filed. ~~Such~~ The penalty shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

C. No individual who has failed to file the statement required by § 2.1-786 ~~xref~~, or who has failed to pay all penalties assessed pursuant to this section, shall register or act as a lobbyist as long as he remains in default.

D. Whenever any lobbyist is or will be in default under § 2.1-786 ~~(xref)~~, and the reasons for such default are or will be beyond his control, or the control of his principal, or both, the Secretary may suspend the assessment of any penalty otherwise assessable and accept a substituted statement, upon the submission of sworn proofs which shall satisfy him that ~~such~~ the default has been beyond the control of the lobbyist or his

principal, and that ~~such the~~ substituted statement contains the most accurate and complete information available after the exercise of due diligence.

E. Penalties collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-791 2.2-XXX.~~ Contingent compensation prohibited.

It shall be unlawful for any individual to lobby for compensation which is dependent in any manner upon the outcome of any legislative or executive action.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-792 2.2-XXX.~~ Prohibited acts; violation a misdemeanor.

A. No lobbyist shall:

1. Lobby in violation of the provisions of this ~~chapter article~~;
2. Make any expenditure, or obligate himself to do so, in connection with lobbying, unless he fully discloses the expenditure as required in this ~~chapter article~~; or
3. Misrepresent in any material respect or omit any information required to be reported pursuant to this ~~chapter article~~.

B. No lobbyist's principal shall:

1. Fail to file any statement required to be filed by the provisions of this ~~chapter article~~;
2. Misrepresent in any material respect or omit any information required to be reported pursuant to this ~~chapter article~~; or
3. Violate any of the provisions of this ~~chapter article~~.

C. Except as provided in subsection D of ~~§ 2.1-786 (xref)~~, any lobbyist or lobbyist's principal violating any provision of this ~~chapter article~~ shall be guilty of a Class 1 misdemeanor. However, a lobbyist who receives no compensation or anything of value for lobbying shall not be subject to the criminal penalties pursuant to prescribed by this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-793 2.2-XXX.~~ Employment of lobbyists prohibited; exceptions.

~~Nothing in this chapter shall be construed so as to permit the employment~~ Employment of a lobbyist for compensation by an officer, board, institution or agency of the Commonwealth, ~~and any such employment is expressly prohibited; however,~~ However, this section shall not apply to any individual who is a full-time or part-time employee of such office, board, department, institution or agency of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-794 2.2-XXX.~~ Prohibition for state party chairman.

The chairman or any full-time paid employee of a state political party, as defined in § 24.2-101, or a member of his immediate family, as defined in ~~§ 2.1-639.2 (xref)~~, shall not be employed as a lobbyist by any principal.

DRAFTING NOTE: Technical corrections only.

PART B.
Chapter X.
Department of Law.
Article 1.
General Provisions.

~~§ 2.1-117~~ 2.2-XXX. Attorney General to be chief executive officer; duties generally.

The Attorney General shall be the chief executive officer of the Department of Law, and ~~as such shall~~ perform such duties as may be provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-130~~ 2.2-XXX. Assistant and deputy Attorneys General.

The Attorney General shall appoint a chief deputy Attorney General and may appoint ~~such the necessary~~ deputy Attorneys General and assistant Attorneys General ~~as may be necessary and may fix~~ their salaries within the limitation of the funds provided for the purpose in the general appropriation ~~acts~~ act.

If a vacancy occurs in the office of Attorney General for any reason, the chief deputy Attorney General shall serve as acting Attorney General until such time as the vacancy is filled pursuant to § 24.2-213. The acting Attorney General shall exercise all the powers, and duties, and enjoy all the perquisites of the office of Attorney General as are provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-131~~ 2.2-XXX. ~~Clerical force~~ Support staff.

The Attorney General ~~shall have power to may~~ appoint such clerical ~~force persons~~ as he may deem ~~deems~~ necessary for the efficient conduct of his office, and ~~to apportion~~, out of the appropriation for his office, such salaries among ~~the law clerks, secretaries and stenographers~~ such persons ~~as he may think~~ deems proper, but the aggregate amount paid them shall not exceed the amount provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-132~~ 2.2-XXX. Office space.

The Governor shall assign to the Attorney General office space ~~in The Library of Virginia Building or elsewhere~~ for the Attorney General, his assistants and employees suitable for the transaction of the legal business of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-133~~ 2.2-XXX. Contingent and traveling expenses.

The Attorney General ~~shall have power to may~~ expend for the contingent expenses of his office ~~such sums as may be available out of the appropriation~~ the sums appropriated for his office ~~made by the General Assembly.~~ The Attorney General, the deputy and assistant Attorneys General, and other employees of the office shall be reimbursed for actual travel expenses in the performance of their duties in accordance with § 2.2-XXX (2.1-20.8).

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-118~~ 2.2-XXX. Official opinions of Attorney General.

A. The Attorney General shall give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, city or town attorney in those localities in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board.

B. Except in cases where ~~such an~~ opinion is requested by the Governor or a member of the General Assembly, the Attorney General shall have no authority to render an official opinion unless the question dealt with is directly related to the discharge of the duties of the official requesting the opinion. Any opinion request to the Attorney General by an attorney for the Commonwealth or county, city or town attorney shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-120~~ 2.2-XXX. Legal services to attorneys for the Commonwealth in certain proceedings; costs.

The Attorney General shall at the request of an attorney for the Commonwealth, provide legal service to such attorney for the Commonwealth in any proceedings brought against him seeking to restrain the enforcement of any state law.

Any costs chargeable against the defendant in any such case shall be paid by the Commonwealth from the appropriation for the payment of criminal charges.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-124~~ 2.2-XXX. Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as hereinafter provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General, ~~in his discretion,~~ may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges which are parties to the same transaction or which are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity.

B. The Attorney General, ~~in his discretion,~~ may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties: ~~any member~~

~~, agent, or employee~~

1. Members, agents or employees of the Alcoholic Beverage Control Board; ~~agent, inspector, or~~ investigator

2. Agents inspecting or investigators appointed by the State Corporation Commission; ~~agent, investigator, or auditor~~

3. Agents, investigators, or auditors employed by the Department of Taxation; ~~member, agent, or employee~~

4. Members, agents or employees of the State Mental Health, Mental Retardation and Substance Abuse Services Board, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services; ~~any person~~

5. Persons employed by the Commonwealth Transportation Board; ~~any person~~

6. Persons employed by the Commissioner of Motor Vehicles; ~~any person~~

7. Persons appointed by the Commissioner of Marine Resources; ~~any police~~

8. Police officer-officers appointed by the Superintendent of State Police; ~~any game~~

9. Game warden-wardens appointed by the Department of Game and Inland Fisheries; ~~any third~~

10. Third impartial panel member-members appointed to hear a teacher's grievance pursuant to § 22.1-312; or ~~any staff member or volunteer~~

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 1.4 (§ 9-173.6 et seq.) of Chapter 27 of Title 9(xref).

~~If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General.~~

~~The Attorney General, in his discretion, may represent personally or through one of his assistants any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court appointed duties.~~

12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General.

The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department whose members, officers, inspectors, investigators, or other employees are defended pursuant to this section. Notwithstanding any provision of this section to the contrary, the Supreme Court, ~~in its discretion,~~ may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-121.1 2.2-XXX.~~ Legal service in certain redistricting proceedings.

Upon notification by a county, city or town of a pending civil action challenging the legality of its election district boundaries as required by § 24.2-304.5, the Attorney General shall review the papers in the civil action and may represent the interests of the Commonwealth in developing an appropriate remedy that is consistent with requirements of law, including but not limited to Article VII, Section 5 of the Constitution of Virginia or Chapter 3 (§ 24.2-300 et seq.) of Title 24.2.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-121.2 2.2-XXX.~~ Representation in administrative proceedings.

Notwithstanding any other provision of law, if the Attorney General finds after consultation with the head of the affected department that it is in the best interests of the Commonwealth to do so, the Attorney General may, ~~in his discretion,~~ authorize any employee of his office or any employee of a department to represent that department or an affiliated body in any administrative proceedings before the department, an affiliated body or before any hearing officer or examiner appointed or employed by the department or affiliated body.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-122 2.2-XXX.~~ Employment of special counsel generally.

No special counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court except in the following cases:

~~(a) 1.~~ Where because of the nature of the service to be performed, the Attorney General's office is unable to render ~~same such service,~~ the Governor after issuing an exemption order stating with particularity the facts and reasons upon which he bases his conclusion that the Attorney General's office is unable to render such service, may employ special counsel to render such service as the Governor may deem necessary and proper.

~~(b) 2.~~ In cases of legal services in civil matters to be performed for the Commonwealth, where it is impracticable or uneconomical for the Attorney General to render ~~same such service,~~ he may employ special counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

~~(c) 3.~~ In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impracticable or uneconomical for the Attorney General's office to render ~~same such service,~~ special counsel may be employed but only upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

~~(d) 4.~~ In cases where the Attorney General certifies to the Governor that it would be improper for the Attorney General's office to render legal services due to a conflict of interests, or that he is unable to render certain legal services, the Governor may employ special counsel or other assistance to render such services as may be necessary.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-124 2.2-XXX.~~ ~~(Effective January 1, 1998)~~ Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation,

(iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, and (vii) cases involving the practice of law without being duly authorized or licensed or the illegal practice of law, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may, ~~in his discretion, institute proceedings by information, presentment or indictment, as the one or the other may be appropriate, and conduct the same.~~

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing and disposition of any appeal or habeas corpus proceeding involving the ~~case or cases~~ in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-125~~ 2.2-XXX. Employment of special counsel to prosecute persons illegally practicing law.

Notwithstanding any other provision of law, the Attorney General ~~is hereby authorized to~~ may expend funds appropriated to his office for the purpose of employing special counsel to investigate and prosecute ~~any a~~ complaint that any person is engaged in the practice of law without being duly authorized or licensed so to do or is practicing law in violation of law. The compensation of ~~such the~~ special counsel shall be paid out of the appropriation for the Attorney General's office. No ~~such~~ special counsel shall be employed and paid except upon the request of the Executive Committee of the Virginia State Bar.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-126~~ 2.2-XXX. Counsel for Commonwealth in federal matters.

The Attorney General shall represent the interests of the Commonwealth, its departments, boards, institutions and commissions in matters before or controversies with the officers and several departments of the government of the United States.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-127~~ 2.2-XXX. Compromise and settlement of disputes.

Except as provided in subsection B of § 23-38.33:1, the Attorney General ~~shall have the authority to~~ may compromise and settle disputes, claims and controversies involving the interests of the Commonwealth, and may discharge any such claims, but only after the proposed compromise, settlement or discharge, together with the reasons therefor, have been submitted in writing to the Governor and approved by him. Where any dispute, claim or controversy involves the interests of any department, institution, division, commission, board or bureau of

the Commonwealth, the Attorney General ~~shall have authority to~~ may compromise and settle or discharge the same provided ~~such the~~ the action is approved both by the Governor, ~~in the manner above as~~ provided in this section, and by the head of the department, institution, division, board or bureau which is interested. However, when any dispute, claim or controversy involves the interests of any department, institution, division, commission, board or bureau of the Commonwealth, and the amount in dispute does not exceed \$50,000, the Attorney General or an assistant Attorney General assigned to such department, institution, division, commission, board or bureau ~~shall have the authority to~~ may compromise and settle or discharge the same provided ~~such the~~ the action is approved by the head of the department, institution, division, board or bureau whose interests are in issue. When the dispute, claim or controversy involves a case in which the Commonwealth has a claim for sums due it as the result of hospital, medical or dental care furnished by or on behalf of the Commonwealth, the Attorney General or such assistant Attorney General ~~shall have the authority to~~ may compromise and settle and discharge the same when the amount in dispute does not exceed \$50,000.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-128 2.2-XXX.~~ Annual report.

The Attorney General shall annually, on or before May 1, deliver to the Governor a report of the state and condition of all important matters in which he has represented the Commonwealth during the preceding year. He shall also include in his report the official opinions rendered by him that he believes to be of general interest or helpful in promoting uniformity in the construction of the laws of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

Article 2.

Division of Consumer Counsel.

~~§ 2.1-133.1 2.2-XXX.~~ Division of Consumer Counsel created; duties.

A. There is hereby ~~created in the office of the Attorney General Department of Law~~ a Division of Consumer Counsel (the "Division") which shall represent the interests of the people as consumers.

B. The duties of ~~such the~~ the Division shall be to:

~~(a)~~ 1. Appear before governmental commissions, agencies and departments, including the State Corporation Commission, to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance.

~~(b)~~ 2. Make such studies related to enforcing consumer laws of the Commonwealth as deemed necessary to protect the interests of the consumer and recommend to the Governor and General Assembly the enactment of such legislation deemed necessary to promote and protect the interests of the people as consumers.

C. The Division, in all investigations connected with enforcing consumer laws and appearances before governmental bodies shall, on behalf of the interests of the consumer, cooperate and coordinate its efforts with such commissions, agencies and departments in ensuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. The appearance of a representative of the Division before any governmental body shall in no way limit or alter the duties of such governmental body.

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of existing § 2.1-133.1 as subsections A and B, and § 2.1-133.3 as subsection C.

~~§ 2.1-133.2.~~ Salaries of personnel in Division of Consumer Counsel.

~~The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, and~~

~~other services as may be provided for by law, as he may deem necessary in the operation of the Division of Consumer Counsel to carry out its functions.~~

DRAFTING NOTE: Technical corrections only. This section has been deleted as duplicative of existing § 2.1-130 (proposed § 2.2-XXX) infra.

~~§ 2.1-133.3. Cooperation between Division of Consumer Counsel and governmental bodies.~~

~~The Division of Consumer Counsel in all investigations connected with enforcing consumer laws and appearances before the above governmental bodies shall, on behalf of the interests of the consumer, cooperate and coordinate its efforts with such commissions, agencies and departments in insuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. The appearance of a representative of the Division of Consumer Counsel before any governmental body shall in no way limit or alter the duties of such governmental body.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing

§ 2.1-133.1) as new subsection C.

Article 3.

Division of Debt Collection.

~~§ 2.1-133.4~~ 2.2-XXX. Division of Debt Collection.

There is hereby created in the Department of Law a Division of Debt Collection which shall provide all legal services and advice related to the collection of funds owed to the Commonwealth, pursuant to § 2.1-424 (xref) and the Virginia Debt Collection Act (§ 2.1-726- (xref) et seq.).

The Attorney General may appoint and fix the salaries of such attorneys and employees as may be necessary to carry out the functions of the Division, within the amounts appropriated to the Division, and may supplement such funds from appropriations made to his office for the provision of legal services to the Commonwealth.

DRAFTING NOTE: Technical corrections only.

PART C.
STATE AGENCIES RELATED TO THE
GENERAL OPERATION OF GOVERNMENT.

Chapter X.
General Provisions.

~~§ 2.1-1.2~~ 2.2-XXX. Standard nomenclature to be employed.

Every independent administrative entity established by law and every collegial body established by law or executive order within the executive branch of state government shall be designated according to a standard nomenclature system. The following definitions shall be applied:

"Department" means an independent administrative agency within the executive branch.

"Office" means an administrative office of the Governor, Lieutenant Governor, Attorney General or a governor's secretary.

"Board" means a permanent collegial body affiliated with an agency.

"Commission" or "Council" means a permanent collegial body either affiliated with more than one agency or independent of an agency within the executive branch.

~~"Commission" means a temporary collegial body established within the executive branch for a specified purpose and specified period of time.~~

"Division," "Bureau," "Section," "Unit" or other similar titles shall be reserved for internal groupings within agencies.

Exceptions to this standard nomenclature ~~may shall~~ be used only for agencies and entities with unique characteristics requiring unique descriptive titles, including museums, libraries and historic or commemorative attractions.

DRAFTING NOTE: Technical corrections only.

§ 2.2-XXX. General powers of the departments established in this title.

Each department established in this title shall have the following general powers to:

1. Employ such personnel as may be required to carry out the respective purposes for which such department was created;

2. Make and enter into contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this title;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, each department shall have the power to comply with the conditions and execute the agreements necessary, convenient, or desirable; and

4. Do all acts necessary or convenient to carry out the respective purposes for which the department was created.

DRAFTING NOTE: This new section represents the consolidation of the various repetitive existing sections dealing with the general powers of each agency created in this subtitle.

~~§ 2.1-114.7~~ 2.2-XXX. Duties of agencies and their appointing authorities.

The heads of state agencies shall be the appointing authorities of the respective agencies, and shall establish and maintain within their agencies ~~such~~ methods of administration relating to the establishment and maintenance of personnel standards on a merit basis ~~as that~~ are approved by the Governor for the proper and efficient enforcement of ~~this chapter~~ the Virginia Personnel Act (§ 2.2-XXX et seq.). But the Governor shall exercise no authority with respect to the selection or tenure of office of any individual employed in accordance with such methods, except when the Governor is the appointing authority.

~~At their discretion, appointing~~ Appointing authorities may assign to the personnel officers or to other officers and employees of their agencies such personnel duties as they see fit.

Agencies shall establish and maintain rosters of their employees ~~in~~ which shall be set forth, as to each employee, the class title, pay and status and such other data as they may deem desirable to produce significant facts pertaining to personnel administration.

Agencies shall establish and maintain such promotion and employment lists, rated according to merit and fitness, as they deem desirable; ~~but such agencies as desire to do so.~~ However, agencies may make use of the employment list kept by the Department of Personnel and Training in lieu of keeping employment lists for their agencies.

Agencies shall supply the Governor with any information he deems necessary for the performance of his duties in connection with the administration of ~~this chapter~~ (xref) to Personnel Act.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.01:1~~ 2.2-XXX. Authority of agency directors.

A. Notwithstanding any provision of law to the contrary, the agency director of each ~~executive branch agency in the executive branch of state government~~ shall have the following powers and duties:

~~1. To power and duty to (i)~~ supervise and manage the department or agency.

~~2. To and (ii)~~ prepare, approve, and submit to the Governor all requests for appropriations and to be responsible for all expenditures pursuant to appropriations.

B. The agency director of each ~~executive branch agency in the executive branch of state government~~ except those that by law are appointed by their respective boards, shall not proscribe any agency employee from discussing the functions and policies of the agency, without prior approval from his supervisor or superior, with any person unless the information to be discussed is protected from disclosure by the Virginia Freedom of Information Act (~~§ 2.1-340~~ 2.2-XXX et seq.) or any other provision of state or federal law.

C. ~~No provision in subsection~~ Subsection A shall not be construed to restrict any other specific or general powers and duties of executive branch boards granted by law.

D. This section shall not apply to those agency directors that are appointed by their respective boards or by the Board of Education. Directors appointed in this manner shall have the powers and duties assigned by law or by the board.

E. In addition to the requirements of subsection C of ~~§ 2.1-799~~ 2.2-XXX, the director of each agency in any branch of state government shall, at the end of each fiscal year, report to (i) the Secretary of Finance and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance Committees—a listing

and general description of any federal contract, grant, or money in excess of \$1,000,000 for which the agency was eligible, whether or not the agency applied for, accepted, and received such contract, grant, or money, and, if not, the reasons therefore, and a listing and cost of any federal mandate or regulation affecting the agency, and the dollar amount and corresponding percentage of the agency's total annual budget that was supplied by funds from the federal government and (ii) the Chairmen of the House Committees on Appropriations, House and Finance, and the Senate Committee on Finance ~~Committees~~ any amounts owed to the agency from any source that are more than six months delinquent, the length of such delinquencies, and the total of all such delinquent amounts in each six-month interval; ~~however,~~ However, clause (i) shall not be required of public institutions of higher education.

F. On or before December 1, 1999, the director of every department ~~listed in § 2-1-1.1 in the executive branch of state government~~ shall appoint an agency information officer from among the department's employees to (i) ensure the coordinated planning, practical acquisition, effective development, and efficient use of information technology resources and communications services to meet the department's needs and (ii) serve as the department's liaison to the ~~Office of the Secretary of Technology created pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty Three (1998).~~

DRAFTING NOTE: Technical corrections. Reference to Executive Order Nine (1998), as amended, has been deleted as obsolete. The office of the Secretary of Technology was statutorily created in accordance with Chapter 412 of the 1999 Acts of Assembly.

~~§ 2-1-20.01:2~~ 2.2-XXX. Performance of duties assigned to an agency.

The chief executive officer may delegate or assign to any officer or employee of his agency any tasks required to be performed by him or the agency and, in the case of an agency with a supervisory board, such board may delegate or assign the tasks. Except as otherwise provided by law, the chief executive officer may also delegate to any officer or employee of any state or quasi-state agency nondiscretionary duties conferred or imposed upon the chief executive officer or his agency by law where the delegation of duties is necessary to achieve efficiency and economy in the administration of government. The chief executive officer or supervisory board delegating or assigning tasks shall remain responsible for the performance of such tasks.

Any delegation pursuant to this section shall, where appropriate, be accompanied by written guidelines for the exercise of the tasks delegated. Where appropriate, ~~such the~~ guidelines shall require that agency heads receive summaries of actions taken. Such delegation shall not relieve the chief executive officer or supervisory board of the responsibility to ensure faithful performance of the duties and tasks.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-20~~ 2.2-XXX. Appointment of acting officer in case of temporary disability.

When any officer in charge of or at the head of any division or department of the state government shall, because of sickness or for any other reason, be unable to perform the duties of his office and no provision is made for someone, or for the appointment of someone, to exercise the powers and perform the duties of such office while ~~such the~~ officer is sick or unable to act, the Governor ~~shall have the power to~~ may appoint some person temporarily to fill such office as acting head or in charge of such division or department, who shall after qualifying exercise the powers and perform the duties of such office until the incumbent returns or the office ~~be~~ is otherwise filled.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-7.2~~ 2.2-XXX. Consideration of certain issues in policy development.

In the formulation and implementation of policies and regulations, each department and division of the executive branch and those boards affiliated with a state agency within the executive branch of state government shall consider the impact of ~~such the~~ policies and regulations on family formation, stability, and autonomy. This

section shall not be construed to confer a right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its agencies, officers, or any other person.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-114.7:1~~ 2.2-XXX. Reporting transfers of personnel; granting reports.

A. Whenever a state employee is transferred for a limited period of time from one state agency to another without transferring appropriations, as may be provided by law, ~~such~~ the transfer shall be reported by the transferring agency to the Department of Personnel and Training, including the name and classification of the employee, the name of the transferring and receiving agencies and the length of time of transfer. If, at a subsequent time, the length of time is shortened or extended, a subsequent report of that fact shall also be submitted.

B. A consolidated report of all ~~such~~ current transfers and all that have begun and ended within the preceding three-month period shall be prepared as of the first day of each January, April, July and October. A copy of each ~~such~~ report shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance ~~Committees~~ and the Director of the Department of Planning and Budget no later than three working days after the effective date of the report.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-2.1~~ 2.2-XXX. Furnishing reports; Governor authorized to require reports.

Agencies which are specifically required by the Code of Virginia to report annually or biennially to the Governor and General Assembly shall submit their reports on or before October 1 of each year, unless otherwise specified. The Governor, ~~in his discretion,~~ may require any agency to furnish an annual or biennial report. Agencies shall distribute such reports in accordance with the provisions of ~~§ 2.1-467~~ 2.2-XXX (xref).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-467.4~~ 2.2-XXX. Records to be kept by agencies; information to be furnished to Librarian of Virginia upon request; copy of publications.

A. Every agency shall maintain such records of the cost of printing and distributing publications, and the revenue therefrom, as are necessary to disclose the actual costs of such publication and mailing and the revenue received therefrom. In addition to other expenses, there shall be included in the cost of publication the cost of purchased materials, staff time and the expenses involved in printing and mailing any such publication. Each agency shall furnish to the Librarian of Virginia such records of costs of printing and distribution, along with such additional information relating to cost of printing and distribution of such publications as shall be specifically requested by the Librarian of Virginia.

B. Every agency shall furnish such number of copies as may be designated by the Librarian of Virginia of each of its publications at the time of issue to The Library of Virginia for its collection and copies sufficient for the depository system and for exchange purposes, not exceeding 100 copies.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-467.4 and subsection B is § 2.1-467.2.

~~§ 2.1-2.2~~ 2.2-XXX. Furnishing copies of documents at no cost to law enforcement officials.

All agencies and instrumentalities of the Commonwealth shall provide, at no cost, copies of documents requested by the Department of State Police or other law-enforcement officers as part of an active criminal investigation.

"Law-enforcement officer" means the same as that term is defined in ~~§ 9-169~~ 9.1-XXX(xref).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-7.4~~ 2.2-XXX. Electronic filing of information permitted.

Upon providing protection to preserve security and confidentiality, agencies, departments, boards, commissions, authorities, political subdivisions or other instrumentalities of the Commonwealth may (i) accept the electronic filing of any information required or permitted to be filed with such public body and (ii) prescribe the methods of executing, recording, reproducing, and certifying electronically filed information. Unless otherwise provided for in the Code of Virginia, electronic filing in the courts of ~~this the~~ Commonwealth shall be governed by the Rules adopted by the Supreme Court of Virginia.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-3~~ 2.2-XXX. Acceptance by departments, etc., of funds from United States; application of funds.

A. Any department, agency, bureau or institution of this the Commonwealth may (i) accept grants of funds made by the United States government; or any department or agency thereof, to be applied to purposes within the functions of such state department, agency, bureau or institution, and may (ii) administer and expend such funds for the purposes for which they are granted.

B. The State Treasurer is appointed custodian of all such funds, and shall disburse them on warrants issued by the Comptroller for the department, agency, bureau or institution for whose use they are granted.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-3 and subsection B is § 2.1-4.

~~§ 2.1-4. State Treasurer custodian of funds granted; disbursements.~~

~~The State Treasurer is hereby appointed custodian of all such funds, and shall disburse them on warrants issued by the department, agency, bureau or institution for whose use they are granted.~~

DRAFTING NOTE: Technical corrections. This section was moved to proposed § 2.2-XXX (§ 2.1-3) as new subsection B.

~~§ 2.1-7.3~~ 2.2-XXX. Notification to localities of reduction or discontinuation of service.

A. No agency, board, commission or other entity of the Commonwealth shall take any action to reduce or discontinue a service which it performs for a local government or reduce or discontinue any form of financial assistance to a local government without first notifying all affected local governments and the Virginia Advisory Commission on Intergovernmental Relations at least ninety days in advance of ~~such the~~ proposed action. However, in emergencies, certified by the Governor for executive branch agencies or by the chief administrative officer for any other entity of the Commonwealth, such action may be taken immediately following the notice. The Virginia Advisory Commission on Intergovernmental Relations shall hold hearings on any such notice and shall render an advisory report to the Governor and to the succeeding session of the General Assembly on the ramifications for the Commonwealth and its localities of ~~such the~~ action.

B. ~~Subsection~~ The provisions of subsection A of this section shall not apply to any action taken by an executive branch agency or other entity of the Commonwealth pursuant to a specific legislative requirement, agreement or contract negotiated with a local government, the application of a statute prescribing periodic adjustments in state financial assistance, workforce reduction resulting from diminished appropriation or legislated early retirement provisions, or judicial decree.

C. Nothing in subsection A of this section shall apply to any officer who receives funding under § 44.1-5015.2-1636.7 or who may appeal Compensation Board budget decisions under § 44.1-52-15.2-1636.9 or § 44.1-52-04 15.2-1636.10, or to those payments made to localities in accordance with §§ 53.1-20.1, 53.1-83.1, 53.1-84, or § 53.1-85.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-7.4~~ 2.2-XXX. Agency mandates on localities; assessment.

Pursuant to ~~§ 45.1-945.3~~ 15.2-2903, all agencies, as defined in ~~§ 2.1-8.2~~ 2.2-XXX (xref), shall conduct an assessment of all mandates imposed on local governments administered by ~~each the~~ agency to determine which mandates, if any, may be altered or eliminated.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-7~~ 2.2-XXX. Purebred livestock raised by state institutions and agencies may be sold instead of slaughtered.

The person in charge of any state institution or agency which raises purebred livestock may, when any of ~~such the~~ livestock are to be slaughtered, sell the same to any person desiring to acquire ~~such the~~ livestock for breeding purposes, provided the interests of the institution or agency will not be adversely affected ~~thereby by the~~ sale.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Implementation of Federal Mandates Act.

~~§ 2.1-795~~ 2.2-XXX. Short title.

This chapter shall be known and may be cited as the "Implementation of Federal Mandates Act".

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-796~~ 2.2-XXX. Legislative declaration.

A. In enacting this chapter, the General Assembly employs its legislative authority to establish that the people of Virginia, acting through their elected officials in Virginia government, have the responsibility and authority to establish policy in and for Virginia pertaining to federal programs mandated in federal statutes.

B. The intent of the General Assembly is to assure the primacy of the ~~Commonwealth of Virginia's~~ Commonwealth's legal and political authority to implement in and for Virginia the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Virginia policy and exceed the lawful authority of the federal government or are not required by federal law.

C. In this connection the General Assembly finds and declares that:

1. The power to implement federal policies in and for Virginia is central to the ability of the people of Virginia to govern themselves under a federal system of government; and

2. Any implementation of federal policies in and for Virginia by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

D. The General Assembly further finds and declares that:

1. There is an urgent need to modify federal mandates because the implementation of these mandates by the Commonwealth wastes the financial resources of local governments, the citizens of Virginia and the Commonwealth and does not properly respect the rights of the Commonwealth, local governments, and citizens.

2. The state government has an obligation to the public to do what is necessary to protect the rights of Virginia citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the Commonwealth.

3. The Tenth Amendment to the United States Constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Virginia, as one of the sovereign states within the Union, has constitutional authority to enact laws protecting the environment of the Commonwealth and safeguarding the public health, safety, and welfare of the citizens of Virginia. However, this authority has too often been ignored by the federal government, as the federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the Tenth Amendment be accorded proper respect.

4. Current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of Virginia and federal regulators frequently do not understand the needs and priorities of the citizens of Virginia.

5. The citizens of the Commonwealth can create and wish to create innovative solutions to Virginia's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the Commonwealth the flexibility it needs. It is not possible for the Commonwealth of Virginia to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the Commonwealth's efforts to implement federal requirements is shifted to the person or agency who asserts such insufficiency.

6. The provisions of this chapter will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this chapter ultimately will bring about greater protection for the Commonwealth and the nation because it will direct the Commonwealth to implement federal statutes at the least possible cost, thereby freeing more moneys for other needs.

7. The purpose of this chapter is to ensure that federal mandates implemented in Virginia comply with state policy as established by the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-797~~ 2.2-XXX. Definitions.

As used in this chapter, unless the context requires otherwise:

"Federal statute" means a federal statute that is in accord with the United States Constitution imposing mandates on state or local governments, which may include, but is not limited to, the following:

1. The Safe Drinking Water Act, 42 U.S.C. § 300 f, et seq., as amended;
2. The Clean Air Act, 42 U.S.C. § 7401, et seq., as amended;
3. The Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended;
4. The Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., as amended;
5. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended;

6. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended;
7. The Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, as amended;
8. The Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended;
9. The Asbestos School Hazard Abatement Statute, 20 U.S.C. § 4011, et seq., as amended;
10. The Brady Handgun Violence Prevention Act of 1993, P.L. 101-336, as amended;
11. The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. § 2501, et seq., as amended;
12. The Family and Medical Leave Act of 1993, P.L. 103-3, as amended;
13. The Emergency Planning and Community Right-to-Know Act, P.L. 99-145 and 99-499, as amended;
14. The Federal, State, and Local Partnership for Education Improvement Program, 20 U.S.C. § 1751, et seq., as amended;
15. The National Voter Registration Act of 1993, P.L. 103-31, as amended;
16. The Federal School Lunch Program and School Breakfast Program, 42 U.S.C. §§ 1751 and 1773, P.L. 101-336, as amended;
17. The Federal Social Services and Medicaid Requirements, 42 U.S.C. § 1396, et seq., as amended;
18. The Federal Highway Safety Programs; and
19. The Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, as amended.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-798~~ 2.2-XXX. State programs to implement federal statutes.

~~A. Any state officer, official, or employee charged with the duty of implementing any federal statute shall implement the law as required by the federal statute in good faith and exercising a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Virginia policy or do not advance Virginia policy in a cost-effective manner.~~

B. Any agency of the executive branch of state government that is authorized to develop a state program to respond to implement any mandates contained in a federal statute shall develop the state program and promulgate adopt any necessary regulations using the following criteria:

1. State programs shall be developed by the agency to meet the requirements of federal statutes in good faith with a critical view toward any federal regulations, guidelines, or policies.

2. State programs shall be developed with due consideration of the financial restraints of the Commonwealth, local governments, and the citizens of Virginia ~~and the Commonwealth~~.

3. Any state program that implements the goals of the federal statute shall use the most efficient method possible with careful consideration given to cost of the program and the impact of the program on Virginia citizens and local governments, and the long-range public health, safety, and welfare of citizens of the Commonwealth.

DRAFTING NOTE: Technical corrections only. Subsection A was deleted as duplicative of subsection B.

~~§ 2-1-799 2.2-XXX-~~ Governor to report to the General Assembly.

A. The Governor shall report to the General Assembly regarding the proposed implementation of this section.

B. If any state program is authorized or mandated by a federal statute, no state funds for the program shall be appropriated unless:

1. The state program is necessary to protect the public health, safety, and welfare;
2. The state program is necessary to implement the federal statute;
3. The operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the Commonwealth, local government, and business; or
4. The state program benefits the Commonwealth, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

C. Each agency making a budget request for state appropriations for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The Governor shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the General Assembly.

D. The General Assembly, after receiving a recommendation from the Governor, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. [The General Assembly shall ~~exercise a critical review~~ toward the interpretation of the federal statute found in federal regulations, guidelines, or policies]. Enactment Appropriation of state appropriations funds for a state program shall constitute the General Assembly's determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

E. Prior to recommending to the General Assembly any budget for an agency that is charged with implementing federal mandates, the Governor shall request that the agency provide information to the Department of Planning and Budget regarding any monetary savings for the state and any reduction in regulatory burdens on the public and on local governments that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The agency shall also provide advice to the Department of Planning and Budget regarding any changes in law that are necessary to provide the agency with the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The Department of Planning and Budget shall review and compile the information received from agencies pursuant to this section and shall include recommendations in the executive budget.

F. For purposes of this section, "state program" shall not include any portion of a program that is funded with nontax or nonfee revenue, or both, which state authorities are required to administer in a trusteeship or custodial capacity and which are not subject to appropriation by the General Assembly.

DRAFTING NOTE: Technical corrections only.

Chapter X.
Department for the Aging.
Article 1.
General Provisions.

§ 2.1-371 2.2-XXX. Department created; appointment of Commissioner.

~~The duties of the Office on Aging are continued. The Office shall be known as the A. There is created a Department for the Aging, hereinafter referred to as (the "Department"). The Department which shall be under the supervision and direction of the Governor. The Governor shall appoint headed by a Commissioner of the Department who shall hold his position appointed by the Governor to serve at the his pleasure of the Governor and shall be paid such compensation as the Governor may fix.~~

~~B. The Commissioner of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.~~

DRAFTING NOTE: Technical corrections only. Subsection B was added to standardize, among the various agencies in this title, language relating to the Director's exercise of powers/duties conferred by law, etc. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-372. General powers of Department.~~

~~The Department shall have the following general powers:~~

~~(a) To employ such personnel as may be required to carry out the purposes of this chapter.~~

~~(b) 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 the United States, other states, agencies and governmental subdivisions of Virginia.~~

~~(c) To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.~~

~~(d) To do all acts necessary or convenient to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

§ 2.1-373.4 2.2-XXX. Designation of Department as agency responsible for coordination; nature of long term care services.

A. The Virginia Department for the Aging is designated as the state agency responsible for coordinating all long-term care efforts of state and local human services agencies.

B. Long-term care services shall include the following categories: socialization services, health care services, nutrition services, daily living services and supportive services. For the purposes of this subsection:

"Socialization services" includes telephone reassurance, friendly visiting and congregate meals.

"Health care services" includes home health care and community medical care.

"Nutrition services" includes home-delivered meals, food stamps and congregate meals.

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization and adult day care.

"Supportive services" includes adult protective services, mental health and mental retardation services, counseling services and legal aid.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-373.4 and subsection B is § 2.1-373.8.

~~§ 2.1-373.8. Nature of long-term care services.~~

~~A. The long-term care services include the following categories: socialization services, health care services, nutrition services, daily living services and supportive services.~~

~~B. As used in this section:~~

~~"Socialization services" includes telephone reassurance, friendly visiting and congregate meals.~~

~~"Health care services" includes home health care and community medical care.~~

~~"Nutrition services" includes home-delivered meals, food stamps and congregate meals.~~

~~"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization and adult day care.~~

~~"Supportive services" includes adult protective services, mental health and mental retardation services, counseling services and legal aid.~~

DRAFTING NOTE: Technical corrections. This section now appears in proposed § 2.2-XXX (§ 2.1-373.4) as new subsection B.

~~§ 2.1-373.6~~ 2.2-XXX. Administrative responsibilities of Department regarding long-term care.

The administrative responsibilities of the Department ~~for the Aging~~ regarding long-term care shall be to:

1. ~~{Expired}~~

~~2.~~ Develop appropriate fiscal and administrative controls over public long-term care services in the Commonwealth.

~~3.~~ Develop a state long-term care plan to guide the coordination and delivery of services by the human resources agencies, including transportation services. The plan shall ensure the development of a continuum of long-term care programs and services for the impaired elderly population in need of services.

~~4.~~ Identify programmatic resources and assure the equitable statewide distribution of these resources.

~~5.~~ Perform ongoing evaluations of the cost-effective utilization of long-term care resources.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-373 2.2-XXX.~~ Powers and duties of Department with respect to aging persons; area agencies on aging; ~~Commonwealth Council on Aging.~~

A. The mission of the Department for the Aging shall be to improve the quality of life for older Virginians and to act as a focal point among state agencies for research, policy analysis, long-range planning, and education on aging issues. ~~In this chapter, older Virginians means persons aged sixty or older.~~ The Department's policies and programs shall be designed to enable older persons to be as independent and self-sufficient as possible. The Department shall promote local participation in programs for the aging older persons, evaluate and monitor the services provided for older Virginians and provide information to the general public. In furtherance of this mission, ~~the Department's duties shall include, but not be restricted~~ Department shall have, without limitation, the following duties to:

1. ~~To study~~ Study the economic and physical condition of the residents in the Commonwealth whose age qualifies them for coverage under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, ~~hereinafter referred to as the aging~~, and the employment, medical, educational, recreational and housing facilities available to them, with the view of determining the needs and problems of such persons;

2. ~~To determine~~ Determine the services and facilities, private and governmental and state and local provided for and available to the aging older persons and to recommend to the appropriate ~~person or persons~~ such coordination of and changes in such services and facilities as will make them of greater benefit to the aging older persons and more responsive to their needs;

3. ~~To act~~ Act as the single state agency, under Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States, and as the sole agency for administering or supervising the administration of such plans as may be adopted in accordance with the provisions of such ~~law or laws~~. ~~As such agency, the~~ The Department shall have authority to ~~may~~ prepare, submit and carry out state plans and shall be the agency primarily responsible for coordinating state programs and activities related to the purposes of, or undertaken under, such plans or laws;

4. ~~With the approval of the Governor, to apply~~ Apply, with the approval of the Governor, for and expend such grants, gifts or bequests from any source ~~as may that~~ become available in connection with its duties under this section, and ~~is authorized to~~ may comply with such conditions and requirements as may be imposed in connection therewith;

5. ~~To hold such~~ Hold hearings and conduct ~~such~~ investigations ~~as are necessary~~ to pass upon applications for approval of a project under the plans and laws set out in subdivision ~~(3)~~ hereof 3, and shall make ~~such~~ reports to the Secretary of the United States Department of Health and Human Services as may be required;

6. ~~To designate~~ Designate area agencies on aging pursuant to Public Law 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to ~~promulgate rules and~~ adopt regulations for the composition and operation of such area agencies on aging;

7. ~~To provide~~ Provide information to consumers and their representatives concerning the recognized features of special care units. Such information shall educate consumers and their representatives on how to choose special care and may include brochures and electronic bulletin board notices;

8. ~~To provide~~ Provide staff support to the Commonwealth Council on Aging;

9. ~~To assist~~ Assist state, local, and nonprofit agencies, including, but not limited to, area agencies on aging, in identifying grant and public-private partnership opportunities for improving services to elderly Virginians.

10. ~~To contract~~ Contract with a not-for-profit Virginia corporation granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging for the administration of the ombudsman program.

The Department may also contract with such entity or entities for the administration of elder rights programs as authorized under Public Law 89-73, such as insurance counseling and assistance, and to create an elder information/elder rights center.

B. The governing body of any county, city or town may appropriate funds for support of area agencies on aging designated pursuant to subdivision 6 of subsection A-6 hereof.

C. All agencies of the Commonwealth shall assist the Department in effectuating its functions in accordance with its designation as the single state agency as required in subdivision 3 of subsection A-3 above.

D. As used in this chapter, "older Virginians" or "older persons" mean persons aged sixty years or older.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-373.02. Commonwealth Council on Aging; created; purpose; membership; terms; duties.~~

~~A. There is hereby created in the executive branch the Commonwealth Council on Aging, hereinafter referred to as the Council. The purpose of the Council shall be to promote an efficient, coordinated approach by state government to meeting the needs of older Virginians. The Council shall be composed of persons selected from the Commonwealth at large without regard to political affiliation but with due consideration of geographical representation. Appointees shall be selected for their ability, and all appointments shall be of such nature as to aid the work of the Council and to inspire the highest degree of cooperation and confidence.~~

~~B. The Council shall consist of nineteen voting members appointed as follows: one member from each of the eleven congressional districts of the Commonwealth appointed by the Governor subject to confirmation by a majority of each House of the General Assembly at its next regular session; four at-large members appointed by the Speaker of the House of Delegates; and four at large members appointed by the Senate Committee on Privileges and Elections. The Council shall also include the following nonvoting, ex officio members: the Commissioner of the Department for the Aging, the Director of the Department of Medical Assistance Services, the Commissioner of Social Services and the Secretary of Health and Human Resources, or their designees. For initial appointments made by the Governor, the terms shall be as follows: five members shall serve four year terms, four members shall serve three year terms and two members shall serve two year terms. For initial appointments made by the Speaker of the House of Delegates, two members shall be appointed for four year terms and two members shall be appointed to two year terms. For the initial appointments by the Senate Committee on Privileges and Elections, two members shall be appointed for four year terms and two members shall be appointed for two year terms. Thereafter, all appointments shall be for four year terms.~~

~~In making initial appointments, the Governor, the Speaker of the House, and the Senate Committee on Privileges and Elections shall give due consideration to the appointment of members of the current Governor's Advisory Board on Aging.~~

~~Appointments to fill vacancies shall be for the unexpired term. No person having served on the Council for two consecutive terms shall be eligible for reappointment to the Council for two years thereafter.~~

~~C. The Council shall elect a chairman and a vice chairman from among its members and shall appoint a secretary and such other officers as it deems necessary and prescribe their duties and terms of office.~~

~~D. The duties of the Council shall be as follows:~~

~~1. Examine the needs of older Virginians and ways in which state government can most effectively and efficiently assist in meeting those needs;~~

~~2. Advise the Governor and General Assembly on aging issues and aging policy for the Commonwealth;~~

~~3. Advise the Governor on any proposed regulations deemed by the Director of the Department of Planning and Budget to have a substantial and distinct impact on older Virginians. Such advice shall be provided in addition to other regulatory reviews required by the Administrative Process Act;~~

~~4. Advocate and develop the Commonwealth's planning for meeting the needs of the growing number of older Virginians; and~~

~~5. Advise the Governor and General Assembly regarding the activities of the Department.~~

~~E. The Council is authorized to apply for and expend such grants, gifts, or bequests from any source as may become available in connection with its duties under this section, and is authorized to comply with such conditions and requirements as may be imposed in connection therewith.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Part D in Subtitle I - State Authorities, Boards, Commissions, etc., under the heading of "Councils".

~~§ 2.1-373.3 2.2-XXX.~~ Responsibility of Department for complaints regarding long-term care services.

The Department ~~for the Aging~~, or its designee, shall investigate complaints regarding community services which are designed to provide long-term care to the elderly older persons and are rendered by the Department of Health, the Department of Social Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the area agencies on aging or any private nonprofit or proprietary agency.

Nothing in this section shall affect the services provided by local departments of welfare or social services pursuant to § 63.1-55.1.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-373.4 2.2-XXX.~~ Access to residents, facilities and patients' records by Office of State Long-Term Care Ombudsman.

The entity designated by the Department ~~for the Aging~~ to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act, Public Law 100-175, shall, in the investigation of complaints referred to the program, have the same access to (i) to residents, facilities and patients' records of licensed adult care residences as is provided for in accordance with § 63.1-177 and (ii) to patients, facilities and patients' records of nursing facilities or nursing homes as is provided for in accordance with § 32.1-25, and shall have access to the patients, residents and patients' records of state hospitals operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. However, if a patient is unable to consent to the review of his medical and social records and has no legal guardian, such representatives shall have appropriate access to such records in accordance with the provisions above this section. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department ~~for the Aging~~ to operate the programs of the Office of the State Long-Term Care Ombudsman shall have access to nursing facilities and nursing homes and state hospitals as herein provided in accordance with this section. Access to residents, facilities and patients' records shall be during normal working hours except in emergency situations.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-373.2 2.2-XXX.~~ Confidentiality of records of Office of the State Long-Term Care Ombudsman.

All documentary and other evidence received or maintained by the Department ~~for the Aging~~ or its agents in connection with specific complaints or investigations under any program of the Office of the State Long-Term Care Ombudsman conducted by or under the Commissioner of that Department shall be confidential and not subject to the Virginia Freedom of Information Act (~~§ 2.1-340 2.2-XXX~~ xref et seq.), except that such information may be released on a confidential basis in compliance with regulations ~~promulgated~~ adopted by the Department

and consistent with provisions of ~~subsection (d) of § 2-1-372 (xref)~~ and with the requirements of the Older Americans Act (42 U.S.C. § 3001 et seq.).

The Commissioner of the Department ~~for the Aging~~ shall release information concerning completed investigations of complaints made under the programs of the Office of the State Long-Term Care Ombudsman, but shall in no event release the identity of any complainant or resident of a long-term care facility unless (i) ~~such the~~ complainant or resident or his legal representative consents in writing to ~~such disclosure~~, or (ii) ~~such disclosure is~~ required by court order. The Commissioner of the Department ~~for the Aging~~ shall establish procedures to notify long-term care facilities of the nature of complaints and ~~the their findings thereof~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-373.2-1~~ 2.2-XXX. Protection for representatives of the Office of the State Long-Term Care Ombudsman.

Any designated representative of the Office of the State Long-Term Care Ombudsman who, in good faith with reasonable cause and without malice, performs the official duties of ombudsman, including acting to report, investigate or cause any investigation to be made regarding a long-term care provider, shall be immune from any civil liability that might otherwise be incurred or imposed as the result of the making of ~~such the~~ report or investigation.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-373.7~~ 2.2-XXX. Coordination of local long-term care services.

The governing body of each county or city, or a combination thereof, shall designate a lead agency and member agencies to accomplish the coordination of local long-term care services. The agencies shall establish a long-term care coordination committee composed of, but not limited to, representatives of each agency. The coordination committee shall guide the coordination and administration of public long-term care services in the locality ~~or localities~~. The membership of the coordination committee shall be comprised of, but not limited to, representatives of the local department of public health, the local department of social services, the community services board or community mental health clinic, the area agency on aging and the local nursing home pre-admission screening team. ~~By July 1, 1983, a A~~ plan shall be implemented which ~~assures ensures~~ the cost-effective utilization of all funds available for long-term care services in the locality. Localities are encouraged to provide ~~a service or services~~ within each category of service in the continuum and to allow one person to deliver multiple services, when possible.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-373.04~~ 2.2-XXX. Contracts between area agency and Campbell County.

Notwithstanding any contrary provision of law, Campbell County may, under contract with the Area Agency on Aging designated to serve Campbell County, provide directly any and all services specified in Public Law 89-73, as amended.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-373.9~~ 2.2-XXX. Alzheimer's and Related Diseases Research Award Fund.

There is ~~hereby~~ established a fund to be known as the Alzheimer's and Related Diseases Research Award Fund. ~~This~~ The Fund shall be administered by the Virginia Center on Aging and the awards shall be made through an ~~Awards Committee awards committee~~ consisting of representatives from the scientific and medical community and the general public. The ~~Awards awards~~ shall be given annually to scientists in Virginia in order to support research into the causes of Alzheimer's and related diseases, methods of treatment, ways that families can cope with the stresses of the disease, and the impact of the disease on the citizens of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

Article 2.

Virginia Public Guardian and Conservator Program.

~~§ 2.1-373.10-2.2-XXX.~~ Policy statement; Virginia Public Guardian and Conservator Program established; definitions.

A. The General Assembly declares that it is the policy of the Commonwealth to ensure that persons who cannot adequately care for themselves because of incapacity (in this article, also referred to as "clients") are able to meet essential requirements for physical and emotional health and management of financial resources with the assistance of a guardian or conservator, as appropriate, in circumstances where (i) the incapacitated person's financial resources are insufficient to fully compensate a private guardian or conservator and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity. In order to ensure that the protection and assistance of a guardian or conservator are available to all incapacitated persons in the Commonwealth, there is hereby established the statewide Virginia Public Guardian and Conservator Program (hereinafter, "the Program") within the Department for the Aging to (i) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (ii) fund, coordinate, administer and manage such programs.

B. The definitions found in § 37.1-134.6 shall apply to this article.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-373.10 and subsection B is § 2.1-373.11.

~~§ 2.1-373.11. Definitions.~~

~~The definitions found in § 37.1-134.6 shall apply to this article.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing 2.1-373.10).

~~§ 2.1-373.12 2.2-XXX.~~ Powers and duties of the Department with respect to public guardian and conservator program.

A. The Department shall fund from appropriations received for such purpose a statewide system of local or regional public guardian and conservator programs.

B. The Department shall:

1. Make and enter into all contracts necessary or incidental to the performance of its duties and in furtherance of the purposes as specified in this article in conformance with the Public Procurement Act (§ 11-35 et seq.).

2. Contract with local or regional public or private entities to provide services as guardians and conservators operating as local or regional Virginia Public Guardian and Conservator Programs in those cases in which a court, pursuant to § 37.1-134.14:1, determines that a person is eligible to have a public guardian or conservator appointed.

3. ~~Promulgate~~Adopt reasonable regulations in accordance with the Administrative Process Act (~~§ 9-6-14:1~~ xref et seq.) as appropriate to implement, administer and manage the state and local or regional programs authorized by this article, including, but not limited to the adoption of: ~~adoption of minimum~~

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs; ~~adoption of an~~

b. An ideal range of staff to client ratios for the programs; adoption of procedures to be followed whenever a local or regional program falls below or exceeds the ideal range of staff to client ratios, which shall include, but not be limited to, procedures to ensure that services shall continue to be available to those in need and that appropriate notice is given to the courts, sheriffs, where appropriate, and the Department; and ~~adoption of procedures~~

c. Procedures governing disqualification of any program falling below or exceeding the ideal range of staff to client ratios, which shall include a process for evaluating any program which has exceeded the ratio to assess the effects falling below or exceeding the ideal range of ratios has had or is having upon the program and upon the incapacitated persons served by the program.

The regulations shall require that ~~such~~ evaluations occur no less frequently than every six months and shall continue until the staff to client ratio returns to within the ideal range.

4. Establish procedures and administrative guidelines to ensure the separation of local or regional Virginia Public Guardian and Conservator Programs from any other guardian or conservator program operated by the entity with whom the Department contracts, specifically addressing the need for ~~such~~ separation in programs that may be fee-generating.

5. Establish record-keeping and accounting procedures to ensure that each local or regional program (i) maintains confidential, accurate and up-to-date records of the personal and property matters over which it has control for each incapacitated person for whom it is appointed guardian or conservator and (ii) files with the Department an account of all public and private funds received.

6. Establish criteria for the conduct of and filing with the Department and as otherwise required by law: values history surveys, annual decisional accounting and assessment reports, the care plan designed for the incapacitated person and such other information as the Department may by regulation require.

7. Establish criteria to be used by the local and regional programs in setting priorities with regard to services to be provided.

8. Take such other actions as are necessary to ensure coordinated services and a reasonable review of all local and regional programs.

9. Maintain statistical data on the programs and report to the General Assembly on or before January 1 of each year as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents regarding the status of the Virginia Public Guardian and Conservator Program and the developing trends with regard to the need for guardians, conservators and other types of surrogate decision-making services.

10. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2 ~~of this section~~ with an entity which may also provide privately funded surrogate decision-making services, including guardian and conservator services funded with fees generated by the estates of incapacitated persons, provided such private programs are administered by the contracting entity entirely separately from the local or regional Virginia Public Guardian and Conservator Programs, in conformity with regulations established by the Department in that respect.

D. In accordance with the Public Procurement Act (§ 11-35 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity which does not provide services to incapacitated persons as guardian or conservator to administer the program, and, if it does, the term "Department" when used in this article shall refer to the contract administrator.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-373.13. Public Guardian and Conservator Advisory Board created; duties; membership; terms.~~

~~There is hereby created the Public Guardian and Conservator Advisory Board (the "Board") which shall report to and advise the Commissioner on the means for effectuating the purposes of this article and shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1. The Board shall provide advice and counsel on the provision of high quality guardianship service and avoidance of conflicts of interest, promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this article, and make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 37.1-134.19 to appoint the sheriff as guardian or conservator when the maximum staff to client ratio of the local program is met or exceeded.~~

~~The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association; one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Association of Community Service Boards, the Commissioner of the Department of Social Services or his designee, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his designee, the Director of the Virginia Department for the Rights of Virginians with Disabilities or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.~~

~~The Commissioners of the Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services or their designees, the Director of the Virginia Department for the Rights of Virginians with Disabilities or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four year terms and the remainder shall serve for three year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as members of the Board.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I - State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-373.14 2.2-XXX. Minimum requirements for local programs; authority.~~

Every local or regional program with which the Department contracts to provide services as a public guardian or conservator shall (i) furnish bond with corporate surety in an amount deemed sufficient by the Department to afford adequate financial protection to the maximum number of incapacitated persons to be served by the program; (ii) have in place a multi-disciplinary panel to (a) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person and (b) continually review cases being handled by the program as required by the Department; (iii) accept only appointments as guardian or conservator which generate no fee or would generate a minimal fee as defined by regulation payable from a public source of funds and not from the estate of the incapacitated person; (iv) have a direct service staff to client ratio which is consistent with that specified by regulation of the Department; and (v) develop a plan, in consultation with the local circuit court and sheriffs where appropriate, to provide advance notice to the court when the program falls below or exceeds the ideal range of staff to client ratios in order to assure continuity of services. Volunteers shall not be counted for purposes of ascertaining compliance with the staff to client ratio specified by the Department.

A local or regional program which exceeds the specified staff to client ratio ~~is~~ shall not be disqualified from serving as a guardian or conservator except as provided by regulation or if the court or the Department finds that there is an immediate threat to the person or property of any incapacitated person or that exceeding the specified ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

A local or regional program appointed as a guardian or conservator shall have all the powers and duties specified in Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1, except as otherwise specifically limited by the court. In addition, a public guardian or conservator shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian or conservator for the incapacitated person. A public guardian shall not have authority to admit an incapacitated person to a psychiatric hospital or mental health facility without a civil commitment proceeding, or to approve or authorize a sterilization procedure except when specific authority has been given pursuant to a proceeding in the circuit court. A public guardian may authorize mental health treatment, including the administration of psychotropic medication, unless the appointing court specifically provides otherwise.

A local or regional program appointed as a guardian or conservator may delegate the powers, duties and responsibilities to individual volunteers or professional staff as authorized in the contract with the Department.

In addition to funds received from the Department, a local or regional program may accept private funds solely for the purposes of providing public education, supplemental services for incapacitated persons and support services for private guardians and conservators, consistent with the purposes of this article.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Accounts.

Article 1

General Provisions.

~~§ 2.1-192 2.2-XXX. Appointment Department of Accounts created; and term appointment of Comptroller; oath.~~

~~A. There is created a Department of Accounts (the "Department"). The Director of the Department of Accounts shall be known as the Comptroller. He shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when such appointment is made, and if not in session, then at its next succeeding session. He shall hold office to serve at the his pleasure of the Governor for a term coincident with that of the Governor making the appointment, or until his successor shall be appointed and qualified.~~

~~B. The Comptroller of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.~~

~~C. The Comptroller, before entering upon the discharge of his duties, shall take an oath that he will faithfully and honestly execute the duties of his office.~~

DRAFTING NOTE: Technical corrections only. Subsection B was added to standardize, among the various agencies in this title, language relating to the Director's exercise of powers/duties conferred by law, etc. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-193. Department of Accounts and Purchases, etc., abolished; powers and duties transferred to Comptroller and Department of Accounts.~~

~~The Department of Accounts and Purchases and the office of the Director thereof, heretofore existing, are hereby abolished and all the powers and duties heretofore conferred or imposed upon said Department and the Director are hereby transferred to and shall hereafter be exercised by the Comptroller and the Department of Accounts. Whenever the words "Division of Accounts and Control" or words of like import appear in this Code they shall be construed to mean and refer to the Department of Accounts. Wherever the words "Director of the Division of Accounts and Control" or words of like import appear in this Code they shall be construed to mean and refer to the Comptroller.~~

DRAFTING NOTE: This section has been deleted as obsolete.

~~§ 2.1-194. Oath of Comptroller.~~

~~The Comptroller, before entering upon the discharge of his duties, shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing 2.1-192).

~~§ 2.1-173 2.2-XXX. Comptroller and State Treasurer to appoint administrative assistants, etc.~~

~~A. The Comptroller and the State Treasurer shall appoint, in their respective offices, the administrative assistants, deputies and clerks allowed by law.~~

~~B. The Comptroller shall appoint administrative assistants, who shall have authority to act for and perform the duties of the Comptroller under his direction, supervision and control, and in the absence of the Comptroller to perform all the duties of the office. Of such absence, the others shall be informed. When the absence of the Comptroller is to be for more than five days at a time, notice thereof shall be given to the Governor.~~

~~C. In the event the administrative assistant is incapacitated from performing his duties during the absence of the Comptroller, the Governor shall designate some other person in the office to act during the absence of the Comptroller, and in the event of the removal, resignation or death of the Comptroller, the administrative assistant shall perform all the duties of the office until the vacancy is filled in the manner prescribed by law.~~

~~D. Such officers and their sureties shall be liable for any default or breach of duty of their administrative assistants respectively during their absence.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-173, subsection B is § 2.1-174, subsection C is § 2.1-175, and subsection D is § 2.1-176. References to the State Treasurer have been deleted here since this proposed section deals with the Comptroller. The same authority is given to the State Treasurer in a corresponding section set out in the chapter dealing with the State Treasurer to ensure that this authority is maintained. In addition, references to "clerks" has been changed to "administrative assistants" on the recommendation of the Comptroller.

~~§ 2.1-174. When administrative assistants to perform duties of chief, notifying Governor of chief's absence.~~

~~The Comptroller and the State Treasurer shall appoint for their respective offices administrative assistants, who shall have authority to act for and perform the duties of the chief in such office under his direction, supervision and control, and in the absence of the chief to perform all the duties of the office. Of such absence, the others shall be informed. When the absence of the chief is to be for more than five days at a time, notice thereof shall be given to the Governor.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-173).

~~§ 2.1-175. When Governor to designate administrative assistant; temporary vacancy filled by administrative assistant.~~

~~In the event the administrative assistant is incapacitated from performing his duties during the absence of the chief, the Governor shall designate some other clerk in the office to act during the absence of the chief, and in the event of the removal, resignation or death of the chief, the administrative assistant shall perform all the duties of the office until the vacancy is filled in the manner prescribed by law.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-173).

~~§ 2.1-176. Officers and sureties liable for acts of administrative assistants.~~

~~Such officers and their sureties shall be liable for any default or breach of duty of their administrative assistants respectively during their absence.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 2.2-XXX (existing § 2.1-173).

~~§ 2.1-195~~ 2.2-XXX. General accounting and clearance through Comptroller.

In the Department of Accounts the Comptroller shall maintain a complete system of general accounting to comprehend the financial transactions of every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not. All transactions in public funds shall clear through the Comptroller's office.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-196~~ 2.2-XXX. Financial accounting and control.

A. Unified financial accounting and control shall be established through the departments and agencies of the Commonwealth, in the manner prescribed in this chapter.

The Comptroller shall prescribe what accounts shall be kept by each state agency in addition to the system of general accounting maintained in the Comptroller's office. In prescribing what accounts shall be kept by each state agency, the Comptroller shall take care that there shall be no unnecessary duplication.

B. The Comptroller shall direct the development of a modern, effective and uniform system of bookkeeping and accounting, ~~comprehending~~ to include (i) an efficient system of checks and balances between the officers at the seat of the government entrusted with the collection and receipt, custody and disbursement of the revenues of the Commonwealth; and (ii) a system of accounting, applicable to all state officers, departments, boards, commissions, agencies, and penal, educational and eleemosynary institutions maintained in whole or in part by the Commonwealth, which shall be suitable to their respective needs, considering their relation to each other and their relation to subordinate officers and officials. All systems so developed shall require the approval and certification of the Auditor of Public Accounts that they are adequate for purposes of audit and financial control.

As to the operation of merchandising activities, or other centralized support services provided by one state agency to other state agencies for which charges are made, the system of accounting ~~therefor~~ shall be designed to reflect all charges properly allocable ~~thereto to the end~~ so that the net profit or loss therefrom shall be reflected. In the furtherance of this objective the Joint Legislative Audit and Review Commission may direct the Comptroller to establish under such terms and conditions as they may determine working capital fund accounts on his books and record therein the receipts and expenditures of these several functions. The Comptroller shall provide the agencies responsible for the operations of these functions with working capital advances with which to finance the operations pursuant to appropriations made by law. The Joint Legislative Audit and Review Commission may

direct the Comptroller to transfer excess fund balances to the general fund or to remove from his books internal service fund accounts which are no longer considered appropriate and record the necessary transfer of funds.

Unit prices of services rendered by internal service funds shall be fixed so that all costs properly allocable to providing the service shall be fully recoverable.

C. The Comptroller shall ~~file with the Secretary of the Commonwealth a statement and~~ maintain a full explanation of all systems of accounting devised and adopted in furtherance of this section, but no copyright system shall be adopted which shall entail additional cost upon the Commonwealth by reason of such copyright. ~~Such~~ The systems of accounting shall be communicated by the Comptroller to the officials affected thereby, and he shall as soon as possible instruct the officials as to ~~such~~ the systems of accounting.

D. Should any of the state offices, departments, boards, commissions, agencies, or institutions refuse or neglect to adopt ~~such~~ the systems of accounting ~~as developed by the Comptroller may devise, adopt, and promulgate,~~ then upon suit of the Attorney General a writ of mandamus will lie to the Supreme Court to compel ~~such~~ the adoption, ~~and it.~~ It shall be the duty of the Attorney General to ~~forthwith~~ promptly institute such suit in any such case.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-196.2~~ 2.2-XXX. Recovery of certain improper payments to state employees.

If any officer or employee of the Commonwealth, whether or not exempt from the provisions of Chapter 40 (~~§ 2.1-140 et seq.~~) ~~(xref)~~ of this title, contrary to any applicable statute, regulation or written policy of the Commonwealth, obtains or authorizes any other officer or employee to obtain any compensation or other payment to which an employee is not entitled, and upon the written request of his employer, fails or refuses to return or reimburse such compensation or payment, then both the employee who received the payment to which he was not entitled and the employee who authorized the payment shall be liable for repayment to the employer. Liability ~~will~~ shall not attach unless such authorization was given with actual or constructive knowledge that the recipient employee was not entitled to such compensation or payment.

As long as he remains an officer or employee of the Commonwealth, and liability is admitted, his employer may recover ~~such~~ the compensation or payment from any compensation or other payments to which the officer or employee is entitled as an administrative offset pursuant to ~~§ 2.1-733~~ 2.2-XXX ~~(xref)~~. However, ~~such~~ the offset shall not exceed the amount allowed pursuant to § 8.01-512.3. If ~~such~~ the officer or employee leaves state service, liability is disputed or recovery cannot be accomplished, the employer may request the Attorney General to bring an action for restitution pursuant to this section, and the court may award the prevailing party costs and reasonable attorneys' fees.

The provisions of this section shall not apply to good faith disbursements made to beneficiaries of the Virginia Retirement System.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-197~~ 2.2-XXX. Fiscal year.

The fiscal year shall commence on the first day of July and end on the thirtieth day of June.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-198~~ 2.2-XXX. Reports and payments by city and county treasurers, and clerks of court; deposits of state income tax payments.

A. All county and city treasurers receiving state income tax payments, whether from taxpayers or from the commissioner of the revenue, shall deposit ~~such~~ the payments, within one banking day of receipt, into an account

of the state treasury. ~~Such~~The treasurers shall maintain a record of the date on which ~~such~~the payments are received and ~~shall also record the date on which such~~the payments are deposited into the state treasury. The Auditor of Public Accounts shall either prescribe or approve the treasurer's record-keeping system and shall audit such records as provided for in Chapter 43 (~~§ 2.1-153 et seq.~~)(xref) of this title. Reporting of ~~such~~the deposits shall be in accordance with subsection B hereof.

B. All county and city treasurers and clerks of courts receiving state moneys shall deposit promptly all state moneys and, in the manner directed by the State Treasurer of Virginia, shall transfer state moneys into an account of the state treasury twice each week and submit a report of state moneys being transferred. However, except for state income tax payments which shall be controlled by subsection A above, state moneys received amounting to less than \$5,000 may be transferred into an account of the state treasury once each week.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-199~~ 2.2-XXX. Monthly reports of state departments, divisions, etc., receiving public funds.

Every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not, including county and city treasurers and clerks of courts, collecting or receiving public funds, or moneys from any source whatever, belonging to or for the use of the Commonwealth, or for the use of any state agency, and paying the same to the State Treasurer, or depositing the same to his credit in pursuance of law, shall, on or before the tenth day of each month, or oftener if so directed by the Comptroller, report to the Comptroller in such manner as he may direct, the amount collected or received and paid into the state treasury for the preceding calendar month or other period designated by the Comptroller, ~~such~~The report ~~to~~shall show also the dates of payments to or deposits to the credit of the State Treasurer.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-200~~ 2.2-XXX. Collection of delinquent taxes.

Whenever, by any section of this Code, the Comptroller is required or is authorized to collect any delinquent taxes, he shall refer the matter to the Tax Commissioner, who shall at once proceed to collect the same and may employ such legal process as may be necessary for that purpose, ~~and when~~When so collected the Tax Commissioner shall pay the same into the state treasury.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-202~~ 2.2-XXX. When accounts on Comptroller's books to be balanced; general ledger of accounts.

All unsettled accounts on the books of the Comptroller shall be balanced on the last day of each fiscal year, and the balances brought forward on the first day of the new fiscal year. For this purpose there shall be a general ledger of accounts, which shall be ~~so kept as to~~ show the balances due to or from the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-203. Comptroller and State Treasurer to compare their books.~~

~~On the last day of each month of the fiscal year, the Comptroller shall compare the books of his office with those in the State Treasurer's, and prepare a reconciliation detailing the balance per each office, the amount of money in the state treasury, and the nature of all reconciling items.~~

DRAFTING NOTE: Technical corrections. This section has been deleted at the recommendation of the Comptroller because in actual practice these reconciliations are done daily.

~~§ 2.1-204. Judges and clerks to certify to Supreme Court lists of all allowances made by courts.~~

The judge of every court of ~~this the~~ Commonwealth making an allowance for the payment of any sum out of the state treasury shall certify to the Supreme Court a list of all allowances at least monthly ~~and~~ the date of their making ~~and the amount of such allowance, the amount thereof, and to whom made; and a like.~~ A certificate of all allowances made by such court shall be made up by the clerk of ~~such the~~ court and forwarded to the Supreme Court. The form of ~~such the~~ certificate shall be prescribed by the Supreme Court, and it shall be made on blanks ~~which shall be prepared by them and furnished the judges and clerks of the several courts of the Commonwealth.~~ The Comptroller shall not draw any warrant on the State Treasurer in satisfaction of any allowance made by any court of the Commonwealth until the Supreme Court ~~shall have~~ has received notification of the allowance by the court of ~~such the~~ claim and approved ~~such the~~ allowance for payment.

DRAFTING NOTE: Technical corrections only.

§ 2.1-205 2.2-XXX. Cancellation of state bonds received in settlement of claims.

All bonds of ~~this the~~ Commonwealth which are received by the Comptroller in the settlement of claims of the Commonwealth against the sureties of treasurers, sheriffs, or other officers, or in settlement of any other claim shall be turned over by him to the Treasury Board, who shall cancel the ~~same bonds~~ according to law.

DRAFTING NOTE: Technical corrections only.

§ 2.1-206 2.2-XXX. What Comptroller may do with old books and papers.

The Comptroller may, ~~at his discretion,~~ dispense with all noncurrent books, papers, invoices, financial documents, and similar papers belonging to his office in a manner prescribed by the Virginia Public Records Act (§ 42.1-76 et seq.) in coordination with the needs of the Auditor of Public Accounts.

DRAFTING NOTE: Technical corrections only.

§ 2.1-207 2.2-XXX. Annual report of Comptroller to Governor.

The Comptroller shall make a preliminary annual report to the Governor on or before August 15. The Governor shall submit the preliminary report to the General Assembly within thirty days of its receipt. The Comptroller shall provide a final annual report on or before December 15. ~~Beginning with the final report issued for the fiscal year ending June 30, 1986, the~~ The report is to ~~shall~~ include (i) financial statements which ~~shall be~~ are prepared, insofar as practical as determined by the Comptroller and the Auditor of Public Accounts, in ~~conformance~~ accordance with generally accepted accounting principles, ~~and also include;~~ (ii) supplementary statements prepared on the budgetary basis of accounting. ~~The final report shall also include;~~ (iii) information provided by the State Treasurer on the status of bonded debt in the Commonwealth and the future general fund requirements thereof, ~~as well as such for such debt;~~ and (iv) other information ~~as deemed necessary by the State Treasurer.~~ The Comptroller and the State Treasurer shall also make ~~such~~ other reports at such times as the Governor may require.

DRAFTING NOTE: Technical corrections only.

Article 2.

Claims Against Commonwealth.

§ 2.1-223.12.2-XXX. To whom claims ~~to be presented;~~ Comptroller to furnish forms.

A. Any person having any pecuniary claim against the Commonwealth upon any legal ground shall present the same to the head of the department, division, institution or agency of the Commonwealth responsible for the alleged act or omission which, if proved, gives rise to ~~such the~~ claim; ~~provided, however, that whenever, if~~ however, the claimant cannot identify ~~such the~~ alleged act or omission with any single department, division, institution or agency of the Commonwealth, then the claim shall be presented to the Comptroller.

B. The Comptroller shall supply the several clerks of record and, upon request, each head of a department, division, institution or agency mentioned in subsection A with the necessary forms to be used by them for accounts payable out of the state treasury.

DRAFTING NOTE: Technical corrections. This section is comprised of the following existing sections: subsection A is § 2.1-223.1 and subsection B is § 2.1-223.2.

~~§ 2.1-223.2. Comptroller to furnish forms for accounts payable out of state treasury.~~

~~The Comptroller shall supply the several clerks of record and, upon request, each head of a department, division, institution or agency mentioned in § 2.1-223.1, with the necessary forms to be used by them for accounts payable out of the state treasury.~~

DRAFTING NOTE: Technical corrections. This section now appears as new subsection B of proposed § 2.2-XXX (existing § 2.1-223.1).

~~§ 2.1-223.3~~ 2.2-XXX. Claims to be examined and forwarded to Comptroller; what Comptroller may allow.

A. Every claim authorized to be presented to the Comptroller or to the head of a department, division, institution or agency shall be examined by the person to whom it is presented and forwarded with appropriate supporting papers and recommendations without unreasonable delay to the Comptroller, who shall promptly allow so much on account thereof as may appear the amount that appears to be due.

B. No allowance made by order of any court of record shall be paid out of the state treasury, unless presented to the Comptroller for payment within two years from the date of the allowance.

DRAFTING NOTE: Technical corrections. This section is comprised of the following existing sections: subsection A is § 2.1-223.3 and subsection B is § 2.1-223.4.

~~§ 2.1-223.4. Within what time allowance by court shall be paid.~~

~~No allowance made by order of any court of record shall be paid out of the state treasury, unless presented to the Comptroller for payment within two years from the date of such allowance.~~

DRAFTING NOTE: Technical corrections. This section now appears as new subsection B of proposed § 2.2-XXX (existing § 2.1-223.3).

~~§ 2.1-223.6~~ 2.2-XXX. When Comptroller may refer claim to Governor.

Whenever a claim cannot be allowed solely because it was not presented within the time prescribed by § 8.01-255, the Comptroller may, within three years after the claim might have been presented, refer the same to the Governor, and so much thereof shall be paid as the Governor may direct who may direct payment of all or any part of the claim.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Business Assistance.

~~§ 2.1-548.44~~ 2.2-XXX. Creation of Department; appointment of Director; powers & duties.

A. There is hereby created the a Department of Business Assistance (the "Department"). The Department which shall be headed by a Director who shall be appointed by the Governor to serve at his pleasure and for a term coincident with the Governor's.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. The Director shall receive such compensation as provided by law.

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of the following existing sections: subsection A is § 2.1-548.44 and subsection B is § 2.1-548.45. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-548.45. Powers and duties of Director.~~

~~The Director of the Department of Business Assistance, under the direction and control of the Governor, shall exercise such powers and perform such 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. The Director shall receive such compensation as may be provided by law.~~

DRAFTING NOTE: This section now appears as subsection B in proposed § 2.2-XXX (2.1-548.44).

~~§ 2.1-548.46. 2.2-XXX. General powers-Additional power of Department.~~

The Department or, with the approval of the Director, a division of the Department shall have the power to:

- ~~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 the United States, other state agencies and governmental subdivisions of the Commonwealth;~~
- ~~3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;~~
- ~~4. Promulgate~~adopt~~ regulations and issue guidelines necessary or incidental to the performance of the duties or execution of the powers conferred under this title and other relevant chapters, which regulations shall be promulgated~~adopted~~ by the Department in accordance with the provisions of Article 2 (§ 9-6.14:7.1- 2.2-XXX et seq.) of the Administrative Process Act; and~~
- ~~5. Do all acts necessary or convenient to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

~~§ 2.1-548.47 2.2-XXX. Duties of the Department; state agencies to furnish information.~~

A. The Department of Business Assistance shall serve as the liaison between the Commonwealth's existing business and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Provide for training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;
2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program which is the principal point of communication between basic employers in the Commonwealth and the state government which will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses; and

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth.

B. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-548.47 and subsection B is § 2.1-548.48.

~~§ 2.1-548.48. State agencies to furnish information and assistance.~~

~~All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-548.47).

~~§ 9-249.4 2.2-XXX. Nonstock corporation to assist small businesses.~~

The Department of Business Assistance is hereby authorized to may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.), Title 13.1 as an instrumentality to assist the Department in providing support to the small business segment of the economy of the Commonwealth. The Department is ~~further authorized to~~ may do all things necessary to qualify such corporation as a certified development company under Subchapter V of the Small Business Investment Act of 1958 (15 U.S.C. § 695 et seq.), or any amendment or successor statute thereto, as well as regulations ~~promulgated~~ adopted thereunder by the United States Small Business Administration. Any action by the Department to establish such a corporation prior to July 1, 1986, is hereby ratified and approved.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Employee Relations Counselors.

~~§ 2.1-116.01 2.2-XXX. Office of Employee Relations Counselors continued as Creation of Department of Employee Relations Counselors; appointment of Director; powers and duties.~~

~~The Office of Employee Relations Counselors is continued and shall hereafter be known as the A. There is created a Department of Employee Relations Counselors (the "Department"). The Department shall be under the direct control and supervision of the Governor. Wherever the term "Office of Employee Relations Counselors" is used in any law of the Commonwealth, it shall mean the Department of Employee Relations Counselors, which shall be headed by a Director appointed by the Governor to serve at his pleasure.~~

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of a consolidation of §§ 2.1-116.01 and 2.1-116.02, with standard language relating to the exercise of powers conferred by law, etc., added to subsection B.

~~§ 2.1-116.02. Appointment of Director.~~

~~The Department of Employee Relations Counselors shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.~~

DRAFTING NOTE: Technical corrections only. This section now appears in subsection A of proposed § 2.2-XXX (existing § 2.1-116.01).

~~§ 2.1-116.03~~ 2.2-XXX. Director to administer Department; powers and duties.

The Director shall, under the direction and control of the Governor, administer and supervise the Department and shall:

1. Establish a comprehensive program of employee relations management which includes alternative processes for resolving employment disputes;
2. Establish the grievance procedure and a statewide mediation program;
3. ~~Promulgate~~Adopt rules and set hearing officer fees for grievance hearings;
4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure; (ii) direct full compliance with the grievance procedure process; (iii) investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste or abuse to the State Employee Fraud, Waste and Abuse Hotline and advise the agency head of ~~such~~the findings; and (iv) rule on the qualification of a grievance or the question of access to the grievance procedure;
5. Render final decisions on all matters related to procedural compliance with the grievance procedure;
6. Establish a process to select, on a rotating basis, hearing officers from the list maintained by the Executive Secretary of the Supreme Court; train and assign such hearing officers to conduct grievance hearings; and evaluate the quality of their services to determine eligibility for continued selection;
7. Establish, in conjunction with the Department of Personnel and Training, a training program for human resources personnel on employee relations management and employment rights and responsibilities;
8. Implement a comprehensive training and instructional program for all supervisory personnel which includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct on-site training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;
9. Provide information upon the request of any employee concerning personnel policies, ~~rules and~~ regulations, and ~~statutes~~law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;
10. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;
11. Collect information and statistical data ~~in regard to~~regarding the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

12. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

13. Exercise such other powers and perform such other duties as may be requested by the Governor; and

14. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-742~~ 2.2-XXX. Participation by political subdivisions and governmental entities.

Notwithstanding any charter provision, political subdivisions may participate in the programs afforded pursuant to the Act as administrative entities or grant recipients as these terms are used in Section 103 of the Act and may provide program services to eligible participants. Political subdivisions may make funds and governmental services available in furtherance of the job training plans in effect within the service delivery areas of the Commonwealth. Regulations of the Department affecting participating political subdivisions ~~participating as above-said~~ shall not be subject to the provisions of subsections B and C of ~~§ 9-6-14:3(xref)~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-743~~ 2.2-XXX. Chapter to be liberally construed.

The Act shall be implemented and administered in the Commonwealth in ~~such a~~ fashion as will best meet the goals of the Act, the needs of eligible participants and prevent program abuse and misexpenditure of funds made available by the United States. The provisions of this chapter shall be liberally construed to this end.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of General Services.

Article 1.

General Provisions.

~~§ 2-1-422~~ 2.2-XXX. Creation of Department; appointment of Director; duties.

A. There is hereby created a Department of General Services. The Department (the "Department") which 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.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. The Director shall be responsible for the overall supervision of the Department's divisions, programs and personnel. Under his direction the Department shall serve as an agency whose services are primarily for the support of other state agencies in carrying out their programs. The head of each division shall, under the direction and control of the Director, exercise the powers and perform the duties conferred by this chapter as they pertain to his division and perform such other duties as required by the Director.

C. Whenever in this title and in the Code of Virginia, reference is made to a division, department or agency hereinafter transferred to this Department, it shall mean the Department of General Services, through the division to which the powers and duties of that division, department or agency are assigned. Nothing in this section shall limit the authority of the Director to assign or reassign the duties of the Department's divisions to such of these divisions as may best perform them.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A and C are § 2.1-422 and subsection B is § 2.1- 423. Additionally, the second sentence in subsection B is from the first paragraph of § 2.1-425, and the second sentence in subsection C is from the last paragraph of § 2.1-425. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-423. Powers and duties of Director.~~

~~The Director of the Department of General Services shall, under the direction and control of the Governor, exercise such powers and perform such 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.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-422).

~~§ 2.1-425 2.2-XXX. Supervision of Department Creation of working capital fund accounts.~~

~~The Director shall be responsible for the overall supervision of the Department's divisions, programs and personnel. Under his direction the Department shall serve as an agency whose services are primarily for the support of other state agencies in carrying out their programs. The head of each division, however, shall be vested with the power and duty of carrying out the provisions of this chapter as they pertain to his division.~~

Upon written request of the Director of the Department of General Services, the Joint Legislative Audit and Review Commission may direct the Comptroller to establish working capital fund accounts on his books and record therein the receipts and expenditures for appropriate functions of the Department. The Comptroller shall provide the Department with working capital advances with which to finance these operations pursuant to appropriations made by law. Charges for services rendered sufficient to offset costs involved in these operations shall be established.

~~Nothing in this section shall limit the authority of the Director to assign or reassign the duties of the Department's divisions to such of these divisions as may best perform them.~~

DRAFTING NOTE: Technical corrections only. The first paragraph has been moved to proposed § 2.2-XXX (§ 2.1-422) as the second sentence in subsection B. The last paragraph has been moved to proposed § 2.2-XXX (§ 2.1-422) as the second sentence in subsection C.

~~§ 2.1-424 2.2-XXX. General-Additional powers of Department.~~

A. The Department shall have the following general additional powers, all of which, with the approval of the Director of the Department, may be exercised by a division of the Department with respect to matters assigned to that division:

- ~~1. 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 the United States, other state agencies and governmental subdivisions of the Commonwealth;~~
- ~~3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;~~
- ~~4. Prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter; and~~

~~5-2. Establish fee schedules which may be collectible from users when general fund appropriations are not applicable to the services rendered; and~~

~~6. Do all acts necessary or convenient to carry out the purposes of this chapter.~~

B. All statewide contracts and agreements made and entered into by the Department for the purchase of computers, software, supplies, and related peripheral equipment and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Administration may disapprove ~~such the~~ inclusion from a specific contract or agreement.

C. The Department may operate or provide for the operation of hazardous waste management facilities.

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of the following existing sections: subsection A and B are § 2.1-424 and subsection C is § 2.1-425. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions. The powers listed in this proposed section come from existing § 2.1-424, and are powers granted specifically to the Department of General Services.

~~§ 2.1-425.2. Operation of hazardous waste facility.~~

~~The Department of General Services through its Division of Engineering and Buildings may operate or provide for the operation of hazardous waste management facilities.~~

DRAFTING NOTE: Technical corrections only. This section now appears as subsection C in proposed § 2.2-XXX (§ 2.1-424).

Article 2.

Division of Consolidated Laboratory Services.

~~§ 2.1-426~~ 2.2-XXX. Division of Consolidated Laboratory Services.

~~The~~ Within the Department shall be created the Division of Consolidated Laboratory Services, ~~heretofore existing as an independent agency, is hereby transferred to the Department of General Services, which shall exercise the powers and duties described in this article through the Division of Consolidated Laboratory Services.~~ The Division (the "Division"), which shall provide certain laboratory services, including research and scientific investigations, for various agencies of the Commonwealth in an efficient, effective and professional manner. The provisions of this article shall in no manner limit the authority and responsibilities of institutions of higher learning education from conducting laboratory services, research and scientific investigations independently of the Division.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-429~~ 2.2-XXX. Laboratory, testing, and analytical functions.

A. The Division shall provide, but is not ~~be~~ limited to, the following specific laboratory, testing and analytical functions:

1. Maintain laboratories for the examination of clinical material and pathological specimens submitted by members of the medical profession of the Commonwealth and for which the Division may charge fees to recover full costs.

2. Provide laboratory services for the testing and analysis of various products, foods, drinks, economic poisons and other materials regulated or controlled by the Commonwealth.

3. Provide laboratory services for the analysis and examination of samples and materials related to environmental control.

4. Establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act (P.L. 93-523) and state requirements pursuant to that Act.

B. No fee shall be charged for the analyses of water samples which are required by regulations of the Department of Health or for feed and fertilizer samples which are required by regulations of the Department of Agriculture and Consumer Services.

C. The Division may provide, upon request of any law-enforcement agency, chemical and microbiological testing and analytical functions related to any criminal investigation. Nothing in this section shall be construed to limit or preclude the Division of Forensic Science within the Department of Criminal Justice Services from conducting all necessary testing and analytical functions associated with any criminal investigation.

D. Upon request of a bidder on any state contract which requires the Division to test or analyze the product being offered by the bidder, the Director of the Division of Purchases and Supply may allow such bidder or his representative to witness the test or analysis.

E. The Division shall provide for security and protection of evidence, official samples and all other samples submitted to the Division for analysis or examination.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections; subsections A through D are § 2.1-429 and subsection E is § 2.1-430.

~~§ 2.1-429.04 2.2-XXX. (Effective January 1, 1998)-Environmental laboratory certification program.~~

A. The Division of ~~Consolidated Laboratory Services~~ shall by regulation establish a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, the Virginia Waste Management Act (§ 10.1-1400 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.). The program shall include, but need not be limited to, minimum criteria for: (i) laboratory procedures; (ii) performance evaluations; (iii) supervisory and personnel requirements; (iv) facilities and equipment; (v) analytical quality control and quality assurance; (vi) certificate issuance and maintenance; (vii) recertification and decertification; and (viii) granting partial and full exemptions from the program based on compliance and performance. ~~Such~~ The regulations shall be promulgated only after adoption of national accreditation standards by the National Environmental Laboratory Accreditation Conference sponsored by the United States Environmental Protection Agency. The purpose of the program shall be to ensure that laboratories provide accurate and consistent tests, analyses, measurements and monitoring so that the goals and requirements of Chapter 13 of Title 10.1, the Virginia Waste Management Act, and the State Water Control Law may be met.

B. Once the certification program has been established, laboratory certification shall be required before any tests, analyses, measurements or monitoring performed by a laboratory may be used for the purposes of Chapter 13 of Title 10.1, the Virginia Waste Management Act, and the State Water Control Law.

C. The Division shall by regulation establish a fee system to offset the costs of the certification program. The regulations shall establish fee categories based upon the types of substances for which tests, analyses, measurements or monitoring are performed. ~~Such~~ The fees shall be used solely for offsetting the costs of the laboratory certification program.

D. The Division shall develop procedures for determining the qualifications of laboratories located in jurisdictions outside of Virginia to conduct tests, analyses, measurements or monitoring for use in Virginia. Laboratories located outside of Virginia that are certified or accredited under a program determined by the Division to be equivalent to the program established under this section shall be deemed to meet the certification requirements ~~established hereunder~~.

~~E. Without limiting~~ In addition to any other penalties available under this chapter penalty provided by law, laboratories found to be falsifying any data or providing false information to support certification shall be decertified or denied certification.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-429.4~~ 2.2-XXX. Consolidation of other laboratories.

The Director of the Department of General Services is authorized to ~~may~~ take in and absorb within the Division of Consolidated Laboratory Services any laboratory activity that is owned and operated by a political subdivision of the Commonwealth that will conform to the duties and responsibilities of the Division. Any costs that may accrue to the Commonwealth as a result of the consolidation ~~must~~ shall be paid out of funds specifically appropriated for this purpose by the ~~general appropriations~~ appropriation act.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-430~~. Security and protection of evidence, etc.

~~The Division shall provide for security and protection of evidence, official samples, and all other samples submitted to the Division for analysis or examination.~~

DRAFTING NOTE: Technical corrections. This section has been merged with existing § 2.1-429 as new subsection E.

~~§ 2.1-432~~ 2.2-XXX. Disposal of certain hazardous materials.

Any material ~~which is seized in any a~~ criminal investigation, and ~~which is~~ deemed to be hazardous to health and safety, may be disposed of upon written application of the Division of Consolidated Laboratory Services to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which such material is proposed to be evidence is pending. Upon receipt ~~thereof~~, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Division of Consolidated Laboratory Services shall accompany the application for disposal and shall clearly identify and designate the material ~~to be disposed of for disposal~~. The application shall state the nature and quantity of the hazardous materials, ~~the quantity thereof~~, the location where seized, the person ~~or persons~~ from whom the materials were seized, and the manner ~~whereby such~~ in which the material shall be destroyed. Where the ownership of the hazardous material is known, notice shall be given to the owner ~~thereof~~ at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of ~~such the~~ seizure, ~~such~~ notice shall be given to the accused if other than the owner. Upon receipt of the analysis report and the application, the court may order the destruction of all, or a part of, ~~such the~~ material; ~~however~~. However, a sufficient and representative quantity of ~~such the~~ material shall be retained to permit an independent analysis when a criminal prosecution may result from ~~such the~~ seizure. A return under oath, reporting the time, place and manner of destruction shall be made to the courts. Copies of the analysis report, application, order and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-432.4~~ 2.2-XXX. Disposal of certain other property.

Personal property, including drugs, not subject to be disposed of under ~~§ 2.1-432~~ 2.2-XXX (xref), which has been submitted to the Division of Consolidated Laboratory Services for analysis or examination and which has not been reclaimed by the agency submitting ~~such the~~ property for analysis or examination, may be disposed of by the Division in accordance with this section if, after the expiration of 120 days after the receipt by the Division of the property, (i) the Director notifies the circuit court of the county or city from which the property was taken, in

writing, that the analysis or examination has been completed, and (ii) a report ~~submitted is given~~ to the submitting agency; that the property has not been reclaimed by the agency submitting it, and ~~that~~ the Division proposes to dispose of ~~such the~~ property. The notice shall state the nature and quantity of the property, ~~the quantity thereof~~, the location where seized, the name of the accused, if known, and the proposed method of disposing of the property. When the ownership of the property is known, a copy of ~~such the~~ notice shall be sent simultaneously with the notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the copy shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within thirty days after receipt of the notice, may direct that the property be disposed of by the Division by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Division. If the court does not so direct within such thirty-day period, then the Division may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. ~~Such The~~ report, if sworn to, shall be admissible as evidence to the same extent as the disposed; of property would have been admissible.

DRAFTING NOTE: Technical corrections only.

Article 3.

Division of Purchases and Supply.

~~§ 2-1 435~~ 2.2-XXX. Division of Purchases and Supply established.

~~The~~ Within the Department of Purchases and Supply, heretofore existing as an independent agency, is hereby transferred to the Department of General Services, shall be created a Division of Purchases and Supply (the "Division") which shall exercise the powers and duties described in this article ~~through a Division of Purchases and Supply.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1 440~~ 2.2-XXX. Using agencies to purchase through Division of Purchases and Supply; exception.

A. Except as otherwise directed and authorized by the Division or in the Code of Virginia, every department, division, institution, officer and agency of the Commonwealth, hereinafter called the using agency, shall purchase through the ~~Division of Purchases and Supply~~ all materials, equipment, supplies, printing and nonprofessional services of every description, whenever the whole or a part of the costs is to be paid out of the state treasury. The Division shall make such purchases in conformity with this article.

B. The provisions of subsection A shall not apply to the purchase of materials, equipment, supplies, printing and nonprofessional services of every description by the Virginia Retirement System; ~~however. However,~~ the Board of Trustees of the Virginia Retirement System shall ~~promulgate rules and adopt~~ regulations made in accordance with the Virginia Public Procurement Act (§ 11-35 et seq.) that specify policies and procedures which are based on competitive principles and which are generally applicable to procurement of such goods and services by comparably situated state agencies. ~~Exemption from subsection A shall be applicable. The exemption provided by this subsection shall apply for only so as long as such rules and regulations, or other rules and regulations meeting the requirements of this subsection, remain in effect at the Virginia Retirement System.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1 442~~ 2.2-XXX. ~~(Effective July 1, 1998)~~ Purchases to be made in accordance with Chapter 7 of Title 11 and ~~rules and regulations of Division; exempt purchases.~~

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with Chapter 7 (§ 11-35 et seq.) of Title 11 and such ~~rules and regulations~~ as the Division may prescribe.

B: ~~Such rules and~~ The regulations adopted by the Division shall:

1. Include a purchasing plan which shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products which facilitate the rights of the public to access official records under the Freedom of Information Act (~~§ 2-1-340-2.2-XXX~~ (xref) et seq.) or other applicable law; and

3. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing which has been negotiated and accepted by the U.S. General Services Administration.

C. The Division ~~shall have authority to~~ may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-464. Uniform standards for state forms.~~

~~The Division of Purchases and Supply may set uniform standards for the design, utilization, procurement and inventory of state forms.~~

DRAFTING NOTE: Technical corrections only. This section has been moved to proposed § 2.2-XXX (existing § 2.1-465) as subsection B.

~~§ 2-1-446~~ 2.2-XXX. Standardization of materials, equipment and supplies.

So far as practicable, all materials, equipment and supplies, purchased by or for the officers, departments, agencies or institutions of the Commonwealth, shall be standardized by the Division, and no variation shall be allowed from any established standard without the written approval of the Division. ~~Such~~ The standard shall be determined upon the needs of all using agencies, so far as their needs are in common, and for groups of using agencies or single using agencies so far as their needs differ. When changes or alterations in equipment are necessary in order to permit the application of any standard, ~~such~~ the changes and alterations shall be made as rapidly as possible.

The Division shall determine the proper equipment or electrical devices used to monitor the speed of any motor vehicle pursuant to § 46.2-882 and shall so advise the respective law-enforcement officials ~~of the same~~. Police chiefs and sheriffs shall ensure that all such equipment and devices meet or exceed the standards established by the Division. This provision shall apply only to equipment and devices purchased on or after July 1, 1986.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-465~~ 2.2-XXX. Printing management coordination; uniform standards for state forms.

A. The Division may establish criteria and procedures to obtain more economical operation of ~~State-state~~ printing facilities, provide guidelines to agencies regarding the most beneficial utilization of duplicating and reproduction equipment, and to centralize printing, duplicating and reproduction equipment and services.

B. The Division may set uniform standards for the design, utilization, procurement and inventory of state forms.

DRAFTING NOTE: Technical corrections only. This proposed section is comprised of the following existing sections: subsection A is § 2.1-465 and subsection B is § 2.1-464.

~~§ 2.1-444 2.2-XXX. Rules and regulations-Regulations as to estimates and requisitions; submission of estimates.~~

The Division shall prescribe and enforce ~~rules and regulations~~ under which estimates of the needs of the using agencies shall be submitted and requisitions made, and under which contracts for purchases may be made. Estimates of the amount and quality of materials, equipment, supplies, and printing needed by the using agencies shall be submitted at such periods as may be prescribed by the Division.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-444 2.2-XXX. Execution of contracts; payment for purchases; violations.~~

A. All contracts entered into by the Division shall be executed in the name of the Commonwealth of Virginia.

B. All purchases made by or through the Division shall be paid for in the same manner and out of the same funds as if the purchase had not been made by or through it.

C. The Division shall maintain a system of accounting prescribed by the State Comptroller. All moneys collected by the Division shall be paid promptly into the state treasury and reported to the State Comptroller for appropriate credit.

D. The Comptroller shall not issue any warrant upon any voucher issued by any using agency covering the purchase of any material, equipment or supplies, when such purchases are made in violation of any provision of this article.

E. Intentional violations of the centralized purchasing provisions of this article by any using agency, continued after notice from the Governor to desist, shall constitute malfeasance in office, and shall subject the officer responsible for violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-444; subsection B is § 2.1-455; subsection C is § 2.1-438; and subsection D and E are § 2.1-456.

~~§ 2.1-455. Payment for purchases by Division.~~

~~All purchases made by or through the Division of Purchases and Supply shall be paid for in the same manner and out of the same funds as if the purchase had not been made by or through it.~~

DRAFTING NOTE: Technical corrections. This section has been merged into proposed § 2.2-XXX (§ 2.1-444) as new subsection B.

~~§ 2.1-438. Accounting and records; payment of moneys into state treasury.~~

~~The Division shall maintain such system of accounting as shall be prescribed by the State Comptroller.~~

~~All moneys collected by the Division shall be paid promptly into the state treasury and reported to the State Comptroller for appropriate credit.~~

DRAFTING NOTE: Technical corrections. This section has been merged into proposed § 2.2-XXX as new subsection C.

~~§ 2.1-456. When warrants for purchases not to be issued, intentional violations of article.~~

~~The Comptroller shall not issue any warrant upon any voucher issued by any using agency covering the purchase of any material, equipment or supplies, when such purchases are made in violation of any provision of this article.~~

~~Intentional violations of the centralized purchasing provisions of this article by any using agency, continued after notice from the Governor to desist, shall constitute malfeasance in office, and shall subject the officer or officers responsible for such violations to suspension or removal from office, as may be provided by law in other cases of malfeasance.~~

DRAFTING NOTE: Technical corrections. This section has been merged into proposed § 2.2-XXX (§ 2.1-444) as new subsections D and E.

~~§ 2.1-453 2.2-XXX. Purchase of products of the penitentiary, etc and services of state correctional facilities.~~

The provisions of this article shall be subject to the provisions of Title 53.1 relating to the products and services of ~~the penitentiary and state farms~~ state correctional facilities required by state departments, institutions, and agencies, and the purchase of the same through ~~this~~ the Division.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-450 2.2-XXX. Purchases from Department for Visually Handicapped; violation.~~

Unless exempted by the Division, all such services, articles and commodities as ~~(4)(i)~~ (i) are required for purchase by the Division or by any person authorized to make purchases ~~in on~~ on behalf of the Commonwealth and ~~their its~~ departments, agencies and institutions; ~~(2)~~; (ii) are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; ~~(3)~~; (iii) are available for sale by ~~the such~~ Department; and ~~(4)(iv)~~ (iv) conform to the standards established by the Division shall be purchased from ~~the such~~ Department at the fair market price without competitive procurement. When convenience or emergency requires it the Commissioner of the Department for the Visually Handicapped may, upon request of the purchasing officer, release the purchasing officer from the obligations of this section. Any purchasing officer ~~who violates its provisions shall be guilty of a misdemeanor and upon conviction shall be punished accordingly~~ convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-450-1 2.2-XXX. Purchases from nonprofit sheltered workshops of Virginia serving the handicapped.~~

A. The Division shall publish annually a list of materials, supplies, services and equipment which, in the opinion of the Division, would be beneficial to the Commonwealth to procure from a sheltered workshop. ~~Such~~ The list shall exclude items currently produced by schools or workshops under the supervision of the Virginia Department for the Visually Handicapped or by inmates confined in state correctional institutions.

B. Any item or service included on the list required by subsection A may be purchased by the Division from nonprofit sheltered workshops serving the handicapped without competitive procurement, if the Division is satisfied that ~~such the~~ items and services (i) can be purchased within ten percent of their fair market value, (ii) will be of acceptable quality, and (iii) can be produced in sufficient quantities within the time required.

C. Nothing in this section shall prohibit the Division from amending the list required under subsection A by adding categories ~~as they may develop after such~~ to the list after it has been published.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-454 2.2-XXX.~~ Cases in which purchasing through Division not mandatory.

Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies and nonprofessional services through the Division of Purchases and Supply is shall not be mandatory in the following cases:

~~1. Such materials~~ Materials, equipment and supplies ~~as are~~ incident to the performance of a contract for labor or for labor and materials;

2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state appropriation funds;

3. Perishable articles, provided that no article except fresh vegetables, ~~fresh fish, fresh eggs and or~~ milk shall be considered perishable within the meaning of this clause subdivision, unless so classified by the Division of ~~Purchases and Supply~~;

4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; ~~however, this exception may include. However,~~ office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes only shall not be included except when authorized in writing by the Division;

5. Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board; ~~however, this exception may include. However,~~ office stationery and supplies, office equipment, janitorial equipment and supplies, coal and fuel oil for heating purposes, only shall not be included except when authorized in writing by the Division;

6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

7. Printing of the records of the Supreme Court; and

8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-447 2.2-XXX.~~ Direct purchases by using agencies.

The Division shall have the power, by general rule or special order, to permit purchases of any material, equipment, supplies, printing or nonprofessional services of every description to be made by any using agency directly, and not through the Division, whenever it appears to the satisfaction of the Division that by reason of the excess transportation costs, a lower price with equal quality can be obtained by the using agency, or for any other reason, which in the judgment of the Division warrants such an exemption.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-440.1 2.2-XXX.~~ Procurement of computer equipment to be based on performance-based specifications.

Should any agency or institution elect to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 11-37, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish, with the cooperation of the Department of Information Technology, performance-based specifications for the selection of equipment. Establishment of such

contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-454.1~~ 2.2-XXX. Aid and cooperation of Division may be sought by any public body or public broadcasting station in making purchases; use of facilities of central warehouse Virginia Distribution Center; Board to furnish list of public broadcasting stations to Division; services to certain volunteer organizations.

A. Virginia public broadcasting stations as defined in ~~§ 2-1-563.27:2~~ 2.2-XXX (xref), and public bodies as defined in § 11-37 who are empowered to purchase material, equipment, and supplies of any kind, ~~in their discretion,~~ may purchase through the Division of Purchases and Supply. When any such public body, public broadcasting station, or duly authorized officer requests ~~that the Division to~~ obtain bids for any materials, equipment and supplies, and ~~such the bids accordingly~~ have been obtained by the Division of Purchases and Supply, the Division may award the contract to the lowest responsible bidder, and ~~such the~~ public body or public broadcasting station shall be bound by ~~such the~~ contract. The Division shall set forth in the purchase order that the materials, equipment and supplies be delivered to, and that the bill ~~therein~~ be rendered and forwarded to, ~~such the~~ public body or public broadcasting station. Any such bill shall be a valid and enforceable claim against the public body or public broadcasting station requesting the ~~Division to seek such bids.~~

B. The Division may make available to any public body or public broadcasting station the facilities of the central warehouse Virginia Distribution Center maintained by the Division; ~~however,~~ However, the furnishing of any such services or supplies shall not limit or impair any services or supplies normally rendered any department, division, institution or agency of the Commonwealth.

C. The Virginia Public Broadcasting Board shall furnish to the Division of ~~Purchases and Supply~~ a list of public broadcasting stations in Virginia for the purposes of this section.

D. The services or supplies authorized by this section shall extend to any volunteer fire company or volunteer rescue squad which is recognized by an ordinance to be a part of the safety program of a county, city or town when ~~such the~~ services or supplies are sought through and approved by the governing body of such county, city or town.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-445.1~~ 2.2-XXX. Acquisition of surplus materials from the United States government.

The Division is designated as the agency of state government responsible for acquiring surplus personal property, including but not limited to materials, supplies, and equipment, by purchase, gift, or otherwise, from the United States government or any of its agencies for distribution to departments, agencies, institutions and political subdivisions of the Commonwealth and to eligible, nonprofit, nongovernmental organizations for use in ~~such the~~ organizations' activities within the Commonwealth. ~~Such The~~ acquisitions shall be made, when in the judgment of the Division, it ~~shall be~~ is advantageous to the Commonwealth to do so. ~~Such The~~ property may be acquired for storage and subsequent distribution or for immediate distribution. The Division may collect the purchase price of any such property, if applicable, and service charges sufficient to defray the costs of carrying out this program from entities to which it distributes ~~such the~~ property. The Division shall publish a ~~plan, or plans,~~ which ~~meet~~ meets the requirements of the Federal Property and Administrative Services Act of 1949, as it may be amended from time to time, and any similar federal statutes requiring such plan.

The Division ~~shall have the power~~ may, by general rule or special order, ~~to~~ delegate to any using department, agency, institution, political subdivision, or eligible, nonprofit, nongovernmental organization the authority to acquire such property directly from the federal government rather than through the Division, whenever the Division determines that it shall appear to the satisfaction of the Division that it is advantageous to do so. The

Division may prescribe rules and regulations for the acquisition of such property by entities to which it delegates its authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-457.2~~ 2.2-XXX. Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but ~~does shall not~~ include property as defined in ~~§ 2.1-504- 2.2-XXX~~ that is determined to be surplus. Surplus materials shall not include finished products which a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to such the facility, and whose; (ii) the patients or residents of the facility have substantially altered such the supplies, equipment, or products in the course of occupational or other therapy, and such; and (iii) the substantial alterations have resulted in a finished product.

B. The Department of ~~General Services (the "Department")~~ shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, provided that ~~such the~~ procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to §15.2-955 any surplus materials prior to the public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

6. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;

7. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of ~~such the~~ dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (~~§ 2.1-639.4- 2.2-XXX~~ et seq.);

8. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

9. Encourage the recycling of paper products, beverage containers, and used motor oil; and

10. Require ~~that the~~ proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with ~~§ 2.1-489.2-2-XXX~~ and report the deposit to the State Comptroller.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established ~~in subsection B~~. No surplus materials shall be

disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances: ~~(i) emergencies~~

1. Emergencies declared in accordance with § 44-146.18:2 or § 44-146.28; ~~(ii) as~~

2. As set forth in the budget bill as defined by § ~~2-1-399 2.2-XXX~~, provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill; ~~(iii) when~~

3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than \$200; ~~however. However,~~ the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed five percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year; or ~~(iv) during~~

4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of ~~every~~each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision ~~B-6~~ of subsection B.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-457-3 2.2-XXX.~~ Proceeds from the sale or recycling of surplus materials.

A. The proceeds from the sale or recycling of surplus materials pursuant to § ~~2-1-457-2 2.2-XXX~~ (xref) shall promptly be deposited into the state treasury and ~~such the~~ deposit reported to the State Comptroller, along with a statement of total proceeds and the amount of ~~such the~~ proceeds derived from the sale or recycling of surplus materials purchased in whole or in part from general fund appropriations.

B. At the end of each fiscal quarter, the State Comptroller shall (i) determine the total proceeds derived from the sale of surplus materials purchased in whole or in part from general fund appropriations and direct that the State Treasurer ~~shall to~~ transfer fifty percent of the total of such proceeds to the Conservation Resources Fund and (ii) provide copies of the reports furnished to him pursuant to subsection A, or summaries thereof, to the Department of Planning and Budget.

C. Based on such reports, or summaries, the Department of Planning and Budget, pursuant to its authority in the ~~Appropriation Act~~ appropriation act, may increase general fund appropriations to any department, division, institution, or agency of the Commonwealth by the amount of available proceeds derived from the sale or recycling of surplus materials pursuant to § ~~2-1-457-2 2.2-XXX.~~ ~~Such~~ The department, division, institution, or agency of the Commonwealth may use the additional appropriations to purchase materials, supplies, or equipment, or to defray the cost of disposing of surplus materials to the extent permitted pursuant to § ~~2-1-457-2 2.2-XXX~~ (xref).

D. Departments, divisions, institutions, or agencies may retain the full net profits from the sale of recycled materials provided that a report is filed with the State Comptroller on or before October 1 of each year.

E. Departments, divisions, institutions, or agencies meeting management standards prescribed by the Governor may retain the net proceeds from the surplus materials sold pursuant to § ~~2-1-457-2 2.2-XXX~~ (xref). Such retention shall be effective on July 1 following the determination that the department, division, institution, or agency meets the management standards.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-466. Printing of annual reports of state agencies.~~

~~A. The Division shall provide state agencies with technical assistance and advice, as far as may be practicable, in the manner and method of preparation of copy for, format of, method of reproduction of, etc., annual reports, whether required by statute or otherwise to be submitted to either the Governor or some other official or controlling body, board, commission, etc., of the Commonwealth. If the Governor so directs, the Division shall edit for the purpose of reducing and condensing the reports, but the content of any annual report constituting all or any part of a formal opinion or decision of any administrative agency or tribunal shall not be subject to any editorial change or deletion.~~

~~The cost of printing annual reports shall be borne by the agencies of the government for which said reports are printed.~~

~~In the printing of annual reports, as in all classes of the state work, the officer preparing the report or other documents shall in all cases be responsible for the matter contained therein.~~

~~B. Each annual report prepared for distribution by any state agency or institution of higher education for which the total general fund cost exceeds \$25,000 shall have conspicuously displayed on the front or back of its first two pages: (i) its unit cost and (ii) the total cost for the annual report. As used in this subsection, "total cost" includes, but is not limited to, the production, mailing and printing expenses incidental to the publication of the document.~~

DRAFTING NOTE: Technical corrections. This section has been merged into proposed § 2.2-XXX (2.1-467.3) as subsection B and C, respectively.

~~§ 2-1-467.3 2.2-XXX. Review and recommendations by Division of Purchases and Supply; printing of annual reports of state agencies.~~

~~A. When the Division of Purchases and Supply receives publications from an agency it shall review such the publications and furnish such the agency with suggestions concerning the most economical methods of printing, binding and mailing such the publications.~~

~~B. The Division shall provide state agencies with technical assistance and advice, as far practicable, in the manner and method of preparation of copy for, format of, or method of reproduction of, annual reports, whether required by statute or otherwise to be submitted to either the Governor or some other official or controlling body, board, commission, or instrumentality of the Commonwealth. If the Governor so directs, the Division shall edit for the purpose of reducing and condensing the reports, but the content of any annual report constituting all or any part of a formal opinion or decision of any administrative agency or tribunal shall not be subject to any editorial change or deletion.~~

~~The cost of printing annual reports shall be borne by the reporting agencies.~~

~~In the printing of annual reports the officer preparing the report or other documents shall in all cases be responsible for the matter contained in the report.~~

~~C. Each annual report prepared for distribution by any state agency or institution of higher education for which the total general fund cost exceeds \$25,000 shall have conspicuously displayed on the front or back of its first two pages (i) its unit cost and (ii) the total cost for the annual report.~~

~~As used in this subsection, "total cost" includes, but is not limited to, the production, mailing and printing expenses incidental to the publication of the document.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-467.3, subsection B is § 2.1-466 A, and subsection C is § 2.1-466 B.

~~§ 2.1-467.2.2-XXX.~~ Distribution of annual or biennial reports.

A. Unless otherwise provided by law, the Division of ~~Purchases and Supply~~ shall cause to be distributed by the reporting department, agency or institution, the printed volumes of annual or biennial reports as follows:

1. One or more copies to the Governor, as he may direct;

2. One copy to the President of the Senate;

3. Such number of copies not to exceed 100, to The Library of Virginia as may be designated by the Librarian of Virginia, ~~pursuant to § 2.1-467.2~~ for its collection, for the depository systems, and for exchange purposes;

4. One copy to the Clerk of the Senate ~~for the use of the Senate~~ and one copy to the Clerk of the House of Delegates ~~for the use of the House~~ their respective uses;

5. Such number of copies to the Law Library of the University of Virginia as may be designated by the Law Librarian, pursuant to § 30-34.9; and

6. One copy to the Division of ~~Purchases and Supply, Department of General Services.~~

B. The Division of ~~Purchases and Supply~~ shall distribute to all legislators and agency heads a list of state agencies for the purpose of selecting those agencies whose reports they wish to receive. The Division shall also make provision on the list for individuals to specify the types of agency reports they wish to receive, including annual or biennial, recurring, major or all reports. Agencies shall be informed by the Division as to those individuals who wish to receive their reports and should limit the distribution of their reports accordingly.

C. Any member of the General Assembly or agency head may at any time file with the Division of ~~Purchases and Supply~~ a request that he not be sent reports from agencies named by him and that his name be deleted from the mailing lists of such agencies. The Division shall notify all agencies involved.

D. State agencies shall update their mailing lists annually and shall limit the quantities printed to the reasonably foreseeable demand.

DRAFTING NOTE: Technical corrections. Subdivision 3 of subsection A represents a consolidation of that existing subdivision and the provisions of existing § 2.1-467.2.

~~§ 2.1-467.2. Agencies to furnish copies to The Library of Virginia.~~

~~Every agency shall furnish such number of copies as may be designated by the State Librarian of each of its publications at the time of issue to The Library of Virginia for its collection and copies sufficient for the depository system and for exchange purposes, not exceeding 100 copies.~~

DRAFTING NOTE: This section has been merged into proposed § 2.2-XXX (2.1-467) in subsection A 3 of that section.

§ 2.1-468. Sale of state flag.

The Division of ~~Purchases and Supply~~ shall have available at all times flags of the Commonwealth of Virginia, to be offered for sale to the public in such manner and cost as the Division may determine.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-467.1. Definitions.~~

~~As used in §§ 2.1-467.2 through 2.1-467.8, "agency" includes every agency, board, commission, office, department, division, institution or other entity of any branch of the state government. "Publication" includes all written documents fixed in any tangible format which can be understood, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, and issued by an agency of the Commonwealth in full or in part at state expense. Publication excludes those written documents which apply solely to the agency's administrative and internal operations.~~

DRAFTING NOTE: Technical corrections. This section, along with other like sections, has been moved to Title 42.1 under the duties of the Librarian of Virginia since the moved sections deal with the duties of the Librarian of Virginia.

~~§ 2.1-467.4. Records to be kept by agencies; information to be furnished to Librarian of Virginia upon request.~~

~~Every agency shall maintain such records of the cost of printing and distributing publications, and the revenue therefrom, as are necessary to disclose the actual costs of such publication and mailing and the revenue received therefrom. In addition to other expenses, there shall be included in the cost of publication the cost of purchased materials, staff time and the expenses involved in printing and mailing any such publication. Each agency shall furnish to the Librarian of Virginia such records of costs of printing and distribution, along with such additional information relating to cost of printing and distribution of such publications as shall be specifically requested by the Librarian of Virginia.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Article 1 (General Provisions) of Chapter X at the beginning of this Part C.

~~§ 2.1-467.5. Annual listing.~~

~~The Librarian of Virginia shall compile an annual listing of all publications printed by each state agency during the previous fiscal year, to include the quantity of each publication printed and the costs to print and distribute each publication.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Title 42.1 under the duties of the Librarian of Virginia.

~~§ 2.1-467.7. Librarian of Virginia to prepare and publish catalog.~~

~~The Librarian of Virginia shall prepare, publish and make available annually a catalog of publications printed by state agencies. Each such publication shall be indexed by subject, author and issuing agency. The date of publication of each listed publication shall be noted in the catalog together with information showing, in appropriate cases, that library copies only are available. To the extent such information is available, the catalog shall set forth the price charged, if any, of each publication and how and where the same may be obtained.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Title 42.1 under the duties of the Librarian of Virginia.

~~§ 2.1-467.8. Distribution of catalog.~~

~~The catalog shall be made available without cost to persons indicating a continuing interest in such catalog. Copies sent out of state shall be on an exchange basis or at a price sufficient to equal the unit cost of printing and mailing; complimentary copies may be made available by the Librarian of Virginia.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Title 42.1 under the duties of the Librarian of Virginia.

Article 4.

Division of Engineering and Buildings.

~~§ 2.1-480 2.2-XXX. Division of Engineering and Buildings transferred.~~

~~A. The Within the Department shall be established the Division of Engineering and Buildings, heretofore existing within the office of the Governor, is hereby transferred to the Department of General Services, (the "Division") which shall exercise the powers and duties described in this article through the Division of Engineering and Buildings.~~

~~B. The Division shall have charge of all public buildings, grounds and all other property at the seat of government not placed in the charge of others, and shall protect such properties from depredations and injury.~~

~~C. The Division shall have custody, control and supervision of the Virginia War Memorial Carillon. However, nothing herein shall abrogate the obligations of the City of Richmond to provide for the upkeep and maintenance of the Carillon.~~

~~D. To execute the duties imposed by this article, the Division may obtain information and assistance from other state agencies and institutions.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections; subsection A is § 2.1-480, subsections B and C are § 2.1-481, and subsection D is § 2.1-492.

~~§ 2.1-481. Care of public buildings and property; Virginia War Memorial Carillon.~~

~~The Division of Engineering and Buildings shall have charge of all public buildings, grounds and all other property at the seat of government not placed in the charge of others, and shall protect such properties from depredations and injury.~~

~~The Division shall have custody, control and supervision of the Virginia War Memorial Carillon; provided, however, that nothing herein shall abrogate the obligations of the City of Richmond to provide for the upkeep and maintenance of the said Carillon.~~

DRAFTING NOTE: Technical corrections. This section has been merged into proposed § 2.2-XXX (existing § 2.1-480) as new subsections B and C.

~~§ 2.1-482 2.2-XXX. Maintenance and utilization standards.~~

~~The Division may develop, in cooperation with state institutions and agencies concerned, maintenance and utilization standards for state buildings, and provide functional direction and service to institutions and agencies of the state government with respect to their policies, practices and administration of buildings and grounds. Such maintenance and utilization The standards shall include, but are not be limited to, advice and appropriate provisions for the installation and utilization of approved water-conservation devices for the avoidance of wasting water throughout the facilities owned by the Commonwealth. This effort on the part of the Division shall be in cooperation with other appropriate agencies of the Commonwealth. The Division shall review all maintenance and utilization standards and plans of such state institutions and agencies.~~

DRAFTING NOTE: Technical corrections only. The next to last sentence has been deleted as redundant of first sentence.

~~§ 2.1-483.1 2.2-XXX. Administration of capital outlay construction.~~

~~The Department of General Services through its Division of Engineering and Buildings shall provide assistance in the administration of capital outlay construction projects set forth in the Appropriation Act appropriation act, other than highway construction undertaken by the Department of Transportation and the~~

acquisition or improvement of specialized cargo-handling equipment and related port infrastructure including, but not limited to, port construction, renovation, and demolition which is required in a timely manner to meet market demands to enhance commerce through the Virginia Port Authority, the review and approval of plans and specifications, and acceptance of completed projects.

~~The Department of General Services Division may also establish standards, as needed, for construction by the Commonwealth and may, with the advice of the Attorney General, establish standard contract provisions and procedures for the procurement and administration of construction and for the procurement and administration of architectural and engineering services relating to construction, which shall be used by all departments, agencies and institutions of the Commonwealth. Such The standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the Commonwealth when project costs are reduced by such the contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such the cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.~~

~~The term "construction" as used in For purposes of this section, "construction" shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth. It does shall not include buildings or other facilities ancillary to the use of state highways which are located within the right-of-way of any state highway, or assets for use by the Virginia Port Authority within the boundaries of property owned or leased by the Virginia Port Authority.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-483.1:1~~ 2.2-XXX. Use of value engineering.

A. ~~The Department of General Services, through its Division of Engineering and Buildings, shall ensure that value engineering is employed for any capital project costing more than five million dollars. Value engineering may also be used for any project costing five million dollars or less. For purposes of this section, "value engineering" means a systematic process of review and analysis of a capital project by a team of persons not originally involved in the project. Such team, which shall include appropriate professionals licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1, may offer suggestions that would improve project quality and reduce total project cost by combining or eliminating inefficient or expensive parts or steps in the original proposal or by totally redesigning the project using different technologies, materials, or methods.~~

B. ~~The Director of the Department of General Services may waive the requirements of this section for any proposed capital project for compelling reasons. Any such waiver shall be in writing, state the reasons for the waiver, and apply only to a single capital project. On or before September 15 of each year, the Director of the Department of General Services shall report to the Governor and the General Assembly on the (i) number and value of the capital projects where value engineering was employed and (ii) identity of the capital projects for which a waiver of the requirements of this section was granted, including a statement of the compelling reasons for granting the waiver. Such reports The report shall cover projects completed or for which a waiver was granted within the previous fiscal year.~~

C. Notwithstanding any law to the contrary, the provisions of this section shall apply to public institutions of higher education.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-483.1:2~~ 2.2-XXX. Assistance to the Design-Build/Construction Management Review Board.

~~The Director of the Division of Engineering and Buildings or his designee shall serve as a member of the Design-Build/Construction Management Review Board (the Review Board) created pursuant to § 11-41.2:3. The Division shall provide staff support to the Review Board in the conduct of its duties in accordance with § 11-41.2:4.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-483.2 2.2-XXX.~~ Information on equipment utilizing wood wastes.

The Division shall assemble and maintain information relevant to a determination by any department, agency, or institution regarding the suitability of using a central boiler or other heating equipment which is fueled by wood wastes, including but not limited to: the (i) identity of manufacturers and suppliers of wood waste handling and burning equipment, (ii) capital and operating costs of such equipment, (iii) associated air emissions and solid waste disposal requirements, and (iv) fuel storage requirements. The information shall be distributed to any department, agency, or institution with a construction project specifying a central boiler or heating plant, and to personnel involved in the procurement and administration of architectural and engineering services relating to such construction project. For purposes of this section, "wood wastes" means raw wood by-products from wood processing and wood product manufacturing industries, including sawdust, chips, bark, and planer shavings. ~~The information shall be distributed to any department, agency, or institution with a construction project specifying a central boiler or heating plant, and to personnel involved in the procurement and administration of architectural and engineering services relating to such construction projects.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-484 2.2-XXX.~~ Review of easements; maintenance of real property records.

A. The Division shall review all deeds, leases and contractual agreements with utilities to serve state institutions or agencies that require the approval of the Governor, as well as all easements and rights-of-way granted by institutions and agencies to public and private utilities.

B. The Division shall be responsible for the maintenance of real property records of all state institutions and agencies, except records of real property acquired by the Department of Transportation for the construction of highways, and may have such boundary, topographic and other maps prepared as may be ~~deemed necessary.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-485 2.2-XXX.~~ Location, construction or lease of state consolidated office buildings.

Subject to the authority of the Virginia Public Buildings Board, the Division shall be responsible for the location and construction or lease of state consolidated office buildings at the seat of government and throughout the Commonwealth for joint use by state agencies, departments and institutions.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-486.~~ Public Buildings Commission continued as Public Buildings Board.

~~The Virginia Public Buildings Commission is continued and shall hereafter be known as the Virginia Public Buildings Board. The Board shall consist of nine members, three of whom shall be appointed by the Speaker of the House of Delegates from the membership of the House of Delegates, two of whom shall be appointed by the Committee on Privileges and Elections of the Senate from the membership of the Senate; such members shall be appointed for a term to expire on the date of the convening of the first regular session of the General Assembly in even numbered years following their appointments. The Governor shall appoint three members of the Board from the public at large, who shall serve for terms coincident with his own. The Director of the Department of General Services shall be an ex-officio member of the Board.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-487.~~ Board to assist and advise Governor and Department.

~~The Board shall assist and advise the Governor and the Department of General Services in the preparation and maintenance of a long range site plan at the seat of government, and in the determination of need for the acquisition of land, buildings and improvements, through purchases or construction.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488. Expenses of members of Board.~~

~~The members of the Board shall receive their actual expenses incurred in the performance of the duties imposed by this article to be paid from the funds transferred from other state departments, agencies or institutions under § 2.1-493, or from any funds which may be appropriated or made available for such purposes.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.1. Art and Architectural Review Council continued as Art and Architectural Review Board; members and officers; travel expenses; quorum.~~

~~The Art and Architectural Review Council within the Department of General Services is continued and shall hereafter be known as the Art and Architectural Review Board. The Board shall consist of the Director of the Department of Historic Resources, or his designee, serving as an ex officio member and five citizen members, appointed by the Governor. One shall be appointed from a list of architects nominated by the governing board of the Virginia Society of the American Institute of Architects; one from a list of persons nominated by the governing board of the University of Virginia; one from a list of persons nominated by the board of trustees of the Virginia Museum of Fine Arts; and two from the Commonwealth at large, one of whom shall be a painter or sculptor. The members of the Board shall be appointed for terms of four years each, except appointments to fill vacancies, which shall be for the unexpired terms. No member shall serve for more than two consecutive four year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four year terms in his own right. The Governor shall have authority to fill all vacancies in the manner of the original appointments. The members of the Board shall serve without compensation, but shall be entitled to receive actual and necessary travel expenses. From their own members they shall elect such officers as may be deemed proper. Three members of the Board shall constitute a quorum.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.2:1. Biennial report.~~

~~The Board shall submit a biennial report to the Governor and 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.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.3. Meaning of term "work of art."~~

~~The term "work of art" as used in this chapter shall apply to and include all paintings, mural decorations, stained glass, statues, bas-reliefs, tablets, sculptures, monuments, fountains, arches or other structure of a permanent character intended for ornament or commemoration.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.4. Governor's approval of works of art; removal, etc.; structures, fixtures and works of art placed on or extending over state property.~~

~~A. Works of art.— Hereafter no work of art shall become the property of the Commonwealth by purchase, gift or otherwise, unless such work of art or a design thereof, together with its proposed location, shall have been submitted to and approved by the Governor acting with the advice and counsel of the Council; nor shall any work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the Commonwealth. No existing work of art owned by the Commonwealth shall be removed, relocated or altered in any way without submission to the Governor; provided, that the foregoing provisions shall not apply to any portrait, tablet or work of art portraying, or pertaining to, a member or former member of the Supreme Court, presented to, or acquired by, the Court and displayed in that part of any building or buildings under the direct supervision and jurisdiction of the Court nor shall they apply to any portrait, tablet or work of art acquired by the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at state colleges or universities.~~

~~B. Structures and fixtures placed on or extending over state property.— No construction or erection of any building or any appurtenant structure of any nature, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, and no construction or erection of any bridge, arch, gate, fence, or other structure or fixture intended primarily for ornamental or memorial purposes, and which is to be paid for, either wholly or in part by appropriation from the state treasury, and, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, shall be begun, unless the design and proposed location thereof shall have been submitted to the Governor and its artistic character approved in writing by him acting with the advice and counsel of the Council, unless the Governor shall have failed to disapprove in writing the design within thirty days after its submission. Furthermore, no existing structure of the kinds named and described in this subsection, owned by the Commonwealth, shall be removed, remodeled or added to, nor shall any appurtenant structure be attached thereto without submission to the Governor and the artistic character of the proposed new structure approved in writing by him acting with the advice and counsel of the Council, unless the Governor shall have failed to disapprove in writing the design within thirty days after its submission.~~

~~C. Works of art placed on or extending over state property.— No work of art not owned by the Commonwealth shall be placed in or upon or allowed to extend over any property belonging to the Commonwealth for a period of more than two years unless such work of art or a design thereof shall have been submitted to and approved by the Governor acting with the advice and counsel of the Council, provided that nothing in this subsection C shall have application to the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at state colleges and universities.~~

~~D. Pending litigation.— Nothing herein shall affect pending litigation.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.5. Works of art accepted by Governor; approval by Council.~~

~~The Governor is authorized to accept, in the name of the Commonwealth, gifts to the Commonwealth of works of art as defined in § 2.1-488.3. But no work of art shall be so accepted until submitted to the Council or otherwise brought to its attention for its advice and counsel to the Governor.~~

~~Nothing herein shall affect pending litigation.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-488.6. Assistance to Council by Division.~~

~~The Division shall provide assistance to the Art and Architectural Review Board in the undertaking of its responsibilities.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Subtitle I, Part D - State Authorities, Boards, Commissions, etc. under the "Boards" heading.

~~§ 2.1-489 2.2-XXX. Planning and construction by Division; exemption.~~

~~A. The Department of General Services, through the Division of Engineering and Buildings shall, subject to written approval of the Governor:~~

~~1. Prepare and, when necessary to meet changing conditions, amend a long-range site plan for the location of all state buildings, and related improvements related thereto, in Capitol Square and its immediate environs, and for such other areas providing comparable facilities for the seat of government in or adjacent to the City of Richmond as the Governor shall direct;~~

~~2. Acquire with such funds as may be appropriated for that purpose the necessary land for effectuation of the plan; and~~

~~3. Direct and control the execution of all authorized projects for the construction of state buildings and related improvements in or adjacent to the City of Richmond.~~

~~B. The Governor may exempt from the provisions of subsection A those buildings and improvements which, in his opinion, should be planned and constructed under the direction of other state agencies or institutions or included in site plans prepared by such other agencies or institutions.~~

~~C. No building for state use shall be erected or acquired nor other property acquired for state use, in Capitol Square and its immediate environs, or in such other areas as may be included in the site plan required by subsection A unless it has been approved by the Governor as conforming to the site plan.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-489, subsection B is § 2.1-490, and subsection C is § 2.1-491.

~~§ 2.1-490. Exemptions from § 2.1-489.~~

~~The Governor is authorized to exempt from the provisions of § 2.1-489 those buildings and improvements which, in his opinion, should be planned and constructed under the direction of other state agencies and institutions or included in site plans prepared by such other agencies or institutions.~~

DRAFTING NOTE: Technical corrections. This section appears as subsection B in the proposed § 2.2-XXX (existing § 2.1-489).

~~§ 2.1-491. Buildings and property to conform to site plan.~~

~~No building for state use shall be erected or acquired nor other property acquired for state use, in Capitol Square and its immediate environs, or in such other areas as may be included in the site plan required by § 2.1-489, unless it shall first have been approved by the Governor as conforming to the site plan.~~

DRAFTING NOTE: Technical corrections. This section appears as subsection C of proposed § 2.2-XXX (existing § 2.1-489).

~~§ 2.1-492. Information and assistance from other state agencies and institutions.~~

~~To execute the duties imposed by this article, the Division may obtain information and assistance from other state agencies and institutions.~~

DRAFTING NOTE: Technical corrections. This section appears as subsection C of proposed § 2.2-XXX (existing 2.1-480).

~~§ 2.1-493 2.2-XXX.~~ Transfer of funds; acceptance of donations.

The Governor may transfer to the Department of General Services for use by the Division of Engineering and Buildings funds appropriated to any state department, agency or institution for the construction, alteration, reconstruction and repair of any building to be erected or acquired for the use of such department, institutional agency, or for the acquisition of land therefor for such building, or for planning, architectural, engineering or other studies in connection therewith, and may accept funds donated for such purposes.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-494.~~ Authority of existing special commissions not affected.

~~The provisions of this article shall not be construed to abolish or limit the authority of any special commission, now in existence, specifically charged by law with the acquisition or construction of any building for the use or occupancy of any state department or agency.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete. Chapter 672 of the 1977 Acts of Assembly added this provision when the Department of General Services was reorganized.

~~§ 2.1-495 2.2-XXX.~~ Assignment of office space.

The Division shall be responsible for the assignment of office space to agencies at the seat of government and buildings under control of the Division, and for the establishment of standards for the utilization and furnishing of such space.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-496 2.2-XXX.~~ Purchase of furniture for state buildings; repairs to buildings and furniture; surplus furniture.

The Division shall cause to be purchased through the Division of Purchases and Supply with the approval of the Governor, all ~~such~~ furniture as may be required in for the buildings within the master site plan of Capitol Square, ~~excepting~~ except those assigned for use by agencies and departments, ~~and~~. The Division shall have all ~~such~~ repairs made to either buildings or furniture thereof, as may be approved by the Governor; ~~the~~. The cost of ~~such~~ the repairs and furniture ~~to~~ shall be paid with ~~such~~ funds as approved by the Governor. The Division shall declare surplus that furniture which may no longer be satisfactorily used.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-497 2.2-XXX.~~ Furniture for Executive Mansion.

The Division shall requisition for the Executive Mansion ~~such~~ the furniture as may be required by the Governor, and cause to be sold such old furniture as the Governor may direct, taking care not to exceed in ~~expenditures~~ such ~~appropriated~~ sums as may be appropriated therefor, in addition to the proceeds of old furniture sold. An account both of the sales and purchases shall be returned to the Comptroller before any warrant shall issue for any part of the sum appropriated, ~~and then the~~. The warrant shall ~~only~~ be only so much as by the account shall ~~appear~~ appears to be proper.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-498 2.2-XXX.~~ Services for Capitol and other state ~~buildings~~ facilities.

The Division of ~~Engineering and Buildings~~ shall contract for water, electricity, gas, sewer service, fuel for heating, and such other utility services as may be required to serve the buildings-facilities within the master site plan of Capitol Square and for such other buildings-facilities as the Governor may designate. The cost of ~~such the~~ services shall be paid out of funds appropriated ~~therefor~~ for that purpose.

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of General Services, the term "buildings" was replaced with "facilities" as there are other metered items in addition to buildings such a boat ramps, parking lots, and ball fields.

§-2.1-499 2.2-XXX. Control of Capitol Square and other property at seat of government.

A. The Department of General Services, through the Division of Engineering and Buildings, under the direction and control of the Governor, shall have control of the Capitol Square with the expense of the maintenance and control to be paid out of the fund appropriated for that purpose. The Division shall keep the keys of the Capitol Building and shall take charge of all the rooms in the Capitol Building, except in those areas under the control of the legislature, the public grounds and all other property at the seat of government not placed in specific charge of others. The Division shall have no control ~~nor~~ or responsibility with respect to the old and new Senate chambers, the old and new halls of the House of Delegates, the Rotunda, the offices of the Clerks of the Senate and House of Delegates, the legislative committee rooms, the enrolling office, or any other area specifically designated as legislative space. The Division ~~is to~~ shall do such work and make such repairs for the respective bodies of the General Assembly as may be requested by the clerks thereof with appropriate reimbursement of expenses to the Division.

B. The Division shall have all the furniture and the rooms in the Capitol, other than the rooms excepted in subsection A, the open parts of the Capitol, the public grounds, and all other property at the seat of government not placed in the charge of others, kept in proper order at all times.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-499 and subsection B is § 2.1-500.

~~§-2.1-500.~~ Rooms in Capitol and other property to be kept orderly and clean.

~~The Division shall have all the rooms in the Capitol, other than the rooms excepted in § 2.1-499, and the furniture thereof, and also the open parts of the Capitol, the public grounds and all other property at the seat of government not placed in the charge of others, kept in proper order and cleanliness at all times.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (§ 2.1-499).

§-2.1-501 2.2-XXX. Inventory of property and Governor's house; custody of house and property pending election of Governor.

When the ~~terms~~ term of office of any Governor shall ~~expire~~ expires, or he shall die or resign, the Division shall take an inventory of all the public property and furniture in the Governor's house and ~~outhouses-outbuildings~~ and deliver ~~such the~~ inventory to the Comptroller, to be preserved in his office; ~~and~~. The Division shall, unless the house ~~be is~~ occupied by the Lieutenant Governor, have charge of the house, furniture, and other public property, until a Governor shall ~~be is~~ elected and ~~take-takes~~ possession thereof.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-502.~~ Quarters for veterans' organizations.

~~The Division shall, when practicable, provide in the state office buildings, or other office space owned or under lease by the Commonwealth, quarters for all organizations composed entirely of war veterans, upon the~~

~~application of the department commander thereof. Such quarters shall consist of two contiguous rooms which shall be for the exclusive use of the state or department headquarters of such organizations.~~

DRAFTING NOTE: On the recommendation of the Department of General Services, this section has been deleted because, as a matter of practice, DGS has not and currently is not providing any offices to veterans' organizations. This section was enacted in 1932 (HB 72). ~~§ 2-1-503 2.2-XXX~~. Division may lease certain state property; preparation of leases by Attorney General; disposition of rentals.

~~The Division of Engineering and Buildings, with the prior written approval of the Governor first obtained, may lease property owned by the Commonwealth which has been or is hereafter and acquired for the development of the state site plan for permanent state office buildings and related structures and facilities lying near the Capitol Square. All such leases shall be prepared by the Attorney General; they. The leases may run for such time as prescribed by the Governor may prescribe and shall be for such appropriate rental as appears proper. All rentals received therefrom shall be paid into the general fund of the state treasury.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-504 2.2-XXX~~. Definitions.

~~As used in §§ 2-1-504.1 through 2-1-512 2.2-XXX (xref), unless the context requires a different meaning clearly appears from the context:~~

"Institutions" shall include, but not be limited to, any corporation owned by the Commonwealth and subject to the control of the General Assembly.

"Property" shall mean an interest in land and any improvements thereon held by the Commonwealth and under the control of or occupied by any of its departments, agencies or institutions, but shall not include (i) real estate or rights-of-way acquired by the Department of Transportation for the construction of highways and (ii) ungranted shores of the sea, marsh and meadowlands as defined in § 28.2-1500.

"Recommend," "recommended," or "recommendation," when used with reference to a recommendation by the Department of General Services to the Governor, ~~shall mean~~ means to advise either for or against a proposed action.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-504.1 2.2-XXX~~. Approval of actions; conveyances in name of the Commonwealth.

A. All actions to be taken or approvals to be given by the Governor or the Attorney General pursuant to §§ ~~2-1-504.2 through 2-1-512 2.2-XXX (xref)~~ may be taken or given by the Governor or his designee, or by the Attorney General or one of his deputies or assistant attorneys general.

B. All conveyances of any interest in property to or from the Commonwealth or any state department or agency ~~thereof or any state institution thereof~~ which is not a corporation, shall be in the name of the Commonwealth and shall designate the department, agency or institution in control or possession of the property in the following manner: "Commonwealth of Virginia, Department of (name of department, agency or institution, or other appropriate name)." All interests in property conveyed to any department, agency or institution of the Commonwealth, whether past or future, is and shall be the property of the Commonwealth. Conveyance of an interest in property on behalf of the Commonwealth by a department, agency or institution other than that which acquired title on behalf of the Commonwealth shall not create a cloud upon the title.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-504.2 2.2-XXX~~. Department to review proposed acquisitions of real property; approval by the Governor; exceptions.

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means ~~whatsoever~~ without following the guideline promulgated-adopted by the Department of General Services and obtaining the prior approval of the Governor. The Department of General Services shall review every proposed acquisition of real property by gift, lease, purchase or any other means ~~whatsoever~~ by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of ~~such the~~ transactions to the Governor based on cost, demonstrated need, and compliance with the aforesaid Department's guidelines.

The provisions of this section shall not apply to the (i) acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A 4 of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property, ~~for~~ (ii) the acquisition through the temporary lease or donation of real property for a period of six months or less duration, ~~or for~~ or (iii) the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; ~~however~~, However acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, ~~and or~~ correctional facilities shall be subject to such the Department's review and approval.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-504.3~~ 2.2-XXX. Conveyance and transfers of real property by state agencies; approval of Governor and Attorney General.

A. When it is deemed to be in the public interest, ~~property~~

1. Property owned by the Commonwealth may be sold, leased or other interests therein conveyed to political subdivisions, public authorities, or the federal government, for such consideration as is deemed proper, upon the written approval of the Governor, who shall have first considered the written recommendations of the Director of the Department of General Services. ~~The Attorney General shall approve the form of the instruments prior to execution.~~

~~B. When it is found to be in the public interest, property; and~~

2. Property owned by the Commonwealth and held in the possession of a department, agency or institution of the Commonwealth may be transferred to the possession of another department, agency or institution of the Commonwealth by the execution of an agreement between the heads of such departments, agencies or institutions, ~~upon the written approval of the Governor, who shall have first considered the written recommendations of the Director of the Department of General Services. The Attorney General shall approve the form of the instruments prior to execution.~~

B. No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

DRAFTING NOTE: Technical corrections only. Subsection B has been added for consistency to clarify all conveyances of state property require the approval of the Governor and the Attorney General. The text of subsection B comes from existing § 2.1-504.4.D.

~~§ 2.1-504.4~~ 2.2-XXX. Conveyance of easements and appurtenances thereto to cable television companies, utility companies, public service companies, political subdivisions by state departments, agencies or institutions; communication towers.

A. Any state department, agency or institution, through its executive head or governing board ~~as the case may be, is authorized to may~~ convey to public utility companies, public service corporations or companies, ~~political subdivisions or cable television companies, right-of-way easements over property owned by the Commonwealth and held in its possession and any wires, pipes, conduits, fittings, supports and appurtenances thereto for the~~

transmission of electricity, telephone, cable television, water, gas, steam, or sewage placed on, over or under ~~such~~ the property for such consideration as the executive head or governing board of the agency ~~shall deem deems~~ proper, when such conveyance is deemed to be in the public interest.

B. Any state department, agency or institution having responsibility for a state-owned office building, through its executive head or governing board ~~as the case may be, shall be authorized to~~ may lease space to a credit union in ~~such the~~ building for the purpose of providing credit union services which are readily accessible to state employees. ~~Any such~~ The lease shall be for a term of not more than five years, with annual renewals or new leases permitted thereafter. The department, agency or institution responsible for the building may ~~at its discretion~~ forego all rent or charge less than the fair market value.

C. When it is deemed to be in the public interest, and subject to guidelines ~~promulgated~~ adopted by the Department of ~~General Services~~, property owned by the Commonwealth may be sold or leased or other interests or rights therein granted or conveyed to political subdivisions or persons providing communication or information services for the purpose of erecting, operating, using or maintaining communication towers, antennas, or other radio distribution devices. If any tower proposed ~~for erection to be erected~~ on property owned by the Commonwealth is to be used solely by private persons providing communication or information services, and there is no immediate use ~~thereof~~ planned or anticipated by any department, agency or institution of the Commonwealth or political subdivision, the guidelines shall provide a means to obtain comments from the local governing body where the property is located. The conveyances shall be for such consideration as the Director of the Department of ~~General Services~~ deems appropriate, and may include shared use of ~~such the~~ facilities by other political subdivisions or persons providing the same or similar services, and by departments, agencies, or institutions of the Commonwealth.

D. No transaction authorized by this section shall be made without the prior written recommendation of the Department of General Services to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-504.5~~ 2.2-XXX. Conveyances to Department of Transportation by state institutions or public corporations owned by Commonwealth.

Any state institution or public corporation whose funds and property are owned solely by the Commonwealth ~~is authorized may~~ through its governing board ~~to~~ convey to the Commonwealth of Virginia, Department of Transportation, ~~after having obtained the written recommendation of the Department of General Services to the Governor and the written approval of the Governor, such the~~ lands as may be necessary for highway purposes or other ~~incidental~~ incidental uses ~~incident thereto~~, either for such consideration as ~~shall be~~ deemed proper or in exchange for other lands, and to execute the instruments necessary to effectuate the conveyance, ~~such instruments to be subject to the approval of the Attorney General as to form.~~

No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

The proceeds ~~realized from such the~~ sale, with the written approval of the Governor, ~~in writing,~~ may be used by the state institution or public corporation ~~afesaid~~ for the purchase of other property or for capital improvements.

~~Any conveyance or agreement heretofore executed which, by its terms, conveys lands from a state institution or other public corporation whose funds and property are owned solely by the Commonwealth, to the Commonwealth of Virginia, Department of Transportation, is hereby declared valid and effective.~~

DRAFTING NOTE: Technical corrections only. The last paragraph of this section has been deleted as obsolete.

~~§ 2-1-505~~ 2.2-XXX. State agencies and institutions to notify ~~Department~~ Division of property not used or required; criteria.

A. Whenever any department, agency or institution of state government ~~shall possess or have possesses~~ or has under its control state-owned property which is not being used or is not required for the programs of ~~such the~~ department, agency or institution, it shall so notify the ~~Department of General Services through its Division of Engineering and Buildings~~. The ~~Department of General Services Division~~ shall periodically inquire of all departments, agencies, or institutions as to the current and proposed use of all state-owned property under their control to determine whether ~~any such the~~ property should be declared surplus to the needs of the Commonwealth. The ~~Department Division~~ shall then determine whether or not ~~such the~~ property, including property in its possession and control, is surplus.

Until permanent disposition of ~~such the~~ property determined to be surplus is effected, the property shall continue to be maintained by the department, agency or institution possessing or controlling ~~such property it~~, unless upon the recommendation of the Department, the Governor authorizes the transfer of ~~such the~~ property to the possession or control of the Department. In this event, the department, agency or institution formerly possessing or controlling ~~such the~~ property shall have no further interest ~~therein in it~~.

B. The ~~Department Division~~ shall establish criteria for ascertaining whether property under the control of a department, agency or institution should be classified as "surplus" to its current or proposed needs.

C. Notwithstanding the provisions of subsection A ~~of this section~~, the property known as College Woods which includes Lake Matoaka and is possessed and controlled by a college founded in 1693, regardless of whether such property has been declared surplus ~~property~~ pursuant to this section, shall not be transferred or disposed of without the approval of the board of visitors of such college by a two-thirds vote of all board members at a regularly scheduled board meeting. The General Assembly shall also approve ~~such the~~ disposal or transfer.

DRAFTING NOTE: Technical corrections only. To conform with actual practice, "Department" has been replaced with "Division".

~~§ 2-1-508~~ 2.2-XXX. State agencies, institutions, to inquire of Division before acquiring land for capital improvements.

Any state department, agency or institution shall, before purchasing or otherwise acquiring land for any capital improvement, inquire of the ~~Department of General Services~~ whether there is available any suitable land under the control of the ~~Division of Engineering and Buildings~~ or any other state department, agency or institution which ~~can may~~ be authorized for the purpose for which the additional land is needed.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-511~~ 2.2-XXX. Temporary transfer of use of property between state agencies and institutions; lease to private entities.

A. Whenever any department, agency, or institution of state government ~~shall possess or have possesses~~ or has under its control property for which there is an anticipated future use, but for which there is no immediate use, ~~such the~~ department, agency, or institution of the Commonwealth may effect, subject to the written recommendation of the ~~Department of General Services~~ to the Governor and the written approval by the Governor, an agreement in writing with any other department, agency, or institution of state government for the use of ~~such the~~ property by ~~such the~~ other department, agency, or institution during a period not to exceed fifteen years. ~~Any such mutual~~ The agreement may be extended beyond ~~such the~~ fifteen-year period on an annual basis in accordance with the procedures ~~hereinabove-prescribed in this subsection~~. In the event no other department, agency, or institution of state government has use for the property, ~~any the~~ department, agency, or institution may lease ~~such the~~ property to private individuals, firms, corporations or other entities in accordance with the procedures and subject to the term limitations ~~as to term hereinabove-prescribed in this subsection~~.

B. The provisions of subsection A notwithstanding, ~~state-supported-public~~ institutions of higher education, subject to the approval of the General Assembly, may enter into written agreements with university-related foundations, private individuals, firms, corporations, or other entities to lease property in the possession or control of the institution. Any such agreement and proposed development or use of property shall (i) be for a purpose consistent with the educational and general mission, auxiliary enterprises, and sponsored program activities of the institution, or such other purpose as the General Assembly may authorize, and ~~shall (ii) comply with guidelines to be promulgated-adopted by the Department of General Services.~~ The term of any ~~such~~ agreement shall be based upon, among other things, the useful life of the improvements to the property and shall not exceed fifty years; ~~however.~~ However, any agreement may be extended upon the written recommendation of the Governor and the approval of the General Assembly. Agreements with private individuals, firms, corporations, or other entities shall also be subject to guidelines ~~to be promulgated-adopted by the Secretary of Finance.~~ In the event that any ~~state-supported-public~~ institution of higher education ~~shall enter~~ enters into any written agreement with a university-related foundation, private individual, firm, corporation, or other entity to lease property in the possession or control of the institution pursuant to this subsection-B, neither the real property which is the subject of ~~such-the~~ lease nor any improvements or personal property located on ~~any-the~~ real property which is the subject of ~~such-the~~ lease shall be subject to taxation by any local government authority pursuant to § 58.1-3203 or § 58.1-3502 or any other applicable law during the term of ~~such-the~~ lease, regardless of the ownership of ~~such-the~~ property, improvements or personal property, provided ~~such-the~~ real property, improvements or personal property shall be used for a purpose consistent with the educational and general mission, auxiliary enterprises, and sponsored program activities of the institution.

For the purposes of this section, "university-related foundation" means any foundation affiliated with an institution of higher education.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-542~~ 2.2-XXX. Sale or lease of surplus property.

Except when a department, agency or institution notifies the Department of a need for property which has been declared surplus, and the Department finds that stated need to be valid and best satisfied by the use of ~~said~~ the property, the Department may dispose of ~~such-the~~ property as ~~herein provided in this section.~~

A. After it determines the property to be surplus to the needs of the Commonwealth, the Department may, with the prior written approval of the Governor ~~in writing first obtained~~, proceed to sell the property. The sale shall be by public auction, or sealed bids, or by marketing through one or more real estate brokers licensed by the Commonwealth. Notice of the date, time and place of sale, if by public auction or sealed bids shall be given by advertisement in at least two newspapers published and having general circulation in the Commonwealth, at least one of which shall have general circulation in the county or city in which the property to be sold is located. At least thirty days shall elapse between publication of ~~such-the~~ notice and the auction or the date on which sealed bids will be opened.

In instances where the appraised value of property proposed to be sold is determined to be a nominal amount or an amount insufficient to warrant statewide advertisement, but in no event in excess of \$50,000, the notice of sale may be placed in only one newspaper having general circulation in the county or city in which the property to be sold is located.

B. The Department shall have the right to reject any and all bids or offers when, in the opinion of the Department, the price is inadequate in relation to the value of ~~such-the~~ property or if a need has been found for the property. If the Department deems the bid or offer fair and adequate in relation to the value of the property, and if no other need for the property has been found, the Department shall recommend acceptance of ~~such-the~~ bid or offer to the Governor for approval. In lieu of the sale of any such property, the Department may, with the approval of the Governor, lease ~~the same~~ it to any responsible person, firm or corporation on such terms as ~~shall be~~ are fair and adequate in relation to the value of ~~such-the~~ property. The provisions of this ~~article-section~~ requiring disposition of ~~such~~ property through the medium of sealed bids, public auction, or marketing through licensed real estate brokers shall not apply to any lease thereof, although such procedures may be followed in the discretion of

the Department. The deed or lease to ~~such the~~ property shall be executed in the name of the Commonwealth and shall be in a form approved by the Attorney General. Notwithstanding any law to the contrary and notwithstanding how title to ~~such the~~ property was acquired, the deed or lease may be executed on behalf of the Commonwealth by the Director of the Department of General Services, or his designee, and such action shall not create a cloud on the title to the property. The terms of ~~such the~~ sale or lease shall be subject to the written approval of the Governor

B1C. An exception to sale by sealed bids, public auction, or listing the property with a licensed real estate broker may be granted by the Governor if the property is landlocked and inaccessible from a public road or highway. In such cases, the Department shall notify all adjacent landowners of the Commonwealth's desire to dispose of the property. After ~~such the~~ notice has been given, the Department may begin negotiations for the sale of the property with each interested adjacent landowner. The Department, with the approval of the Governor, may accept any offer which it deems to be fair and adequate consideration for the property. In all cases, ~~such the~~ offer shall be the best offer made by any adjacent landowner. The terms of all negotiations shall be public information.

GD. Fifty percent of the proceeds from all ~~such~~ sales or leases, or from the conveyance of any interest in property under the provisions of this article, above the costs of ~~such the~~ transaction, which costs shall include fees or commissions, if any, negotiated with and paid to auctioneers or real estate brokers, shall be paid, subject to any contrary provisions of law, into the Conservation Resources Fund, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund, except as provided in Chapter 180 of the Acts of Assembly of 1966. The remaining fifty percent of proceeds involving general fund sales or leases, less a pro rata share of any costs of ~~such the~~ transactions, shall be deposited in the general fund of the ~~Commonwealth state treasury~~. The Department of Planning and Budget shall develop guidelines which allow, with the approval of the Governor, any portion of the deposit in the general fund to be credited to the agency, department or institution having control of the property at the time it was determined surplus to the Commonwealth's needs. Any amounts so credited to an agency, department or institution may be used, upon appropriation, to supplement maintenance reserve funds, ~~to supplement or~~ capital project appropriations, ~~and or~~ for the acquisition, construction or improvement of real property or facilities. Net proceeds from sales or leases of special fund agency properties or property acquired through a gift for a specific purpose shall be retained by ~~such the~~ agency or used in accordance with the original terms of the gift.

DE. When the Department deems it to be in the best interests of the Commonwealth, it may, with the approval of the Governor, authorize the department, institution or agency in possession or control of the property to dispose of surplus property in accordance with the procedures set forth ~~herein~~ in this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-512-4 2.2-XXX~~. Exploration for and extraction of minerals on state-owned uplands.

A. The Department of Mines, Minerals and Energy, in cooperation with the Division, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan (the "Plan"). The Plan shall include provisions for the holding of public hearings and the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities on state-owned uplands. Sales of mineral exploration permits and leases for these lands shall be administered by the Division, with the advice of the Department of Mines, Minerals and Energy.

AB. Upon receiving the recommendation of both the Director of the Department of General Services and the Director of the Department of Mines, Minerals and Energy, the Governor shall determine whether the proposed mineral exploration, leasing, or extraction of minerals on state-owned uplands is in the public interest. No state-owned uplands shall be approved for mineral exploration, leasing, or extraction without a public hearing in the locality where the affected land or the greater portion thereof is located and a competitive bid or proposal process as described in the Plan. The provisions of this section shall not apply to the extraction of minerals on state-owned uplands pursuant to an oil or gas pooling order unless the well through which the extraction will occur is situated on such land.

For the purposes of this section, "state-owned uplands" shall ~~mean~~ means lands owned by the Commonwealth which (i) ~~which~~ lie landward of the mean low water mark in tidal areas or (ii) ~~which~~ have an elevation above the average surface water level in nontidal areas.

~~BC.~~ The agencies, departments, or institutions proposing or receiving applications for mineral exploration, leasing or extraction on state-owned uplands shall, through their boards or commissions, recommend as specified in ~~§ 2.1-512 B-2.2-XXX (xref)~~ all such activities to the Department of General Services, Division of Engineering and Buildings, following guidelines set forth in the State Minerals Management Plan. The Division of Engineering and Buildings and the Department of Mines, Minerals and Energy shall review and recommend to the Governor such proposed activities. Such agencies, departments or institutions, through their boards or commissions, may execute such the leases or contracts which have been approved by the Governor.

~~C.~~ The Department of Mines, Minerals and Energy, in cooperation with the Department of General Services, Division of Engineering and Buildings, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan. The Plan shall include provisions for the holding of public hearings and the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities on state-owned uplands. Sales of mineral exploration permits and leases for these lands shall be administered by the Department of General Services, Division of Engineering and Buildings, with the advice of the Department of Mines, Minerals and Energy.

D. The proceeds from all such sales or leases above the costs of ~~such the~~ sale to the Department of Mines, Minerals and Energy or to the agency, department or institution sponsoring this the sale shall be paid into the general fund of the state treasury, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund. Net proceeds from sales or leases of special-fund agency properties or property acquired through a gift shall be retained by such agency or institution or used in accordance with the original terms of the gift if so stated.

E. Mining, leasing, and extraction activities in state-owned submerged lands shall be authorized and administered by the Virginia Marine Resources Commission pursuant to §§ 62.1-3 through 62.1-4.

DRAFTING NOTE: Technical corrections. Proposed subsection A is derived from existing subsection C, which is show as stricken.

~~§ 2.1-513 2.2-XXX.~~ Management, harvesting and sale of timber on lands under control of Division.

The Division is ~~authorized and empowered to~~ may manage and harvest timber on lands placed under its control in accordance with the best timber management practices, after receiving the advice of the State Forester. ~~It is also authorized to~~ The Division may also sell such the timber, but before ~~such the~~ sale is made, the State Forester or his deputy shall furnish the Division with an estimate of the value of ~~such the~~ timber. In the event of sale, the proceeds shall first be used to defray the cost of the sale and the cost of maintenance of the property from which the timber is removed and the remainder, if any, of ~~such the~~ funds shall be deposited in the Forest Management of State-owned Lands Fund ~~as created in § 10.1-1120.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-514 2.2-XXX.~~ Facilities for ~~handicapped persons~~ with physical disabilities in certain buildings; "building" defined definitions; construction standards; waiver; temporary buildings.

A. For the purposes of §§ ~~2.1-515 through 2.1-524 2.2-XXX (xref);~~

"Building" means any building or facility, used by the public which is constructed in whole or in part or altered by the use of state, county or municipal funds, or the funds of any political subdivision of this Commonwealth. ~~The provisions of §§ 2.1-515 through 2.1-524.~~ "Building" shall not apply to ~~include~~ public school buildings and facilities, which shall be governed by standards established by the Board of Education pursuant to § 22.1-138.

"Persons with physical disabilities" means persons with:

1. Impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs;

2. Impairments that cause individuals to walk with difficulty or insecurity;

3. Total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to dangers;

4. Deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals;

5. Faulty coordination or palsy from brain, spinal, or peripheral nerve injury; or

6. Those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination and perceptiveness but are not accounted for in the aforementioned categories.

B. The Division shall prescribe standards for the design, construction, and alteration of buildings constructed in whole or in part or altered by the use of state funds, other than school funds, necessary to ensure that persons with physical disabilities will have ready access to, and use of, such buildings.

C. The governing body of a county, city or town or other political subdivision, shall prescribe standards for the design, construction and alteration of buildings, not including public school facilities, constructed in whole or in part or altered by the use of the funds of such locality or political subdivision necessary to ensure that persons with physical disabilities will have ready access to, and use of, such buildings. The Division shall consult with the governing bodies upon request.

D. The Division with respect to standards issued by it, and the governing body of any county, city or town or other political subdivision with respect to standards issued by it may:

1. Modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency or other instrumentality concerned, upon determining that a modification or waiver is clearly necessary; and

2. Conduct necessary surveys and investigations to ensure compliance with such standards.

E. The provisions of §§ 2.2-XXX through 2.2-XXX shall apply to temporary and emergency construction as well as permanent buildings.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-514, subsection B is § 2.1-516, subsection C is § 2.1-517, subsection D is § 2.1-520, and subsection E is § 2.1-521. The definition of "building" in subsection A is from existing § 2.1-514. The term "handicapped person" was replaced with persons with physical disabilities throughout this section.

~~§ 2.1-515. Same; "physically handicapped persons" defined.~~

~~For the purposes of this article, the term "physically handicapped persons" shall mean persons with:~~

~~1. Impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs;~~

~~2. Impairments that cause individuals to walk with difficulty or insecurity;~~

~~3. Total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to dangers;~~

~~4. Deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals;~~

~~5. Faulty coordination or palsy from brain, spinal, or peripheral nerve injury; or~~

~~6. Those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination and perceptiveness but are not accounted for in the aforementioned categories.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing § 2.1-514) as part of subsection A.

~~§ 2.1-516. Same; authority of Division to prescribe standards.~~

~~The Division of Engineering and Buildings shall prescribe such standards for the design, construction, and alteration of buildings constructed in whole or in part or altered by the use of state funds, other than school funds, as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-514).

~~§ 2.1-517. Same; authority of local governing bodies to prescribe standards.~~

~~The governing body of a county, municipality or other political subdivision, shall prescribe such standards for the design, construction and alteration of buildings, not including public school facilities, constructed in whole or in part or altered by the use of the funds of such county, municipality or other political subdivision as may be necessary to insure that physically handicapped persons will have ready access to, and use of, such buildings. The Division of Engineering and Buildings shall consult with the governing bodies upon request.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C of proposed § 2.2-XXX (existing § 2.1-514).

~~§ 2.1-519 2.2-XXX. Same Facilities for persons with physical disabilities; what buildings to be constructed in accordance with standards.~~

~~Every building or facility designed, constructed or substantially altered after the effective date of a standard issued under this article subsection B of § 2.2-XXX which is applicable to such building shall be designed, constructed or altered in accordance with such standard.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-520. Same; modification or waiver of standards; surveys and investigations.~~

~~The Division of Engineering and Buildings with respect to standards issued by it, and the governing body of any county, municipality or other political subdivision with respect to standards issued by it are authorized:~~

~~1. To modify or waive any such standard, on a case by case basis, upon application made by the head of the department, agency or other instrumentality concerned, upon determining that such modification or waiver is clearly necessary; and~~

~~2. To conduct such surveys and investigations as may be deemed necessary to insure compliance with such standards.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 2.2-XXX (existing § 2.1-514).

~~§ 2.1-521. Article applicable to temporary as well as permanent buildings.~~

~~The provisions of this article shall apply to temporary and emergency construction as well as permanent buildings.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX (existing 2.1-514).

~~§ 2.1-521.4 2.2-XXX. Buildings not in conformance with standards for handicapped persons with physical disabilities.~~

~~The Division of Engineering and Buildings, upon a determination that a building or facility, in accordance with § 2.1-519, is not in conformance with the applicable standards for handicapped persons with physical disabilities, shall immediately take all necessary steps to insure-ensure such building or facility is in conformance within three months of the date of such-its determination; provided, however, that such. The three-month period may be extended for an additional minimum period of time required to obtain funding and complete construction, where the Division determines such-an extension to be is necessary; provided, however, that. However, this section shall apply only to those state buildings or facilities designed, constructed or substantially modified after July 1, 1977.~~

DRAFTING NOTE: Technical corrections only.

Article 5.

Division of Risk Management.

~~§ 2.1-526.1 2.2-XXX. Division of Risk Management-continued.~~

~~The Office of Risk Management within Within the Department of General Services is continued as the shall be established the Division of Risk Management (the "Division") and which shall exercise the powers and duties described in this article.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-526.2 2.2-XXX. Property and insurance records to be maintained.~~

The Division shall establish and maintain a file of state-owned buildings and contents, hereinafter inclusively referred to as buildings or properties, and the actual cash value or replacement cost value if insured or replacement cost basis thereof, and the amount of fire and extended coverage, vandalism and malicious mischief, optional perils or all risk insurance coverage thereon. All agencies of the Commonwealth shall keep the Division informed as to the status of all properties under their control.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-526.3 2.2-XXX. Inspection of state-owned properties for insurance purposes; determination of coverage; procurement, discontinuance, etc., of insurance.~~

A. The Division may inspect or ~~may~~ administer a program of self-inspection for all state-owned properties and confer with the proper officials or employees of the several agencies of the Commonwealth for the purpose of determining (i) insurance coverages which shall be carried on or are necessary with respect to properties under their control and (ii) the manner whereby savings and costs of such insurance may be made. It may seek the assistance of insurance companies and their representatives, and the State Fire Marshal of the Commonwealth, in devising means by which hazards may be reduced or eliminated. The Division shall have final responsibility with

respect to coverage, noncoverage, provisions of policies, quantity and type of fire and extended coverage, vandalism and malicious mischief, and optional perils or all risk insurance coverage. The Governor may exempt any agency, institution of higher education, or part thereof from any part of the risk management and insurance program.

B. The Division ~~shall have the authority to~~ may change or discontinue fire and extended coverage, vandalism and malicious mischief, optional perils or all risk insurance coverage carried pursuant to bond indentures and other contractual requirements, provided ~~such the~~ change or discontinuance meets with the written approval of the trustee ~~or trustees~~ of the bond indenture and those signatory to the contracts.

C. As its programs are implemented, the Division shall assume the sole responsibility, with the approval of the Governor, for purchasing insurance, self-insuring or combining insurance and self-insurance (i) on all properties of the Commonwealth or (ii) for protection of liabilities or other casualties.

DRAFTING NOTE: Technical corrections only.

~~§ 2-4-526.5~~ 2.2-XXX. State Insurance Reserve Trust Fund.

A. The State Insurance Reserve Trust Fund (the "Fund") is ~~established under former § 2-4-409.8 is continued. The fund and~~ shall consist of the payments required by subsection B ~~of this section. The fund~~ Fund shall be under the management and control of the ~~Department of General Services, through the Division of Risk Management,~~ and any claims for losses payable out of the ~~fund~~ Fund shall be at the direction of the Division. The ~~fund~~ Fund shall be invested as provided in ~~§ 2-4-485~~ 2.2-XXX (xref) and interest shall be added to the fund as earned.

B. Each agency, department, division, or institution of state government having control over any state structure and contents thereof, or which participates in any program of insurance operated by the ~~Division of Risk Management,~~ shall pay each year into the ~~State Insurance Reserve Trust Fund~~ or any trust fund established pursuant to the provisions of this article amounts necessary to maintain the trusts at levels of funding deemed adequate by the Division. The Division shall set the premium and administrative costs to be paid to it for providing an insurance plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole discretion requires. Premiums and administrative costs need not be uniform among participants, but shall be set to best ~~insure~~ ensure the financial stability of the plan. Whenever any building or structure is under the control of two or more agencies, departments, divisions or institutions of the Commonwealth, the payment required herein shall be prorated upon the basis of percentage of the area controlled.

C. In the event of loss or damage exceeding \$1000 to property on which there is no insurance recovery or limited insurance recovery as a consequence of any action by the ~~Division of Risk Management~~ resulting in noncoverage, reduced insurance, elimination of insured perils or otherwise, the Division shall determine the amount, if any, payable out of the ~~fund~~ Fund, and such amount, when approved by the Governor, shall be final. The amount payable shall be used for the purpose of restoring the damaged structure or rebuilding ~~the same it,~~ as the circumstances may require, but in no event shall the amount payable on account of such loss exceed the actual cash value or the replacement cost value of the property in accordance with the basis of insurance, nor shall the amount payable when added to the insurance recovered exceed the actual cash value or the replacement cost value of the property, as recorded in the property and insurance records of the ~~Division of Risk Management.~~

D. In addition to the amounts payable under subsection C ~~of this section,~~ the costs of operating the Division which are properly allocated to its functions concerning the ~~State Insurance Reserve Trust Fund~~ and other administrative and contractual costs of the Division not otherwise provided for shall be paid out of the ~~State Insurance Reserve Trust Fund,~~ for which purposes such funds are hereby appropriated.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-526.7~~ 2.2-XXX. Insurance plan for state-owned buildings and state-owned contents of buildings.

A. Subject to the approval of the Governor, the ~~Department of General Services through its Division of Risk Management~~ shall establish ~~an insurance~~ a risk management plan which may be ~~wholly self-insurance~~ or a combination of self-insurance and purchased insurance ~~for the purpose of providing to provide~~ coverage on (i) state-owned buildings and (ii) state-owned contents of buildings owned by the Commonwealth or of buildings not owned by the Commonwealth which are occupied in whole or in part by an agency of the Commonwealth.

B. Any insurance plan established pursuant to this section may provide, but not be limited to, physical damage coverage against the perils of (i) fire and lightning; (ii) extended coverage; ~~being defined as for~~ windstorm, hail, smoke, explosion, other than that caused by steam pressure vessels, riot, riot attending a strike, civil commotion, aircraft and vehicles not owned by the Commonwealth; (iii) vandalism and malicious mischief; (iv) optional perils; and (v) all risk insurance.

C. Any insurance plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under such a plan, which are not recoverable from purchased insurance. The funds shall be invested as provided in § ~~2-4-1852.2-XXX~~ (xref) and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs and other expenses related to the administration of ~~such a~~ the plan.

D. The insurance plan for state-owned buildings and state-owned contents of buildings shall be submitted to the Governor for approval prior to implementation.

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of General Services, the term "insurance plan" has been replaced throughout this article with the term "risk management plan" to reflect contemporary vernacular.

§ ~~2-1-526.8~~ 2.2-XXX. ~~Insurance~~ Risk management plan for public liability.

A. Subject to the approval of the Governor, the ~~Department of General Services through its Division of Risk Management~~ shall establish ~~an insurance~~ a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. ~~To provide protection~~ Protection against liability imposed by law for damages resulting from any claim:

a. ~~Any claim made~~ Made against any state department, agency, institution, board, commission, officer, agent, or employee thereof for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. ~~Any claim made~~ Made against participants, other than professional counsel, in student disciplinary proceedings at state public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in ~~such the~~ the proceedings; or

c. ~~Any claim resulting~~ Resulting from an authorized indemnification agreement entered into by a state public institution of higher education, which agreements the institutions are ~~hereby authorized to may~~ execute if the Governor (i) considers in advance of execution (i) (a) the institution's analysis of the relevant public benefit and risk of liability, (ii) (b) the ~~Division of Risk Management's~~ Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (iii) (c) the Office of the Attorney General's comments, and ~~the Governor~~ (ii) determines that execution is necessary to further the public's best interests, ~~provided the~~ The indemnification agreement ~~limits shall limit~~ limits shall limit the institution's total liability ~~thereunder~~ to a stated dollar amount and ~~the agreement notifies shall notify~~ the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement;

2. ~~To further provide protection~~ Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment; and

3. ~~If the Division of Risk Management is informed by the Attorney General's Office that it will not provide a defense due to a conflict or other appropriate reason, to provide for~~ For the payment of attorneys' fees and expenses incurred in defending such persons and entities concerning any claim which (i) arises from their governmental employment or authorization, which (ii) arises from their participation in such student disciplinary proceedings, or which (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason.

B. Any ~~insurance~~ risk management plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under ~~such the~~ plan. The funds shall be invested as provided in § ~~2-1-185~~ 2.2-XXX (xref) and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other expenses related to the administration of such plan.

C. The ~~insurance~~ risk management plan for public liability shall be submitted to the Governor for approval prior to implementation.

D. The ~~insurance~~ risk management plan established pursuant to this section shall provide protection against professional liability imposed by law for damages resulting from any claim made against a local electoral board, electoral board member or general registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization, subject to the limitations of the insurance-risk management plan.

E. The ~~insurance~~ risk management plan established pursuant to this section shall provide protection against any claim made against any soil and water conservation district, director, officer, agent or employee thereof, (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any such district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

F. The ~~insurance~~ risk management plan established pursuant to this section shall provide protection against professional liability imposed by law for damages resulting from any claim made against a local school board selection commission or local school board selection commission members for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of authorization, subject to the limitations of the insurance-risk management plan.

G. The ~~insurance~~ risk management plan established pursuant to this section shall provide coverage for any matter that involves or could involve an action or proceeding against a judge ~~occurring on or after September 8, 1993~~, the nature of which is designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance is appropriate or to otherwise determine the fitness of ~~such the~~ judge to hold office or to continue his employment. No coverage ~~nor~~ or indemnification shall be made pursuant to this subsection when the Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-526-6~~ 2.2-XXX. Insurance of state motor vehicles.

A. Subject to the approval of the Governor, the ~~Department of General Services through its Division of Risk Management~~ shall establish an insurance-a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance:

~~1. To provide (i) protection for the Commonwealth, its officers and employees and other authorized persons against tort liability and incidental medical payments arising out of the ownership, maintenance or use of motor vehicles owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment; and~~

~~2. If the Division of Risk Management is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason, to provide (ii) for payment of attorneys' fees and expenses incurred in defending such persons and entities concerning any claim which arises from their governmental employment or authorization where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason.~~

B. ~~The insurance~~ risk management plan shall provide for the establishment of a trust fund or a contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under ~~such the~~ plan arising out of the ownership, maintenance or use of motor vehicles owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment. The funds shall be invested as provided in § ~~2-1-185~~ 2.2-XXX (xref) and interest shall be added to the fund as earned. The plan shall also provide for payment of the expenses related to the administration of a motor vehicle insurance program for the Commonwealth. The insurance-risk management plan shall be submitted to the Governor for approval prior to implementation.

C. Any insurance-risk management plan for state motor vehicles established pursuant to this section shall provide (i) protection against the uninsured motorist at limits not less than those provided in § 46.2-100, (ii) incidental medical payments of not less than \$5,000 per person to state employees and other authorized persons, and (iii) recovery of damages for loss of use of a motor vehicle, as provided in § 8.01-66.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526.8-1 2.2-XXX. Insurance~~ Risk management plans administered by the ~~Department of General Services, Division of Risk Management,~~ for political subdivisions and constitutional officers.

A. ~~The Department of General Services, through its Division of Risk Management,~~ shall establish an insurance-a risk management plan or ~~plans~~ subject to the approval of the Governor, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; affiliate or foundation of a state department, agency or institution; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

B. Participation in ~~such insurance~~ the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, and by the ~~Department of General Services, Division of Risk Management.~~ Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal.

C. ~~The Division of Risk Management~~ shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the ~~Division of Risk Management.~~

D. ~~An insurance~~ The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § ~~2-1-185~~ 2.2-XXX (xref) and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. ~~The Division of Risk Management shall~~, in its sole discretion, set the premium and administrative cost to be paid to it for providing ~~an insurance a~~ risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ~~insure-ensure~~ the financial stability of the plan.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526.9~~ 2.2-XXX. Blanket surety bond plan for state and local employees.

A. Subject to the approval of the Governor, the ~~Department of General Services through its Division of Risk Management shall~~ establish a program of blanket surety bonding to provide surety for the faithful performance of duty for all state employees required by statute to be bonded, and for other agency employees handling funds or having access to funds whose function, in the opinion of the agency head and the Division, should be bonded.

B. Local employees, including superintendents and jail officers of regional jail facilities as described in § 53.1-110, local constitutional officers, and those employees of the Supreme Court for whom the Commonwealth pays all or part of the costs of surety bonds shall be required to participate in the blanket surety bond program ~~promulgated-adopted~~ by the Division through the Comptroller and the Compensation Board. The Division of ~~Risk Management shall exclude from the provisions of this section~~ clerks of the circuit court with respect to the moneys they hold pursuant to § 8.01-582 insofar as coverage is provided under § ~~2-1-526.9:1~~ 2.2-XXX (xref) for their faithful performance concerning those moneys. Before implementing the program, the Division shall determine that ~~such the~~ program will be of less cost to the Commonwealth than the aggregate of individual bonds costs.

C. The blanket surety bonding plan for state employees shall be submitted to the Governor for approval prior to implementation.

D. Employees or officers of a public service authority created under the Virginia Water and Sewer Authorities Act (~~§ 15.1-1239- 15.2-5100~~ et seq.) ~~are authorized to may~~ participate in the blanket surety bond program ~~promulgated-adopted~~ by the Division through the Comptroller and the Compensation Board whenever any federal or state agency lends or guarantees funds to a public service authority created under the Virginia Water and Sewer Authorities Act where the funds are utilized in the construction or capitalization of projects authorized under the Act, and there is a condition of ~~such the~~ loan or guarantee that those employees or officers of the authority who have access to ~~such the~~ funds be bonded. Participation by such employees or officers shall be approved by the governing body of the county or city which created the authority or is a member of the authority, with approval of the ~~Department of General Services, Division of Risk Management~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526.9:1~~ 2.2-XXX. Blanket surety bond plan for moneys under control of court.

The ~~Department of General Services through its Division of Risk Management shall~~ establish a program of blanket surety bonding to provide surety for the faithful discharge of duty with respect to moneys held pursuant to §§ 8.01-582 and 8.01-600 by all general receivers and clerks. General receivers and clerks shall participate in the program. The Division's cost of obtaining and administering the blanket surety bond shall be paid from those moneys covered by the bond.

DRAFTING NOTE: Technical corrections only..

~~§ 2-1-526.10~~ 2.2-XXX. Workers' Compensation insurance plan for state employees.

A. Subject to the approval of the Governor, the ~~Department of General Services through its Division of Risk Management~~ shall establish a workers' compensation insurance program for all state employees through a program of ~~self-insurance, purchased insurance, self-insurance~~ or a combination of self-insurance and purchased insurance that is determined to be the most cost effective on a statewide basis. The Division shall determine that ~~such the~~ program will be of less cost to the Commonwealth than the aggregate of individual agency policies. If the ~~Division of Risk Management~~ is informed by the Attorney General's Office that it will not provide a defense due to a conflict or other appropriate reason, the Division shall provide for payment of attorneys' fees and expenses incurred in defending workers' compensation claims against the Commonwealth, its agencies and institutions.

B. Any insurance program established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under ~~such the~~ program. The funds shall be invested as provided in § ~~2.1-485~~ 2.2-XXX (xref) and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other necessary expenses related to the administration of ~~such the~~ program.

C. The workers' compensation insurance program for state employees shall be submitted to the Governor for approval prior to implementation.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-526.11~~ 2.2-XXX. Sovereign immunity.

Although the provisions of this article are subject to those of Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01, nothing in this article shall be deemed an additional expressed or implied waiver of the Commonwealth's sovereign immunity.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-526.11:1~~ 2.2-XXX. Loss prevention.

The ~~Division of Risk Management~~ may develop and implement risk management and loss prevention programs related to ~~insurance~~ risk management plans established pursuant to the provisions of this article. The Division may confer with the proper officials or employees of all agencies and institutions of the Commonwealth and of participating entities and persons pursuant to § ~~2.1-526.8:1~~ 2.2-XXX (xref), for the purpose of determining risk management and loss prevention programs which shall be carried on with respect to properties and governmental operations under their control and may determine the manner in which ~~such the~~ programs may be developed, implemented and enforced. The Division may seek the assistance of risk management consulting companies, insurance companies, loss prevention engineering companies, and their representatives, the ~~State Fire Marshal of the Commonwealth~~, and the Division of Engineering and Buildings in devising means by which causes of loss may be reduced or eliminated. The Division shall have the final responsibility with respect to implementation or nonimplementation of a plan ~~or plans~~ by an agency or institution of the Commonwealth and by a participating entity or person pursuant to § ~~2.1-526.8:1~~ 2.2-XXX (xref). Information contained in investigative reports of any state or local police department, sheriff's office, fire department or fire marshal relevant to ~~insurance~~ risk management plans established pursuant to the provisions of this article shall be made available to the ~~Division of Risk Management~~ upon request. The relevant information requested shall be furnished within a reasonable time, not to exceed thirty days.

DRAFTING NOTE: Technical corrections only.

Article 6.

Abatement of Risk of Asbestos in State-Owned and Public School Buildings.

§ ~~2.1-526.12~~ 2.2-XXX. Definitions.

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

"Asbestos" means any material containing more than one percent of the asbestiform varieties of:

1. chrysotile (serpentine),
2. crocidolite (riebeckite),
3. amosite (cummingtonite-grunerite),
4. anthophyllite,
5. tremolite, or
6. actinolite.

"Director" means the Director of the Department of General Services.

"Friable" means material which is capable of being crumbled, pulverized or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

"Local education agency" or "LEA" ~~shall have the meaning provided~~ means the same as that term is defined in the USEPA-ASHERA-United States Environmental Protection Agency Asbestos Hazard and Emergency Response Act regulations set forth in 40 CFR 763.

"Operations and maintenance program" means work practices to maintain asbestos-containing material in good condition and to minimize and control disturbance or damage to such materials.

"Response actions" means any action, including removal, encapsulation, enclosure, repair, method of operation, maintenance, record keeping or notification that protects human health from building materials containing asbestos.

"Secretary" means the Secretary of Administration.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526-13~~ 2.2-XXX. Inspection of state-owned buildings; marking locations where asbestos found; risk abatement and estimate of cost thereof.

The Director at the direction of the Secretary and in cooperation with any other appropriate agencies including but not limited to the Department of Education shall ensure that every building owned by the Commonwealth or any agency of the Commonwealth which has not previously been inspected by competent personnel as provided below is inspected as soon as practical by competent personnel who have the training and equipment necessary to identify (i) the presence of asbestos, and (ii) to the extent practicable the relative hazard or hazards to health and safety posed at each location at which asbestos is identified. Every location at which asbestos is identified shall be clearly marked with suitably designed signs or labels. The Director shall prepare an accurate estimate of the cost of abating the risk of all asbestos so identified. The Director shall also establish a list of abatement priorities, which shall include the estimated cost of abating the risk at each location on the list. To the extent that funds are available, and in accordance with the priorities established by the Director, the agency or institution of the Commonwealth responsible for the maintenance of buildings at any such location shall proceed to abate the risk at such locations.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526-14~~ 2.2-XXX. Standards for inspection of buildings for asbestos.

The Director, at the direction of the Secretary and in cooperation with any other appropriate agencies including, but not limited to, the Department of Education shall ~~promulgate-adopt~~ standards for the inspection of state-owned and local education agency buildings of all types and the ancillary facilities used in connection therewith for the purpose of identifying the presence of asbestos and to the extent practicable the relative hazard to health or safety posed by any asbestos identified. The Administrative Process Act (~~§ 9-6-14-1~~ (xref) et seq.) shall not apply to the ~~promulgation-adoption~~ of standards under this section.

A. The standards shall include:

1. Inspection ~~of such location~~ for the presence, location and condition of asbestos-containing materials;
2. Development of a building asbestos profile for each building inspected and found to contain asbestos-containing material, which profile shall:

(a) Include information regarding product type (surfacing material, thermal system insulation, or miscellaneous material), specific location, estimated quantity (in square or linear feet), type and percentage of asbestos content, and physical condition;

(b) Be kept in possession of the person designated pursuant to subsection E, at a location in the building where it is readily accessible to building employees or their designated representatives;

(c) Be updated as surveillance, test results and/or response actions are undertaken in the building.

B. The following standards are ~~hereby~~ established for state-owned buildings:

1. When air monitoring is used for building assessment, it ~~must~~ shall be used in conjunction with comprehensive visual assessment techniques for determining the priority and nature of response action.

2. The airborne asbestos reoccupancy level, to be measured upon completion of response actions, shall be equal to the reoccupancy standards established for buildings pursuant to subsection C.

C. The Director, in conjunction with the state Departments of Commerce Professional and Occupational Regulation, Health, Labor and Industry, Education, and ~~Air Pollution Control~~ Environmental Quality, shall ~~promulgate-adopt~~ standards governing aggressive air sampling after completion of an asbestos project for airborne asbestos for local education agencies and public colleges and universities.

D. Asbestos management plans for state-owned buildings shall include:

1. Operation and maintenance programs, including procedures for the notification of maintenance and housekeeping personnel of the location of asbestos-containing materials likely to be disturbed during routine building operations; the labeling of asbestos-containing materials in routine maintenance areas; and work practices, engineering controls or personal protective measures to minimize asbestos exposure to such personnel and other building occupants;

2. Training requirements for maintenance workers and maintenance supervisory personnel;

3. Assurance of compliance by contractors with licensing under ~~all relevant~~ applicable state ~~statutes~~ laws and regulations; and

4. Provisions for setting priorities of buildings for response actions.

E. Each person responsible for such management plans shall designate one member of the maintenance personnel in or responsible for each building containing asbestos-containing materials to serve as the liaison to coordinate the specific efforts of such program within the particular building to which the liaison is assigned.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526-15 2.2-XXX.~~ Inspection of public school buildings; certification of inspection; certain inspections made before July 1, 1986, deemed in compliance.

A. Every public school division in the Commonwealth shall ensure that every school building owned or operated by it, which has not previously been inspected in compliance with this article, is inspected ~~in accordance herewith.~~ Inspection shall conform to the standards developed pursuant to ~~§ 2-1-526-149 2.2-XXX (xref).~~

B. The superintendent of schools for each public school division shall certify to the Superintendent of Public Instruction and the Secretary that the public schools in the division have been inspected in compliance with this article.

C. Inspections completed prior to July 1, 1986, shall be deemed in compliance with this article if the Superintendent of Public Instruction and the Secretary determine that they conform substantially to the standards referenced in ~~§ 2-1-526-14 2.2-XXX (xref),~~ or to the inspection procedures contained in 40 CFR 763.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526-16 2.2-XXX.~~ Marking locations where asbestos found in public school buildings; estimate of cost of risk abatement; list of priorities based on risk.

Each public school division shall ensure that every location at which asbestos is identified following inspections conducted pursuant to subsection A or C of § ~~2-1-526-15 hereof as being present 2.2-XXX (xref)~~ is clearly marked with suitably designed signs or labels. Each division shall prepare an accurate estimate of the cost of abating the risk of asbestos at each location so identified. Each division shall also establish a list of priorities, based upon its determination of the risk to public health and safety posed by asbestos at each such location, which shall include the estimated cost of abating the risk at each location on the list.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-526-17. Report to General Assembly as to estimated cost of risk abatement.~~

~~The Director of the Department of General Services shall submit to the General Assembly no later than January 1, 1989, a consolidated report of the above mentioned estimates for abating the risks of asbestos in all state owned buildings, all buildings owned by any agency of the Commonwealth and all public school buildings. The report shall identify an estimate for each individual building.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete.

~~§ 2-1-526-17:1 2.2-XXX.~~ Commonwealth immune from civil liability.

The Commonwealth and its officers, agents and employees shall be immune from civil liability for actions (i) arising from the establishment and implementation of asbestos inspection standards developed pursuant to § ~~2-1-526-14 2.2-XXX (xref)~~ and (ii) undertaken pursuant to ~~Article 5-2 (§ 2-1-526-12 et seq.) of this chapter the provisions of this article,~~ Chapter 5 of Title 54.1, and §§ 32.1-126.1 and 63.1-198.01.

DRAFTING NOTE: Technical corrections only.

Article 7.

Division of Support Services.

~~§ 2-1-527 2.2-XXX.~~ Division of Support Services may be established.

The Director of the Department of General Services may establish a Division of Support Services (the "Division") and assign to this Division or to any other division any or all of the duties described in this article or otherwise imposed upon the Department of General Services.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-528~~ 2.2-XXX. Mail handling, messenger and parcel service.

The Division of Support Services shall operate a central service unit to provide all state departments, divisions, institutions and agencies in the Richmond area with mail handling, messenger and parcel service. These services may, if deemed appropriate, be extended to state departments, divisions, institutions and agencies in other areas of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-529~~ 2.2-XXX. Office equipment pool; repair, etc.

The Division of Support Services may establish a general office equipment pool and central repair shop for such equipment, and may provide guidelines for the utilization of such equipment; ~~provided, however, that electronic data processing equipment.~~ For the purposes of this section, computers, software, supplies, and related peripheral equipment shall not be considered general office equipment.

DRAFTING NOTE: Technical corrections only. The term "electronic data processing equipment" has been replaced with "computers, software, supplies, and related peripheral equipment" to modernize that term.

~~§ 2-1-530~~ 2.2-XXX. Printing and duplicating facilities.

The Division of Support Services may operate a printing and duplicating facility in the Richmond area, and may establish criteria for its use, subject to the provisions of ~~§ 2-1-465~~ 2.2-XXX (xref).

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-534~~ 2.2-XXX. Parking of vehicles in Capitol Square; parking facilities for state officers and employees; violations.

A. Except as hereinafter provided in this section, all parking in the Capitol Square of motor vehicles and animal-drawn vehicles is hereby prohibited; ~~provided, that.~~ However, during the recess of the General Assembly, the Division of Support Services may cause to be marked off certain portions of the driveways in the Capitol Square and permit such vehicles to be parked therein ~~there~~ under such rules and regulations as may be prescribed. Parking areas on the west of the Capitol shall be reserved at all times for parking by members of the General Assembly.

B. During sessions of the General Assembly, parking in the Capitol Square shall be subject to rules and regulations promulgated ~~adopted~~ jointly by the Speaker of the House of Delegates and the chairman of the Senate Committee on Rules Committee.

C. The Division is authorized, by and may with the approval of the Governor, to utilize any property owned by the Commonwealth and located in the Richmond area for the purpose of providing parking facilities for officers and employees of the Commonwealth, and to allocate spaces therein. The Division may fix and collect fees for the use of such the parking facilities. The Division may promulgate rules and adopt regulations for such the parking facilities, which rules and regulations shall include the enforcement provisions required by §§ 46.2-1225 through 46.2-1229.

D. Any person parking any vehicle contrary to the rules and regulations referred to in subsection B or contrary to the other provisions of this section, or contrary to any parking sign or "No Parking" sign erected by the

Division pursuant to ~~rules and regulations promulgated~~adopted by it, shall be subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Information on Technology.

~~§ 2.1-563.14~~ 2.2-XXX. Creation of Department; appointment of Director; duties.

~~A. There is hereby created a Department of Information Technology. The Department (the "Department") which 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.~~

~~Whenever in this title and in the Code of Virginia reference is made to a division, department or agency hereinafter transferred to this Department, it shall mean the Department of Information Technology.~~

~~B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-563.14 and subsection B is § 2.1-563.15. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-563.13~~ 2.2-XXX. Definitions.

As used in this chapter:

"Communications ~~Services~~services" includes telecommunications services, automated data processing and word processing services, and management information systems that serve the needs of state agencies and institutions, but does not include telecommunications services and facilities under the direct control of the Department of State Police.

"Department" means the Department of Information Technology.

"Director" means the Director of the Department of Information Technology.

"Noncommercial telecommunications entity" means any public broadcasting station as defined in ~~§ 2.1-563.27:2~~ 2.2-XXX (xref).

"Public telecommunications entity" means any public broadcasting station as defined in ~~§ 2.1-563.27:2~~ 2.2-XXX (xref).

"Public telecommunications facilities" means all apparatus, equipment and material necessary for or associated in any way with public broadcasting stations or public broadcasting services as those terms are defined in ~~§ 2.1-563.27:2~~ (xref), including the buildings and structures necessary to house such apparatus, equipment and material, and the necessary land ~~necessary therefor~~ for the purpose of providing public broadcasting services, but not telecommunications services.

"Public telecommunications services" means public broadcasting services as defined in ~~§ 2.1-563.27:2~~ 2.2-XXX (xref).

"Telecommunications facilities" means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus, and the ~~necessary land necessary therefor; however, .~~ However, computer and computer terminal facilities and wireless communications facilities under the direct control of the Department of State Police shall not be included in this definition.

"Telecommunications services" means telecommunications to serve the needs of state agencies and institutions but shall not include public broadcasting services as defined in § ~~2.1-563.27:2~~ 2.2-XXX (xref) nor wireless communications services and systems under the direct control of the Department of State Police.

"Telecommunications" means any origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

"Telecommunications facilities" means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus and the land necessary therefor; however, computer and computer terminal facilities and wireless communications facilities under the direct control of the Department of State Police shall not be included in this definition.

"Telecommunications services" means telecommunications to serve the needs of state agencies and institutions but shall not include public broadcasting services as defined in § ~~2.1-563.27:2~~ 2.2-XXX nor wireless communications services and systems under the direct control of the Department of State Police.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-563.15. Powers and duties of Director.~~

~~The Director of the Department of Information Technology shall, under the direction and control of the Governor, exercise such powers and perform such 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.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (2.1-563.14).

~~§ 2.1-563.16~~ 2.2-XXXX. ~~General~~ Additional powers of Department.

A. The Department shall have the following ~~general~~ additional powers, ~~all of which,~~ with the approval of the Director of the Department, may be exercised by a division of the Department with respect to matters assigned to that division:

1. ~~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 the United States, other state agencies and governmental subdivisions of the Commonwealth;~~

3. ~~Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;~~

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

~~5.2. Establish fee schedules which may be collectible from users when general fund appropriations are not applicable to the services rendered; and~~

~~6. Do all acts necessary or convenient to carry out the purposes of this chapter.~~

~~B. All statewide contracts and agreements made and entered into by the Department shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Technology may disapprove such inclusion from a specific contract or agreement. Notwithstanding the provisions of § 11-37, the Department may enter into multiple vendor contracts for the referenced hardware, software, and services.~~

DRAFTING NOTE: Technical corrections. Subsection B has been moved to proposed 2.2-XXX (2.1-563.17) as new subsection C. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions. The powers listed in this proposed section come from existing § 2.1-563.16, and are powers granted specifically to the Department of Information Technology.

§ ~~2.1-563.17~~ 2.2-XXX. Powers—Additional powers and duties relating to communications equipment and services.

A. The Department shall have the following additional powers and duties concerning the planning, budgeting, acquiring, using and disposing of communications equipment and services:

~~1. To formulate—Formulate~~ specifications for telecommunications, automated data and word processing, and management information systems.

~~2. To analyze—Analyze~~ and approve all procurements of interconnective telecommunications facilities, telephones, automated data and word processing, and other communications equipment and goods.

~~3. To review—Review~~ and approve all agreements and contracts for communications services prior to execution between a state agency and another public or private agency.

~~4. To develop—Develop~~ and administer a system to monitor and evaluate executed contracts and billing and collection systems.

~~5. To exempt—Exempt~~ from review requirements, but not from the state's competitive procurement process, any state agency which establishes, to the satisfaction of the Department, (i) its ability and willingness to administer efficiently and effectively the procurement of communications services or (ii) that it has been subjected to another review process coordinated through or approved by the Department.

B. The Department shall have the following powers and duties concerning the development, operation and management of communications services:

1. Manage and coordinate the various communications facilities, centers, and operations used by the Commonwealth.

2. Acquire, lease, or construct such facilities and equipment as necessary to deliver comprehensive communications services; and to maintain such facilities and equipment owned or leased.

3. Provide technical assistance to state agencies in such areas as: (i) designing management information systems; (ii) performing systems development services, including design, application programming, and maintenance; (iii) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications; (iv) effecting economies in telephone systems and equipment; (v) planning and forecasting for future needs in communications services; and (vi) management studies and surveys of organizational structure, management practices and systems and procedures.

4. Develop and implement information, billing and collections systems which will aid state agencies in forecasting their needs and managing their operations.

C. All statewide contracts and agreements made and entered into by the Department for the purchase of computers, software, supplies, and related peripheral equipment and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Administration may disapprove the inclusion from a specific contract or agreement.

D. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.1-196.1 2.2-XXX.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-563.17, subsection B is § 2.1-563.18, subsection C is § 2.1-563.16, and subsection D is the last paragraph of § 2.1-563.18.

~~§ 2.1-563.18. Powers and duties.~~

~~The Department shall have the following powers and duties concerning the development, operation and management of communications services:~~

~~1. To manage and coordinate the various communications facilities, centers, and operations used by the Commonwealth.~~

~~2. To acquire, lease, or construct such facilities and equipment as necessary to deliver comprehensive communications services; and to maintain such facilities and equipment owned or leased.~~

~~3. To provide technical assistance to state agencies in such areas as: (i) designing management information systems; (ii) performing systems development services, including design, application programming, and maintenance; (iii) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications; (iv) effecting economies in telephone systems and equipment; (v) planning and forecasting for future needs in communications services; and (vi) management studies and surveys of organizational structure, management practices and systems and procedures.~~

~~4. To develop and implement information, billing and collections systems which will aid state agencies in forecasting their needs and managing their operations.~~

~~This section shall not be construed or applied so as to infringe upon, in any manner, the responsibility for accounting systems assigned to the Comptroller under § 2.1-196.1.~~

DRAFTING NOTE: Technical corrections. Subdivisions 1 through 4 have been merged with proposed § 2.2-XXX (§ 2.1-563.17) as new subdivisions 1 through 4 of subsection B. The last paragraph now appears as new subsection D in proposed § 2.2-XXX (existing § 2.1-563.17).

~~§ 2.1-563.19 2.2-XXX. Working capital funds; Automated Services Working Capital Fund; Computer Services Working Capital Fund; Telecommunication Services Working Capital Fund.~~

~~A. There is are hereby established an Automated Services Working Capital Fund to be used exclusively to finance automated systems design, development and testing services and staff of the Department. the following working capital funds to be administered by the Department:~~

~~1. The Automated Services Working Capital Fund to be used exclusively to finance automated systems design, development and testing services and staff of the Department;~~

~~2. The Computer Services Working Capital Fund to be used exclusively to finance computer operations and staff of the Department; and~~

3. The Telecommunication Services Working Capital Fund to be used exclusively to finance telecommunications operations and staff of the Department.

B. All users of services provided for in this chapter administered by the Department shall be assessed a surcharge which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow the Department to finance the operations and staff of the service offered.

C. Additional moneys necessary to establish these funds or provide for the administration of the activities of the Department may be advanced from the general fund of the state treasury.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: in subsection A, subdivision 1 is § 2.1-563.19, subdivision 2 is § 2.1-563.20, and subdivision 3 is § 2.1-563.21; and subsection B and C are § 2.1-563.22.

~~§ 2.1-563.20. Computer Services Working Capital Fund.~~

~~There is hereby established a Computer Services Working Capital Fund to be used exclusively to finance computer operations and staff of the Department.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing 2.1-563.19) as new subdivision 2 in subsection A.

~~§ 2.1-563.21. Telecommunication Services Working Capital Fund.~~

~~There is hereby established a Telecommunication Services Working Capital Fund to be used exclusively to finance telecommunications operations and staff of the Department.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing 2.1-563.19) as new subdivision 3 in subsection A.

~~§ 2.1-563.22. Working Capital Funds; continuation.~~

~~A. All users of services provided for in this article administered by the Department shall be assessed a surcharge which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow the Department to finance the operations and staff of the service offered.~~

~~B. All moneys existing in Working Capital Funds of the Department of Information Technology are hereby transferred to the appropriate service's Working Capital Fund.~~

~~C. Additional moneys necessary to establish these funds or provide for the administration of the activities of the Department may be advanced from the general fund of the state treasury of the Commonwealth of Virginia.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (existing 2.1-563.19) as new subsections B and C, respectively. Existing subsection B of this section (2.1-563.22) was deleted as obsolete.

Chapter X.

Department of Minority Business Enterprise.

~~§ 2.1-64.32 2.2-XXX. Office Creation of Department of Minority Business Enterprise continued as Department; appointment of Director; offices; personnel.~~

~~The State Office of Minority Business Enterprise within the office of the Governor is continued and shall hereafter be known as the A. There is created within the Office of the Governor a Department of Minority Business Enterprise (the "Department"). Wherever the words "State Office of Minority Business Enterprise" are used in any law of this Commonwealth, they shall mean the Department of Minority Business Enterprise, which shall be~~

headed by a Director appointed by the Governor to serve at his pleasure. The Director shall also serve as a special assistant to the Governor for minority enterprise.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

C. The Department shall have its main office in Richmond and may have branch offices as may be necessary, as determined by the Director subject to the approval of the Secretary of Commerce and Trade.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-64.32, except the last sentence which is from § 2.1-64.33; subsection B was added to standardize, among the various agencies in this title, language relating to the Director's exercise of powers/duties conferred by law, etc.; and subsection C is § 2.1-64.33.

~~§ 2.1-64.32:1~~ 2.2-XXX. Definitions.

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

"Certification" means the process by which a business or business enterprise is determined to be a minority business enterprise for the purpose of reporting minority business participation in state contracts and purchases pursuant to §§ ~~2.1-64.37-2.2-XXX~~ (xref) and ~~2.1-64.38~~ 2.2-XXX (xref).

"Minority business enterprise" means a business enterprise that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-64.33~~. Appointment and functions of Director; offices; personnel.

~~The Department of Minority Business Enterprise shall be headed by a Director appointed by the Governor. The Director shall also serve as a special assistant to the Governor for minority enterprise. The Department of Minority Business Enterprise shall have its main office in Richmond and may have branch offices as may be necessary, as determined by the Director subject to the approval of the Secretary of Commerce and Trade. The Director shall employ such personnel as are necessary to carry out the duties of his office.~~

DRAFTING NOTE: Technical corrections. This section now appears as new subsections A and C in proposed § 2.2-XXX (existing § 2.1-64.32).

~~§ 2.1-64.34~~ 2.2-XXX. Powers ~~Additional powers~~ and duties of Department.

The Department of ~~Minority Business Enterprise~~ shall have the following additional powers and duties:

~~(a)~~ 1. Coordinate as consistent with law the plans, programs and operations of the state government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

~~(b)~~ 2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of state departments and agencies.

~~(e)~~ 3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

~~(d)~~ 4. Within constraints of law and availability of funds, and according to the Director's discretion, provide technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects which are designed to overcome the special problems of minority business enterprises.

5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-XXX, and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund.

DRAFTING NOTE: Technical corrections. Subdivision 5 was added as a cross reference to the Capital Access Fund for Disadvantaged Businesses, which is now found in Part D of Subtitle I, in the chapter dealing with the Small Business Financing Authority. The Department of Minority Business Enterprise has management responsibility for the Fund while the Small Business Financing Authority actually administers the Fund.

~~§ 2-1-64.35~~ 2.2-XXX. Powers of Director.

As deemed necessary or appropriate to better fulfill the duties of the Department of ~~Minority Business Enterprise~~, the Director may:

1. With the participation of other state departments and agencies ~~as appropriate~~, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of federal and state support in achieving his objectives.

2. Employ the necessary personnel and/or subcontract according to his discretion, with localities to supplement the functions of business development organizations.

3. Assure the coordinated review of all proposed state training and technical assistance activities in direct support of the minority enterprise program to ~~assure~~ ensure consistency with program goals and to avoid duplication.

4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this chapter.

5. Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating or coordinating governmental and private activities in furtherance of the objectives of this chapter.

6. Provide the managerial and organizational framework through which joint ~~or collaborative~~ undertakings with state departments or agencies or private organizations can be planned and implemented.

7. Recommend appropriate legislative or executive actions.

8. ~~Promulgate~~ Adopt reasonable regulations in accordance with the Administrative Process Act (~~§ 9-6-14:1~~ 2.2-XXX (xref) et seq.) to implement a certification program for minority business enterprises. Such certification process shall include consideration of other states' laws which may deny like certifications to Virginia-based minority business enterprises and which may provide preference for minority business enterprises based in that state.

9. Establish an interdepartmental board in accordance with § 2.2-XXX to supply the Director with information useful in promoting minority business activity.

DRAFTING NOTE: Technical corrections only. Subdivision 9 was added to clarify that the Director has the power to create an interdepartmental board pursuant to existing § 2.1-64.36 supra.

~~§ 2.1-64.36 2.2-XXX. Interdepartmental Committee continued as Interdepartmental Board; cooperation with Department.~~

~~A. The Interdepartmental Committee Board established by the Director, is continued and shall hereafter be known as the Interdepartmental Board. The Board shall be composed of heads of the several departments and agencies of state government or their respective assistants designated by them designees, whose functions affect minority business enterprise. The participating departments and agencies shall be determined by the Director of the Department of Minority Business Enterprise in consultation with the Governor's special assistant for minority affairs. The Interdepartmental Board shall meet at the call of the Director and shall supply the Director with information useful in promoting minority business activity.~~

~~B. The head of each participating state department and agency, or their designees shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Director in the performance of his duties as needed.~~

~~C. The head of each participating state department or agency shall, when so requested by the Director, designate an assistant or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~

~~D. Each participating state department or agency shall, within constraints of law and availability of funding, continue all current efforts to foster and promote minority business enterprises and to support the minority business program, and shall cooperate with the Director in increasing the total state effort.~~

DRAFTING NOTE: Technical corrections only This proposed section is comprised of the following existing sections: subsection A is § 2.1-64.36 and subsections B, C and D are § 2.1-64.37. The phrase "in consultation with the Governor's special assistant for minority affairs" in subsection A has been deleted because existing § 2.1-64.32 designates the Director of the Department of Minority Business Enterprise as the Governor's special assistant for minority affairs.

~~§ 2.1-64.37 2.2-XXX. Cooperation of other state agencies.~~

~~(a) The head of each participating state department and agency, or a representative designated by such head shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Director in the performance of his duties insofar as possible.~~

~~(b) The head of each participating state department or agency shall, when so requested by the Director, designate an assistant or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.~~

~~(c) Each participating state department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Director in increasing the total state effort.~~

DRAFTING NOTE: Technical corrections only. This section now appears as subsections B, C and D in proposed § 2.2-XXX (§ 2.1-64.36).

~~§ 2.1-64.38 2.2-XXX. Reports and recommendations; collection of data.~~

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter. The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection

process which will provide information for a report to the Governor and General Assembly on state expenditures to minority business enterprises during the previous fiscal year.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Personnel and Training.

~~§ 2.1-114.3~~ 2.2-XXX. Department of Personnel and Training created; Director.

A. There is hereby created a Department of Personnel and Training. The Department (the "Department"), which shall be headed by the a Director of Personnel and Training appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise such powers and perform such duties as are delegated to him by the Governor or conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-114.3 and subsection B is part of § 2.1-113. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-113. Governor to be Chief Personnel Officer; Director of Personnel and Training; assistants and employees; assignment of duties; expenses.~~

~~The Governor shall be the Chief Personnel Officer of the Commonwealth. He shall direct the execution of this chapter. The Governor shall appoint a Director of Personnel and Training, who shall hold his position at the pleasure of the Governor. The Director of Personnel and Training shall, under the direction and control of the Governor, exercise such powers and perform such duties as are delegated to him by the Governor or conferred or imposed by law upon him; and he shall perform such other duties as may be required of him by the Governor. The Governor may employ such other competent personnel assistants and employees as he may require to carry out its provisions. At his discretion he may assign to officers and employees of the Commonwealth such duties as he sees fit in connection with the administration of this chapter; such officers and employees shall receive no extra compensation for such duties but shall be reimbursed for necessary travel and other expenses.~~

DRAFTING NOTE: Technical corrections. Part of this section dealing with powers of the Director of the Department of Planning and Budget now appear as subsection B in proposed § 2.2-XXX (existing § 2.1-114.3) with the remainder of this section appearing in § 2.1-XXX of Chapter X, concerning the powers of the Governor.

~~§ 2.1-114.4. General powers of Department.~~

~~The Department shall have the following general powers:~~

~~A. To employ such personnel as may be required to carry out the purposes of this chapter.~~

~~B. 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 the United States, other states, agencies and governmental subdivisions of Virginia.~~

~~C. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.~~

~~D. To do all acts necessary or convenient to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

§ ~~2.1-114.5~~ 2.2-XXX. Duties of Department.

The Department shall have the following duties:

1. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and recommend necessary amendments thereto ~~as may be necessary~~.

2. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend necessary amendments thereto ~~as may be necessary~~.

3. Design and maintain a personnel information system which shall support the operational needs of the Department and of state agencies, and which shall provide for the management information needs of the Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay, status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

4. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth.

5. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance. In no event shall workers' compensation leave affect the total number of hours credited during a performance cycle for purposes of calculating incentive increases in salary based on such performance evaluations.

6. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

7. Design and utilize an application form which shall include, but not be limited to, information on prior volunteer work performed by the applicant.

8. Establish and administer a comprehensive and integrated program of employee training and management development.

9. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

10. Establish and administer a program to ~~assure~~ ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment.

11. Establish and administer regulations relating to disciplinary actions; however, no disciplinary action shall include the suspension without pay for more than ten days of any state employee who is under investigation without a hearing conducted either by a level of supervision above the employee's immediate supervisor or by his agency head.

12. Adopt and implement a program of meritorious service awards to employees who propose procedures or ideas which are adopted and which will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect.

13. Develop state personnel policies and, after approval by the Governor, disseminate and interpret state personnel policies and procedures to all agencies. Such personnel policies shall permit an employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an acceptable use policy for the international network of computer systems commonly known as the Internet. At a minimum, the Department's acceptable use policy shall contain provisions which (i) prohibit use by state employees of the Commonwealth's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet and (ii) establish strict disciplinary measures for violation of the acceptable use policy. An agency head may supplement the Department's acceptable use policy with such other terms, conditions, and requirements as he deems appropriate. The Director of the Department of Personnel and Training shall have the final authority to establish and interpret personnel policies and procedures and shall have the authority to ~~assure~~ensure full compliance with such policies. However, unless specifically authorized by law, the Director of the Department of Personnel and Training shall have no authority with respect to the state grievance procedures.

14. Ascertain and publish on an annual basis, by agency, the number of employees in the service of the Commonwealth, including permanent full-time and part-time employees, those employed on a temporary or contractual basis, and constitutional officers and their employees whose salaries are funded by the Commonwealth. The publication shall contain the net gain or loss to the agency in personnel from the previous fiscal year. ~~Effective July 1, 1995, the publication shall include and the~~ net gains and losses in personnel for each agency for a three-year period.

15. Submit a report to the General Assembly on or before September 30 of each year showing the number of employees who voluntarily and involuntarily terminated their employment with each department, agency or institution in the previous fiscal year.

DRAFTING NOTE: Technical corrections. Subdivision 15 is derived from existing § 2.1-404 dealing with Department of Planning and Budget and was moved to this section (§§ 2.2-XXX) as a more appropriate placement since it affects Department of Personnel and Training.

~~§ 2.1-144.6~~ 2.2-XXX. Employee compensation; annual review.

It is a goal of the Commonwealth that its employees be compensated at a rate comparable to the rate of compensation for employees in the private sector of the Commonwealth in similar occupations. In determining comparability, consideration shall be given to the economic value of fringe benefits in addition to direct compensation. An annual review shall be conducted by the Director of ~~Personnel and Training~~ the Department to determine where discrepancies in compensation exist as between the public and private sectors of the Commonwealth; ~~the~~ The results of ~~such the~~ the review ~~to shall~~ shall be reported by December 15 of each year to the Governor and the General Assembly, ~~by the fifteenth day of December.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-144.5:04~~ 2.2-XXX. Certain information not to be made public.

Notwithstanding the provisions of Chapter 21 (~~§§ 2.1-340 through 2.1-346.1~~) of Title 2.1 the Freedom of Information Act (§ 2.2-XXX et seq.), the Department shall not disclose lists of home addresses of state employees except in accordance with regulations adopted by the Department pursuant to ~~Chapter 1.1:1 (§§ 9-6.14:1 through 9-6.14:25) of Title 9~~ the Administrative Process Act (§ 2.2-XXX et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 2-4-20-1-02~~ 2.2-XXX. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions.

A. The Department of Personnel and Training shall establish a plan or plans subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees. The plan or plans shall be rated separately from the plan established pursuant to ~~§ 2-4-20-1-2.2-XXX~~ to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations ~~promulgated~~adopted by the Department.

B. The plan established by the Department shall satisfy the requirements of the Virginia Public Procurement Act (§ 11-35 et seq.), shall consist of a flexible benefits structure which permits the creation of multiple plans of benefits and may provide for separate rating groups based upon criteria established by the Department. The Department shall ~~promulgate~~adopt regulations regarding the establishment of such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and egress, mandatory employer contributions and financial reserves, and the administration of the plan or plans. The Department may engage the services of other professional advisors and vendors as necessary for the prudent administration of the plan or plans. The assets of the plan or plans, together with all appropriations, premiums and other payments, shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge reasonable fees to recover the actual costs of investing the assets of the plan or plans.

In establishing the participation requirements, the Department may provide that those employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.

C. In the administration of the plan or plans, the Department shall take into consideration the recommendations made by an advisory committee. Such advisory committee shall be composed of at least five members to be appointed by the Governor, with at least one member representing each of the following groups: local governments, local officers, local school boards, teachers, and retirees. Committee members shall be reimbursed for the expenses incurred by them as members of the committee but shall not be otherwise compensated for their services. The terms of service for the advisory committee members shall be established by the Department.

D. In the event that the financial reserves of the plan fall to an unacceptably low level as determined by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to raise the reserve level to one which is considered adequate. The State Treasurer ~~is hereby authorized to~~may make such a loan, to be repaid on such terms and conditions as established by him.

E. For the purposes of this section, ~~the following terms shall have the meanings indicated:~~

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from ~~§§ 15.1-20, 15.1-24~~ 15.2-1303, 15.2-1300, or similar statutes, provided that the officers and employees of a social services department, welfare board, mental health, mental retardation and substance abuse services board, or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

F. Any stock and cash distributed to the Commonwealth pursuant to the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield, from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., that is directly attributable to the health insurance plan or plans established for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees, pursuant to subsection A (hereinafter referred to as the "local choice plan distribution") shall be deposited in the state treasury to the credit of the employee health insurance fund to be used as provided in this subsection. Such distribution shall not include any cash paid by Blue Cross and Blue Shield of Virginia or its successor to the Commonwealth in connection with such conversion which was assumed as general fund revenue in Chapter 912 of the 1996 Acts of Assembly. All other stock and cash received by the Commonwealth pursuant to such conversion of Blue Cross and Blue Shield of Virginia to a stock corporation shall be allocated as provided in subsection B of § 23-284.

The State Treasurer shall sell any stock received pursuant to the local choice plan distribution as soon as practicable following its receipt, subject to any lockup period or other restriction on its sale, and the proceeds therefrom shall be deposited in the state treasury to the credit of the employee health insurance fund. Notwithstanding any other provision of law to the contrary, the State Treasurer shall not be liable for any losses incurred from the sale or distribution of such stock.

The Department of Personnel and Training shall use any stock, or the proceeds therefrom, and cash received pursuant to the local choice plan distribution to reduce premiums payable by employers participating in a plan or plans established pursuant to subsection A. In setting health insurance premiums for such plan or plans, the Director of the Department of Personnel and Training shall allocate the value of such stock, or proceeds therefrom, and cash among each participating employer. Such allocation shall be based on the proportionate amounts of premiums previously paid by each participating employer. If a participating employer withdraws from such plan or plans before all of the value allocated to it has been used for the benefit of the participating employer, the remaining value shall be transferred to such participating employer upon his withdrawal.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-20.1:04 2.2-XXX~~. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired local law-enforcement officer, firefighter, etc. through the Department.

A. The surviving spouse and any dependents of an active or retired law-enforcement officer of any county, city, or town of ~~this the~~ Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of this Commonwealth as an integral part of the official safety program of such county, city or town; or a member of an emergency medical services department, whose death occurs as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, shall be entitled, upon proper application to the Department of Personnel and Training, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated in a health insurance plan administered by the Department of Personnel and Training pursuant to § ~~2-1-20.1:02 2.2-XXX~~ and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plan administered by the Department of Personnel and Training pursuant to § ~~2-1-20.1:02 2.2-XXX~~ shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased. The spouse and any dependents of the deceased who purchase continued health insurance coverage pursuant to this section shall pay the same portion of the applicable premium as active employees pay for the same class of coverage, and the local government employer that employed the deceased shall pay the remaining portion of the premium.

B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department of Personnel and Training within sixty days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.

C. In addition to any necessary information requested by the Department of Personnel and Training, the application shall state whether conditions (i) and (ii) set forth in subsection A of this section have been met. If the Department states that such conditions have not been met, the Department shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § ~~9-6-14-41~~ 2.2-XXX of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the Administrative Process Act (§ ~~9-6-14-4~~ xref. et seq.) shall apply thereafter.

D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department of Personnel and Training. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § ~~2-1-20-1:02~~ 2.2-XXX. However, at no time shall a surviving spouse or dependents pay more for continued health insurance coverage than active employees pay under the same plan for the same class of coverage.

F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § ~~2-1-20-1:02~~ 2.2-XXX.

G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § ~~2-1-20-1:02~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-20-1:05~~ 2.2-XXX. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active local law-enforcement officer, firefighter, etc. through a plan sponsor.

A. For the purposes of this section, "plan sponsor" means a local government employer which has established a plan of health insurance coverage for its employees, retirees and dependents of employees as are described in subsection B.

B. The surviving spouse and any dependents of an active law-enforcement officer of any county, city, or town of this Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of this Commonwealth as an integral part of the official safety program of such county, city or town; or a member of an emergency medical services department; whose death occurs as the direct or proximate result of the performance of his duty shall be entitled, upon proper application to the appropriate plan sponsor, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated in a health insurance plan administered by the plan sponsor and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health

insurance plan administered by the plan sponsor shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased.

C. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the plan sponsor within sixty days of the date of the deceased's death. The time for making application may be extended by the plan sponsor for good cause shown.

D. In addition to any necessary information requested by the plan sponsor, the application shall state whether conditions (i) and (ii) set forth in subsection B of this section have been met. If the plan sponsor states that such conditions have not been met, the plan sponsor, notwithstanding the provisions of ~~§ 9-6-14-4.1 2.2-XXX~~, shall conduct an informal fact-finding conference or consultation with the applicant pursuant to ~~§ 9-6-14-11 2.2-XXX~~ of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the local government's grievance procedure for nonprobationary, permanent employees shall apply thereafter.

E. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

F. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the plan sponsor. The plan sponsor may increase the cost of coverage consistent with its administration of health insurance plans under ~~§ 2-1-20.1:02 2.2-XXX~~. However, at no time shall the surviving spouse or dependents pay more for continued health insurance coverage than the active employee rate under the same plan for the same class of coverage.

G. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.

H. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Planning and Budget.

~~§ 2-1-388 2.2-XXX.~~ Department of Planning and Budget created; appointment of Director; powers and duties.

A. There is hereby created, a Department of Planning and Budget. The Department (the "Department") which shall be headed by a Director who shall be appointed by and the Governor to serve at the his pleasure of the Governor

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-388 and subsection B is § 2.1-389.

~~§ 2.1-389 Powers and duties of Director.~~

~~The Director of the Department of Planning and Budget shall, under the direction and control of the Governor, exercise such powers and perform such duties as are conferred or imposed by law upon him; and he shall perform such other duties as may be required of him by the Governor.~~

DRAFTING NOTE: Technical corrections. This section now appears as new subsection B in proposed § 2.2-XXX (§ 2.1-388).

~~§ 2.1-390. General powers of Department.~~

~~The Department shall have the following general powers:~~

~~A. To employ such personnel as may be required to carry out the purposes of this chapter.~~

~~B. 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 the United States, other states, agencies and governmental subdivisions of Virginia.~~

~~C. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.~~

~~D. To do all acts necessary or convenient to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

~~§ 2.1-394 2.2-XXX. Duties of Department.~~

~~The Department shall have the following duties:~~

~~1. Development and direction of an integrated policy analysis, planning, and budgeting process within state government.~~

~~2. Review and approval of all sub-state district systems boundaries established or proposed for establishment by state agencies.~~

~~3. Formulation of an executive budget as required in this chapter. In implementing this provision, the Department of Planning and Budget shall (i) utilize the resources and determine the manner of participation of any executive agency as the Governor may determine necessary to support an efficient and effective budget process notwithstanding any contrary provision of law and (ii) make an appropriate reduction in the appropriation and maximum employment level of any state agency or institution in the executive branch of government which reports involuntary separations from employment with the Commonwealth due to budget reductions, agency reorganizations, or workforce down sizings, or voluntary separations from employment with the Commonwealth as provided in the second and third enactments of the act of the General Assembly creating the Workforce Transition Act of 1995 (§ 2.1-116.20 et seq.). In the event an agency reduces its workforce through privatization of certain functions, the funds associated with such functions shall remain with the agency to the extent of the savings resulting from the privatization of such functions. Such The budget shall include reports, or summaries thereof, provided by agencies of the Commonwealth pursuant to subsection E of § 2.1-20.04:4 2.2-XXX (xref).~~

~~4. Conduct of policy analysis and program evaluation for the Governor.~~

5. Continuous review of the activities of state government focusing on budget requirements in the context of the goals and objectives determined by the Governor and the General Assembly and monitoring the progress of agencies in achieving goals and objectives.

6. Operation of a system of budgetary execution to ~~assure~~ ensure that agency activities are conducted within fund limitations provided in the ~~appropriations~~ appropriation act and in accordance with gubernatorial and legislative intent. The Department shall make an appropriate reduction in the appropriation and maximum employment level of any state agency or institution in the executive branch of government which reports involuntary separations from employment with the Commonwealth due to budget reductions, agency reorganizations, or workforce down-sizings, or voluntary separations from employment with the Commonwealth as provided in the second and third enactments of the act of the General Assembly creating the Workforce Transition Act of 1995 (§ 2.2-XXX xref.). In the event an agency reduces its workforce through privatization of certain functions, the funds associated with such functions shall remain with the agency to the extent of the savings resulting from the privatization of such functions.

7. Development and operation of a system of standardized reports of program and financial performance for management.

8. Coordination of statistical data by reviewing, analyzing, monitoring, and evaluating statistical data developed and used by state agencies and by receiving statistical data from outside sources, such as research institutes and the federal government.

9. Assessment of the impact of federal funds on state government by reviewing, analyzing, monitoring, and evaluating the federal budget, as well as solicitations, applications, and awards for federal financial aid programs on behalf of state agencies.

10. Review and ~~verification of~~ verify the accuracy of agency estimates of receipts from donations, gifts or other nongeneral fund revenue.

DRAFTING NOTE: Technical corrections. Language stricken in subdivision 3 has been reinserted in subdivision 6 based on the recommendations of DPB as a more appropriate place dealing with budget execution. Also in subdivision 3, the word "executive" has been deleted on the recommendation of DPB because in practice, DPB involves agencies in all branches of government in the development of the executive budget.

~~§ 2.1-51.34~~ 2.2-XXX. Establishing ~~rules~~ regulations for preplanning of capital outlay projects.

A. The Director of the Department of Planning and Budget or his designee shall ~~prepare and issue~~ adopt regulations requiring a preplanning justification or a preplanning study, or both, for all capital outlay projects undertaken by any department, agency or institution of the Commonwealth. ~~Such regulations, being ones which pertain to the location, design, specifications and construction of public buildings and other facilities, shall be exempt from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).~~ A preplanning study shall be required for any project of construction, renovation, or other capital outlay involving a structure of 20,000 or more square feet or which is estimated to cost one million dollars or more. For projects of lesser size or cost, the regulations issued by the Director may require only a preplanning justification of the project. ~~Furthermore, the~~ The Director or his designee may waive the requirement for a preplanning justification or preplanning study for such projects of lesser size and cost when, in his judgment, such a preplanning justification or preplanning study is not needed or would not be warranted by the cost of making one. ~~The Director shall in his regulations, by incorporation of existing administrative procedures or otherwise, determine the content and scope of preplanning justifications and preplanning studies, including the definition of the terms "capital outlay project."~~ Preplanning studies for projects estimated to cost less than \$2 million shall be done at a cost not exceeding \$25,000. Preplanning studies for projects estimated to cost \$2 million or more shall be done at a cost not exceeding \$50,000. Exceptions to these limitations upon the cost of preplanning studies may be authorized by the House Committee on Appropriations and the Senate Committee on Finance Committees.

B. ~~The regulations required by subsection A shall~~ (i) provide for the content and scope of preplanning justifications and preplanning studies, including the definition of the terms "capital outlay project" and (ii) require consideration of locally available fuels, including wood wastes, for use in new and replacement central heating plants in any proposed or existing public buildings or other facilities and (iii) shall be exempt from the provisions of the Administrative Process Act (§ 2.2-XXX).

DRAFTING NOTE: Technical corrections. This section was moved from the existing chapter dealing with the Secretary of Administration and added to this proposed chapter on the Department of Planning and Budget for more appropriate placement. In subsection A, "shall" was replaced with "may" on the recommendation of DPB since the process for establishing regulations for preplanning of capital outlay projects has not been used for several years. DPB, however, believes it desirable to retain the statutory authority.

~~§ 2.1-393~~ 2.2-XXX. Filing of six-year revenue plan by Governor.

In every year, the Governor shall by December 15 prepare and submit to the members of the General Assembly an estimate of anticipated general fund revenue, and estimates of anticipated revenues for each of the major nongeneral funds, for a prospective period of six years.

The Governor's estimates of anticipated general and nongeneral fund revenues shall be based on the following:

1. Forecasts of economic activity in the Commonwealth.

2. Review by an advisory board of economists with respect to economic assumptions and technical econometric methodology.

3. Review by an advisory council of revenue estimates with respect to economic assumptions and the general economic climate of the Commonwealth. ~~The Advisory Board on Revenue Estimates is continued and shall hereafter be known as the Advisory Council on Revenue Estimates. The~~ Advisory Council on Revenue Estimates shall be comprised of such representatives of the private sector as the Governor may appoint and ~~representation from the General Assembly. The representation of the General Assembly shall include the Speaker and Majority Leader of the House of Delegates, the President pro tempore and Majority Leader of the Senate, and the Chairmen of the House Committees on Appropriations, House and Finance, and the Senate Committee on Finance Committees, or their designated representatives designees.~~

4. Any such other advisory bodies as the Governor may desire.

DRAFTING NOTE: Technical corrections only. Reference to the Advisory Board on Revenue Estimates deleted as obsolete.

~~§ 2.1-394~~ 2.2-XXX. Estimates by state agencies of amounts needed.

A. Biennially in the odd-numbered years, on a date established by the Governor, each of the several state agencies and other agencies and undertakings receiving or asking financial aid from the Commonwealth shall report to the Governor, through the responsible secretary designated by statute or executive order, in a format prescribed for such purpose, an estimate in itemized form in accordance with the expenditure classification adopted by the Governor, showing the amount needed for each year of the ensuing biennial period beginning with the first day of July ~~thereafter~~. The Governor may prescribe targets which shall not be exceeded in the official estimate of each agency; ~~however~~. However, an agency may submit to the Governor a request for an amount exceeding the target as an addendum to its official budget estimate.

B. Each agency or undertaking required to submit a biennial estimate pursuant to subsection A ~~of this section~~ shall simultaneously submit an estimate of the amount which will be needed for the two succeeding biennial periods beginning July 1 of the third year following the year in which the ~~report estimate~~ is submitted. The ~~Department of Planning and Budget~~ shall provide, within thirty days following receipt, copies of all agency

estimates provided under this subsection to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

C. The format ~~which must be used~~ in making these ~~reports-estimates~~ shall (i) be prescribed by the Governor, shall (ii) be uniform for all agencies, and ~~shall (iii)~~ clearly designate the kind of information to be given ~~thereon~~. The Governor may prescribe a different format for ~~reports-estimates~~ from institutions of higher education, which format shall be uniform for all such institutions and shall clearly designate the kind of information to be provided ~~thereon~~.

DRAFTING NOTE: Technical corrections. On the recommendation of DPB, subsection A is amended to restore the statutory basis for expenditure classification system for executive branch agencies consistent with the requirements of existing §§ 2.1-395 and 2.1-401 (proposed §§ 2.2-XXX and 2.2-XXX) for legislative and judicial agencies.

~~§ 2.1-394.1~~ 2.2-XXX. Estimates by nonstate agencies of amounts needed.

A. Except as provided in §§ 10.1-2211, 10.1-2212 and 10.1-2213, no state funds shall be appropriated or expended for, or to, nonstate agencies unless:

1. A request for state aid is filed by the organization with the Department of Planning and Budget, as required by § 2.1-394.

2. ~~Such~~The nonstate agency ~~shall certify~~ certifies to the satisfaction of the Department, that matching funds are available in cash from local or private sources in an amount at least equal to the amount of the request. These matching funds ~~must~~ shall be concurrent with the purpose for which state funds are requested. Contributions received and spent prior to the state grant shall not be considered in satisfying the requirements of this subdivision.

3. ~~Such~~The nonstate agency ~~shall provide~~ provides documentation of its tax exempt status under applicable provisions § 501 (c) (3) of the United States Internal Revenue Code.

B. Except as provided in §§ 23-38.11 through 23-38.18, no state funds shall be appropriated to, or expended for, a private institution of higher education or religious organization.

~~C. Requests for the appropriation of funds for nonstate agencies shall be considered by the Governor and the General Assembly only in even numbered years.~~

~~D. For the purposes of this section, a "nonstate agency" shall mean~~ means any public or private foundation, authority, institute, museum, corporation or similar organization which is not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act. It shall not ~~mean~~ include any such entity which receives state funds as a subgrantee of a state agency or through a state grant-in-aid program authorized by law.

DRAFTING NOTE: Technical corrections. On the recommendation of DPB, existing subsection C, relating to the prohibition against consideration in odd numbered years, has been deleted because it does not represent current practice.

~~§ 2.1-394.2. Overall spending target set by the General Assembly.~~

~~The General Assembly, by joint resolution adopted on or before May 1 in odd numbered years, may prescribe an overall spending target for the biennial period beginning with July 1 of the next even numbered year. The target shall be the basis for the preparation of a budget plan and bill by the Governor for the regular session of the General Assembly in the next even numbered year. Notwithstanding any overall spending target adopted by the General Assembly under this section, the Governor may submit to the General Assembly a different budget plan and bill which may be greater than or less than any target established by the General Assembly.~~

DRAFTING NOTE: This section has been deleted on the recommendation of the Code Commission as obsolete and contrary to practice.

~~§ 2.1-395 2.2-XXX. Estimates of financial needs of General Assembly and judiciary.~~

~~On or before the first day of September biennially in the odd-numbered years the Committees on Rules of the House of Delegates and the Senate shall furnish the Governor an estimate of the financial needs of the General Assembly, itemized in strict accordance with the budget classifications adopted by the Governor, for each year of the ensuing biennial period beginning with the first day of July thereafter; and the Supreme Court of Virginia shall furnish to the Governor an estimate of the financial needs of the judiciary, as provided by law, itemized in strict accordance with the budget classifications adopted by the Governor, for each year of the ensuing biennial period beginning with the first day of July thereafter. The Committees on Rules of the House of Delegates and the Senate and the Supreme Court shall transmit to the Governor with these estimates full and detailed explanations of all increases or decreases.~~

DRAFTING NOTE: Technical corrections. This section has been amended to reflect current budgetary practice.

~~§ 2.1-396. Hearings on estimates.~~

~~The Governor shall provide for public hearings on any and all estimates to be included in the budget, which shall be held prior to completion of his plan of expenditures for the ensuing biennial period biennially in odd-numbered years. The Governor may require the attendance at these hearings of the heads or responsible representatives of all state departments, bureaus, divisions, offices, boards, commissions, institutions, or other agencies or undertakings receiving or asking financial aid from the Commonwealth.~~

DRAFTING NOTE: This section deleted on the recommendation of DPB because in practice it is unusable given the time constraints of the budget process. In addition, this section has been preempted by the legislative hearings prescribed in existing § 2.1-399.2 (proposed § 2.2-XXX).

~~§ 2.1-397. Survey of state agencies.~~

~~On or before the first day of January biennially in the even-numbered years the Governor and his assistants must have completed a careful survey of all the departments, bureaus, divisions, offices, boards, commissions, institutions, and other agencies and undertakings of the Commonwealth through which he shall be in possession of the working knowledge upon which to base his recommendations to the General Assembly.~~

DRAFTING NOTE: This section deleted on the recommendation of DPB because the objective of this provision is effected, for all practical purposes, during the development of the budget bill.

~~§ 2.1-397.1 2.2-XXX. Participation of certain agencies in budget development process of other agencies.~~

~~Agencies having responsibilities granted under §§ 2.1-373, 2.1-563.17, 2.1-563.18 (xref) and 37.1-207 shall participate in the budget development process of relevant agencies and receive from these agencies, prior to submission to the Department of Planning and Budget, their proposed programs and budgets. Recommendations to the appropriate agencies and the secretaries of the Governor on related matters shall be made prior to budget submissions.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-398 2.2-XXX. Submission of executive budget to General Assembly.~~

A. ~~On or before December 20 in the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year of the General Assembly, the Governor shall submit to the~~

presiding officer of each house of the General Assembly printed copies of a budget document, which shall be known as "The Executive Budget," based on his own conclusions and judgment, containing the following:

1. For each agency, the amount and number of positions appropriated for the current appropriation year and the amounts and number of positions recommended for each year of the ensuing biennial period beginning with the first day of July thereafter, accompanied by an explanation of the recommended amounts and number of positions.

2. A statement of historical and projected trends which influence development, natural and human resources, and the general economic conditions in the Commonwealth, and projections pertaining to population, transportation, commerce, agriculture, and urbanization. In addition to utilizing such statement in the preparation of his budget, the Governor shall use such statement for the purpose of coordinating programs of planning district commissions, regional development authorities, and local governments with those of state agencies and a statement of the economic assumptions upon which revenue projections are based.

3. A statement of the Governor's proposed goals, objectives, and policies in the areas of:

~~(a)~~ a. Administration of justice;

~~(b)~~ b. Education, including intellectual and cultural development;

~~(c)~~ c. Individual and family services;

~~(d)~~ d. Resources and economic development, including specific references to economic development and management of natural resources;

~~(e)~~ e. Transportation; and

~~(f)~~ f. General government, including therein or as separate categories areas of multiple impact, such as telecommunications, energy, and urban development.

3. 4. A statement organized by function, primary agency, and proposed appropriation item which sets forth:

~~(a)~~ a. Identification of common programs and services;

~~(b)~~ b. Service attainments or lack of attainments and service terminations or reductions for the biennium;

~~(c)~~ c. Major goals and objectives for programs;

~~(d)~~ d. Program measures to be used in monitoring and evaluating services as specified in the general appropriations act; and

~~(e)~~ e. The amount of each primary agency's budget that is direct aid to localities.

4. An "executive salary plan" recommending levels into which the position of each cabinet secretary and administrative head of each agency and institution of the executive branch of state government should be placed for salary purposes, salary ranges for each of those recommended levels, and the basis for the recommendations contained in the plan.

5. A statement of proposed capital appropriations organized by the primary agency that sets forth the program need for the project and the proposed source of funding.

B. On or before December 20 of the year immediately prior to the beginning of the regular session of the General Assembly held in odd-numbered years, the Governor shall submit to the presiding officer of each house of

the General Assembly printed copies of a budget document, which shall be known as "Executive Amendments to the Appropriation Act," describing all gubernatorial amendments proposed to the general appropriation act enacted in the immediately preceding even-numbered session.

DRAFTING NOTE: This section has been amended on the recommendation of DPB to (i) replace the term "appropriation item" with "agency" since positions are appropriated for the entire agency and not for individual appropriation items and (ii) provide a statutory basis for the odd-year budget document. This section as amended also clarifies the distinction between the budget document and the budget bill.

§ 2.1-399 2.2-XXX. Budget bill.

A. On or before December 20 of the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year of the General Assembly, the Governor also shall submit to the presiding officer of each house of the General Assembly, at the same time he submits his budget "The Executive Budget", copies of a tentative bill for all proposed appropriations of the budget, for each year in the ensuing biennial appropriation period, which shall be known as "The Budget Bill." "The Budget Bill" shall be organized by function, primary agency, and proposed appropriation item and shall include an identification of, and authorization for, common programs and the appropriation of funds according to programs. Except as expressly provided in an appropriation act, whenever the amounts in a schedule for a single appropriation item are shown in two or more lines, the portions of the total amount shown on separate lines are for information purposes only and are not limiting. No such bill shall contain any appropriation the expenditure of which is contingent upon the receipt of revenues in excess of funds unconditionally appropriated. ~~The salary proposed for payment for the position of each cabinet secretary and administrative head of each agency of the executive branch of state government shall be specified in "The Budget Bill."~~

B. The salary proposed for payment for the position of each cabinet secretary and administrative head of each agency and institution of the executive branch of state government shall be specified in "The Budget Bill," showing the salary ranges and levels proposed for such positions.

C. "The Budget Bill" shall include all proposed capital appropriations, including each capital project to be financed through revenue bonds or other debt issuance, the amount of each project, and the identity of the entity which will issue the debt.

D. Concurrently with the submission of "The Budget Bill," the Governor shall submit a tentative bill involving a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in "The Budget Bill."

~~E.~~ On or before December 20 of the year immediately prior to the beginning of each regular session held in an odd-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of all gubernatorial amendments proposed to the general appropriation act adopted in the immediately preceding even-numbered year session. In preparing the amendments, the Governor may obtain estimates in the manner prescribed in §§ 2.2-XXX, 2.2-XXX, 2.2-XXX, and 2.2-XXX (2.1-394, 2.1-394.1, 2.1-394.2 and 2.1-395). On the same date he shall also submit a tentative bill during the second year of the appropriation period, a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in the proposed gubernatorial amendments.

DRAFTING NOTE: On the recommendation of DPB, this section represents a merger of existing §§ 2.1-399 and 2.1-399.1 (proposed § 2.2-XXX and 2.2-XXX, respectively) as follows: proposed subsection A and E are derived from § 2.1-399 except the last two sentences of proposed subsection E which are derived from § 2.1-399.1. Proposed subsections B through D are derived from § 2.1-399.1 with minor amendments. Additionally, the last sentence in proposed subsection A has been deleted as duplicative of proposed subsection B.

§ 2.1-399.1. Capital projects; debt legislation.

~~A. On or before December 20 of the year immediately prior to the beginning of each regular session held in an even numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house of the General Assembly copies of any tentative bill or bills involving, for each year in the ensuing biennial appropriation period, (i) proposed capital appropriations or (ii) the request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part from appropriations contained in, the budget bill submitted pursuant to § 2.1-399. Such bill or bills shall include each capital project to be financed through revenue bonds or other debt issuance, the amount of each such project, and the identity of the entity which will issue such debt. Notwithstanding any other provision of law, the Governor may recommend, and the General Assembly may make, an appropriation of special fund revenues derived from the operations of the medical centers of Virginia Commonwealth University and the University of Virginia that may be used, as directed by such universities, in connection with the ownership and operation of their medical centers and related health care and educational activities, including operating expenses and debt service.~~

~~B. On or before December 20 of the year immediately prior to the beginning of each regular session held in an odd numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of (i) all gubernatorial amendments proposed to capital appropriations acts adopted in the immediately preceding even numbered year session and (ii) copies of any tentative bill or bills involving, during the second year of the appropriation period, the request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part from appropriations contained in, the budget bill submitted pursuant to § 2.1-399.~~

DRAFTING NOTE: This section has been merged with proposed § 2.2-XXX (2.1-399) as subsections B through D, with minor amendments. On the recommendation of DPB, redundant and unnecessary language pertaining to special fund appropriations for the medical centers at UVA and VCU has been deleted since this authority is contained within the general authority for development of the Budget Bill. Additionally, MCV Hospitals is no longer a state agency.

~~§ 2.1-399.2.2-XXX.~~ § 2.2-XXX. Publication of budget highlights; public hearings.

A. The Governor shall ensure that a summary of the highlights of each budget submitted pursuant to § ~~2.1-398~~2.2-XXX (xref) and set of amendments submitted pursuant to subsection B ~~E~~ of § ~~2.1-399~~2.2-XXX (xref) be ~~are~~ sent to a newspaper of general circulation in the following geographical areas of the Commonwealth: Northern Virginia, Hampton Roads, Richmond/Petersburg, Central Virginia, Shenandoah Valley, Roanoke Valley, Southside, and Southwest Virginia prior to the convening of each session of the General Assembly.

B. The House Committee on Appropriations and the Senate Committee on Finance shall hold at least four regional public hearings on the budget bill submitted by the Governor. The four public hearings shall be held prior to the convening of such session of the General Assembly, at hearing sites and times as selected by the chairmen of the two committees.

DRAFTING NOTE: Technical corrections. The words "at least" have been inserted in subsection B to reflect current practice because more than four regional public hearings are held.

~~§ 2.1-400~~ 2.2-XXX. Consideration of budget by committees.

The standing committees of the House of Delegates and of the Senate ~~being in charge of appropriation measures shall begin consideration of the budget within five calendar days after the budget has been submitted to the General Assembly by the Governor~~ the convening of the regular session of the General Assembly to which the budget is submitted. The committees or subcommittees thereof, may meet jointly on ~~such~~ matters concerning the budget ~~and~~ at such times as the chairmen of the two committees deem ~~the work of the committees to be facilitated thereby~~ appropriate. The committees or subcommittees may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the Commonwealth to furnish such information and answer such questions as they ~~shall require, and to these sessions shall be admitted, with the right to be heard, all.~~ All persons interested in the matters under consideration shall be admitted to the meetings and shall have the right to be heard.

DRAFTING NOTE: Technical corrections. On the recommendation of DPB, "calendar" was inserted after five to clarify the time threshold for consideration of the budget, as well as to clarify that consideration of the budget by the General Assembly begins after the convening of the General Assembly session.

~~§ 2.1-401. Changes in budget bill by General Assembly.~~

~~The General Assembly may increase or decrease items in the budget bill as it may deem to be in the interest of greater economy and efficiency in the public service, but neither house shall consider further or special appropriations, except in case of an emergency, which fact shall be clearly stated in the bill therefor, until the budget shall have been finally acted upon by both houses. All bills introduced in either house carrying appropriations shall be itemized in accordance with the classifications used in the budget.~~

DRAFTING NOTE: This section has been deleted on the recommendation of the Code Commission as obsolete and also because its provisions are covered by the Virginia Constitution.

~~§ 2.1-402 2.2-XXX. Financial statements by Comptroller.~~

~~On or before August 15 biennially in the odd-numbered years, the Comptroller shall furnish to the Department of Planning and Budget the following statements, classified and itemized in strict accordance with the budget classifications adopted by the Governor:~~

~~1. A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, office, board, commission, institution, or other agency or undertaking of the Commonwealth at the end of the last preceding appropriation year.~~

~~2. A statement showing the monthly expenditures from each appropriation account, and the total monthly expenditures from all the appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.~~

~~3. A statement showing the annual revenues and expenditures in each fund.~~

~~4. An itemized and complete financial balance sheet for the Commonwealth at the close of the last preceding fiscal year ending June 30.~~

~~5. Such other statements as requested by the Governor shall request.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-403. Reports by state agencies to Governor.~~

~~The departments, bureaus, divisions, offices, boards, commissions, institutions, or other agencies or undertakings of the Commonwealth, upon request, shall immediately furnish to the Governor, in such form as he may require, any information desired by him in relation to their respective affairs or activities.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as duplicative of existing § 2.1-42 (proposed § 2.2-XXX) found in Part A of Subtitle I in Chapter 1 dealing with powers and duties of the Governor.

~~§ 2.1-404 2.2-XXX. Submission of additional information to legislative committees.~~

~~To enable the House of Delegates Committee on Appropriations and the Senate Committee on Finance to fully carry out perform their prescribed duties, all departments, agencies and institutions of the Commonwealth, their staff and employees shall, upon request, provide such committees with any additional information, as may be deemed necessary, and allow such committees ample opportunity to physically observe the department's, agency's or institution's daily operations. The Department of Personnel and Training shall present a report,~~

~~submitted on or before September 30 of each year, of the number of employees who voluntarily and involuntarily terminated their employment with each department, agency, or institution in the previous fiscal year.~~

DRAFTING NOTE: On the recommendation of DPB the last sentence of this section was moved to the proposed chapter dealing with DPT (proposed § 2.2-XXX-2.1-114.5) as a more appropriate placement.

Chapter X.

Department of the State Internal Auditor.

§ 2.1-234.29 2.2-XXX. Department created; appointment of State Internal Auditor; staff support.

~~There is hereby created a Department of the State Internal Auditor (the "Department"). The Department shall be an agency under the direction of the Secretary of Finance. The State Internal Auditor shall be selected by and report directly to the Secretary of Finance. The State Internal Auditor shall be a certified public accountant. The State Internal Auditor, in order to provide continuity to the state's internal audit program, shall be a classified position subject to the provisions of the Virginia Personnel Act (§ (xref) et seq.).~~

~~The Secretary of Finance shall assign responsibility for the Department's administrative support services to one or more state agencies within responsibility of his Secretariat.~~

~~The Department of the State Internal Auditor is established to shall provide for the development and maintenance of internal audit programs in state agencies in order to ensure that the Commonwealth's assets are subject to appropriate internal management controls.~~

~~Appropriate Such internal management controls shall assist in safeguarding assets, ensuring accurate accounting and reporting of financial transactions, and in providing effective and efficient management.~~

DRAFTING NOTE: Technical corrections. This proposed section is principally comprised of § 2.1-234.29. The second paragraph comes from existing § 2.1-234.33, and the last two sentences in the first paragraph are from existing § 2.1-234.30.

~~§ 2.1-234.30. Qualifications and personnel status of the State Internal Auditor.~~

~~The State Internal Auditor shall be either a certified public accountant or a certified internal auditor. The State Internal Auditor, in order to provide continuity to the state's internal audit program, shall be a classified position subject to the provisions of the Virginia Personnel Act (§ 2.1-110 et seq.).~~

DRAFTING NOTE: Technical corrections. This section now appears as the last paragraph in proposed § 2.2-XXX (existing § 2.1-234.29) infra.

~~§ 2.1-234.31. General powers of the Department.~~

~~The Department shall have the following general powers:~~

- ~~1. To employ such personnel as may be required to carry out the purposes of this chapter;~~
- ~~2. To make and enter into contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter;~~
- ~~3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable; and~~
- ~~4. To do all acts necessary or convenient to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

~~§ 2.1-234.32~~ 2.2-XXX. Duties of the Department.

A. The Department shall have the following duties to:

1. ~~To establish~~ Establish state policies, standards, and procedures which will ensure an effective internal audit program in all state agencies;
2. ~~To provide~~ Provide technical information to state agencies concerning trends and new techniques in internal auditing;
3. ~~To develop~~ Develop evaluative tools and other modern methods to assist agency internal auditors in performing audits;
4. ~~To assist~~ Assist state agencies in developing and implementing automated data processing internal audit programs in the Commonwealth;
5. ~~To provide~~ Provide general technical and audit assistance to agency internal auditors and to the Auditor of Public Accounts and the Governor on request;
6. ~~To assist~~ Assist agency heads and collegial bodies in establishing and operating internal audit organizations;
7. ~~To assist~~ Assist in the professional development of agency internal auditors by developing and conducting training programs;
8. ~~To examine~~ Examine the adequacy of agency internal audit programs through periodic assessments of such programs and provide the Governor, Governor's Secretaries, the State Comptroller, the Director of the Department of Planning and Budget, and agency heads with the results of such assessments;
9. ~~To develop~~ Develop, in conjunction with the State Comptroller, the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission, and other appropriate state officials, a plan for accommodating the internal audit needs of agencies that do not require full-time internal auditors; and
10. ~~To prepare~~ Prepare a biennial report for the Governor, Governor's Secretaries, Auditor of Public Accounts, and appropriate agency heads on the status of agency internal audit programs generally, and on agency adherence to other legislative requirements on internal auditing.

B. The provisions included above of subsection A shall not infringe upon responsibilities assigned to the Comptroller, the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by other provisions of the Code of Virginia.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.33~~. Responsibility for administrative support.

~~The Secretary of Finance shall assign responsibility for the Department's administrative support services to one or more state agencies within the executive responsibility of the Secretary.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (§ 2.1-234.29) as the last sentence in the first paragraph of that section.

~~§ 2-1-234.34 2.2-XXX. Review of these provisions Department; report to Governor and General Assembly.~~

~~On November 1, 1993, and every four years thereafter, Every four years the duties of the Department of the State Internal Auditor shall be reviewed by the Secretary of Finance to determine if the duties of the Department they should be restructured or eliminated. A report of the Secretary of Finance's determination shall be provided to the Governor and the General Assembly.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-742 2.2-XXX. Participation by political subdivisions and governmental entities.~~

~~Notwithstanding any charter provision, political subdivisions may participate in the programs afforded pursuant to the Act as administrative entities or grant recipients as these terms are used in Section 103 of the Act and may provide program services to eligible participants. Political subdivisions may make funds and governmental services available in furtherance of the job training plans in effect within the service delivery areas of the Commonwealth. Regulations of the Department affecting participating political subdivisions participating as above said shall not be subject to the provisions of subsections B and C of § 9-6-14:3(xref).~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-743 2.2-XXX. Chapter to be liberally construed.~~

~~The Act shall be implemented and administered in the Commonwealth in such a fashion as will best meet the goals of the Act, the needs of eligible participants and prevent program abuse and misexpenditure of funds made available by the United States. The provisions of this chapter shall be liberally construed to this end.~~

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of the Treasury.

Article 1.

General Provisions.

~~§ 2-1-177 2.2-XXX. Department of the Treasury; State Treasurer.~~

~~The A. There is created a Department of the Treasury is continued with the same powers, functions and duties as existed immediately prior to noon of July 1, 1974. The ("the Department"), which shall be under the direct control and supervision of the State Treasurer shall be in direct charge of the Department of the Treasury. The State Treasurer shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor to serve at his pleasure.~~

~~B. The State Treasurer shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed by law upon him and shall perform such other duties as may be required by the Governor.~~

DRAFTING NOTE: Technical Corrections only. Subsection B was added to standardize, among the various agencies in this title, language relating to the Director's exercise of powers/duties conferred by law, etc. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2-1-173 2.2-XXX. State Treasurer to appoint administrative assistants, etc.~~

~~A. The State Treasurer shall appoint the administrative assistants, deputies and clerks allowed by law.~~

B. The State Treasurer shall appoint administrative assistants, who shall have authority to act for and perform the duties of the State Treasurer under his direction, supervision and control, and in the absence of the State Treasurer to perform all the duties of the office. Of such absence, the others shall be informed. When the absence of the State Treasurer is to be for more than five days at a time, notice thereof shall be given to the Governor.

C. In the event the administrative assistant is incapacitated from performing his duties during the absence of the State Treasurer, the Governor shall designate some other administrative assistant in the office to act during the absence of the State Treasurer, and in the event of the removal, resignation or death of the State Treasurer, the administrative assistant shall perform all the duties of the office until the vacancy is filled in the manner prescribed by law.

D. Such officers and their sureties shall be liable for any default or breach of duty of their administrative assistants respectively during their absence.

DRAFTING NOTE: Technical corrections. This new section is comprised of the following existing sections: subsection A is § 2.1-173, subsection B is § 2.1-174, subsection C is § 2.1-175, and subsection D is § 2.1-176. Those existing sections refer also to the Comptroller but have been deleted here since this proposed section deals with the State Treasurer. The same authority given to the Comptroller is in a corresponding section set out in the chapter dealing with the Comptroller to ensure that this authority is maintained. The terms "chief" and "clerk" have been replaced with "Treasurer" and "administrative assistant."

~~§ 2.1-178. Treasury Board generally.~~

~~The State Treasurer, the Comptroller, the Tax Commissioner, and four additional members to be appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, at the first session subsequent to such appointment, which members shall serve at the pleasure of the Governor, shall constitute and be known as the Treasury Board. The State Treasurer shall act as the Chairman, and the Board shall elect a Secretary either from its own membership or from without. The Board shall have regularly scheduled meetings at least monthly, and shall keep a regular and sufficient set of books, wherein shall be recorded all of their proceedings and any action taken by them with respect to any funds which by any provision of law are required to be administered by the Treasury Board. Four members of the Board shall constitute a quorum. The members appointed by the Governor should have a background and experience in financial management and investments, and shall receive necessary traveling and other expenses incurred in performing official duties as members of the Board.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

~~§ 2.1-179. Powers and duties of Treasury Board.~~

~~The powers and duties of the Treasury Board shall be as follows:~~

- ~~1. To exercise general supervision over all investments of state funds;~~
- ~~2. To give advice and supervision in the financing of state buildings and to make recommendations, as requested, to the Governor on methods by which capital outlay requirements of the Commonwealth, including its agencies and institutions, may be financed;~~
- ~~3. To control and manage all sinking funds and other funds in possession of the Commonwealth in a fiduciary capacity;~~
- ~~4. To administer the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.);~~

~~5. Notwithstanding any provisions to the contrary, to make recommendations to the Governor on proposed bond issues or other financing arrangements, to approve the terms and structure of bonds or other financing arrangements executed by or for the benefit of educational institutions and state agencies other than independent state authorities, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;~~

~~6. As to any tax exempt bonds for which it has issuing authority, either by statute or by act of the General Assembly, to take or cause to be taken and omit to take all actions, the taking or omission of which is necessary on behalf of the Commonwealth to prevent such bonds from being or becoming subject to federal income taxation or being considered to be "arbitrage bonds" within the meaning of federal tax laws, including compliance with the arbitrage rebate provisions thereof;~~

~~7. Notwithstanding any provisions to the contrary, to approve the terms and structure of bonds or other financing arrangements executed by or for the benefit of state agencies, boards and authorities where debt service payments on such bonds or other financing arrangements are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;~~

~~8. To establish debt structuring guidelines for bonds or other financing arrangements executed by or for the benefit of all state agencies, institutions, boards, and authorities where the debt service payments on such bonds or other financing arrangements are expected to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth, in which guidelines the Treasury Board may, in its sole discretion, include such items as it deems necessary and appropriate, including, but not limited to, defining terms such as "terms and structure" and "bonds and other financing arrangements" and exempting from its review and approval pursuant to subdivision 5 or 7 of this section (a) specific bond issues and other financing arrangements, (b) certain types or classes of bond issues and other financing arrangements, and (c) bond issues and other financing arrangements that are below a stated dollar amount;~~

~~9. To do all acts and things necessary or convenient to efficiently carry out and enforce the powers granted to and duties imposed on it by law, including delegating to the State Treasurer or to a committee composed of not less than three members of the Treasury Board such powers and duties, as it may deem proper, to the extent designated and permitted by the Treasury Board;~~

~~10. To exercise such other powers and perform such other duties as may be conferred or imposed upon it by law; and~~

~~11. To do all acts and things necessary or convenient to wind down the affairs of, and protect the Commonwealth's interests in such matters that may survive the termination of the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority. Nothing herein shall be construed to amend, enhance or otherwise alter such commitments, security interests, guarantees or other pledges entered into by the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority, acting in their official capacity and effective on or before March 31, 1997.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

~~§ 2.1-179.2. Approval of financial terms of certain contracts; using agencies to procure certain financial services through Treasury Board.~~

~~A. The Treasury Board, or the Board's designee, shall review and approve the financial terms of all contracts for the purchase or financing of the purchase by agencies, institutions, boards and authorities which receive appropriations from the Commonwealth, i.e., the using agencies, of personal property, including personal property to be affixed to realty, whether by lease purchase, installment purchase or otherwise, where payment of~~

~~the purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties.~~

~~B. The Board may specifically exempt from its review and approval specific purchases, and purchases below a stated amount, and may promulgate rules and regulations governing the financial terms of contracts, as described in subsection A herein, including but not limited to the authority to negotiate with a seller or lessor the public or private sale of securities, the security interest which may be granted to a seller or lessor, and the types and value of property which may be acquired under such contracts. Approval of the Board or its designee and compliance with rules and regulations issued pursuant to this section shall be required in addition to and notwithstanding any other provision of law pertaining to the review, approval or award of contracts by agencies and institutions of the Commonwealth.~~

~~C. Notwithstanding any of the foregoing and except as the Board shall direct and authorize otherwise, every using agency shall procure through the Treasury Board all contracts for the financing of the purchases described in subsection A or other financial services needed for the purpose of financing such purchases. The Board is hereby authorized to acquire such financing services, which may include but are not limited to employing financial advisors and private or public placement agents.~~

~~D. An agency, institution, board, or authority which receives appropriations from the Commonwealth shall procure state agency energy efficiency projects under this section. State agency energy efficiency projects may include personal property, the installation or modification of an installation in a building, and professional, management, and other special services which are primarily intended to reduce energy consumption and demand, or allow the use of an alternative energy source, and which may contain integral control and measurement devices.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

§ 2.1-179.3. Use of bond anticipation notes by the Treasury Board.

~~Whenever the General Assembly has enacted legislation pursuant to Article X, Section 9 (b), (c), or (d) of the Constitution of Virginia authorizing the issuance of bonds for capital projects of the Commonwealth or any state agency, institution, board, or authority (a "state instrumentality") where debt service payments on such bonds are expected to be made in whole or in part from appropriations of the Commonwealth, the Treasury Board, by and with the consent of the Governor, is hereby authorized to borrow money in anticipation of the issuance of such bonds to provide funds, with any other available funds, to pay the costs of acquiring, constructing, renovating, enlarging, improving, and equipping any one or more of the capital projects for which such bonds have been authorized. Any such borrowing shall be evidenced by notes of the Commonwealth which shall be in such form, shall be executed in such manner, shall bear interest at such rate or rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Treasury Board, or the State Treasurer when authorized by the Treasury Board, may determine. Such notes may bear interest at a rate or rates subject to inclusion in gross income for federal income tax purposes as may be determined by the Treasury Board, by and with the consent of the Governor. Such notes may be made payable from the proceeds of the bonds, other notes, or other sources of funds authorized by the General Assembly. The proceeds of the notes, to the extent not required to pay the principal or interest on maturing notes, or expenses associated therewith, shall be paid or otherwise made available to the Commonwealth or appropriate state instrumentality to pay the costs of such capital projects; however, the undertaking and obligation of (i) the Treasury Board to make such note proceeds available to the state instrumentality and (ii) the state instrumentality to pay or provide for the payment of the interest and principal coming due on the notes and to issue its own bonds or otherwise retire the notes within five years of the date of their initial issuance shall be set forth in a written agreement between the Treasury Board and the state instrumentality. No such notes shall be issued by the Treasury Board for or on behalf of a state instrumentality unless the Treasury Board shall have first determined that such written agreement provides reasonable assurance of the full and timely payment of the debt service on the notes.~~

~~No law authorizing the issuance of bonds and notes for which bond anticipation notes have been issued by the Treasury Board shall be repealed or otherwise vitiated without first providing for the payment of the related bond anticipation notes of the Treasury Board.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

~~§ 2.1-179.4. Issuance of refunding bonds by the Treasury Board.~~

~~The Treasury Board is authorized, by and with the consent of the Governor, to sell and issue, from time to time, refunding bonds of the Commonwealth to refund any or all of the Commonwealth's bonds or other debt. The aggregate principal amount of such refunding bonds shall not exceed the amount required to redeem or otherwise provide for the payment of the unpaid principal of and interest on and any redemption premium payable on the bonds to be refunded to their date of redemption or payment, plus all expenses incurred in such refunding transaction.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

~~§ 2.1-179.5. Combined issuance of general obligation debt by the Treasury Board.~~

~~Bonds and notes issued by the Treasury Board may be issued and sold at the same time with other bonds and notes issued by the Treasury Board either as separate issues, a combined issue, or a combination of both.~~

DRAFTING NOTE: Technical corrections. Sections § 2.1-178 through 2.1-179.5 relating to the Treasury Board have been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

~~§ 2.1-180, 2.2-XXX. (Effective October 1, 1998) Payment of state funds into state treasury; deposits in state depositories; credit of fund not paid into general fund; exceptions as to endowments and gifts to institutions; appropriations by federal government.~~

Every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not, collecting or receiving public funds, or moneys from any source, belonging to or for the use of the Commonwealth, or for the use of any state agency, shall hereafter pay the same promptly into the state treasury, without any deductions on account of salaries, fees, costs, charges, expenses, refunds, or claims. All fees of office and commissions accruing to the State Treasurer shall be paid into the state treasury.

Any state department, division, officer, board, commission, institution or other agency at the seat of government shall deposit such moneys to the credit of the State Treasurer upon communicating with him and receiving instructions from him as to what state depository may be used for the purpose. In every such case the depositor shall retain a deposit receipt or a certificate of the deposit certified by the bank receiving the deposit for every such deposit to the State Treasurer and send to the Comptroller a copy of the deposit receipt, certificate, or other documentation supporting the deposit, as prescribed by the Comptroller.

Any state department, division, officer, board, commission, institution or other agency not at the seat of government, other than county and city treasurers and clerks of courts, depositing such moneys to its or his credit in local banks shall deposit such moneys to the credit of the State Treasurer in a state depository duly designated in pursuance of accordance with this chapter ~~as such~~, and in every such case ~~such the~~ depositor shall retain a deposit receipt or a certificate of the deposit certified by the bank receiving the deposit for every ~~such~~ deposit to the State Treasurer and send to the Comptroller a copy of the deposit receipt, certificate, or other documentation supporting the deposit, as prescribed by the Comptroller. Moneys deposited into such state depositories shall be transferred to a concentration bank as prescribed by the State Treasurer.

Moneys paid into the state treasury which are not now payable into the general fund of the state treasury shall be placed to the credit of the respective accounts which are required by law to be kept on the books of the Comptroller or to the credit of new accounts to be opened on the books of the Comptroller with such agencies so paying such moneys into the state treasury, respectively.

This chapter shall not apply to the endowment funds or gifts to institutions owned or controlled by the Commonwealth, or to the income from such endowment funds or gifts, or to private funds belonging to the students or inmates of state institutions. The cash as well as the notes of student loan funds shall be held by the respective institutions.

Appropriations made by the government of the United States to or for the benefit of any state institution or agency, however, shall be paid into the state treasury and used for the purposes for which such appropriations were made.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-180.4~~ 2.2-XXX. State Treasurer; regulation procedures for depositing money.

The State Treasurer may ~~promulgate~~ adopt regulations or other directives establishing procedures for depositing moneys in depository banks and for reporting ~~such the~~ deposits. ~~Such The~~ regulations may address, by way of explanation and not limitation: (i) the form of the required reports; (ii) the frequency of reports and deposits; (iii) the disposition of checks; and (iv) the establishment of banking relationships. All agencies and entities depositing moneys to the credit of the Treasurer of Virginia, including judicial and legislative service agencies, clerks of court, local treasurers or other officials performing similar duties, and political subdivisions, shall comply with the State Treasurer's regulations or other directives.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-182~~ 2.2-XXX. Payment by delivery of checks, etc., to State Treasurer; liability when not paid on presentation.

Any public officer, or any firm or corporation, or any other person having to pay money into the treasury may make ~~such~~ payment by delivering to the State Treasurer a check, draft or certificate of deposit, drawn or endorsed, payable to the State Treasurer, or his order, or may make ~~such~~ payment by delivering to the State Treasurer the proper amount of lawful money. Should any check, draft, or certificate of deposit not be paid on presentation, the amount thereof, with all costs, shall be charged to the person on whose account it was received, and his liability and that of his sureties, except the additional liability for costs, shall be as if he had never offered any such check, draft, or certificate of deposit.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-183~~ 2.2-XXX. Records of receipts of such checks, etc.; reports to Comptroller.

A. The State Treasurer shall keep a record of every such check, draft, or certificate of deposit, and of all such moneys received by him, and upon receipt thereof, ~~forthwith~~ shall cause the same to be placed to the credit of the Commonwealth with some state depository. If any check, draft, or certificate of deposit is not ~~be~~ paid on presentation, the State Treasurer shall immediately notify the Comptroller, who shall proceed to collect the amount thereof from the person from whom the same was received by the Treasurer. The State Treasurer shall daily transmit to the Comptroller a detailed record of all receipts, ~~giving the details thereof~~.

B. The State Treasurer shall not collect any money on a check, draft, or certificate of deposit; but the same shall, in every case, be properly endorsed and deposited by him with some state depository for the credit of the Commonwealth.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-183 and subsection B is § 2.1-184.

~~§ 2.1-184. State Treasurer to deposit such checks, etc.~~

~~The State Treasurer shall not collect any money on such check, draft, or certificate of deposit; but the same shall, in every case, be by him properly endorsed and deposited, as aforesaid, with some state depository for the credit of the Commonwealth.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (§ 2.1-183).

~~§ 2.1-185~~ 2.2-XXX. Investment of current funds in state treasury; withdrawals and transfers of moneys to be invested.

The Governor and State Treasurer, acting jointly ~~are authorized and empowered, may~~ whenever in their opinion there are funds in the state treasury in excess of the amount required to meet the current needs and demands of the Commonwealth, ~~to invest such the excess funds in securities that are legal investments under the laws of the Commonwealth for public funds. The funds shall be invested in such of said securities as, in their judgment, will be readily convertible into money. Notwithstanding the provisions of § 2.1-226~~ 2.2-XXX (xref) or any other provision relating to the withdrawal of state moneys in a ~~State Depository~~ state depository, withdrawals and transfers of state moneys to be so invested may be made by ~~State Depositories~~ state depositories pursuant to oral (including telephonic) or electronic instructions of the State Treasurer or his duly authorized deputies. Written confirmations of ~~such the withdrawals and transfers shall be provided by the State Depository~~ state depository no later than the close of business on the day following the withdrawal and transfer. Payment of state moneys pursuant to this procedure shall be valid against the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-186~~ 2.2-XXX. Investments, etc., in custody of State Treasurer.

The State Treasurer shall be charged with the custody of all investments and invested funds of the Commonwealth or in possession of the Commonwealth in a fiduciary capacity, and ~~with the keeping of~~ shall keep the accounts of such investments. The State Treasurer shall also be charged with the custody of all bonds and certificates of the state debts, whether unissued or canceled, and with the receipt and delivery of state bonds and certificates for transfer, registration or exchange.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-187~~ 2.2-XXX. State Treasurer may sell securities in general fund; exceptions; disposition of proceeds.

The Treasurer is ~~authorized, when in his discretion he deems proper, to~~ may sell, transfer, and convey any notes, bonds, obligations or certificates of stock held in the general fund of the state treasury. The proceeds from any such sale or disposition shall immediately be paid into the general fund. This section shall apply to any ~~such present or future holdings and to those hereafter acquired.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-188~~ 2.2-XXX. Warrants on state treasury to be listed and numbered.

The State Treasurer shall keep a list of all warrants drawn upon the state treasury, numbered consecutively.

No information contained in the list of warrants shall be released for any purpose except as a means of establishing the status of a claim previously reported as having been paid when a person legally entitled to the funds presents evidence that a previously submitted claim has not been paid.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-189~~ 2.2-XXX. State Treasurer to keep accounts with depositories.

The State Treasurer shall keep accounts on the books of his office with the different depositories, on which accounts balances shall be struck monthly, showing the amount in bank to the credit of the State Treasurer at the end of each month.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-190~~ 2.2-XXX. Unpresented checks drawn by State Treasurer; reissue and payment.

The State Treasurer shall report and remit, pursuant to the provisions of §§ 55-210.9, 55-210.12 and 55-210.14, all checks drawn by him on state depositories which have not been presented for payment within one year from the date of issuance.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-190.1~~ 2.2-XXX. Admissibility of reproductions of checks in evidence; compliance with subpoena.

A. A reproduction of any check or draft or an enlargement of such reproduction drawn by the State Treasurer of Virginia, when satisfactorily identified, is shall be as admissible in evidence as the original itself in any judicial or administrative proceeding, ~~civil or criminal, whether the original is in existence or not and a satisfactorily identified enlargement of such reproduction is likewise admissible.~~ The introduction of a reproduced check or draft or of an enlargement thereof ~~does~~ shall not preclude admission of the original. Any such check or draft, reproduction or enlargement purporting to be sealed, sealed and signed, or signed alone by the State Treasurer or on his behalf by ~~an employee of the Commonwealth of Virginia designated by the State Treasurer~~ his designee, may be considered satisfactorily identified and admitted as evidence, without any proof of the seal or signature, or of the official character of the person whose name is signed to it.

B. The State Treasurer ~~or an employee of the Commonwealth of Virginia designated by the State Treasurer~~ his designee, when served with any summons, subpoena, subpoena duces tecum or order, directing him to produce any check or draft kept by or in the possession of any agency or institution of the Commonwealth, may comply ~~therewith~~ by certifying a reproduction or enlargement thereof in accordance with ~~the preceding subsection~~ subsection A and mailing ~~such the~~ reproduction or enlargement in a sealed envelope to the clerk of court. Upon good cause shown, any court may direct the Treasurer or ~~an employee of the Commonwealth of Virginia designated by the State Treasurer~~ his designee to appear personally, notwithstanding any other provision of this section.

DRAFTING NOTE: Technical corrections only.

Article 2.

State Depositories.

§ ~~2-1-209~~ 2.2-XXX. Deposits in banks and savings institutions designated as state depositories.

Moneys to be hereafter paid into the state treasury shall be deposited in ~~such the~~ banks and savings institutions ~~as shall be designated~~ as state depositories by the State Treasurer.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-210~~ 2.2-XXX. Amount and time limit of deposits.

The State Treasurer may arrange for and make state deposits in such amounts and for such time as in his judgment the condition of the state treasury permits; ~~however.~~ However, no state deposit shall be made for a period in excess of five years. The money deposited in a bank or savings institution in excess of the amount insured by the Federal Deposit Insurance Corporation or other federal insurance agency shall be fully collateralized by eligible collateral as defined in ~~§-2.1-360 (e)~~ 2.2-XXX (xref).

DRAFTING NOTE: Technical corrections only.

~~§-2.1-214~~ 2.2-XXX. Security to be given by depositories holding state funds.

No state funds shall be deposited in any depository unless it is a "qualified public depository" as defined in ~~§-2.1-360(b)~~ 2.2-XXX (xref). For purposes of this article, "state funds" means public funds or moneys from any source, belonging to or for the use of the Commonwealth, or for the use of any state department, division, officer, board, commission, institution, or other agency or authority owned or controlled by the Commonwealth. All state funds shall be secured pursuant to the Virginia Security for Public Deposits Act (~~§-2.1-359 et seq.~~ 2.2-XXX xref).

DRAFTING NOTE: Technical corrections only.

~~§-2.1-219~~ 2.2-XXX. How public moneys transferred to depositories.

All transfers of public moneys from one depository to another for any purpose shall be made ~~upon drafts drawn by~~ by electronic funds transfer at the direction of the State Treasurer or his duly authorized deputies, ~~and made payable to the depository to which the money is to be transferred for deposit to the credit of the State Treasurer, or shall be made by wire transfer, at the direction of the State Treasurer or his duly authorized deputies,~~ which shall order the transferor bank to make payment to the transferee bank for deposit to the credit of the State Treasurer.

DRAFTING NOTE: Technical corrections. This section has been amended as recommended by the Department of the Treasury because all transfers between depository accounts are made by electronic means, either through wire transfer or an automated clearing house transfer. As a result, a wire generic term "electronic funds transfer" is used in this section to describe the electronic mechanisms currently in use. Written drafts are no longer used.

~~§-2.1-220~~ 2.2-XXX. Commonwealth shall not be liable for loss in collection of checks, etc.

The Commonwealth shall not be liable for any loss resulting from lack of diligence on the part of any depository in forwarding, or in failing to collect, any ~~such~~ check, draft, or certificate of deposit as is referred to in ~~§-2.1-182~~ 2.2-XXX (xref), or for the loss of any ~~such~~ check, draft, or certificate of deposit in transmission through the mails or otherwise.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-223~~ 2.2-XXX. Responsibility of Commonwealth for securities deposited with Commonwealth Transportation Board.

The Commonwealth shall be responsible for the safekeeping of all bonds or other securities deposited with the Commonwealth Transportation Commissioner or the Commonwealth Transportation Board as surety on account of funds deposited in banks by division engineers of the Department of Transportation, ~~going into their custody under the provisions of §-2.1-230, and, if~~ If such bonds or securities or any of them ~~shall be~~ are lost, destroyed or misappropriated, the Commonwealth shall make good such loss to the bank making ~~such~~ the deposit of its bonds or other securities.

Upon the closing of accounts of district engineers with banks, its bonds and other securities then on deposit shall be returned to ~~such banks~~ the bank.

DRAFTING NOTE: Technical corrections. References to § 2.1-230 have been deleted since that section was repealed by Chapter 215 of the 1979 Acts of Assembly.

Article 3.

Disbursement From State Treasury.

~~§ 2.1-224 2.2-XXX.~~ Payments to be ~~in pursuance of~~ made in accordance with appropriations; submission and approval of quarterly estimates.

No money shall be paid out of the state treasury except in ~~pursuance of~~ accordance with appropriations made by law.

No appropriation to any department, institution or other agency of the state government, except the General Assembly and the judiciary, shall become available for expenditure until the agency ~~shall submit~~ submits an annual estimate of the amounts required for each activity to the Director of the Department of Planning and Budget ~~annual estimates of the amount required for each activity to be carried on, and such estimates shall have been approved by the~~ and Governor for approval by the Governor.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-225 2.2-XXX.~~ Filing of statements by certain recipients of state funds; what statements must show.

A. All persons, firms, corporations, associations, groups, and organizations of ~~whatsoever~~ whatever nature to which appropriations are made in the ~~act appropriating appropriations act the public revenue by~~ specific designation, except associations and organizations receiving funds under §§ 10.1-812, 10.1-813 and 10.1-814, shall annually file with the Comptroller a certified statement showing in detail ~~the their~~ receipts and expenditures thereof. ~~Such~~ The statement shall show the compensation, either by salary, bonus, or otherwise paid out to and paid any officer or employee who receives in excess of \$1,000 per year.

B. It shall be unlawful for the Comptroller ~~of this Commonwealth~~ to pay any appropriation to any ~~such of the foregoing organization identified in subsection A, unless such the statement required by subsection A has been filed by the association or organization to which this section and the appropriation are applicable with the~~ Comptroller.

C. The provisions of this section shall not apply to any state agency, officer or employee.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-226 2.2-XXX.~~ Deposits to be to credit of State Treasurer; how money withdrawn.

All state moneys in a state depository shall stand on the books of such depository to the credit of the State Treasurer. The State Treasurer shall have authority to draw any of the money by his check, by ~~an electronic fund wire or payment system funds transfer,~~ or by any means deemed appropriate and sound by the State Treasurer and approved by the Governor, drawn upon a warrant issued by the Comptroller. If any money to his credit, as ~~aforesaid,~~ shall be knowingly paid otherwise than upon his check, ~~electronic fund wire or payment system funds transfer~~ or by alternative means specifically approved by the State Treasurer and the Governor, drawn upon such warrant, the payment shall not be valid against the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-227 2.2-XXX.~~ Conditions to issuance of disbursement warrants.

The Comptroller shall not issue a disbursement warrant unless and until he ~~shall have~~ has audited, through the use of statistical sampling or other acceptable auditing techniques the bill, invoice, account, payroll or other evidence of the claim, demand or charge and satisfied himself as to the regularity, legality and correctness of the expenditure or disbursement, and that the claim, demand or charge has not been previously paid. If he ~~be~~ is so satisfied, he shall approve the same; otherwise, he shall withhold his approval. In order that such regularity and legality may appear, the Comptroller may, by general rule or special order, require ~~such the~~ certification or ~~such other~~ evidence as the circumstances may demand.

DRAFTING NOTE: Technical corrections only.

§ 2-1-228 2.2-XXX. Lump-sum transfers prohibited.

~~Except as hereinafter provided, lump-sum~~ Lump sum transfers of appropriations to state departments, divisions, offices, boards, commissions, institutions and other agencies owned or controlled by the Commonwealth, whether at the seat of government or not, ~~are shall be prohibited except for~~ are shall be prohibited except for. ~~But nothing in this section shall be construed as preventing the payment to or distribution among the political subdivisions of the Commonwealth of any appropriations made to them by law.~~

DRAFTING NOTE: Technical corrections only.

§ 2-1-229 2.2-XXX. Petty cash, payroll and other funds.

A reasonable petty cash, payroll or other imprest fund may be allowed each state department, institution, board, commission or other agency. The amount of such fund ~~or funds~~ shall be fixed by the Comptroller in each case, but these funds shall be reimbursed only upon vouchers audited by the Comptroller.

DRAFTING NOTE: Technical corrections only.

§ 2-1-234 2.2-XXX. Issuance of warrants for payment of claims; Comptroller to keep and sign register of warrants issued; signing of checks drawn on such warrants; electronic payment systems.

After the allowance of any claim which is payable out of the state treasury, under any of the provisions of this title, a warrant shall be issued for the sum to be paid. A register of all warrants so issued shall be kept by the Comptroller, which register and a duplicate register for the State Treasurer shall, from time to time, be signed by the Comptroller or by such deputy ~~or deputies~~ as he may designate for that purpose. The Comptroller shall not be required to sign ~~such the~~ warrants.

All checks drawn upon ~~such warrants as shown by~~ such the register and duplicate register, signed by the Comptroller or his deputy, shall be signed by the State Treasurer, or by such deputy ~~or deputies~~ as he may designate for that purpose. ~~Such The~~ Such The signature may be made by means of a mechanical or electrical device selected by the State Treasurer. ~~Such The~~ Such The device shall be safely kept so that no one ~~shall will~~ shall will have access ~~thereto to it~~ thereto except the State Treasurer and his deputies authorized to sign warrants ~~as herein provided~~.

However, when deemed appropriate, the State Treasurer may utilize various electronic payment systems in lieu of issuing checks drawn upon warrants.

DRAFTING NOTE: Technical corrections only.

§ 2-1-232 2.2-XXX. Issuance of duplicate replacement warrants generally.

Upon satisfactory proof ~~being~~ presented to the Comptroller or to the State Treasurer that any warrant drawn by either the Comptroller or the State Treasurer, or by a predecessor, upon the state treasury has been lost or destroyed before having been paid, the Comptroller or State Treasurer who issued, or from whose office was issued, the original warrant shall issue a duplicate therefor replacement of the original warrant. The Comptroller or the State Treasurer may require a bond to be executed, with such security ~~as is~~ as is approved by him, payable to the

Commonwealth, in the ~~penalty of the amount of the warrant and conditioned to save harmless the Commonwealth from any loss occasioned by the issuing of the~~ duplicate-replacement warrant. Every ~~duplicate-replacement~~ warrant shall show upon its face that it is a ~~duplicate-replacement~~.

In the discretion of the State Treasurer, state warrants in payment and redemption of previously lost or otherwise unpaid warrants may be issued directly to the person ~~or persons~~ entitled to the money as the owner, heir, legatee, or as fiduciary of the estate of the deceased owner, heir, or legatee, and in such cases shall not be issued to a named attorney-in-fact, agent, assignee, or any other person regardless of a written instruction to the contrary. In such circumstances, the State Treasurer may refuse to recognize and is not bound by any terms of a power of attorney or assignment that may be presented as having been executed by a person as the purported owner, heir, legatee or fiduciary of the estate of a deceased owner of such warrants.

DRAFTING NOTE: Technical corrections. The Department of the Treasury recommends substituting "duplicate" with "replacement" warrant because in current practice duplicate warrants are not issued. The replacement warrant is not a duplicate since its date and check number are different.

~~§ 2.1-233~~ 2.2-XXX. When ~~duplicate-replacement~~ warrant issued without bond.

~~If the~~ No bond shall be required where an original warrant was issued: ~~(1) to (i) any eleemosynary or educational institution of the Commonwealth for money appropriated to the institution, (2) to (ii) the treasurer of any county or city in the Commonwealth for money apportioned to it out of the school fund and to be disbursed by the treasurer in payment of school warrants, or to be issued to any district school board of any county for money to be disbursed by the board in payment and settlement of any claims lawfully contracted in the operation of the public schools in the district, or in the construction of graded school buildings, or (3) to (iii) the treasurer of any county or city in the Commonwealth for money apportioned to it from the gas tax, and such warrant has been lost or destroyed without having been paid,~~ The Comptroller or the State Treasurer who issued the original warrant, or from whose office the same it was issued, or if issued by his predecessor, shall issue a duplicate replacement warrant therefor, showing upon. The replacement warrant shall show on its face that it is a duplicate replacement, and shall be issued within thirty days from the date of issuing the original warrant, upon satisfactory proof of the loss or destruction of the original warrant; ~~and in any such case no indemnifying bond shall be required.~~

DRAFTING NOTE: Technical corrections only.

Article 4.

Revenue Stabilization Fund.

~~§ 2.1-191.4~~ 2.2-XXX. Creation of Revenue Stabilization Fund.

There is hereby established a fund to be known as the Revenue Stabilization Fund (the "Fund") for the stabilization of the expected revenues of the Commonwealth. The Fund shall be available to offset, in part, anticipated shortfalls in revenues when appropriations based on previous forecasts exceed expected revenues in subsequent forecasts.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-191.2~~ 2.2-XXX. Reports of Auditor of Public Accounts; Fund deposits and withdrawals.

A. On or before December 1 of each year, the Auditor of Public Accounts shall report to the General Assembly the certified tax revenues collected in the most recently ended fiscal year. The Auditor shall, at the same time, (i) provide his report on the ten percent limitation and the amount which could be paid into the Fund. ~~The Auditor shall, at the same time, also report and~~ (ii) the amount necessary for deposit for the next fiscal year into the Fund in order to satisfy the mandatory deposit requirement of Article X, Section 8 of the Constitution of Virginia. The Governor shall include any such amount in his budget bill submitted to the General Assembly pursuant to ~~§ 2.1-399~~ (xref). A schedule of deposits may be provided for in the Appropriation Act.

B. The State Comptroller shall draw such warrants as appropriated and the State Treasurer of Virginia shall deposit such warrants into the Fund. No amounts shall be withdrawn from the Fund except pursuant to in ~~pursuance of appropriations~~ made by the General Assembly in accordance with ~~§ 2.1-191.3~~ 2.2-XXX (xref). However, if any amounts accrue, such as through interest or dividends, to the credit of the Fund in excess of the ten percent limitation calculated by the Auditor of Public Accounts, any ~~such~~ excess shall be paid into the general fund pursuant to Article X, Section 8 of the Constitution of Virginia.

C. For the purposes of the Comptroller's preliminary and final annual reports as required by ~~§ 2.1-207~~ 2.2-XXX (xref), all balances remaining in the Fund on June 30 of each fiscal year shall be considered to be a portion of the fund balance of the general fund of the state treasury.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-191.3~~ 2.2-XXX. Decline in forecasted revenues.

In the event that a revised general fund forecast presented to the General Assembly reflects a decline when compared to total general fund revenues appropriated, and ~~in the further event such~~ the decrease is more than two percent of certified tax revenues collected in the most recently ended fiscal year, the General Assembly may appropriate an amount for transfer from the Fund to the general fund to stabilize the revenues of the Commonwealth; ~~however,~~ However, in no event shall the transfer exceed more than one-half of the forecasted shortfall in revenues.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-191.4~~ 2.2-XXX. Sources or components of "general fund revenues."

Any revised general fund revenue forecast presented to the General Assembly for purposes of this article shall consist of the same revenue sources or components as those on which the total general fund revenues appropriated are based.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.1~~. Short title.

~~This article may be cited as the "Investment of Public Funds and Local Government Investment Pool Act."~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.2~~. Findings and purpose.

~~A. The General Assembly finds that the public interest is served by maximum and prudent investment of public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments. In selecting among avenues of investment, the highest rate of return, consistent with safety and liquidity, shall be the objective.~~

~~B. The purpose of this article is to secure the maximum public benefit from the deposit and investment of public funds, and, in furtherance of such purposes:~~

- ~~1. To establish and maintain a continuing statewide policy for the deposit and investment of public funds;~~
- ~~2. To establish a state administered pool for the investment of local government funds; and~~

~~3. To authorize treasurers or any other person collecting, disbursing, or otherwise handling public funds to invest such public funds either under the state policy or through the local government investment pool created by the article.~~

~~C. The General Assembly finds that the objectives of this article will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.3. Definitions.~~

~~As used in this article.~~

~~1. "Local official handling public funds" or "official" means any person or entity described in the opening paragraph of § 2.1-327.~~

~~2. "Depository institution" means any commercial bank or trust company, savings institution, (or building and local association) insured by an agency or instrumentality of the United States government.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.4. Investment authority.~~

~~Subject to the procedures set forth in this article, any local official handling public funds may invest and reinvest any money subject to his control and jurisdiction in the local government investment pool established by § 2.1-234.8.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.5. Collateral conditions.~~

~~Local officials handling public funds in this Commonwealth may not require from a depository institution any pledge of collateral for such official's deposits in such institution which is in excess of the requirements of the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.)~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.6. Interfund pooling for investment purposes.~~

~~Local officials handling public funds are hereby authorized and encouraged to effect temporary transfers among separate funds for the purpose of pooling amounts available for investment; this pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting provided that:~~

- ~~1. Moneys are available for the investment period required;~~
- ~~2. The investment fund can repay the advance by the time needed;~~
- ~~3. The transactions are fully and promptly recorded; and~~

~~4. The interest earned is credited to the loaning or advancing jurisdiction.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.7. Powers of Treasury Board.~~

~~A. The Treasury Board shall have power:~~

~~1. To make and promulgate regulations necessary and proper for the efficient administration of the local government investment pool hereinafter created, including but not limited to:~~

~~a. Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;~~

~~b. Creation of a reserve for losses;~~

~~c. Payment of administrative expenses from the earnings of the pool;~~

~~d. Distribution of the earnings in excess of such expenses, or allocation of losses, to the several participants in a manner which equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and~~

~~e. Procedures for the deposit and withdrawal of funds.~~

~~2. To develop guidelines for the protection of the pool in the event of default in the payment of principal or interest or other income of any investment of the investment pool, such guidelines to include the following procedures:~~

~~a. Instituting the proper proceedings to collect the matured principal or interest or other income;~~

~~b. Accepting for exchange purposes refunding bonds or other evidences of indebtedness at appropriate interest rates;~~

~~c. Making compromises, adjustments, or disposition of matured principal or interest or other income as considered advisable for the purpose of protecting the moneys invested;~~

~~d. Making compromises or adjustments as to future payments of principal or interest or other income considered advisable for the purpose of protecting the moneys invested.~~

~~3. To formulate policies for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.~~

~~B. The Treasury Board may delegate the administrative aspects of operating under this article to the State Treasurer, subject to the regulations and guidelines promulgated by the Board.~~

~~C. Such regulations and guidelines may be promulgated without complying with the Administrative Process Act (§ 9-6.14:1 et seq.) provided that input is solicited from local officials handling public funds. Such input requires only that notice and an opportunity to submit written comments be given.~~

~~D. The Treasury Board may determine when the first deposits into the investment pool will be accepted, considering the physical capability of the office of the State Treasurer to administer such pool.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.8. Local government investment pool.~~

~~A. A local government investment pool is hereby created, consisting of the aggregate of all funds from local officials handling public funds that are placed in the custody of the State Treasurer for investment and reinvestment as provided herein.~~

~~B. The Treasury Board or its delegate shall administer the local government investment pool on behalf of the participating local officials subject to regulations and guidelines promulgated by the Treasury Board.~~

~~C. The Treasury Board or its delegate shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth for local officials in Chapter 18 (§ 2.1-327 et seq.) of this title.~~

~~D. A separate account for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.~~

~~E. The Treasury Board or its delegate shall administer and handle such accounts in the same manner as bond and sinking fund trust accounts.~~

~~F. The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the local government investment pool shall be subject to payment at any time from the pool upon request, subject to applicable regulations and guidelines. Accumulated income shall be remitted or credited to each participant at least quarterly.~~

~~G. Except as provided in this section, all instruments of title of all investments of the investment pool shall remain in the custody of the State Treasurer. The State Treasurer may deposit with one or more fiscal agents or banks, those instruments of title he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale. The State Treasurer shall collect the principal and interest or other income from investments of the investment pool, the instruments of title to which are in his custody, when due and payable.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9. Article controlling over inconsistent laws; powers supplemental.~~

~~Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:1. Authorization to Treasury Board to provide certain assistance.~~

~~A. This article shall be known, and may be cited, as the "Government Non-Arbitrage Investment Act."~~

~~B. Certain provisions of the federal Tax Reform Act of 1986 have imposed on the Commonwealth, on counties, cities and towns of the Commonwealth, and on their agencies, institutions, and authorities that borrow money the onus of computing an artificial yield on certain investments associated with such borrowing and of~~

~~rebating to the federal government investment earnings in excess of such yield. The administrative and legal requirements of compliance with such provisions are extensive, complicated and expensive. The General Assembly, therefore, authorizes the Treasury Board to make available to the Commonwealth, to counties, cities and towns in the Commonwealth, and to their agencies, institutions, and authorities or any combination of the foregoing assistance as provided in this article in making and accounting for such investments.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:2. Definitions.~~

~~As used in this article:~~

~~"Bonds" means bonds or other obligations issued by the Commonwealth, by counties, cities and towns, and by their agencies, institutions, and authorities or by any combination of the foregoing under the provisions of the Public Finance Act (§ 15.1-227.1 et seq.), or otherwise, the interest on which is intended to be excludable from the gross income of the recipients thereof for federal income tax purposes.~~

~~"Depository institution" means any commercial bank or trust company, savings institution or (building and loan association) insured by an agency or instrumentality of the United States government.~~

~~"Issuers" means the Commonwealth, counties, cities and towns in the Commonwealth, and their agencies, institutions, and authorities.~~

~~"Official handling public funds" or "official" means the treasurer of the issuer or, if there is no officer known as treasurer of the issuer, the chief financial officer of the issuer, and any person or entity described in § 58.1-~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:3. Powers of the Treasury Board.~~

~~The Treasury Board shall have power:~~

~~1. To provide assistance to issuers in the management of and accounting for their funds, including, without limitation, bond proceeds, reserves and sinking funds, and the investment thereof, any portion of the investment earnings on which is or may be subject to rebate to the federal government.~~

~~2. For and on behalf of issuers or a pool or pools, and not for its own account, to manage, acquire, hold, trade and sell investment obligations that are authorized investments for issuer bond proceeds, reserves, sinking funds or other funds, as the case may be.~~

~~3. To establish one or more pools of the issuer bond proceeds, reserves, sinking funds or other funds that are placed in the custody of the State Treasurer for investment and reinvestment in authorized investments.~~

~~4. To promulgate regulations necessary and proper for the efficient administration of the pool or pools authorized by this article without complying with the Administrative Process Act (§ 9-6.14:1 et seq.), provided that notice and an opportunity to submit written comments on such regulations be given to officials handling public funds.~~

~~5. To formulate policies for the investment and reinvestment of funds under management, including funds in the pool or pools, and the acquisition, retention, management and disposition of investments.~~

~~6. To delegate the administrative aspects of operating under this article to the State Treasurer, subject to the regulations and guidelines promulgated by the Treasury Board.~~

~~7. To retain employees and engage and enter into contracts with independent investment managers, accountants, counsel, depository institutions and other advisors and agents, as may be necessary or convenient.~~

~~8. To enter into contracts with issuers with respect to the performance of investment services.~~

~~9. To charge issuers for the costs of its investment services and for its expenses.~~

~~10. To do any and all other acts and things necessary, appropriate or incidental in carrying out the purposes of this article.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:4. Powers of issuers.~~

~~Any provision of any general or special law or of any charter to the contrary notwithstanding, issuers shall have the power and authority to utilize the investment services of the Treasury Board and for that purpose to enter into contracts with the Treasury Board and its agents.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:5. Alternative method.~~

~~This article shall be deemed to provide an additional, alternative method for the performance of actions authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:6. Liberal construction.~~

~~This article, being necessary for the welfare of the people of the Commonwealth, shall be liberally construed to effect the purposes thereof.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

~~§ 2.1-234.9:7. Inconsistent laws inapplicable.~~

~~Insofar as the provisions of this article are inconsistent with the provisions of any general or special laws or charters, or parts thereof, the provisions of this article shall be controlling.~~

DRAFTING NOTE: This article, Article 7 (§§ 2.1-234.1 through 2.1-234.9:7) of Chapter 14, has been moved to Subtitle II, Part B, Transaction of Public Business.

Chapter X.

Department of Technology Planning.

Article 1.

General Provisions.

~~§ 2.1-563.35:4.2.2-XXX.~~ Creation of Department; appointment of Director.

~~A. There is hereby created a Department of Technology Planning. The Department (the "Department") which 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.~~

~~B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.~~

~~Whenever in this title and in the Code of Virginia reference is made to a division, department, or agency hereinafter transferred to this Department, it shall mean the Department of Technology Planning.~~

DRAFTING NOTE: Technical corrections. Subsection A has been amended to comply with existing § 2.1-41.2 which requires that all agency heads appointed by the Governor shall be subject to confirmation by the General Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at the pleasure of the Governor.

~~§ 2.1-563.35:2. Powers and duties of Director.~~

~~The Director of the Department of Technology Planning shall, under the direction and control of the Governor, exercise such powers and perform such 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.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (§ 2.1-563.35:1).

~~§ 2.1-563.35:3.2.2-XXX. General Additional powers of Department.~~

~~A. The Department shall have the following general additional powers, all of which, with the approval of the Director, may be exercised by a division of the Department with respect to matters assigned to that division:~~

~~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, including, but not limited to, contracts with the United States, other state agencies, and political subdivisions of the Commonwealth.~~

~~3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable.~~

~~4.1. Prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter.~~

~~5. Do all acts necessary, convenient, or desirable to carry out the purposes of this chapter.~~

~~B. The Department shall have the following powers and duties concerning the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology:~~

~~1. To monitor.~~ 2. Monitor trends and advances in information technology; develop a comprehensive, statewide, four-year planning process; and plan for the acquisition, management, and use of information technology.

~~2. To plan~~ 3. Plan and forecast future needs for information technology and conduct studies and surveys of organizational structures and best management practices of information technology systems and procedures.

~~3. To assist~~ 4. Assist the Secretary of Technology in the development of statewide policies affecting technology at all levels of government, in the business sector, and among the general citizenry.

~~4. To provide~~ 5. Provide agencies and institutions of higher education with information and guidelines in the development of information management plans and the preparation of budget requests for information technology which are consistent with the policies and procedures developed by the Secretary of Technology, in consultation with the Department of Planning and Budget, for integrating such plans and requests into the Commonwealth's strategic planning and performance budgeting processes.

~~5. To review~~ 6. Review information management plans submitted by agencies and institutions of higher education to the Secretary of Technology. The Department shall recommend to the Secretary of Technology the approval of such plans and any amendments thereto.

~~6. To monitor~~ 7. Monitor implementation of information management plans and periodically report its findings to the Secretary of Technology.

~~7. To develop~~ 8. Develop and promulgate ~~adopt~~ policies, standards, and guidelines for managing information technology in the Commonwealth.

~~8. To review~~ 9. Review agency and institution budget requests for information technology and recommend to the Secretary of Technology budget request priorities for consideration by the Department of Planning and Budget.

~~9. To direct~~ 10. Direct the compilation and maintenance of an inventory of information technology, including, but not limited to, personnel, facilities, equipment, goods, and contracts for services.

~~10. To develop~~ 11. Develop an approval process to ensure that all information technology procurements conform to the statewide information management plan and the information management plans of agencies and institutions of higher education.

~~11. To develop~~ 12. Develop statewide standards for the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth.

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions.

Article 2.

Virginia Technology Infrastructure Fund.

~~§ 9-145.52. Purpose.~~

~~In order for the Commonwealth to fully take advantage of technological applications in providing services and solving problems of Virginia's citizens, there is a need to reinvest savings that accrue from increased usage of technology into new and emerging technologies that will provide for both greater efficiencies and better responsiveness. The purpose of this chapter is to create the Virginia Technology Infrastructure Fund. The Fund shall make moneys available to state agencies and institutions of higher education for information technology demonstration and pilot projects.~~

DRAFTING NOTE: Technical corrections. This section now appears in as subsection B in proposed § 2.2-XXX (§ 9-145.53).

§ 9-145.53. Definitions; purpose.

A. As used in this chapter article, unless the context clearly provides otherwise requires a different meaning:

"Costs" means the reasonable and customary charges for goods and services incurred or to be incurred in the establishment of information technology demonstration and pilot projects.

~~"Fund" means the Virginia Technology Infrastructure Fund.~~

"Technology infrastructure" means telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

B. In order for the Commonwealth to take advantage of technological applications in providing services and solving problems of Virginia's citizens, there is a need to reinvest savings that accrue from increased usage of technology into new and emerging technologies that will provide for both greater efficiencies and better responsiveness. The purpose of this article is to create the Virginia Technology Infrastructure Fund (the "Fund"). The Fund shall make moneys available to state agencies and institutions of higher education for information technology demonstration and pilot projects.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-145.53 and subsection B is § 9-145.52.

~~§ 9-145.54 2.2-XXX. Virginia Technology Infrastructure Fund created; purposes contributions.~~

A. The Virginia Technology Infrastructure Fund is hereby created in the state treasury. The Fund is to be used exclusively for telecommunications and information technology projects which benefit state government as a whole and which serve more than one state agency or institution of higher education.

B. The Fund shall consist of savings which accrue to the Commonwealth's agencies and instrumentalities from reductions in (i) local or long-distance telecommunications service charges and (ii) computer services rates charged by the Department of Information Technology, not to exceed \$200,000 in each fiscal year. However, for institutions of higher education, the savings shall consist only of savings in general fund dollars which accrue to such institutions from the reduction in such charges or rates.

Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.

When charges for local or long-distance telecommunications services or rates for computer services are reduced by the Department of Information Technology, vendors, or state agencies or instrumentalities, the calculated savings data by fund source for each affected state agency or instrumentality shall be provided to the Department of Planning and Budget. In accordance with its authority to do so in the general appropriation act, the Department of Planning and Budget shall then administratively reduce each affected agency's or instrumentality's appropriation and transfer the agreed-upon savings to the Fund.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A § 9-145.54 and subsection B is § 9-145.55.

~~§ 9-145.55. Contributions to the Fund.~~

~~The Virginia Technology Infrastructure Fund shall consist of savings which accrue to the Commonwealth's agencies and instrumentalities from reductions in (i) local or long distance telecommunications service charges and (ii) computer services rates charged by the Department of Information Technology, not to exceed \$200,000 in~~

~~each fiscal year. However, for institutions of higher education, the savings shall consist only of savings in general fund dollars which accrue to such institutions from the reduction in such charges or rates.~~

~~Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.~~

~~When charges for local or long distance telecommunications services or rates for computer services are reduced by the Department of Information Technology, vendors, or state agencies or instrumentalities, the calculated savings data by fund source for each affected state agency or instrumentality shall be provided to the Department of Planning and Budget. In accordance with its authority to do so in the general appropriations act, the Department of Planning and Budget shall then administratively reduce each affected agency's or instrumentality's appropriation and transfer the agreed-upon savings to the Fund.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-145.54) supra.

~~§ 9-145.56~~ 2.2-XXX. Annual plan; allowable uses of Fund.

The Secretary of Technology, with advice from the Council on Technology Services and the Department of Technology Planning, shall prepare a plan which identifies the projects in which the Virginia Technology Infrastructure Fund will participate. ~~Such~~ The plan shall be consistent with the statewide plan developed by the Secretary and shall consider the use of existing resources and long-term operation and maintenance costs. Projects having the greatest benefit to state government as a whole shall have the highest priority in the plan.

DRAFTING NOTE: Technical corrections only.

Article 3.

Virginia Geographic Information Network.

~~§ 2-1-563.36~~ 2.2-XXX. Definitions.

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

"Base map data" means the digitized common geographic data that are used by most geographic information systems applications to reference or link attribute or other geographic data.

~~"Board" means the Virginia Geographic Information Network Advisory Board.~~

"Department" means the Department of Technology Planning.

"Director" means the Director of the Department of Technology Planning.

"Division" means the Geographic Information Network Division.

"Geographic data" means data that contain either coordinates that reference a geographic location or area or attribute data that can be related to a geographic area or location.

"Geographic information system (GIS)" means a computerized system that stores and links geographic data to allow a wide range of information processing and display operations, as well as map production, analysis, and modeling.

DRAFTING NOTE: Technical corrections only. The definition of "Board" has been deleted here since sections dealing with the Virginia Geographic Information Network Advisory Board have been moved to Part D of Subtitle I under the heading of "Boards."

~~§-2.1-563.37~~ 2.2-XXX. Geographic Information Network Division established.

There is hereby established within the Department of ~~Technology Planning~~ a Geographic Information Network Division (the "Division"), which shall foster the creative utilization of geographic information and oversee the development of a catalog of GIS data available in the Commonwealth. The Division shall be headed by a ~~coordinator~~ Coordinator who shall be under the supervision of and report to the Director. The Division shall exercise the powers and duties conferred in this article.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-563.38~~ 2.2-XXX. Powers and duties of the Division; Division coordinator.

A. The powers and duties of the Division shall include:

1. Requesting the services, expertise, supplies and facilities of the Department from the Director on issues concerning the Division.
2. Accepting grants from the United States government and agencies and instrumentalities thereof and any other source. To those ends, the Division shall have the power to comply with such conditions and execute such agreements as may be necessary or desirable.
3. Fixing, altering, charging, and collecting rates, rentals, and other charges for the use or sale of products of, or services rendered by, the Division, at rates which reflect the fair market value.
4. Soliciting, receiving, and considering proposals for funding projects or initiatives from any state or federal agency, local or regional government, institution of higher education, nonprofit organization, or private person or corporation.
5. Soliciting and accepting funds, goods and in-kind services that are part of any accepted project proposal.
6. Establishing ad hoc committees or project teams to investigate related technology or technical issues and providing results and recommendations for Division action.
7. Establishing such bureaus, sections or units as the Division deems appropriate to carry out its powers and duties.

B. ~~The Division shall have a coordinator, under the supervision of the Director, who~~ Coordinator shall:

1. Oversee the development of and recommend to the Council Department the promulgation of those policies and guidelines required to support state and local government exchange, acquisition, storage, use, sharing and distribution of geographic or base map data and related technologies.
2. Foster the development of a coordinated comprehensive system for providing ready access to electronic state government geographic data products for individuals, businesses, and other entities.
3. Initiate and manage projects or conduct procurement activities relating to the development or acquisition of geographic data and/or statewide base map data.
4. Plan for and coordinate the development or procurement of priority geographic base map data.
5. Develop, maintain, and provide, in the most cost-effective manner, access to the catalog of Virginia geographic data and governmental geographic data users.

6. Provide, upon request, advice and guidance on all agreements and contracts from all branches of state government for geographic data acquisition and design and the installation and maintenance of geographic information systems.

7. Compile a data catalog consisting of descriptions of GIS coverages maintained by individual state and local government agencies.

Nothing in this article shall be construed to require that GIS data be physically delivered to the Division. All state agencies that maintain GIS data bases shall report to the Division the details of the data that they develop, acquire, and maintain. ~~This information shall be reported to the Division no later than June 30, 1998, after which each~~ Each agency shall submit quarterly reports to the Division specifying all updates to existing data as well as all data development and acquisition currently in progress. Data exempt from the Virginia Freedom of Information Act (~~§ 2-1-340-2.2-XXX~~ et seq.) need not be reported to the Division.

8. Identify and collect information and technical requirements to assist the Division in setting priorities for the development of state digital geographic data and base maps that meet the needs of state agencies, institutions of higher education, and local governments.

9. Provide services, geographic data products and access to the repository at rates established by the Division.

10. Ensure the compliance of those policies, standards, and guidelines developed by the Department required to support and govern the security of state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-563.392.2-XXX.~~ GIS Fund created.

There is ~~hereby~~ created in the state treasury a special, nonreverting fund to be known as the GIS Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected pursuant to subsection A of ~~§ 2-1-563.38-2.2-XXX~~ shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-563.40 2.2-XXX.~~ Additional powers and duties of Director of the Department.

The Director of the Department ~~of Technology Planning~~ shall have the power and duty, on the recommendation of the Coordinator, to (i) receive and ~~dispense~~ disburse funds; (ii) enter into contracts for the purpose of carrying out the provisions of this article; ~~and~~ (iii) rent office space and procure equipment, goods, and services that are necessary to carry out the provisions of this article; ~~and~~ (iv) ~~employ full-time or part-time personnel and fix their compensation.~~

DRAFTING NOTE: Technical corrections only. Clause (iv) was deleted as duplicative of the general powers of agency directors found in proposed § 2.2-XXX located at the beginning of this Subtitle C.

~~§ 2-1-563.41. Virginia Geographic Information Network Advisory Board created; membership; terms; meetings; quorum.~~

~~A. The Virginia Geographic Information Network Advisory Board (the Board) is hereby created and shall advise the Division on issues related to the exercise of the Division's powers and duties.~~

~~B. The Board shall consist of seventeen members appointed as follows: (i) eleven members to be appointed by the Governor, including: four state agency officials or their designees consisting of the Commonwealth Transportation Commissioner, the Executive Director of the Economic Development Partnership Authority, an agency director from one of the natural resources agencies, and one official from a state university; one elected official representing a local government in the Commonwealth; one member of the Virginia Association of Surveyors; one elected official who serves on a planning district commission; two representatives of utilities or transportation industries utilizing geographic data; and two representatives of private businesses with expertise and experience in the establishment, operation, and maintenance of geographic information systems; and (ii) five members of the General Assembly, three of whom shall be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, and two of whom shall be members of the Senate, to be appointed by the Senate Committee on Privileges and Elections. The Director of the Department of Technology Planning shall serve as an ex officio, voting member. Any members of the Board who are representatives of private businesses that provide geographic information services, and their companies, are precluded from contracting to provide goods or services to the Division.~~

~~C. The gubernatorial appointees to the Board shall serve five year terms, except that three initial appointees shall serve three year terms, three shall serve four year terms, and the remainder shall serve five year terms. Members appointed by the Governor shall serve no more than two consecutive full terms. All members of the Board appointed by the Governor shall be confirmed by each house of the General Assembly. Legislative members' terms shall be coincident with their terms of office.~~

~~D. The Board shall elect from its membership a chairman, vice chairman, and any other officers deemed necessary. The duties and terms of the officers shall be prescribed by the members. A majority of the Board shall constitute a quorum. Members of the Board shall receive no compensation for their services, but the nongovernmental members shall receive actual expenses in accordance with § 2.1-20.8. The Board shall meet at least quarterly or at the call of its chairman or the Director.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Part D of Subtitle I, State Authorities, Boards, etc. under the heading of "Boards".

Chapter X.

Department of Veterans' Affairs.

~~§ 2.1-736. Division continued and redesignated.~~

~~A. The Division of War Veterans' Claims, created pursuant to Chapter 56 of the Acts of Assembly of 1945, sometimes referred to in this chapter as "the Department" is hereby continued and redesignated the Department of Veterans' Affairs.~~

~~B. Whenever in this Code or in any other law of the Commonwealth the term "Division of War Veterans' Claims" is used, it shall be taken to mean the Department of Veterans' Affairs.~~

DRAFTING NOTE: This section has been deleted as obsolete.

~~§ 2.1-737 2.2-XXX. Chief executive officer; appointment Department created; appointment of director..~~

~~The chief executive officer of the Department shall be known as the Director. The Director A. There is created a Department of Veterans' Affairs (the "Department"); which shall be headed by a Director shall be appointed by the Governor, subject to confirmation of the General Assembly, and to serve at the his pleasure of the Governor.~~

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

DRAFTING NOTE: Technical corrections only. Subsection B was added to standardize, among the various agencies in this title, language relating to the Director's exercise of powers/duties conferred by law, etc.

~~§ 2.1-738 2.2-XXX. General-Additional powers and duties of Director.~~

A. The Director shall establish, equip, and operate ~~such offices as may be necessary~~ or desirable to render assistance to veterans of the armed forces of the United States and their Virginia-domiciled surviving spouses, orphans, and dependents in matters of rehabilitation and in the preparation, presentation, and prosecution of all lawful claims, by, or on behalf of, such veterans and their surviving spouses, orphans, and dependents, to obtain the benefit of their rights and privileges under various federal, state, and local laws enacted for their benefit.

B. However, after an original claim has been disallowed by the U.S. Department of Veterans Affairs, the Director may cancel a veteran's power of attorney to the Virginia Department of Veterans Affairs and discontinue representation of that veteran when, in the Director's judgment, the claim is not a lawful one.

C. For the purposes of this section, "lawful claim" means a claim which, to the best of the claimant's knowledge, information and belief, formed after reasonable inquiry, is well-grounded in fact and is warranted by existing law or is a good faith argument for the extension, modification or reversal of existing law related to the application of such claimant's right or privilege.

~~The Director is authorized to employ such personnel as in his judgment may be necessary for the proper operation of such offices and for the proper discharge of the duties and functions of such Department.~~

~~Such offices~~ D. Offices of the Department shall be so located as to make ~~the their services of the Department~~ conveniently available to ~~such~~ veterans and their surviving spouses, orphans, and dependents. Appropriate geographic areas of responsibility shall be assigned from time to time for each office. The various localities in each such area shall be visited by a representative attached to the office having responsibility for the area at such intervals as may be necessary or desirable.

DRAFTING NOTE: Technical corrections. The fourth paragraph has been deleted as duplicative of the general powers of agencies created in this subtitle to employ necessary personnel to carry out their statutory responsibilities (§ 2.2-XXX of Chapter X, General provisions, infra).

~~§ 2.1-739 2.2-XXX. Veterans' cemeteries.~~

In the event that a state veterans' cemetery ~~or cemeteries are~~ is established in the Commonwealth, the Department shall be responsible for the control and operation of ~~such the cemetery or cemeteries.~~

Upon appropriation to the Department of funds necessary to acquire and develop a state veterans' cemetery, the Department shall proceed ~~forthwith~~ promptly to make application to the United States Veterans Administration for available fifty percent matching funds pursuant to Public Law 98-223 (38 U.S.C. § 2408, State Cemetery Grant Program).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-739.1. Virginia Veterans Cemetery Board created; purpose.~~

~~The Virginia Veterans Cemetery Board (the Board) is hereby created and shall be an advisory board within the meaning of § 9-6.25. The Board shall advise and make recommendations to the Department of~~

~~Veterans' Affairs (the Department) regarding the control and operation of such veterans' cemeteries as may be established in the Commonwealth pursuant to § 2.1 739.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1 739.2. Membership; terms; vacancies; chairman and vice chairman; compensation.~~

~~A. The Board shall consist of ten members as follows: three members from the House of Delegates, to be appointed by the Speaker of the House; two members from the Senate, to be appointed by the Senate Committee on Privileges and Elections; and five members from the Commonwealth at large, each of whom shall be a member in good standing of a veteran service organization recognized by the U.S. Department of Veteran Affairs, to be appointed by the Governor.~~

~~B. All appointments to the Board shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Board, and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any member may be reappointed for successive terms.~~

~~C. The members of the Board shall elect a chairman and a vice chairman annually. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are expedient or necessary. A majority of the membership of the Board shall constitute a quorum for all purposes.~~

~~D. Legislative members of the Board shall receive such compensation as is set forth in § 14.1 18, and all members shall be reimbursed for the actual expenses incurred by them in the performance of their Board duties.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1 739.3. Powers and duties of the Board.~~

~~With regard to such veterans' cemeteries as may be established in the Commonwealth pursuant to § 2.1 739, the Board shall make recommendations and provide advice to the Department regarding: (i) care, maintenance, and upkeep; (ii) fees and costs; and (iii) acceptance of gifts and grants and expenditure of funds.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1 739.4. Staff; cooperation from other state agencies.~~

~~The Department shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1 740 2.2-XXX. Services to Vietnam veterans.~~

In addition to its other duties, the Department shall (i) disseminate literature and information on Agent Orange to Vietnam veterans in the Commonwealth; (ii) establish a mechanism for informing Vietnam veterans about the availability of free screening for exposure to Agent Orange in Veterans Administration facilities; (iii) develop cooperative relationships with other organizations for the purpose of disseminating literature and information on Agent Orange to Vietnam veterans and their families; (iv) monitor congressional actions related to

Vietnam veterans and exposure to Agent Orange and the developments in class action suits; and (v) join and attend the National Conference of State Agent Orange Programs.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-741. Board on Veterans' Affairs; appointment; terms.~~

~~A. There shall be a Board on Veterans' Affairs, sometimes referred to in this chapter as "the Board," in the Department of Veterans' Affairs consisting of ten members appointed by the Governor. Three shall be chosen from a list of nominees submitted by the Speaker of the House of Delegates and two shall be chosen from a list of nominees submitted by the Senate Committee on Privileges and Elections. In making appointments the Governor shall endeavor to select appointees of such qualifications and experience as will qualify them to advise the Department and the Director on matters affecting the veterans of Virginia and afford a balanced geographical representation on the Board. No appointee to the Board shall be an officer or employee of the Department.~~

~~B. Members of the Board shall be appointed for terms of four years each beginning July 1, 1988. Of the members first appointed, two shall be for terms of one year, two shall be for terms of two years, three shall be for terms of three years, and three shall be for terms of four years. Thereafter, the appointments shall be for terms of four years, except that any appointment to fill a vacancy shall be for the unexpired term. No person shall be eligible to serve more than two successive full terms. However, any person heretofore or hereafter appointed to fill a vacancy may be eligible for two additional successive full terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.~~

~~C. Before entering upon the discharge of his duties, each member of the Board shall take the usual oath of office.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-742. Board officers and meetings.~~

~~The Board shall select a chairman from its membership and, pursuant to rules adopted by it, may elect one of its members as vice chairman. It shall elect one of its members as secretary. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are expedient or necessary. A majority of the current membership of the Board shall constitute a quorum for all purposes.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-743. General powers and duties of Board.~~

~~A. The Board shall have the following powers and duties:~~

~~1. To advise the Director and, when requested, to confer with and advise him upon such matters as may arise in the performance of his duties;~~

~~2. To investigate questions and consider problems when requested by the Director or the Governor and report its findings and conclusions;~~

~~3. To initiate investigations and consider problems and make recommendations to the Director or to the Governor of its own motion;~~

~~4. To study all matters affecting the welfare of Virginia citizens who are veterans or dependents or survivors of such veterans, and to consider and recommend legislation for their benefit;~~

~~5. To keep advised on the administration of all laws concerning veterans and their dependents; and~~

~~6. To submit a report to the Governor and General Assembly ninety days prior to the convening of each even-numbered year Session of the General Assembly, setting forth its findings and recommendations.~~

~~B. The Board may make recommendations to acquire land, buildings, furnishings, and equipment for the establishment of a state veterans' cemetery or cemeteries. In connection with the establishment of a cemetery, the Board may make recommendations to accept gifts, apply for and receive grants, and expend funds made available by the federal government, private individuals, veterans' organizations, and all other sources. The Board shall recommend to the Governor candidates for the position of director of a veterans' cemetery.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744. Staff for the Board.~~

~~Staff to support the activities of the Board shall be provided by the Office of the Secretary of Administration and shall perform the administrative and support services that the Division of Legislative Services provided to the Commission on Veterans' Affairs prior to July 1, 1988.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744.1. Virginia Veterans Care Center Board of Trustees; appointments; terms.~~

~~A. The Virginia Veterans Care Center Board of Trustees is hereby established and shall be referred to in this chapter as the Board. The Board is a supervisory board within the meaning of § 9-6.25 and shall operate as an agency under the supervision and direction of the Secretary of Administration. The Board shall govern and oversee the administration of the Virginia Veterans Care Center, located in the City of Roanoke, adjacent to the United States Veterans Administration hospital. The purpose of the Virginia Veterans Care Center is to provide adult home and nursing home care for Virginia residents who are veterans of the armed forces of the United States or those who were Virginia residents at the time of their entry in the armed forces.~~

~~B. The Board shall be composed of ten members, all residents of the Commonwealth, to be appointed by the Governor. Three members shall be chosen from a list of nominees submitted by the Speaker of the House of Delegates. Two members shall be chosen from a list of nominees submitted by the Senate Committee on Privileges and Elections. In making appointments, the Governor shall select members who possess the qualifications and experience necessary to control the operations of the Virginia Veterans Care Center, so as to provide financially sound, high quality care to its residents.~~

~~C. Members of the Board shall be appointed for four-year terms. Any appointment to fill a vacancy shall be for the unexpired term. No person shall be eligible to serve for more than two successive four-year terms. However, any person appointed to fill a vacancy may be eligible for two successive full terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be removed by the Governor at his pleasure.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744.2. Board bylaws; officers; meetings; executive committee.~~

~~The Board shall adopt bylaws governing its organization and procedures and may, from time to time, amend the same. The Board shall elect from its members a chairman and other such officers as its bylaws may provide. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are necessary. A majority of the current membership of the Board shall constitute a quorum for~~

~~all purposes. The Board also shall appoint an executive committee, composed of not less than five members, which shall exercise the powers vested in and perform the duties imposed upon the Board by this chapter to the extent permitted by the Board in its bylaws.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744.3. General powers and duties of Board.~~

~~The Board shall:~~

- ~~1. Manage, control, maintain, and operate the Virginia Veterans' Care Center and all its assets;~~
- ~~2. Set fees for residence and care at the Virginia Veterans' Care Center;~~
- ~~3. Adopt rules and regulations for the use of, residence in, and care at the Center;~~
- ~~4. Enter into contracts with one or more entities to operate the Center on behalf of the Board;~~
- ~~5. Employ and discharge from employment an executive director and such other persons as may be necessary to assist the Board in carrying out its powers and duties;~~
- ~~6. Determine which programs and activities will be offered at the Center; and~~
- ~~7. Determine eligibility criteria for residence or care in the Center.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744.4. Gifts, grants, bequests, etc.; property.~~

~~A. The Board is authorized to seek, promote, and stimulate gifts, grants, bequests, and devises for the endowment, maintenance, and improvement of the Center and its operation. With the approval of the Governor, the Board may apply for, expend, and administer such grants, gifts, bequests, or devises from any source as may become available in connection with its duties under this chapter, and comply with such conditions and requirements as may be imposed in connection therewith.~~

~~B. The Board is authorized to sell, dispose of, liquidate, and change the form of any funds, securities, or other property, real or personal, provided that such action is consistent with the terms of any gift, grant, bequest, or devise by which the property may have been obtained, and to take all actions necessary with respect to any property held by the Board. However, the land and improvements which constitute the Virginia Veterans Care Center may be leased only to a contractor who is to operate the Virginia Veterans Care Center. Such land and improvements may be otherwise disposed of or encumbered only with the prior approval of the Governor and in accordance with the general provisions for the management of real property contained in §§ 2.1-504 through 2.1-512.~~

DRAFTING NOTE: This section has been moved to Part D of Subtitle I, State Authorities, Boards, Commissions, etc., under the heading of "Boards".

~~§ 2.1-744.5~~ 2.2-XXX. Virginia Veterans Care Center Facility Maintenance Fund.

There is hereby created the Virginia Veterans Care Center Facility Maintenance Fund. The Fund shall be used for equipment, repair and renovation of the Veterans Care Center ~~and (the "Center")~~, located in the City of Roanoke, adjacent to the United States Veterans Administration hospital. The Fund also shall be used to pay for

maintenance reserve and capital outlay projects appropriated to the Virginia Veterans Care Center Board of Trustees (the "Board") or the Center in the general appropriation act.

The Fund shall consist of depreciation or similar revenue received under contracts to operate the ~~Virginia Veterans Care Center~~, or any gifts, grants, bequests, or devises received for the Fund's purpose by the Board. The Fund shall be established on the books of the Comptroller. Any funds remaining in ~~such the~~ Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. ~~The Board shall develop guidelines for the use of the Fund. The Board shall report to the Secretary of Administration annually on the uses of the Fund.~~

DRAFTING NOTE: Technical corrections. The last sentence has been moved to proposed § 2.2-XXX (existing 2.1-744.3) in Part D of Subtitle I in the chapter dealing with the Virginia Veterans Care Center Board of Trustees as new subdivisions 8 and 9.

~~§ 2.1-744.6~~ 2.2-XXX. Virginia Veterans Care Center Endowment Fund.

There is ~~hereby~~ created the Virginia Veterans Care Center Endowment Fund. The Fund shall be used to support programs, activities, and services for residents of the Virginia Veterans Care Center. It is the intent of the General Assembly that the Fund shall not be used as operating revenue for the Center, but in addition thereto to enhance the Center and the lives of its residents.

The Fund shall consist of any gifts, grants, bequests, or devises received for the Fund's purpose by the Virginia Veterans Care Center Board of Trustees (the "Board"). The Fund shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of a biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. ~~The Board shall develop guidelines for the use of the Fund. The Board shall report to the Secretary of Administration annually on the uses of the Fund.~~

DRAFTING NOTE: Technical corrections. The last sentence has been moved to proposed § 2.2-XXX (existing 2.1-744.3) in Part D of Subtitle I in the chapter dealing with the Virginia Veterans Care Center Board of Trustees as new subdivisions 8 and 9.

Chapter X.

Governor's Employment Training Department.

~~§ 2.1-706~~ 2.2-XXX. Creation of Department; appointment of Executive Director; Powers and duties of Executive Director.

A. There is created a Governor's Employment and Training Department (the "Department") which shall be headed by an Executive Director appointed by to serve at his pleasure.

B. ~~The Director of the Governor's Employment and Training Department shall, under the direction and control of the Governor, through the Secretary of Human Resources, exercise such the powers and perform such the duties as are conferred or imposed upon him by law upon him and shall perform such other duties as may be required of him by the Governor.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-704~~ 2.2-XXX. Participation by the Commonwealth in federal programs of employment training afforded under the Job Training Partnership Act; ratification of acts of Governor.

A. It shall be the policy of the Commonwealth to participate in the programs afforded pursuant to the Job Training Partnership Act (P.L. 97-300), ~~hereinafter (the "Act,")~~ adopted by the Congress of the United States, in accordance with the provisions of this chapter.

B. The acts of the Governor by way of implementation of the programs and requirements of the Act in Virginia are hereby authorized, ratified and confirmed, including, without limitation, the creation of a state job training coordinating council solely as an advisory body, as provided by the Act.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-705. Governor's Employment and Training Division continued as Governor's Employment and Training Department; appointment of Executive Director.~~

~~The Governor's Employment and Training Division is continued and shall hereafter be known as the Governor's Employment and Training Department. The Department shall be subordinate to the Secretary of Human Resources.~~

~~Wherever the word "Division" is used in this Code meaning the Governor's Employment and Training Division, and wherever the words "Governor's Employment and Training Division" are used in this Code, they shall mean Department and Governor's Employment and Training Department respectively. The Department shall be headed by an Executive Director who shall be appointed by and serve at the pleasure of the Governor.~~

DRAFTING NOTE: This section has been deleted as obsolete.

~~§ 2.1-708 2.2-XXX. Powers-Additional powers of Department.~~

The Department shall have the following additional powers to be exercised under the direction and control of the Executive Director:

1. Accept funds from the United States government allocated to the Commonwealth pursuant to the Act. The Department is empowered to may comply with such conditions and execute such agreements as may be necessary or appropriate in connection with the acceptance of such funds.

2. Allocate funds received from the United States government to carry out the various programs authorized by the Act in accordance with the requirements of the Act, applicable regulations of the United States Department of Labor and the policy of the Department.

3. Adopt and enforce by appropriate action such policies and regulations having the force of law consistent with the Act as may be necessary or appropriate to carry out the purposes of this chapter and the duties imposed upon the Governor by the Act to the end that job training programs afforded by the Act be carried out efficiently in conformity with the requirements of the Act and that program abuse and misexpenditure of funds received from the United States be-is prevented.

4. ~~Make and enter into all contracts and agreements necessary or incidental to the performance of its duties under this chapter, including, but not limited to, contracts with the United States, agencies and governmental subdivisions of the Commonwealth and agencies of adjoining states and the District of Columbia which perform duties similar to the Department.~~

~~5. Employ such personnel as may be necessary to carry out the purposes of this chapter.~~

6. Provide such review at state level of grievances, audit related issues, and such other matters delegated to the Department by the Governor as may be required by the Act and applicable regulations of the United States Department of Labor. ~~Such~~ The review shall be conducted solely in accordance with the requirements of the Act, the applicable regulations and such internal procedures as may be adopted by the Department. Decisions of the Department pursuant hereto shall be reviewable solely in accordance with the terms of the Act and the regulations. The provisions of Article 4 (§ ~~9-6.14:15~~ xref et seq.) of the Administrative Process Act shall ~~have no application~~ not apply to such decisions.

~~7. Promulgate~~ 5. Adopt regulations for the implementation of the state-funded Economic and Employment Improvement Program for Disadvantaged Persons, and the awarding of state grants for funding approved projects.

~~8. 6.~~ Receive such gifts, donations, grants, bequests, and other funds on behalf of and for use by the Economic and Employment Improvement Program for Disadvantaged Persons.

~~9. Do all acts necessary or appropriate to carry out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections only. The stricken language has been consolidated with other like provisions into proposed § 2.2-XXX which is located at the beginning of Chapter X—State agencies; general provisions. The powers listed in this proposed section come from existing § 2.1-708, and are powers granted specifically to the Department of Veterans' Affairs.

~~§ 2.1-707~~ 2.2-XXX. Duties of Department.

The Department shall perform the following duties under the direction and control of its Executive Director:

1. Provide such technical assistance as ~~may at the discretion of the Executive Director be requisite~~ deems necessary for the proper implementation and maintenance of programs afforded under the Act.

2. Monitor performance of those entities which by the terms of the agreement specified in Section 103 (b) (1) of the Act were or may hereafter be selected to administer the job training plans developed and approved by the Governor in accordance with the Act and monitor or require monitoring of contractors including those of ~~the~~ said ~~such~~ entities.

As used ~~herein in this section~~, the term "entities" means any private industry council or other entity or entities performing the functions of administrative entity and grant recipient, either or both, as these terms are used in the Act.

3. Audit or cause audits to be made of the entities specified in subdivision 2 ~~of this section~~ and require auditing of their contractors in accordance with the requirements of the Act and applicable regulations and as sound administration may require at the discretion of the Department.

4. Develop and implement such systems or procedures as may be required or permitted by the Act or such as otherwise may be desirable or convenient for the efficient, fiscally sound and successful administration of the Act in the Commonwealth, including, without limitation, performance standards and reporting.

5. Develop and implement, in coordination with the State Board for Community Colleges, the state-funded Economic and Employment Improvement Program for Disadvantaged Persons.

6. Perform such other ~~or further~~ duties as the Governor may prescribe to assist him in carrying out his duties as prescribed by the Act.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-709~~ 2.2-XXX. Approval of cost not to bar subsequent claim for same.

The approval by any entity specified by subdivision 2 of § ~~2.1-707~~ 2.2-XXX (xref) or by the Department of a cost or expenditure of funds questioned upon audit shall not operate to bar any claim for reimbursement ~~of same~~ by such entity or the Commonwealth in the event that the United States Department of Labor subsequently disallows such cost or expenditure.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-710~~ 2.2-XXX. Program services delivery by state agencies.

A. The Governor may provide for delivery or coordination of delivery of specific program services authorized by the Act by any department, agency, board or commission of the state government whenever he finds that such action is (i) required by the Act or by regulations of the United States Department of Labor or is (ii) otherwise necessary or convenient for coordination of services provided by the Commonwealth with programs afforded pursuant to the Act, for the efficient delivery of services; or for such other reason as may to him warrant such action (iii) otherwise warranted in the discretion of the Governor.

B. If, in acting pursuant to the foregoing authority, the Governor finds that more than one department, agency, board or commission is performing the same or similar tasks or functions, then he may consolidate the tasks or functions under one such department, agency, board or commission. He shall not, in so doing, remove. However, a task or function shall not be removed from a department, agency, board or commission if the same be it is expressly assigned thereto to it by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-710.4 2.2-XXX. Economic and Employment Improvement Program for Disadvantaged Persons created; program developed by Department in coordination with the State Board for Community Colleges.~~

A. With such funds as may be appropriated for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf, there is hereby created the Economic and Employment Improvement Program for Disadvantaged Persons to improve the employability of and provide assistance to disadvantaged persons through education and skills training.

B. The Program shall be developed by the Department in coordination with the State Board for Community Colleges. The Program shall comply with state laws and regulations governing adult education and vocational and technical education programs, and be consistent with existing state apprenticeships and workforce training programs.

C. The Department shall adopt regulations for the implementation of the program and, in accordance with the recommendations of the Grant Awards Committee, designate projects to receive grants awarded pursuant to § 2.2-XXX (xref).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 2.1-710.1 and subsection C is § 2.1-710.2.

~~§ 2.1-710.2. Economic and Employment Improvement Program for Disadvantaged Persons awards administered by Department; promulgation of regulations.~~

~~The Department shall promulgate regulations for the implementation of the program and, in accordance with the recommendations of the Grant Awards Committee, designate projects to receive grants awarded pursuant to § 2.1-710.3.~~

DRAFTING NOTE: Technical corrections. This section now appears as new subsection C in proposed 2.2-XXX (existing 2.1-710.1).

~~§ 2.1-710.3 2.2-XXX. Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee established; eligible projects; criteria for award of grants.~~

A. There is hereby established the Economic and Employment Improvement Program for Disadvantaged Persons Grant Awards Committee (the "Committee"), which shall be composed of fifteen members designated by the relevant state agency heads as follows: three persons ~~of from~~ the Governor's Employment and Training Department ("GETD"); two staff persons ~~of from~~ the State Board for Community Colleges, of whom one shall have expertise in grant writing, review, and awards, and one shall have expertise in the administration and delivery of vocational and technical education programs and services in the Commonwealth; two representatives of the Private Industry Councils ("PICs"), of whom one shall represent small businesses; two staff persons of the Virginia

Employment Commission ("VEC"), of whom one shall have expertise in economic trends and analysis, and one shall have expertise in employment statistics, needs, and projections; two staff persons of the Department of Education, who shall have expertise in adult education, and vocational and technical education programs administered by and offered through the public schools; two staff persons of the Department of Labor and Industry, who shall have expertise in apprenticeship programs and labor force needs and training; and two representatives of four-year institutions of higher education, of whom one shall have expertise in successfully delivering education and training programs and services to persons who are disproportionately represented in minimum wage jobs and occupations requiring minimum education, training, and skills, and who have been traditionally underrepresented in higher education.

Upon the appropriation of funds for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received by the Department on behalf of the Program, the Committee shall issue a request for proposals for grant projects designed to improve the employability of and provide assistance to disadvantaged persons through education and skills training. The Committee shall review each grant application, make grant awards in accordance with the eligibility criteria established in this section, and evaluate the effectiveness of the educational and skills training services delivered by funded projects. The Committee shall report the results of its evaluation, annually beginning July 1, 2000, to the governing boards of agencies represented on the Committee, the Governor, and the General Assembly.

B. ~~On and after July 1, 1998, the~~ The Program shall consist of no more than ten grant projects located in regions throughout the Commonwealth to provide equal geographical distribution of such projects. Priority for awarding such grants shall be given to projects designed to serve persons (i) historically underrepresented in Virginia institutions of higher education, and in management and administrative levels in the business community; (ii) located in counties, cities and towns with high local stress indicators and in economically depressed regions of the Commonwealth; (iii) disproportionately represented in the workforce in minimum wage jobs and occupations requiring minimum education, training, and skills; or (iv) displaced by technological advances in industry; or (v) any combination thereof. Grants for all projects shall be awarded on a competitive basis to applicants responding to requests for proposals. ~~The first grants shall be awarded by May 1, 1999.~~

C. Eligible projects shall (i) satisfy the criteria for receiving awards pursuant to subsection B ~~of this section~~; (ii) through education and skills training, provide assistance to and improve the employability of populations experiencing high rates of unemployment or underemployment; (iii) provide training and education reflective of current and projected workforce needs in the Commonwealth; (iv) coordinate and provide delivery of services, such as community-business outreach programs through the schools or departments of business, or community outreach programs at two-year and four-year public and private institutions of higher education; (v) include a component to evaluate the effectiveness of the delivery of educational and skills training services; and (vi) encourage mentoring partnerships between corporations and financially stressed businesses. Grant recipients may work collaboratively, upon request, to provide approved service delivery.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-714~~ 2.2-XXX. Reports to the General Assembly.

The Executive Director shall conduct investigations and report such information ~~as may to~~ aid the Governor in assessing performance in achieving the goals of the Act in the Commonwealth and such other related matters or issues as the Governor may direct. The Governor shall, at least biennially, cause a report to be made and filed with such ~~committee or committees~~ of each house of the General Assembly as he deems appropriate. ~~Such~~ The report shall include a recommendation with regard to the continued participation of the Commonwealth in the programs of the Act.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-712~~ 2.2-XXX. Participation by political subdivisions and governmental entities.

Notwithstanding any charter provision, political subdivisions may participate in the programs afforded pursuant to the Act as administrative entities or grant recipients as these terms are used in Section 103 of the Act and may provide program services to eligible participants. Political subdivisions may make funds and governmental services available in furtherance of the job training plans in effect within the service delivery areas of the Commonwealth. Regulations of the Department affecting participating political subdivisions ~~participating as above said~~ shall not be subject to the provisions of subsections B and C of § ~~9-6-14:3~~ (xref).

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-743~~ 2.2-XXX. Chapter to be liberally construed.

The Act shall be implemented and administered in the Commonwealth in ~~such a~~ fashion as will best meet the goals of the Act, the needs of eligible participant s and prevent program abuse and misexpenditure of funds made available by the United States. The provisions of this chapter shall be liberally construed to this end.

DRAFTING NOTE: Technical corrections only.

PART D.
STATE AUTHORITIES, BOARDS, COMMISSIONS, COUNCILS, FOUNDATIONS AND
OTHER COLLEGIAL BODIES.

Chapter 1.

General Provisions.

~~§ 9-6-25~~ 2.2-XXX. Classification of executive branch boards, commissions and councils.

A. Effective July 1, 1986, every collegial body established by law or executive order within the executive branch of state government shall be classified according to its level of authority as follows:

"Advisory" - A board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice.

"Policy" - A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to, rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests.

"Supervisory" - A board, commission, or council shall be classified as supervisory if it is responsible for agency operations including approval of requests for appropriations. A supervisory board, commission, or council appoints the agency director and ensures that the agency director complies with all board and statutory directives. The agency director is subordinate to the board. Notwithstanding the foregoing, the Board of Education shall be considered a supervisory board.

B. Each executive branch board, commission or council shall be assigned only one of the above classifications. The classification for boards and councils which are created by law shall be designated by the enabling legislation. The classification for commissions which are created by executive order shall be designated by the executive order.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-23~~ 2.2-XXX. Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply, ~~however,~~ to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board on Veterans' Affairs, who shall be appointed as provided for in ~~§ 2.1-744~~ 2.2-XXX; to members of the Council on Indians, who shall be appointed as provided for in ~~§ 9-138.1~~ 2.2-XXX; to members of the Board of Trustees of the Southwest Virginia Higher

Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Maternal and Child Health Council, who shall be appointed as provided for in ~~§ 9-348 2.2-XXX~~; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in ~~§ 2-1-750 2.2-XXX~~; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in ~~§ 9-326 2.2-XXX~~; to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided for in § 53.1-45.3; to members appointed to the Virginia Veterans Cemetery Board pursuant to ~~§ 2-1-739.2 2.2-XXX~~; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in ~~§ 9-343 2.2-XXX~~; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in ~~§ 2-1-563.41 2.2-XXX~~; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Council on Coordinating Prevention, who shall be appointed as provided for in ~~§ 9-268 2.2-XXX~~; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 37.1-207; or to members of the Criminal Justice Services Board, who shall be appointed as provided in ~~§ 9-168 2.2-XXX~~; or to members of the Virginia Workforce Council, who shall be appointed as provided for in ~~§ 9-329.1 2.2-XXX~~.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-24 2.2-XXX~~. "Citizen member" appointments to executive branch boards and commissions.

Positions on boards and commissions designated for "citizen members," "consumer members," and "representatives of the public" are intended to ensure that the composition of a particular board or commission reflects citizen as well as professional interests. Except as otherwise provided by law, the Governor shall, when making an appointment to an executive branch board or commission specifically designated for a "citizen member," "consumer member," or "representative of the public," appoint a person who (i) is not by training or experience a practitioner in the subject area of concern to the board or commission, (ii) is not the spouse, parent, child or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the subject area of concern to the board or commission.

DRAFTING NOTE: Technical corrections only.

§ 2.2-XXX. Cooperation of other agencies with authorities, boards, commissions, councils, and other collegial bodies.

Upon request, all agencies and political subdivisions of the Commonwealth shall assist any authority, board, commission, council, or other collegial body established in this title in carrying out the respective duties for which each was created.

DRAFTING NOTE: Technical corrections. This proposed section represents the consolidation of the various repetitive sections dealing with the cooperation of state agencies with commissions and boards, etc.

§ 2-1-20-22.2-XXX. (Effective October 1, 1998) Definitions; compensation and expense payments from state funds for certain executive department services.

A. As used in this chapter:

"Compensation" means any amount paid in addition to reimbursement for expenses.

"Expenses" means all reasonable and necessary expenses incurred in the performance of duties.

"Salary" means a fixed compensation for services, paid to part-time and full-time employees on a regular basis.

B. Subject to the provisions of subsections B and C, members of boards, commissions, committees, councils and other similar bodies, who are appointed at the state level, shall be compensated at the rate of fifty

dollars per day, unless a different rate of compensation is specified for such members, plus expenses, for each day or portion thereof in which the member is engaged in the business of that body.

C. Full-time employees of the Commonwealth or any of its local political subdivisions, including full-time faculty members of state-supported colleges and universities, shall be limited to reimbursement for such employee's reasonable and necessary expenses.

D. No person shall receive total compensation of more than fifty dollars per day for services performed on any one day. Whenever a member attends two or more meetings in a single day, compensation and expenses shall be prorated among the bodies served.

DRAFTING NOTE: Technical corrections This proposed section is comprised of the following existing sections: subsection A is § 2.1-20.2 and subsections B through D are § 2.2-20.3.

~~§ 2.1-20.3. Compensation and expense payments from state funds for certain executive department services:~~

~~A. Subject to the provisions of subsections B and C, members of boards, commissions, committees, councils and other similar bodies, who are appointed at the state level, shall be compensated at the rate of fifty dollars per day, unless a different rate of compensation is specified for such members, plus reasonable and necessary expenses, for each day or portion thereof in which the member is engaged in the business of that body.~~

~~B. Full time employees of the Commonwealth or any of its local political subdivisions, including full time faculty members of state supported colleges and universities, shall be limited to reimbursement for such employee's reasonable and necessary expenses.~~

~~C. No person shall receive total compensation of more than fifty dollars per day for services performed on any one day. Whenever a member attends two or more meetings in a single day, compensation and expenses shall be prorated among the bodies served.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B, C, and D in proposed § 2.2-XXX (existing § 2.1-20.2) supra.

~~§ 9-13 2.2-XXX. Investigation of management of institutions or conduct of officers or employees.~~

Whenever any board of visitors to any of the institutions of ~~this the~~ Commonwealth deem it necessary or expedient to investigate the management of their institution or the conduct of any of its officers or employees, such board, or a committee of its members selected by the board, shall have such power and authority to send for persons and papers or to order the attendance of witnesses and compel their attendance as is now conferred upon a committee appointed by the General Assembly or either branch thereof by § 30-10. The oath to be taken by any witness examined by such board or committee may be administered by the president or the presiding officer of the board, chairman of its committee, or the clerk or secretary of the board or committee. All expenses incurred in summoning or in the attendance of such witness shall be paid out of the funds of the institution whose boards made or ordered the investigation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-14 2.2-XXX. Expenses of certain boards; appearances before General Assembly.~~

A. The board of directors of the several state hospitals and the boards of directors of the various institutions of learning receiving aid from the Commonwealth shall receive their actual, itemized expenses incurred in the discharge of their duties in attending the meetings of the boards or committees.

B. No officer of any university, college, school, hospital, or other institution or board maintained in part or in whole by the Commonwealth shall spend or appropriate any money for the purpose of sending any member of the board or officials of such institution or other person to appear before the General Assembly, or any committee

thereof, for the purpose of advocating in any way any appropriation for any institution supported in whole or in part by the Commonwealth. However, when any committee of the General Assembly desires information in regard to the needs of any state institution it may by proper resolution so determine, and request that any institution or board thereof send one or more competent persons to give the information desired, and the expense thereof may be paid out of the funds appropriated by the Commonwealth for the support of that institution.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-14 and subsection B is § 9-15. The term "colony" has been deleted as obsolete.

~~§ 9-15. Expenses of representatives appearing before General Assembly.~~

~~The officers of no university, college, school, hospital, colony or other institution or board maintained in part or in whole by the Commonwealth shall spend or appropriate any money or moneys for the purpose of sending any member of the board or officials of such institution or other person to appear before the General Assembly, or any committee thereof, for the purpose of advocating in any way any appropriation for any institution supported in whole or in part by the Commonwealth; provided, that when any committee of the General Assembly desires information in regard to the needs of any state institution it may by proper resolution so determine, and request that any institution or board thereof send one or more competent persons to give the information desired, and the expense thereof may be paid out of the funds appropriated by the Commonwealth for the support of that institution.~~

DRAFTING NOTE: This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-14).

Subpart 1.

Authorities.

Chapter X.

General Provisions.

§ 2.2-XXX. Definitions.

As used in this Subpart 1, unless the context requires a different meaning:

"Authority" means the respective political subdivisions of the Commonwealth created in this Subpart.

"Board" means the respective boards of directors for the authorities created in this subpart.

"Bonds" means any bonds, refunding bonds, notes, debentures, interim certificates, or any bond, grant, revenue anticipation notes or any other evidences of indebtedness of an Authority, whether in temporary or definitive form and whether or not exempt from federal taxation.

"Federal agency " means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

"Person" means the same as that term is defined in § 1-13.19 of Title 1.

DRAFTING NOTE: This proposed section represents the consolidation of the various repetitive definitions found in this Subpart 1. As noted in this section, the above definitions apply to the authorities created herein.

Chapter X.

Commercial Space Flight Authority.

§ 9-266-12.2-XXX. Short title; definitions.

A. This chapter shall be known and may be cited as the "Virginia Commercial Space Flight Authority Act.

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

"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-XXX (§ 9-266.3).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of existing § 9-266.1 as subsection A and § 9-266.3 as subsection B. The definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from § 9-266.3 have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-266.2. Definitions.~~

~~The following terms, whenever used or referred to in this chapter, have the following meanings, except where the context clearly indicates otherwise:~~

~~"Authority" means the political subdivision of the Commonwealth created by this chapter.~~

~~"Board" means the board of directors of the Authority.~~

~~"Bonds" means the notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.~~

~~"Federal agency" means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.~~

~~"Person" means natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures and public bodies, including but not limited to the Commonwealth of Virginia; any state; and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.~~

~~"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 9-266.3 of this chapter.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing § 9-266.1) as subsection B, except that the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-266.3 2.2-XXX.~~ Declaration of public purpose; Authority created.

A. The General Assembly has determined that there exists in the Commonwealth a need to (i) disseminate knowledge pertaining to scientific and technological research and development among public and private entities, including but not limited to knowledge in the area of commercial space flight, and (ii) promote industrial and economic development. In order to facilitate and coordinate scientific and technological research and development and to promote the industrial and economic development of the Commonwealth, which purposes are declared to be public purposes,

B. To achieve the objectives of subsection A, there is created a political subdivision of the Commonwealth to be known as the "Virginia Commercial Space Flight Authority" (the "Authority"). The Authority's exercise of powers conferred by this chapter shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

DRAFTING NOTE: Technical corrections only.

§ 9-266.4 2.2-XXX. Board of directors; members and officers; Executive Director.

The Authority shall be governed by a board of directors consisting of twelve members, four of whom shall be the President of the Center for Innovative Technology, the President of Old Dominion University, the Secretary of Commerce and Trade, and the Secretary of Technology, who shall serve as ~~directors during their terms in offices~~ members of the Board for terms coincident with their terms of office. The remaining eight members shall be appointed by the Governor as follows: three members ~~representative of~~ representing the commercial space flight industry; two members representing the telecommunications industry; one member representing the County of Accomack, one member representing the County of Northampton, and one at-large member. ~~Two of such directors~~ Of the members appointed by the Governor, two shall be appointed for terms of one year, three for terms of two years, and three for terms of three years, from the effective date of their appointment; ~~and thereafter.~~ Thereafter, the members of the ~~board~~ Board shall be appointed for terms of three years. All members of the ~~board~~ Board appointed by the Governor shall be confirmed by each house of the General Assembly. Vacancies in the membership of the ~~board~~ Board shall be filled by appointment for the unexpired portion of the term. Members of the ~~board~~ Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238 ~~of the Code of Virginia.~~ Immediately after ~~such~~ appointment, the ~~directors~~ members of the Board shall enter upon the performance of their duties.

The ~~board~~ Board shall annually elect one of its members as chairman and another as vice-chairman, a secretary, and a treasurer who ~~may or may need~~ may or may need not be a member of the ~~board~~ Board. The ~~board~~ Board may also elect other subordinate officers, who ~~may or may need~~ may or may need not be members of the ~~board~~ Board, as it deems proper. The chairman or, in his absence, the vice-chairman shall preside at all meetings of the ~~board~~ Board. In the absence of both the chairman and vice-chairman, the ~~board~~ Board shall appoint a chairman pro tempore, who shall preside at such meetings. Seven ~~directors~~ members shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The members of the ~~board~~ Board shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending the meetings of the ~~board~~ 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~~ Board or by such other person ~~or persons as may be designated by the board~~ or persons as may be designated by the Board for this purpose.

The ~~board~~ Board may employ an Executive Director of the Authority, who shall serve at the pleasure of the ~~board~~ Board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him ~~as may be delegated to him by the board~~ as may be delegated to him by the Board. The Executive Director and employees of the Authority shall be compensated in the manner provided by the ~~board~~ Board and shall not be subject to the provisions of Chapter 10 (~~§ 2-1-110 et seq.~~) of Title 2-1 of the Code of Virginia the Virginia Personnel Act (§ 2.2-XXX et seq.) of this title.

DRAFTING NOTE: Technical corrections only.

§ 9-266.5 2.2-XXX. Powers of the Authority.

The Authority is ~~hereby granted and shall have and may exercise~~ 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~~ without limiting the generality of the foregoing ~~not limited to,~~ the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Acquire any project and property, real, personal or mixed, tangible or intangible, or any interest therein, by purchase, gift or devise and to sell, lease (whether as lessor or lessee), transfer, convey or dispose of any

project or property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the ~~board of the Authority~~ Board;

4. Plan, develop, undertake, carry out, construct, equip, improve, rehabilitate, repair, furnish, maintain and operate projects;

5. ~~Make~~ Adopt bylaws for the management and regulation of its affairs;

6. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of projects of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority; the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties; the payment of the costs accomplishing its purposes set forth in ~~§ 9-266.3 2.2-XXX~~; the payment of the principal of and interest on its obligations; and the creation of reserves for such purposes, for other purposes of the Authority and to pay the cost of maintaining, repairing and operating any project ~~or projects~~ and fulfilling the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

7. Borrow money, make and issue bonds including bonds as the Authority may, ~~from time to time~~, determine to issue for the purpose of accomplishing the purposes set forth in ~~§ 9-266.32.2-XXX~~ or for refunding bonds previously issued by the Authority, whether or not such outstanding bonds have matured or are then subject to redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge, assignment or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any rights and interest therein; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general to provide for the security for said bonds and the rights of holders thereof;

8. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this chapter, including interstate compacts and agreements with any person or federal agency;

9. 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;

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

11. Render advice and assistance, and to provide services, to institutions of higher education including, but not limited to, Old Dominion University, and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit toward a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia;

12. Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training; however, credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; foster the utilization of scientific and technological research, information discoveries and data and obtain patents, copyrights and trademarks thereon; coordinate the scientific and technological research efforts of public institutions and private industry and collect and maintain data on the development and utilization of scientific and technological research capabilities;

13. 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. Appoint an industry advisory board to advise the Authority on issues related to the performance of its duties, the furtherance of its purposes and the execution of its powers under this chapter. The Authority shall have full discretion in determining the number and qualifications of members it appoints to the industry advisory board, and whether such members shall be compensated from the funds made available to the Authority; and

15. Do all acts and things necessary or convenient to carry out the powers granted to it by this chapter or any other acts law.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.6 2.2-XXX.~~ Form, terms, execution and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses.

The bonds of each issue shall be dated, shall bear interest at such ~~rate or rates~~ as shall be are fixed by the Authority, or as may be determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by the Authority, shall mature at such time ~~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 price ~~or prices~~ and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and their manner of execution ~~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. The bonds shall be signed by the chairman or vice chairman of the Authority or, if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice chairman of the Authority or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be ~~such an officer~~ before the delivery of ~~such the~~ bonds, ~~such his~~ signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payment of principal of, and premium on, if any, and interest on such bonds. The Authority may contract for the services of one or more banks, trust companies, financial institutions or other entities or persons, within or without the Commonwealth for the authentication, registration, transfer, exchange and payment of the bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement ~~hereinafter mentioned~~ authorized by § 2.2-XXX securing the ~~same~~ bonds.

In addition to the above powers, the Authority ~~shall have the authority to~~ may issue interim receipts or temporary bonds as provided in ~~§ 45.1-227.18 of the Code of Virginia~~ 15.2-2616 and to execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in ~~§ 45.1-227.23 of the Code of Virginia~~ 15.2-2621.

No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the revenues and other funds of the Authority pledged thereto. All such obligations shall contain on the face thereof a statement to the effect that the Commonwealth, any political subdivision thereof and the Authority shall not be obligated to pay the same or the interest thereon except from revenues and other funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

All expenses incurred in carrying out the provisions of the act shall be payable solely from funds provided under the provisions of this act, and no liability shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

§-9-266.7 2.2-XXX. Trust indenture or agreement securing bonds.

~~At~~In the discretion of the Authority, any bonds issued under the provisions of this chapter may be secured by a trust indenture or agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. ~~Such~~The trust indenture or agreement or the resolution providing for the issuance of ~~such~~the bonds may (i) pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof. ~~Such trust indenture or agreement or resolution providing for the issuance of such bonds may and~~ (ii) 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 providing for the repossession and sale by the Authority or any trustees under any trust indenture or agreement of any project, or part thereof, upon any default under the lease or sale of such project, setting forth the duties of the Authority in relation to the acquisition of property and the planning, development, acquisition, construction, rehabilitation, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project ~~or projects~~ in connection with which ~~such~~the bonds shall have been authorized; the amounts of rates, rents, fees and other charges to be charged; the collection of such rates, rents, fees and other charges; the custody, safeguarding and application of all moneys; and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any national bank with its main office in the Commonwealth or any other state or any bank or trust company incorporated under the laws of the Commonwealth or another state which may act as depository of the proceeds of bonds or of revenues to furnish ~~such~~the indemnifying bonds or to pledge ~~such~~the securities ~~as may be required~~ by the Authority. Any ~~such~~ trust indenture or agreement or resolution may set forth the rights of action by bondholders. In addition to the foregoing, any such trust indenture or agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders including, without limitation, provisions for the assignment to a corporate trustee or escrow agent of any rights of the Authority in any project owned by, or leases or sales of any projects made by, the Authority. All expenses incurred in carrying out the provisions of ~~such~~the trust indenture or agreement or resolution or other agreements relating to any project, including those to which the Authority may not be a party, may be treated as a part of the cost of the operation of the project or projects.

DRAFTING NOTE: Technical corrections only.

§-9-266.8 2.2-XXX. 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 indenture or agreement or resolution securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as a trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to ~~such~~the regulations as this chapter and ~~such~~the trust indenture or agreement or resolution may provide.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.9~~ 2.2-XXX. Proceedings by bondholder or trustee to enforce rights.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement or resolution, except to the extent the rights ~~herein~~ given may be restricted by ~~such the~~ trust indenture or agreement or resolution authorizing the issuance of ~~such the~~ bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under ~~such the~~ trust indenture or agreement or resolution, and may enforce and compel the performance of all duties required by this chapter or by ~~such the~~ trust indenture or agreement or resolution to be performed by the Authority or by any officer thereof including the fixing, charging, and collecting of rates, rentals, fees, and other charges.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.10~~ 2.2-XXX. 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~~ shall be 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: Technical corrections only.

~~§ 9-266.11~~ 2.2-XXX. Refunding bonds; bonds for refunding and for costs of additional projects.

The Authority is ~~hereby authorized to~~ may provide for the issuance of refunding bonds of the Authority for the purpose of refunding any bonds then outstanding that ~~shall~~ have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of ~~such~~ bonds. The issuance of ~~such the~~ bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this chapter insofar as ~~the same they~~ may be applicable.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.12~~ 2.2-XXX. Grants or loans of public or private funds.

The Authority is ~~authorized to~~ may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this 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 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: Technical corrections only.

~~§ 9-266.16~~ 2.2-XXX. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other order of such ~~person or~~ persons as the Authority may authorize to execute such warrants or orders.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.17 2.2-XXX.~~ Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in ~~such a form as prescribed by~~ the Auditor of Public Accounts ~~prescribes~~. The Auditor of Public Accounts, ~~and or~~ his legally authorized representatives, shall annually examine the accounts and books of the Authority. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of ~~§ 2-1-467 2.2-XXX.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.18 2.2-XXX.~~ Exemption from taxes or assessments.

The exercise of the powers granted by this chapter ~~will shall~~ be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the projects by the Authority and the undertaking of activities in the furtherance of the purposes of the Authority ~~will constitute~~ constitutes the performance of the essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this chapter or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption ~~hereby granted in this section~~ shall not be construed to extend to persons conducting on the premises of the facility businesses for which local or state taxes would otherwise be required.

Any bonds or refunding bonds issued under the provisions of this chapter and any transfer of such bonds shall at all times be free from state and local taxation. The interest on the bonds and any refunding bonds or bond anticipation notes shall at all times be exempt from taxation by the Commonwealth and by any of its political subdivision ~~thereof subdivisions~~.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.15 2.2-XXX.~~ Exemption of Authority from personnel and procurement procedures.

The provisions of ~~Chapter 10 (§ 2-1-110 et seq.) of Title 21 the Virginia Personnel Act (§ 2.2-XXX et seq.) of this title and Chapter 7 (§ 11-35 et seq.) of Title 11 of the Code of Virginia~~ shall not apply to the Authority in the exercise of any power conferred under this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266.19. Title to property.~~

~~The Authority may acquire title to property in its own name.~~

DRAFTING NOTE: This section has been stricken as duplicative of subdivision 3 of existing § 9-266.5 (proposed § 2.2-XXX) supra.

~~§ 9-266.13 2.2-XXX.~~ Appropriations by any government.

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any project acquired, constructed, improved, maintained or operated by the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266-14 2.2-XXX.~~ Conveyance, lease or transfer of property by a city or county to the Authority.

Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any project, or in order to accomplish any of the purposes of this chapter may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the Authority any real, personal or mixed property located within such city or county.

DRAFTING NOTE: Technical corrections only.

Chapter X.
Innovative Technology Authority.

~~§ 9-250 2.2-XXX.~~ ~~Title of chapter~~ Short title; definitions.

A. This chapter may be cited as the "Innovative Technology Authority Act of 1984."

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

"Project" shall mean the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-XXX (§9-252).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections, § 9-250 is subsection A and § 9-251 is subsection B. The definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from § 9-251 have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-251.~~ 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:~~

~~"Authority" shall mean the political subdivision of the Commonwealth created by this chapter.~~

~~"Board" shall mean the board of directors of the Authority.~~

~~"Bonds" shall mean and include the notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.~~

~~"Federal agency" shall mean and include 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.~~

~~"Person" shall mean and include natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures and public bodies, including, but not limited to, the Commonwealth of Virginia or any state and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.~~

~~"Project" shall mean the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 9-252 of this chapter.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-250) supra, except that the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-252~~ 2.2-XXX. Declaration of public purpose; Authority created.

A. It is ~~hereby~~ found and determined by the General Assembly that there exists in the Commonwealth of Virginia a need to (i) promote the economic development of the Commonwealth by attracting and retaining high technology jobs and businesses in Virginia; (ii) increase industry competitiveness by supporting the application of innovative technologies that improve productivity and efficiency; (iii) mobilize support for high technology industries to commercialize new products and processes, including organizing assistance for small business and supporting select industry sectors and regional high technology efforts; (iv) enhance and expand the scientific and technological research and development capabilities of the institutions of higher education in the Commonwealth and coordinate such capabilities with the scientific and technological research and development activities and requirements of the public and private sectors, including transferring technological advances to the private sector; (v) expand knowledge pertaining to scientific and technological research and development among public and private entities; (vi) attract research and development (R&D) facilities and contracts from the federal government and private sector, including coordinating efforts to identify and compete for large federal and private sector R&D facilities, tracking federal technology initiatives and recommending state actions, and developing a statewide strategy to compete for large R&D contracts; and (vii) facilitate and coordinate the marketing, organization, utilization and development of scientific and technological research and development in the Commonwealth.

B. To achieve the objectives of subsection A ~~of this section~~, there is ~~hereby~~ created and constituted a political subdivision of the Commonwealth to be known as "The Innovative Technology Authority." The Authority's exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

DRAFTING NOTE: Technical corrections only.

~~§ 9-253~~ 2.2-XXX. Board of directors; members; President.

A. The Authority shall be governed by a board of directors consisting of sixteen members appointed by the Governor, two of whom shall be the ~~Presidents~~ presidents of the major research universities and one of whom shall represent the ~~other state public colleges or universities in Virginia.~~ Of the presidents to be appointed in 1993, one shall be appointed for a three-year term, one shall be appointed for a four-year term and one shall be appointed for a five-year term. Thereafter After the original appointments, all appointments of presidents shall be for terms of five years, except that appointments to fill vacancies shall be for the unexpired terms. No president shall be eligible to serve for more than two successive five-year terms; ~~however,~~ However, after the expiration of a term of four years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. The Secretary of Education, the Secretary of Commerce and Trade, the Secretary of Technology, and the Director of the State Council of Higher Education shall serve on the ~~board~~ Board for terms coincident with their terms of office. The Governor shall appoint the nine other ~~directors~~ members of the Board who shall be nominated by established industry groups and technology councils within the Commonwealth. These appointees shall include representatives of a variety of businesses, industries and corporations of different types, sizes, locations and stages of development. All members of the ~~board of directors~~ Board appointed by the Governor shall be confirmed by each house of the General Assembly. ~~Three of the nine directors appointed by the Governor 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~~ After the original appointments, the members of the ~~board~~ Board shall be appointed for terms of four years. Vacancies in the membership of the ~~board~~ Board shall be filled by appointment of the Governor for the unexpired portion of the term. No ~~director~~ member of the Board shall be eligible to serve for more than two successive terms; ~~however,~~ However, after the expiration of a term of four years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Members of the ~~board~~ Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238. ~~The Circuit Court of the City of Richmond shall have exclusive jurisdiction of all proceedings for such removal. Immediately after such appointment, the directors~~ members of the Board shall enter upon the performance of their duties.

~~The members of the board~~ Board shall annually elect ~~one of the~~ from among its members of the ~~board~~ Board to be a chairman and a vice-chairman. The ~~board~~ Board shall annually elect one of its members as vice chairman, and Board shall also elect annually a secretary, who ~~may or may need~~ not be a member of the ~~board~~ Board, and may also elect such other subordinate officers who ~~may or may need~~ not be members of the ~~board~~ Board, as it shall ~~deem~~ deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the ~~board~~ Board. In the absence of both the chairman and vice-chairman, the ~~board~~ Board shall appoint a chairman pro tempore, who shall preside at such meetings.

The ~~board~~ Board shall employ a President of the Authority, who shall serve at the pleasure of the ~~board~~ Board, to direct the day-to-day operations and activities of the Authority and carry out such of the powers and duties conferred upon him as ~~may be delegated to him by the board~~ Board. The President and employees of the Authority shall be compensated in the manner provided by the ~~board~~ Board and shall not be subject to the provisions of Chapter 10 (~~§ 2.1-110 et seq.~~) of Title 2.1. ~~The terms of all current board members shall expire on April 7, 1993~~ the Virginia Personnel Act (~~§ 2.2-XXX et seq.~~) of this title.

B. The ~~board~~ Board shall establish a twenty-two member technical advisory committee with representatives recommended by technology councils, industry and business associations, and college and university presidents. Ten members shall have knowledge, skills and expertise in the needs of industry, and ten shall have knowledge, skills and expertise in specific technology areas. The chief technical officer of the Center for Innovative Technology and the Director of the Department of Minority Business Enterprise shall also serve on this committee.

DRAFTING NOTE: Technical corrections. Language in subsection A relating to the venue for removal actions has been deleted as obsolete. Article 7 of Chapter 2 of Title 24.2, which is referenced in this section provides the venue for removal actions.

~~§ 9-254~~ 2.2-XXX. Powers of the 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~~ not limited to, the following rights and powers to:

- ~~To sue~~ Sue and be sued, implead and be impleaded, complain and defend in all courts.
- ~~To adopt~~ Adopt, use, and alter at will a corporate seal.

3. ~~To acquire~~ Acquire, purchase, hold, use, lease or otherwise dispose of any project and property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and, without limitation of the foregoing, to lease as lessee, any project and any property, real, personal or mixed, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the ~~board of the Authority~~ Board and to lease as lessor to any person, any project and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the ~~board of the Authority~~ Board, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the board of the Authority.

4. ~~To plan~~ Plan, develop, undertake, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

- ~~To make~~ Adopt bylaws for the management and regulation of its affairs.

6. ~~To establish~~ Establish and maintain satellite offices within the Commonwealth.

7. ~~To fix~~ Fix, alter, charge, and collect rates, rentals, and other charges for the use of projects of, or for the sale of products of or for the services rendered by, the Authority, at rates to be determined by it for the purpose of

providing for the payment of the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs accomplishing its purposes set forth in § ~~9-252~~ 2.2-XXX, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

8. ~~To borrow~~ Borrow money, make and issue bonds including bonds as the Authority may, ~~from time to time~~, determine to issue for the purpose of accomplishing the purposes set forth in § ~~9-252~~ 2.2-XXX or of refunding bonds previously issued by the Authority, and to secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any interest therein, and to make ~~such~~ agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority ~~shall deem~~ deems advisable, and in general to provide for the security for ~~said~~ the bonds and the rights of holders thereof.

9. ~~To make~~ Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this chapter, including agreements with any person or federal agency.

10. ~~To employ~~ 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. ~~To receive~~ Receive and accept from any federal or private agency, foundation, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

12. ~~To render~~ Render advice and assistance, and to provide services, to institutions of higher education and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia.

13. ~~To develop~~ Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training, provided that credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; to foster the utilization of scientific and technological research information, discoveries and data and to obtain patents, copyrights and trademarks thereon; to coordinate the scientific and technological research efforts of public institutions and private industry and to collect and maintain data on the development and utilization of scientific and technological research capabilities. The universities set forth in § ~~9-253~~ 2.2-XXX shall be the principal leading universities in the research institutes.

14. ~~To pledge~~ Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority.

15. ~~To receive~~ Receive, administer, and market any interest in patents, copyrights and materials which were potentially patentable or copyrightable developed by or for state agencies, ~~state supported public~~ institutions of higher education and political subdivisions of the Commonwealth. The Authority shall return to the agency, institution or political subdivision any revenue in excess of its administrative and marketing costs. When general funds are used to develop the patent or copyright or material which was potentially patentable or copyrightable, any state agency, except a ~~state supported public~~ institution of higher education, shall return any revenues it receives from the Authority to the general fund unless the Governor authorizes a percentage of the net royalties to be shared with the developer of the patented, copyrighted, or potentially patentable or copyrightable property.

16. ~~To do~~ Do all acts and things necessary or convenient to carry out the powers granted to it by ~~this chapter or any other acts~~ law.

DRAFTING NOTE: Technical corrections only.

~~§ 9-255 2.2-XXX.~~ Form, terms, execution and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses.

The bonds of each issue shall be dated, shall bear interest at such ~~rate or rates~~ as shall be fixed by the Authority, shall mature at such 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 price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and their manner of execution ~~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. The bonds shall be signed by the chairman or vice-chairman of the Authority, or if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile signature thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice-chairman of the Authority or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement ~~hereinafter mentioned~~ authorized by § 2.2-XXX securing the ~~same~~ bonds.

In addition to the above powers, the Authority ~~shall have the authority to~~ may issue interim receipts or temporary bonds as provided in ~~§ 45.1-227.18~~ 15.2-2616 and to execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in ~~§ 45.1-227.23~~ 15.2-2621.

No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the revenue and other funds of the Authority pledged thereto. All such obligations shall contain on the face thereof a statement to the effect that the Commonwealth, political subdivisions thereof and the Authority shall not be obligated to pay the same or the interest thereon except from revenues and other funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the provisions of this chapter and no liability shall be incurred by the Authority ~~hereunder~~ beyond the extent to which moneys ~~shall have~~ been provided under the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 9-256 2.2-XXX.~~ 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 the~~ bonds may (i) pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof. ~~Such trust agreement or resolution providing for the issuance of such bonds may and (ii)~~ contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the planning, development, acquisition, construction, rehabilitation, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project ~~or projects~~ in connection with which ~~such the~~ 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 the~~ indemnifying bonds or to pledge ~~such the~~ securities ~~as may be required~~ by the Authority. Any ~~such~~ trust agreement may set forth the rights of action by bondholders. In addition to the foregoing, any ~~such~~ trust agreement or resolution may contain such other provisions as the Authority may deem 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 cost of the operation of the project or projects.

DRAFTING NOTE: Technical corrections only.

~~§ 9-257~~ 2.2-XXX. 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 deposited shall act as a trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to ~~such the~~ regulations as this chapter and ~~such the~~ resolution or trust agreement may provide.

DRAFTING NOTE: Technical corrections only.

~~§ 9-258~~ 2.2-XXX. Proceedings by bondholder or trustee to enforce rights.

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by ~~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: Technical corrections only.

~~§ 9-259~~ 2.2-XXX. Bonds made securities for investment and deposit.

Bonds issued by the Authority under the provisions of this chapter ~~are hereby made~~ shall be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. ~~Such bonds are hereby made~~ shall be 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: Technical corrections only.

~~§ 9-260~~ 2.2-XXX. Revenue refunding bonds; bonds for refunding and for cost of additional projects.

The Authority is ~~hereby authorized to~~ may 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 thereon and any interest accrued or to accrue to the date of redemption of ~~such the~~ bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is ~~further authorized to~~ may provide by resolution for the issuance of its revenue bonds for the combined purpose of (i) refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of ~~such the~~ 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 the~~ bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this chapter insofar as ~~the same they~~ may be applicable.

DRAFTING NOTE: Technical corrections only.

~~§ 9-261~~ 2.2-XXX. Grants or loans of public or private funds.

The Authority is ~~authorized to~~ may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this 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 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: Technical corrections only.

~~§ 9-265~~ 2.2-XXX. Moneys of Authority; examination of books by the Auditor of Public Accounts.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other order of the treasurer of the Authority or of other ~~person or persons~~ as the Authority may authorize to execute such warrants or orders. The Auditor of Public Accounts ~~of the Commonwealth, and or~~ his legally authorized representatives, shall examine the accounts and books of the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 9-262~~ 2.2-XXX. Exemption from taxes or assessments.

The exercise of the powers granted by this chapter ~~will~~ shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Authority and the undertaking of activities in furtherance of the purpose of the Authority ~~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 bonds issued under the provisions of this chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from state and local taxation. The exemption ~~hereby granted in this section~~ shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

DRAFTING NOTE: Technical corrections only.

§ 9-264 2.2-XXX. Exemption of Authority from personnel and procurement procedures.

The provisions of ~~Chapter 10 (§ 2.1-110 et seq.)~~ the Virginia Personnel Act (§ 2.2-XXX et seq.) of Title 2.1 ~~this title and~~ Chapter 7 (§ 11-35 et seq.) of Title 11 shall not apply to the Authority in the exercise of any power conferred under this chapter.

DRAFTING NOTE: Technical corrections only.

§ 9-263 2.2-XXX. Auxiliaries.

A. The Governor is hereby authorized to may provide for the formation of a nonstock corporation to carry out the purpose of this chapter. The board of directors of the nonstock corporation shall consist of the fifteen members of the ~~board of directors~~ Board of the Authority. The articles of incorporation of the nonstock corporation shall provide that upon dissolution the net assets of the corporation shall be transferred to the Commonwealth of Virginia. The nonstock corporation shall ~~insure~~ ensure that the economic benefits attributable to the income and property rights arising from any transactions in which the nonstock corporation is involved are allocated on a basis which is equitable in the reasonable business judgment of the board of directors, with due account being given to the interest of the citizens of the Commonwealth and the needs of the nonstock corporation. Any such nonstock corporation shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapters 10 (~~§ 2.1-110 et seq.~~), 13 (~~§ 2.1-153 et seq.~~), 14 (~~§ 2.1-173 et seq.~~), 18 (~~§ 2.1-327 et seq.~~), 21 (~~§ 2.1-340 et seq.~~), 23 (~~§ 2.1-359 et seq.~~), 26 (~~§ 2.1-377 et seq.~~) and 40.1 (~~§ 2.1-639.1 et seq.~~) ~~X~~references of Title 2.1, Chapter 7 (§ 11-35 et seq.) of Title 11 and Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1, nor shall any director, officer or employee of any such nonstock corporation or entity be deemed to be an officer or employee for purposes of Chapter 40.1 (~~§ 2.1-639.1 et seq.~~) ~~X~~ref of Title 2.1. Notwithstanding the foregoing, the Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority and any such nonstock corporation entity, provided that the working papers and files of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of ~~Chapter 24 (§ 2.1-340 et seq.) of Title 2.1~~ The Freedom of Information Act (§ 2.2-XXX et seq.).

B. Notwithstanding the provisions of subsection A ~~of this section~~, as an entity receiving state funds, any such nonstock corporation shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor. Any such nonstock corporation shall be deemed to be an institution of higher education within the meaning of §§ 23-3.1 and 23-9.2, but only for the limited purposes therein stated.

DRAFTING NOTE: Technical corrections only.

§ 9-265.1 2.2-XXX. Advanced Communications Assistance Fund created; purposes.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund, to be known as the Advanced Communications Assistance Fund ("the Fund"), to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which may consist of grants or loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the chairman or the vice-chairman of the Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of the Authority.

B. Moneys in the Fund shall be used solely for the purpose of helping underserved localities in the Commonwealth take full advantage of advanced communications services. Loans or grants from the Fund shall be used in underserved localities for (i) the internal communication needs of such localities, which may include but

are not limited to fiber-optic, satellite, and wireless communications networks, or (ii) help in financing the costs of planning, designing, purchasing, leasing, installing, or maintaining dark fiber to the extent permitted in § 15.2-1500.

C. For purposes of this section:

"Dark fiber" means fiber optic cable which is not lighted by lasers or other electronic equipment.

"Underserved locality" means a locality wherein advanced communication services are not readily and generally available from three or more nonaffiliated certificated local exchange companies.

DRAFTING NOTE: Technical corrections only.

~~§ 9-266. 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: This section has been deleted as duplicative of subdivision 3 of proposed § 2.2-XXX (existing § 9-254) supra.

Chapter X.

Virginia Economic Development Partnership Authority.

~~§ 2.1-548.26. Short title.~~

~~This article shall be known and may be cited as the "Virginia Economic Development Partnership Act."~~

DRAFTING NOTE: Technical corrections. This proposed section now appears as subsection A in proposed §2.2-XXX (existing § 2.1-548.28) infra.

~~§ 2.1-548.27. Definitions.~~

~~The following terms, whenever used or referred to in this article, have the following meanings, except where the context clearly indicates otherwise:~~

~~"Authority" means the Virginia Economic Development Partnership, the body corporate and political subdivision of the Commonwealth created by this article.~~

~~"Board" means the Board of Directors of the Authority.~~

~~"Federal agency" means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.~~

~~"Person" means natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures, and public bodies, including but not limited to the Commonwealth of Virginia; any state; and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.~~

DRAFTING NOTE: The definitions of "Authority," "Board," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 2.1-548.28 2.2-XXX. Short title; declaration of public purpose; Authority created.~~

A. This article shall be known and may be cited as the "Virginia Economic Development Partnership Act."

B. The General Assembly has determined that there exist in the Commonwealth a need to encourage, stimulate and support the development and expansion of the economy of the Commonwealth through economic development.

C. ~~The~~ To achieve the objective of subsection B, there is created a political subdivision of the Commonwealth to be known as the Virginia Economic Development Partnership Authority hereinafter referred to as the Authority, is created as a body corporate and political subdivision and as such shall have, and is hereby vested with, the. The Authority's exercise of powers and duties hereinafter conferred in this article by this chapter shall be deemed the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-548.26 and subsection C is § 2.1-548.28. Standard language for the declaration of public purpose used generally with the creation of an authority was added in this section as subsection B for consistency.

~~§ 2.1-548.34~~ 2.2-XXX. Board of directors; members and officers; Executive Director.

~~All powers, rights, and duties conferred by this article, or other provisions of law, upon the Authority shall be exercised by the Board of Directors of the Virginia Economic Development Partnership, hereinafter referred to as the Board. The Board shall consist~~ Authority shall be governed by board of directors consisting of the Secretary of Commerce and Trade, the Secretary of Finance, and thirteen members, one from each congressional district in the Commonwealth and two citizens at large, appointed by the Governor, subject to confirmation by the General Assembly. Four of the thirteen directors initially appointed by the Governor shall be appointed for terms of two and one-half years, four for terms of four and one-half years, and five for terms of six and one-half years, from the effective date of their appointment; and thereafter the terms of members of the Board shall be six years. No member appointed by the Governor shall be eligible to serve more than two terms; however, after the expiration of the term of a member appointed to serve three years or less, two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed by the Governor to fill a vacancy may be appointed to serve two additional terms. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § ~~2.1-20.32.2-XXX~~ for each day spent on the business of the Board.

The Board shall elect from its membership a chairman and a vice-chairman, and shall also elect a secretary and a treasurer, who ~~may or may need~~ not be members of the Board, and may also elect other subordinate officers, who ~~may or may need~~ not be members of the Board, ~~as it shall deem proper~~. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board.

A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

The Board shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board and carry out such of the powers and duties conferred upon him ~~as may be delegated~~ by the Board.

DRAFTING NOTE: Technical corrections. Quorum requirements were added for clarification and consistency with other standard language for authorities.

~~§ 2.1-548.32~~ 2.2-XXX. Powers and duties of the Executive Director.

The Executive Director shall employ or retain such agents or employees subordinate to the Executive Director as may be necessary to fulfill the duties of the Authority conferred upon the Executive Director, subject to the Board's approval. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium

conversion and flexible benefits, available to state employees as provided by law. The Executive Director shall also exercise such of the powers and duties relating to the direction of the Commonwealth's economic development efforts conferred upon the Authority as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him or as may be conferred or imposed upon him by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.35~~ 2.2-XXX. 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~~ not limited to, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;

3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and to lease as lessee, any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board ~~of the Authority~~ and to lease as lessor to any person, any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board ~~of the Authority~~, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board ~~of the Authority~~, provided that the terms of any conveyance or lease of real property shall be subject to the prior written approval of the Governor ~~in writing~~;

4. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority;

5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including agreements with any person or federal agency;

6. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority. The Authority may hire employees within and without the Commonwealth and the United States without regard to whether such employees are citizens of the Commonwealth. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 41 (~~§ 2-1-117 et seq.~~) Xref of this title;

7. Receive and accept from any federal or private agency, foundation, corporation, association or person, grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

8. Render advice and assistance and to provide services to state agencies, local and regional economic development entities, private firms, and other persons providing services or facilities for economic development in Virginia;

9. Develop, undertake, and provide programs, alone or in conjunction with any person, for economic research, industrial development research, and all other research that might lead to improvements in economic development in Virginia;

10. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed.

11. Do all acts and things necessary or convenient to carry out the powers granted to it by this article or any other acts law, and perform any act or carry out any function not inconsistent with state law which may be useful in carrying out the provisions of this chapter.

DRAFTING NOTE: Technical corrections. Subdivision 10 was moved here from existing § 2.1-548.33. The last phrase in subdivision 11 was moved here from existing § 2.1-548.34 infra.

~~§ 2.1-548.29~~ 2.2-XXX. Economic development services.

It shall be the duty of the Authority to encourage, stimulate, and support the development and expansion of the economy of the Commonwealth. The Authority is charged with the following duties and responsibilities to:

1. ~~To see~~ See that there are prepared and carried out effective economic development marketing and promotional programs;

2. ~~To make~~ Make available, in conjunction and cooperation with localities, chambers of commerce, industrial authorities, and other public and private groups, to prospective new businesses basic information and pertinent factors of interest and concern to such businesses;

3. ~~To formulate~~ Formulate, promulgate, and advance programs throughout the Commonwealth for encouraging the location of new businesses in the Commonwealth and the retention and growth of existing businesses;

4. ~~To encourage~~ Encourage and solicit private sector involvement, support, and funding for economic development in the Commonwealth;

5. ~~To encourage~~ Encourage the coordination of the economic development efforts of public institutions, regions, communities, and private industry and collect and maintain data on the development and utilization of economic development capabilities;

6. ~~To establish~~ Establish such offices within and without the Commonwealth that are necessary to the expansion and development of industries and trade;

7. ~~To encourage~~ Encourage the export of products and services from the Commonwealth to international markets; and

8. ~~Upon request, to advise~~ Advise, upon request, the State Board for Community Colleges in designating technical training programs in Virginia's comprehensive community colleges for the Community College Incentive Scholarship Program pursuant to § 23-220.4.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.30~~ 2.2-XXX. Planning and research.

It shall also be the duty of the Authority to:

1. Assist in the development of the comprehensive economic development strategy for the Commonwealth, starting the first year of each new gubernatorial administration, consistent with the provisions of Chapter 5-9 (~~§ 2.1-51.38 et seq.~~) Xref of Title 2.1 this title;

2. Report annually to the Governor on the status of the implementation of the comprehensive economic development strategy and recommend legislative and executive actions related to the implementation of the comprehensive economic development strategy; and

3. Conduct such studies and research, in collaboration with state agencies, universities, local and regional industrial authorities and organizations, and other persons within and without the Commonwealth, as the Board ~~may deem~~ deems necessary, to assist in the development of the comprehensive economic strategy and the development of recommendations and advice on the improvement of economic development and related programs and strategies across the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.43~~ 2.2-XXX. Nonstock corporation to assist economic development.

The Board is hereby ~~authorized to may~~ establish nonprofit, nonstock corporations under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as public instrumentalities exercising public and essential governmental functions, to assist the Board and the Authority in (i) promoting Virginia's economic development and tourism promotion efforts in the national and international corporate community; (ii) raising money in the corporate and nonprofit community to pay for advertising and promotion of the Commonwealth; (iii) raising nonstate dollars to complement state and local economic development activities; or (iv) conducting or undertaking other activities useful in carrying out the provisions of this ~~article~~ chapter.

The ~~Board of Directors~~ board of directors of any such corporation shall be composed of the Executive Director of the ~~Virginia Economic Development Partnership Authority~~ and eight members appointed by the Board of the Authority. However, any such corporation established to promote the tourism industry in the Commonwealth shall be composed of the Executive Director of the Authority, six members appointed by the Board of the Authority, and six members who represent the tourism industry appointed by the Governor. The terms of the members of any corporation established to promote the tourism industry in the Commonwealth appointed by the Governor shall be four years.

The Board shall require any such corporation to report to it at least annually on its activities.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.33. Bylaws and organization.~~

The Authority shall have the power 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.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.34. Powers not restrictive.~~

The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this article, which may be useful in carrying out the provisions of this article.

DRAFTING NOTE: Technical corrections. This section now appears as part of subdivision 10 of proposed section 2.2-XXX (existing § 2.1-548.35) supra.

~~§ 2.1-548.39~~ 2.2-XXX. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of such ~~person or persons~~ as the Authority may authorize to execute such warrants or orders.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.40~~ 2.2-XXX. Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in ~~such a form as prescribed by the Auditor of Public Accounts prescribes~~. The Auditor of Public Accounts ~~of the Commonwealth, and~~ or his legally authorized representatives, shall annually examine the accounts and books of the Authority.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year, ~~beginning in 1996~~. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30. The annual report shall be distributed in accordance with the provisions of ~~§ 2.1-467~~ 2.2-XXX.

The Authority shall submit a detailed annual operational plan and budget to the Secretary of Commerce and Trade and the Director of the Department of Planning and Budget by November 1, ~~beginning in 1996~~. Notwithstanding other provisions of this article, the form and content of the operating plan and budget shall be determined by the Director of the Department of Planning and Budget and shall include information on salaries, expenditures, indebtedness and other information as ~~shall be determined by the Director of the Department of Planning and Budget~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.41~~ 2.2-XXX. Exemptions from taxes or assessments.

The exercise of the powers granted by this ~~article will~~ chapter shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority ~~will constitute~~ constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this ~~article~~ chapter or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption ~~hereby granted in this section~~ shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.38~~ 2.2-XXX. Exemption of Authority from personnel and procurement procedures.

The provisions of ~~Chapter 10 (§ 2.1-100 et seq.)~~ the Virginia Personnel Act (§ 2.2-XXX et seq.) of ~~Title 2.1~~ this title and Chapter 7 (§ 11-35 et seq.) of Title 11 ~~of the Code of Virginia~~ shall not apply to the Authority in the exercise of any power conferred under this ~~article~~ chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.36~~ 2.2-XXX. Appropriations by any government.

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any property acquired, constructed, improved, maintained or operated by the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.37~~ 2.2-XXX. Conveyance, lease or transfer of property by a city or county to the Authority.

Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any property, or in order to accomplish any of the purposes of this ~~article~~ chapter may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the Authority any real, personal or mixed property located within such city or county.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.42. State agencies to furnish information and assistance.~~

~~All agencies of the Commonwealth shall assist the Authority upon its request and furnish such assistance and information as the Authority may require in the discharge of its duties.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

Chapter X.

Virginia Information Providers Network Authority.

~~§ 9-359~~ 2.2-XXX. Definitions.

As used in this chapter, unless the context ~~clearly indicates otherwise~~ requires a different meaning:

~~"Authority" means the Virginia Information Providers Network Authority, a political subdivision of the Commonwealth created by this chapter.~~

~~"Board" means the board of directors of the Authority.~~

"Gateway" means any centralized electronic information system by which public information shall be provided via dial-in modem or continuous link to the public through subscription or through public libraries.

"Public information" means any information created, acquired, or stored in electronic, magnetic, optical or magneto-optical form by state agencies which is included within the information deemed to be public pursuant to the Virginia Freedom of Information Act (~~§ 2.1-340 et seq.~~ 2.2-XXX et seq.) or the Virginia Public Records Act (§ 42.1-76 et seq.).

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government.

"User association" means an association of users of information through a gateway.

DRAFTING NOTE: Technical corrections. The definitions of "Authority" and "Board," have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-360~~ 2.2-XXX. Declaration of purpose; Authority established.

The General Assembly determines that there exists in the Commonwealth a need to provide for the centralized marketing, provision, leasing or executing of license agreements for access on-line or in volume on such terms and conditions as may be determined to be in the best interest of the Commonwealth. Therefore, a political subdivision of the Commonwealth to be known as the Virginia Information Providers Network Authority is

hereby created. The Authority's exercise of powers conferred by this chapter shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

DRAFTING NOTE: Technical corrections only.

~~§ 9-361~~ 2.2-XXX. Board of ~~directors; members and officers;~~ Network Manager.

The Authority shall be governed by a board of directors consisting of eleven members, two of whom shall be the Secretary of Technology and the Director of the Department of Technology Planning, both of whom shall serve ~~during their for~~ terms coincident with their terms of office. The remaining nine members shall be appointed by the Governor as follows: three members who are chief executive officers of agencies in the executive branch; two members from a list submitted by the Virginia State Bar; three members from user associations of a statewide character, except that no two shall represent the same user association; and one member from a list submitted by the Librarian of Virginia. Three members appointed by the Governor shall be appointed for terms of one year, three for terms of two years, and three for terms of three years, effective from their dates of appointment. Thereafter, board members shall be appointed for terms of three years. All board members appointed by the Governor shall be confirmed by ~~the affirmative vote of a majority of those voting in each~~ house of the General Assembly. Vacancies in ~~board~~ membership shall be filled by appointment for the unexpired portion of the term. Board members shall be subject to removal from office for cause.

The ~~board~~ Board shall annually elect one of its members as chairman, one as vice-chairman, and another as secretary. The ~~board~~ Board may also elect other subordinate officers, who ~~may or may need~~ not be members of the ~~board, as it deems proper~~ Board. 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~~ Board shall appoint a chairman pro tempore, who shall preside at such meetings. Six members shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Pursuant to ~~§ 2-120.8~~ 2.2-XXX, ~~board~~ Board members shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending board meetings or while otherwise engaged in discharging their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the ~~board~~ chairman or by such other person as the ~~board~~ Board designates for this purpose.

The ~~board~~ Board shall employ ~~a network manager of the Authority~~ Network Manager, who shall serve at the pleasure of the ~~board~~ Board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him ~~as may be delegated to him by the board~~ Board. The ~~network manager~~ Network Manager and employees of the Authority shall be compensated in the manner provided by the ~~board~~ Board.

DRAFTING NOTE: Technical corrections only.

~~§ 9-362~~ 2.2-XXX. Powers and duties of the Authority.

The Authority may exercise all powers necessary or convenient for carrying out its statutory purposes, including, without limitation, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Foster the development of a coordinated, comprehensive system for providing ready access to electronic public state government information for individuals, businesses, and other entities;
4. Make and execute contracts, lease agreements and all other instruments necessary or convenient to exercise the powers of the Authority or to further the public purpose for which the Authority is created;

5. Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the Authority;

6. Apply for and accept any gifts or grants or loan guarantees or loans of funds or property or financial and other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

7. Contract with state agencies or any local government for the use by the Authority of any property, facilities, or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the Authority; and such state agencies and local governments are authorized to enter into such contracts;

8. Fix and collect fees and charges for public information, media, and incidental services furnished by it to any private individual or entity, notwithstanding the charges set forth in ~~§ 2-1342 2.2-XXX~~;

9. Deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds, and use, redeposit, or reinvest interest earned on such funds for the purposes set forth in this chapter;

10. Exercise any power granted by the laws of the Commonwealth not in conflict with the public purpose of the Authority; and

11. Make rules and regulations for its own governance.

DRAFTING NOTE: Technical corrections only.

~~§ 9-363 2.2-XXX~~. Network manager; duties.

The ~~network manager~~ Network Manager shall (i) direct and supervise the day-to-day operations and expansion of the gateway and network, including the initial phase of operations necessary to make such gateway operational; (ii) attend meetings of the Authority; (iii) keep a record of all gateway, network and related operations of the Authority, which shall be the property of the Authority; (iv) maintain and be custodian of all financial and operational records, documents, and papers filed with the Authority; and (v) update and revise annually the business plan of the Authority, in consultation with and under the direction of the ~~Authority's board of directors~~ Board.

DRAFTING NOTE: Technical corrections only.

~~§ 9-364 2.2-XXX~~. Access to public information of state agencies.

A. All state agencies may make available to the Authority access to public information upon terms mutually agreed upon by the Authority and any such state agency.

B. The Authority shall reimburse the state agency for costs incurred to provide such access to the Authority. The Authority shall establish a reasonable fee, which may include no fee where appropriate, for electronic access to information and electronic transactions, such that user fees from all Authority electronic services shall be sufficient to maintain, develop, operate, and expand the electronic network on a continuing basis. Any fees due and owing under statutory authority to an agency for specific types of information accessed shall be paid by the Authority to the agency. The Authority shall minimize the fees charged for commercially viable information, and shall maximize the amount of information provided at no charge.

DRAFTING NOTE: Technical corrections only.

~~§ 9-365 2.2-XXX~~. Access to public information; receipt of information; application of statutory restrictions on confidentiality to Authority.

A. The Authority may provide electronic access to public information provided to it by any state agency and to the extent provided in the agreement with the providing agency. The Authority shall explore ways and means of expanding the amount and kind of public information provided, increasing the utility of the public information provided and the form in which it is provided, expanding the base of users who access ~~such~~ public information and, where appropriate, implementing changes.

B. The Authority ~~shall be authorized to~~ may execute license agreements which provide access to public information in any electronic medium or format. In executing such agreements, the Authority shall ensure that only those ~~entities~~ entities legally entitled to access information will be permitted access to information through the Network. The Authority shall further ensure that the Network does not aggregate independent sources of information to which it has access for the purpose of building comprehensive records about the citizens of the Commonwealth. Nothing contained in this chapter shall preclude any state agency from providing access to public information to the public or other government agencies or entities, or from disseminating any public information to which the Authority does not provide access. Further, nothing contained in this chapter shall authorize any state agency to provide access to information on a basis that is otherwise prohibited under existing law.

C. The Authority may be authorized by the judicial and legislative branches to execute license agreements which provide access to public information in any electronic medium or format on their behalf. However, nothing in this chapter shall be construed to affect or pertain to records originating from or under the control of the clerks of the circuit courts of the Commonwealth except upon terms mutually agreed upon by the Authority, any state agency that may be holding such records for archival purposes, and the clerk's office where such records originated.

D. The Authority may receive public information in electronic format from members of the public for the purpose of transmitting ~~such the~~ public information electronically to state agencies.

E. In circumstances where official records subject to the Virginia Freedom of Information Act (~~§ 2.1-340~~ Xref et seq.) are furnished to the Authority by any state agency and ~~such the~~ records are no longer available from such agency, the Authority, as custodian of ~~such the~~ records, shall be subject to requests for ~~such the~~ records made pursuant to the Freedom of Information Act. All statutory provisions governing public or official records, including, but not limited to, the Freedom of Information Act, the Privacy Protection Act of 1976 (~~§ 2.1-377~~ Xref et seq.), and the Virginia Public Records Act (§ 42.1-76 et seq.), and all penalties for any violation thereof shall apply to the Authority and its employees. Nothing in this chapter shall relieve any public body, including the Authority, of any duty imposed by such statutory provisions governing public or official records, nor shall this chapter be construed to authorize or encourage the destruction or deletion of such records by public bodies.

DRAFTING NOTE: Technical corrections only.

~~§ 9-365.4~~ 2.2-XXX. Resource site for employment and internship opportunities.

~~On or before January 1, 1999, the~~ The Authority shall establish ~~and thereafter,~~ maintain, and update a resource site on the global information system known as the Internet which provides a clearinghouse for employers and students at institutions of higher education to exchange information about employment and internship opportunities, including part-time, summer, and holiday opportunities. The Authority shall not charge students or institutions of higher education any fees for establishing, maintaining, or updating the resource site.

DRAFTING NOTE: Technical corrections only.

~~§ 9-367~~ 2.2-XXX. Ownership of public information not affected.

Nothing in this chapter shall be deemed to effect a transfer of ownership of any public information from any state agency to the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 9-368~~ 2.2-XXX. Financing and operations; Virginia Information Providers Network Fund established.

A. Initial funding for start-up costs incurred by the Authority shall be obtained from private donations. No state funds shall be used for any Authority purpose.

B. The Authority shall fund its operations from revenues generated from providing access to public information, and from money, goods or in-kind services donated to the Authority by private sources.

C. There is hereby established a special fund in the state treasury to be known as the Virginia Information Providers Network Fund, hereinafter referred to as "the Fund." All moneys received by the Authority, including revenues generated from providing access to public information, and any gifts, donations, grants, or other contributions from any source, public or private, shall be deposited in the Fund. Expenses incurred by the Authority in accomplishing its purposes set forth in this chapter, as determined by the Board, shall be paid out of the Fund on warrant of the Comptroller. The Comptroller shall transfer the balance of the moneys in the Fund to the appropriate state agency or to the general fund, as required by the terms of the agreements between state agencies and the Authority pursuant to ~~§ 9-364 2.2-XXX~~, no later than June 30 of each year.

DRAFTING NOTE: Technical corrections only.

~~§ 9-370 2.2-XXX~~. Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in ~~such a~~ form as prescribed by the Auditor of Public Accounts ~~prescribes~~. The Auditor of Public Accounts, or his legally authorized representatives, shall annually examine the accounts and books of the Authority.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of ~~§ 2-1-467 2.2-XXX~~.

DRAFTING NOTE: Technical corrections only.

~~§ 9-366 2.2-XXX~~. Exemption from ~~taxes~~ taxation and assessments.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the Commonwealth. As the operation of the Authority and the undertaking of activities in the furtherance of the purposes of the Authority ~~shall constitute~~ constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption hereby granted in this section shall not be construed to extend to persons conducting a business on the premises of the facility for which local or state taxes would otherwise be required.

DRAFTING NOTE: Technical corrections only.

~~§ 9-369 2.2-XXX~~. Exemption of Authority from personnel and procurement procedures.

The provisions of ~~Chapter 10 (§ 2-1-110 et seq.)~~ the Virginia Personnel Act (§ 2.2-XXX et seq.) of ~~Title 2-1 this title~~ and Chapter 7 (§ 11-35 et seq.) of Title 11 ~~of the Code of Virginia~~ shall not apply to the Authority in the exercise of any power conferred under this chapter.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Public Building Authority.

~~§ 2-1-234.10 2.2-XXX~~. ~~Title of article~~ Short title; definition.

A. This article chapter may be cited as Virginia Public Building Authority Act of 1981.

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

"Construction" or "to construct" means acquisition and construction, all in such manner as may be deemed desirable.

"Cost" means as applied to a project financed under the provisions of this chapter, the sum total of all costs reasonable and necessary for carrying out all works and undertakings necessary or incident to accomplish a project, including, but not limited to the cost of all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the vendor of such land, buildings or improvements, site preparation and development including demolition or removal of existing structures, construction, and reconstruction, the reasonable cost of financing incurred in the course of the development of a project, carrying charges during construction to the occupancy date, interest on bonds issued to finance a project to a date subsequent to the estimated date of completion of a project, necessary expenses incurred in connection with the initial occupancy of a project, the funding of such funds and accounts as the Authority determines to be reasonable and necessary and the cost of such other items as the Authority determines to be reasonable and necessary.

"Fixtures" and "furnishings" means any fixtures, leasehold improvements, equipment, office furniture and furnishings whatsoever necessary or desirable for the use and occupancy of such project, and the terms "to furnish" and "furnishing" means the installation of such fixtures, equipment and furnishings.

"Improvement" or "to improve" means extension, enlargement, improvement, and renovation, all in such manner as may be deemed desirable.

"Personal property" means all items of equipment, fixtures, and furnishings, including items affixed to real property.

"Project" means any structure, facility, personal property or undertaking which the Authority is authorized to finance, refinance, construct, improve, furnish, equip, maintain, acquire, or operate under the provisions of this chapter.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-234.10 and subsection B is § 2.1-234.11, except the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from § 2.1-234.11 have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 2.1-234.11. Definitions.~~

~~The following terms, whenever used or referred to in this article, shall have the following meanings, except in those instances where the context clearly indicates otherwise:~~

~~1. The term "Authority" shall mean the body politic and corporate created by this article.~~

~~2. The term "project" shall mean any structure, facility, personal property or undertaking which the Authority is authorized to finance, refinance, construct, improve, furnish, equip, maintain, acquire, or operate under the provisions of this article.~~

~~3. The term "board" shall mean the governing body of the Authority.~~

~~4. The term "person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships, and public bodies.~~

~~5. The term "federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.~~

~~6. The term "bonds" shall mean and include the notes, bonds, and other evidences of indebtedness or obligations which the Authority is authorized to issue pursuant to this article.~~

~~7. The term "construction" shall mean and include acquisition and construction, and the term "to construct" shall mean and include to acquire and to construct all in such manner as may be deemed desirable.~~

~~8. The term "improvement" shall mean and include extension, enlargement, improvement, and renovation and the term "to improve" shall mean and include to extend, to enlarge, to improve, and to renovate all in such manner as may be deemed desirable.~~

~~9. The terms "fixtures" and "furnishings" shall mean and include any fixtures, leasehold improvements, equipment, office furniture and furnishings whatsoever as may be deemed necessary or desirable for the use and occupancy of such project, and the terms "to furnish" and "furnishing" shall mean and include the installation of such fixtures, equipment and furnishings.~~

~~10. The term "cost" as applied to a project financed under the provisions of this article shall mean the sum total of all costs as are reasonable and necessary for carrying out all works and undertakings necessary or incident to accomplish a project, including, without limitation because of enumeration, the cost of all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the vendor of such land, buildings or improvements, site preparation and development including demolition or removal of existing structures, construction, and reconstruction, the reasonable cost of financing incurred in the course of the development of a project, carrying charges during construction to the occupancy date, interest on bonds issued to finance a project to a date subsequent to the estimated date of completion of a project, necessary expenses incurred in connection with the initial occupancy of a project, the funding of such funds and accounts as the Authority determines to be reasonable and necessary and the cost of such other items as the Authority determines to be reasonable and necessary.~~

~~11. The terms "Commonwealth" or "state" shall mean the Commonwealth of Virginia and any agency or department thereof.~~

~~12. The term "personal property" shall mean and include all items of equipment, fixtures, and furnishings, including items affixed to real property.~~

DRAFTING NOTE: Technical corrections. This section has been merged with proposed § 2.2-XXX (existing § 2.1-234.10) as subsection B, except that the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 2.1-234.12 2.2-XXX. Virginia Public Building Authority created; purpose; membership; terms; expenses; vacancies staff.~~

There is created a political subdivision of the Commonwealth to be known as the "Virginia Public Building Authority." The Authority is created for the purpose of constructing, improving, furnishing, maintaining, acquiring, financing, refinancing, and operating public buildings for the use of the Commonwealth (heretofore or hereafter constructed), state arsenals, armories, and military reserves, state institutions of every kind and character (heretofore and hereafter constructed), additions and improvements to land grant colleges, state colleges, universities and medical colleges, and the purchase of lands for rehabilitation purposes in connection with state institutions and for use of state colleges, and museum facilities for a trust instrumentality of the United States, and the purchase of lands for the development of public buildings which may be authorized by the General Assembly in the future, the acquisition of items of personal property for the use of the Commonwealth, and the financing or

refinancing of reimbursements to localities or regional jail authorities of all or any portion of the Commonwealth's share of the costs for jail projects made pursuant to §§ 53.1-80, 53.1-81, 53.1-82, or § 53.1-95.19, and the refinancing of (i) bonds issued by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases (any and all of the foregoing being herein called "projects"), the purpose and intent of this article being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity.

~~The Authority shall be comprised of the State Treasurer or his designee, the State Comptroller, and five additional members appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointments are made, and if not in session, at its first session subsequent to such appointment, who shall serve at the pleasure of the Governor, are hereby created a body corporate and politic, constituting a public corporation and governmental instrumentality by the name of the "Virginia Public Building Authority." Unconfirmed appointments shall expire thirty days after the convening of the General Assembly. Such members Members of the Authority shall be entitled to no compensation for their services as members, but shall be entitled to reimbursement reimbursed for all reasonable and necessary expenses incurred in connection with the performance the discharge of their duties as members as provided in § 2.2-XXX (2.1-20.10). The term of each member appointed by the Governor shall be five years; provided, however, that of the members first appointed, one shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Any vacancy happening among the appointed members of the Authority shall be filled by appointment by the Governor, subject to confirmation by the General Assembly.~~

Vacancies in the membership of the Authority shall be filled by appointment for the unexpired portion of the term. The Governor shall designate one member of the Authority as chairman. The Department of the Treasury shall serve as staff to the Authority.

DRAFTING NOTE: Technical corrections. The first paragraph comes from the first full sentence of existing § 2.1-234.13. References to the terms of the initial members of the Authority have been deleted as obsolete.

~~§ 2.1-234.25~~ 2.2-XXX. Governing body of Authority Board of directors.

~~The powers of the Authority shall be exercised by a governing body consisting of the members of the Authority acting as a board. The board Board shall elect from their number its membership a vice-chairman, a treasurer and a secretary. In the absence of the chairman, the vice chairman shall exercise the powers and duties thereof. The offices of secretary and treasurer may be combined. The board Board may elect such other officers from its own membership or from without as it deems appropriate who need not be a member of the Board.~~

~~Four members shall constitute a quorum of the board Board for the purpose of organizing the Authority and conducting the its business thereof and for all other purposes, and all. All actions shall be taken by vote of a majority of the members of the Authority Board, unless in any case the bylaws shall require a larger number.~~

~~The board Board shall have full authority to manage the properties and business of the Authority, and to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Authority may be conducted, and the powers granted to it may be exercised and embodied. The board Board may assign to the Treasury Board or the State Treasurer such powers and duties as it may deem deems proper.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.13~~ 2.2-XXX. Purposes and general powers Powers and duties of Authority; limitations.

~~The Authority is created for the purpose of constructing, improving, furnishing, maintaining, acquiring, financing, refinancing, and operating public buildings for the use of the Commonwealth (heretofore or hereafter constructed), state arsenals, armories, and military reserves, state institutions of every kind and character (heretofore and hereafter constructed), additions and improvements to land grant colleges, state colleges, universities and medical colleges, and the purchase of lands for rehabilitation purposes in connection with state~~

~~institutions and for use of state colleges, and museum facilities for a trust instrumentality of the United States, and the purchase of lands for the development of public buildings which may be authorized by the General Assembly in the future, the acquisition of items of personal property for the use of the Commonwealth, and the financing or refinancing of reimbursements to localities or regional jail authorities of all or any portion of the Commonwealth's share of the costs for jail projects made pursuant to §§ 53.1-80, 53.1-81, 53.1-82, or § 53.1-95.19, and the refinancing of (i) bonds issued by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases (any and all of the foregoing being herein called "projects"), the purpose and intent of this article being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity. The Authority shall not undertake or finance or refinance any project or projects which are not specifically included in a bill or resolution passed by a majority of those elected to each house of the General Assembly, authorizing such project or projects or the reimbursement of all or any portion of the Commonwealth's share of the costs of such project or projects and, as to any project relating to a state institution of higher education, not specifically designated by the board of visitors of that institution as a project to be undertaken by the Authority.~~

A. ~~The Authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid its purposes, including, but without limiting the generality of the foregoing not limited to, the following rights and powers to:~~

- ~~1. To have~~ Have perpetual existence as a corporation.
- ~~2. To sue~~ Sue and be sued, implead and be impleaded, complain and defend in all courts.
- ~~3. To adopt~~ Adopt, use, and alter at will a corporate seal.

~~4. To acquire~~ Acquire, purchase, hold and use any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; ~~without limitation of the foregoing, to lease as lessee, with the approval of the Governor, any property, real, personal or mixed, or any interest therein for a term not exceeding ninety-nine years at a nominal rental or at such annual rental as may be determined; with the approval of the Governor, to lease as lessor to the Commonwealth of Virginia and any city, county, town or other political subdivision, or any agency, department, or public body of the Commonwealth, or land grant college, any project at any time constructed by the Authority and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed; with the approval of the Governor, to sell, transfer and convey to the Commonwealth of Virginia, any project at any time constructed by the Authority; and, with the approval of the Governor, to sell, transfer and convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority.~~

~~5. To acquire~~ Acquire by purchase, lease, or otherwise, and to construct, improve, furnish, maintain, repair, and operate projects.

~~6. To make~~ Adopt bylaws for the management and regulation of its affairs.

~~7. To fix~~ Fix, alter, charge, and collect rates, rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority, or projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the construction, improvement, repair, furnishing, maintenance, and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

~~8. To borrow~~ Borrow money; make and issue negotiable notes, bonds, and other evidences of indebtedness or obligations (~~herein called "bonds"~~) of the Authority and such bonds as the Authority may, ~~from time to time,~~ determine to issue for the purpose of refunding bonds previously issued by the Authority; 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; to make such agreements with the purchasers or holders of such bonds or with others in connection with

any such bonds, whether issued or to be issued, as the Authority ~~shall deem~~ deems advisable; and in general, to provide for the security for ~~said the~~ the bonds and the rights of holders thereof, provided that the total principal amount of ~~such the~~ the bonds outstanding excluding bonds issued to refinance bonds previously issued by the Authority and bonds issued to refinance (i) bonds issued by other state and local authorities or political subdivisions where such bonds are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases or other payment agreements at any time shall not exceed \$1,140 million.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year containing, at a minimum, the annual financial statements of the Authority for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of ~~§ 2.1-467 2.2-XXX.~~

9. ~~To make~~ Make contracts of every name and nature, and to execute all instruments necessary or convenient ~~for the carrying on of~~ to carry out its business.

10. ~~Without limitation of the foregoing, to borrow~~ Borrow money and accept grants from, and to enter into contracts, leases or other transactions with, any federal agency.

11. ~~To have~~ Have the power of eminent domain.

12. ~~To pledge~~ 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.

13. ~~To do~~ Do all acts and things necessary or convenient to carry out the powers granted to it by ~~this article or any other acts~~ law.

14. ~~To acquire~~ Acquire, by assignment from the Commonwealth or the Virginia Retirement System, all contracts, including those which are not completed, which involve constructing, improving, furnishing, maintaining, and operating the structures, facilities, or undertakings similar to those designated herein as projects.

15. ~~To enter~~ Enter into contractual agreements with localities or regional jail authorities undertaking a jail project for which the financing or refinancing of reimbursements of all or any portion of the Commonwealth's share of the costs of such project will be made pursuant to subsection A 3 of § 53.1-82.2.

B. The Authority shall not undertake or finance or refinance any projects which are not specifically included in a bill or resolution passed by a majority of those elected to each house of the General Assembly, authorizing such projects or the reimbursement of all or any portion of the Commonwealth's share of the costs of such projects and, as to any project relating to a public institution of higher education, not specifically designated by the board of visitors of that institution as a project to be undertaken by the Authority.

C. Except as otherwise provided by law, when projects are to be constructed, improved, furnished, maintained, repaired or operated for the use of any department of the Commonwealth, as ~~hereinbefore listed in this section,~~ no plans or specifications therefor shall be presented for quotations or bids until ~~such the~~ the plans and specifications ~~shall~~ have been submitted to and approved by the Department of General Services and any other department of the Commonwealth having any jurisdiction over the projects, so that the project will conform to standards established by such departments.

DRAFTING NOTE: Technical corrections. The first sentence of this section has been moved to proposed § 2.2-XXX (existing § 2.1-234.12) as the first paragraph in that section. Also, the second sentence of this section now appears subsection B in this proposed section.

~~§ 2.1-234.14~~ 2.2-XXX. Revenue bonds generally.

The Authority ~~is hereby authorized, by and may~~ with the consent of the Governor, ~~to provide for the issuance, at one time or from time to time,~~ of revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more projects or of any portion ~~or portions~~ thereof. The principal of and the interest

on such bonds shall be payable solely from the funds provided in this ~~article chapter~~ for such payment. Any bonds of the Authority issued pursuant to this ~~article chapter~~ shall not constitute a debt of the Commonwealth, or any political subdivision thereof other than the Authority, and shall so state on their face. Neither the members of the Authority nor any person executing ~~such the~~ bonds shall be liable personally ~~thereon~~ by reason of the issuance thereof. The bonds of each issue shall be dated, shall bear interest, shall mature at such 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 price ~~or prices~~ and under such terms and conditions as ~~may be~~ fixed by the Authority, at such price ~~or prices~~ and under such terms and conditions as ~~may be~~ fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any 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, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons shall cease to be such officer before the delivery of ~~such the~~ bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes ~~the same~~ as if he had remained in office until such delivery. 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 a~~ manner, either at public or private sale, and for such price as ~~it may determine~~ will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the projects for which such bonds shall have been issued, and shall be disbursed in ~~such the~~ manner and under ~~such the~~ restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement ~~hereinafter mentioned securing the same bonds~~. If the proceeds of the bonds of any issue, by error of estimates or otherwise, ~~shall be~~ is less than ~~such the~~ cost, additional bonds may ~~in like manner~~ be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of ~~such the~~ bonds or in the trust agreement securing the ~~same 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. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or may be applied to the payment of the cost of any additional project or projects.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.15~~ 2.2-XXX. Trust agreement securing bonds.

In the discretion of the Authority any bonds issued under the provisions of this ~~article 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 the~~ bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or any part thereof. ~~Such The~~ trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the acquisition, construction, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project ~~or projects~~ in connection with which ~~such the~~ 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 revenues to furnish ~~such~~the indemnifying bonds or to pledge ~~such~~the securities as ~~may be required~~ by the Authority. Any such trust agreement may set forth the rights of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority ~~may deem~~deems reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of ~~such a~~trust agreement or resolution may be treated as a part of the cost of the operation of the project ~~or projects~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.16~~ 2.2-XXX. Rents, fees and charges for financing or refinancing, services or use of facilities; use and disposition of revenues.

The Authority ~~is hereby authorized to~~may fix, revise, charge, and collect rates, fees, and other charges for the financing or refinancing of, the use of or for the services and facilities furnished by each project and the different parts thereof, and to contract with any agency, commission, political subdivision or other entity desiring the use of any part thereof, and to fix the terms, conditions, rents, and rates of charges for such use or financing or refinancing. Such rates, fees, and other charges shall be ~~so~~ fixed and adjusted so that revenues of the Authority, together with any other available funds, will be sufficient at all times to pay (i) the cost of maintaining, repairing and operating such project ~~or projects~~ and (ii) the principal of and the interest on such bonds as ~~the same shall they~~ become due and payable, and to create reserves for such purposes. Such rates, fees, and other charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the Commonwealth. The revenues derived from the project ~~or projects~~ in connection with which the bonds ~~shall~~ have been issued, except such part thereof as may be necessary to pay ~~such the~~ cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the ~~same~~ bonds, shall be set aside at such regular intervals as may be provided in ~~such the~~ resolution or ~~such~~ trust agreement in a sinking fund which is ~~hereby~~ pledged to, and charged with, the payment of the principal of and the interest on such bonds as ~~the same shall they~~ become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of ~~such the~~ bonds or of ~~such the~~ trust agreement. Except as may otherwise be provided in ~~such the~~ resolution or ~~such~~ trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.17~~ 2.2-XXX. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this ~~article 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 ~~article chapter~~. The resolution authorizing the bonds of any issue or the trust agreement securing ~~such the~~ 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 the~~ moneys and shall hold and apply the same for the purposes hereof, subject to ~~such the~~ regulations as this ~~article chapter~~ and ~~such the~~ resolution or trust agreement may provide.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.18~~ 2.2-XXX. Proceedings by bondholder or trustee to enforce rights.

Any holder of bonds issued under the provisions of this ~~article chapter~~ or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by ~~such the~~ trust agreement or the resolution authorizing the issuance of ~~such the~~ bonds, may, either at law or in

equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under ~~such the~~ trust agreement or resolution, and may enforce and compel the performance of all duties required by this ~~article 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, fees, and other charges.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-234.19~~ 2.2-XXX. Bonds made securities for investment and deposit.

Bonds issued by the Authority under the provisions of this ~~article chapter~~ are ~~hereby made shall be~~ securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are ~~hereby made shall be~~ 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: Technical corrections only.

§ ~~2.1-234.20~~ 2.2-XXX. Revenue refunding bonds; bonds for refunding and for cost of additional projects.

The Authority is ~~hereby authorized to may~~ 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 ~~article chapter~~ or by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of ~~such the~~ bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the project ~~or projects~~ in connection with which the bonds to be refunded ~~shall~~ have been issued. The Authority is ~~further authorized to may~~ provide by resolution for the issuance of its revenue bonds for the combined purpose of (i) refunding any bonds then outstanding which ~~shall~~ have been issued under the provisions of this ~~article chapter~~ or by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of ~~such the~~ 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 the~~ bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority ~~in respect of the same~~ shall be governed by the provisions of this ~~article chapter~~ insofar as ~~the same they~~ may be applicable.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-234.23~~ 2.2-XXX. Grants or loans of public or private funds.

The Authority is ~~authorized to may~~ accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, including proceeds of the Authority's bonds, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-234.26~~ 2.2-XXX. Moneys of Authority; audit.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge of direct obligations of the United States of America or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the Authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in such accounts shall be paid out on the warrant or other order of the treasurer of the Authority, or of such other person or persons as the Authority may authorize to execute such warrants or orders.

The Auditor of Public Accounts of the Commonwealth, and or his legally authorized representatives are hereby authorized and empowered from time to time to may examine the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation and affairs.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1 234.21~~ 2.2-XXX. Contracts, leases and other arrangements.

A. In connection with the operation of a facility owned or controlled by the Authority, the Authority may enter into contracts, leases, and other arrangements with any person ~~or persons~~ (i) granting the privilege of using or improving the facility or any portion or facility thereof or space therein consistent with the purposes of this ~~article~~ chapter; (ii) conferring the privilege of supplying goods, commodities, things, services, or facilities at the facility; (iii) making available services to be furnished by the Authority or its agents at the facility; and (iv) providing for the payment therefor.

In each case the Authority may establish the terms and conditions and fix the charges, rentals, or fee for the privilege or service, which shall be reasonable and uniform for the same class of privilege or service at each facility and shall be established with due regard to the property and improvements used and the expenses of operation to the Authority.

B. Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by ~~§ 2.1 234.23~~ 2.2-XXX, the Authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person, for a term not to exceed thirty years, the privilege of operating, as agent of the Authority or otherwise, any facility owned or controlled by the Authority; provided that no person shall be granted any authority to operate a facility other than as a public facility or to enter into any contracts, leases, or other arrangements in connection with the operation of the facility which the Authority might not have undertaken under subsection A of this section.

C. In connection with a project leased to or financed or refinanced for a trust instrumentality of the United States where payments or contributions by the Commonwealth and any political subdivision, together with amounts pursuant to an agreement with such trust instrumentality to pay rent or other amounts, are sufficient to pay the principal of and interest on the Authority's bonds issued to finance or refinance such project, the Authority may agree that such trust instrumentality shall assume all responsibility for the acquisition, construction, operation, maintenance, and repair of the project and may further agree that when the principal of all such bonds of the Authority and the interest thereon have been paid in full or provision made therefor satisfactory to the Authority, the trust instrumentality may acquire the Authority's interest in such project without payment of additional consideration.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1 234.22~~ 2.2-XXX. Resolutions, rules and regulations, etc.

The Authority is authorized to may adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it shall ~~deem~~ deems necessary for the management, government, and use of any facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the Authority shall be

inconsistent with, or contrary to, any law of ~~this the~~ Commonwealth or act of the Congress of the United States or any regulation ~~promulgated~~adopted or standard established pursuant thereto. The Authority shall keep on file at the principal office of the Authority for public inspection a copy of all its rules and regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.27~~ 2.2-XXX. Competition in award of contracts; contractors to give surety; terms of contracts

If any project or any portion thereof or any improvement thereof shall be constructed, pursuant to a contract and the estimated cost thereof exceeds \$10,000, such contract with the Authority shall be awarded to the lowest responsible bidder after advertisement for bids. The Authority may make rules and regulations for the submission of bids and the construction, furnishing, or improvement of any project or portion thereof to be owned by the Authority, the Commonwealth or any agency, institution, or department thereof. No contract shall be entered into by the Authority for construction, furnishing, or improvement of any project, or portion thereof, or for the purchase of materials, unless the contractor ~~shall give~~ gives an undertaking with a sufficient surety ~~or sureties~~ approved by the Authority, and in an amount fixed by the Authority in accordance with § 11-58, for the faithful performance of the contract; ~~and such~~. Such contract shall be accompanied by an additional bond for the protection of those who furnish labor and material or rental equipment for such amount and subject to the same terms and conditions as established by the Authority in accordance with § 11-58. All construction contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished, rental equipment used and services rendered for the performance of the contract, and that any person or corporation furnishing such materials, rental equipment or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. The additional bond shall be conditioned upon the prompt payment of actual equipment rentals and shall not be conditioned upon or guarantee payment of equipment rentals, all or any part of which, directly or indirectly, apply on the purchase price of such equipment under the terms of a bailment lease or conditional sales contract or by any other arrangement by which title to the equipment will be transferred to the contractor and the rentals form any part of the consideration.

Subject to the ~~aforesaid~~ foregoing, the Authority may, but without intending by this provision to limit any powers of ~~such the~~ Authority, enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials to rental equipment and other related matters in connection with any project, or portion thereof, as the Authority ~~may deem~~ deems desirable.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.28~~ 2.2-XXX. Eminent domain; right of entry.

The Authority is ~~hereby~~ vested with the power of eminent domain and may exercise ~~the same it~~ for the purposes set forth in this ~~article~~ chapter. If the owner, lessee, or occupier of any property to be condemned or otherwise acquired ~~shall refuse~~ refuses to remove his property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.28:1~~ 2.2-XXX. Jurisdiction of suits against Authority; service of process.

The Circuit Court of the City of Richmond shall have exclusive jurisdiction of any suit brought in Virginia against the Authority, and process in any such suit shall be served either on the State Treasurer or the chairman of the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.24~~ 2.2-XXX. Exemption from taxes or assessments.

The exercise of the powers granted by this ~~article~~ chapter shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Authority ~~will constitute~~ constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this ~~article~~ chapter or upon the income therefrom, and any bonds issued under the provisions of this ~~article~~ chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the Commonwealth; ~~provided that the~~ The exemption hereby granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Small Business Financing Authority.

~~§ 9-197.2.2-XXX.~~ Short title; definitions.

A. This chapter shall be known and may be cited as the "Virginia Small Business Financing Act."

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

"Cost," as applied to the eligible small business, means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing, rehabilitating or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing or operating a project of an eligible small business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible small business or the financing of such construction, acquisition or expansion and the placing of a project of an eligible small business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction or acquisition of a project of an eligible small business may be regarded as a part of the cost of a project of an eligible small business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

"Eligible small business" means any person engaged in one or more small business enterprises in the Commonwealth which satisfies one or more of the following requirements: (i) has received \$10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (ii) has fewer than 250 employees, (iii) has a net worth of \$2 million or less, or (iv) such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance.

"Federal Act" means the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as amended from time to time.

"Indenture" means any trust agreement, deed of trust, mortgage or other security agreement under which bonds authorized pursuant to this chapter shall be issued or secured.

"Lender" means any federally or state chartered bank, federal land bank, production credit association, bank for cooperatives, state or federally chartered savings institution, building and loan association, small business investment company or any other financial institution qualified within the Commonwealth to originate and service loans, including but not limited to insurance companies, credit unions, investment banking or brokerage companies and mortgage loan companies.

"Loan" means any lease, loan agreement or sales contract as hereinafter defined:

(i) "Lease" means any lease containing an option to purchase the project or projects of the eligible small business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds issued in connection with the eligible small business and all interest thereon and principal of and premium, if any, thereon and all other expenses in connection therewith.

(ii) "Loan agreement" means an agreement providing for a loan of proceeds from the sale and issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an eligible small business and providing for the repayment of such loan including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, by such contracting party or parties and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to which the bonds were issued.

(iii) "Sales contract" means a contract providing for the sale of one or more projects of an eligible small business to one or more contracting parties and includes but is not limited to a contract providing for payment of the purchase price including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If the sales contract permits title to a project being sold to an eligible small business to pass to such contracting party or parties prior to payment in full of the entire purchase price, it also shall provide for such contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to which the bonds were issued, one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments of the purchase price thereof.

"Municipality" means any county or incorporated city or town in the Commonwealth.

"Revenue Code" means the Internal Revenue Code of 1954, as amended.

"Revenues" means any and all fees, rates, rentals, profits and receipts collected by, payable to, or otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible small business in furtherance of the purposes of this chapter.

"Small business enterprise" means (i) any industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining or industry or professional services; (ii) commercial enterprises making sales or providing services to industries described in clause (i) hereof; (iii) enterprises for research and development, including but not limited to scientific laboratories; or (iv) such other businesses as will be in furtherance of the public purposes of this chapter.

"Statewide Development Company" means the corporation chartered under this chapter for purposes of qualification as a state development company as such term is defined in the Federal Act.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-197 and subsection B is § 9-199, except that the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX. The definition of "umbrella bonds" has been deleted because it does not actually provide a definition.

~~§ 9-198 2.2-XXX. Legislative findings; Declaration of public purpose; Authority created.~~

~~A. The General Assembly finds and determines that (i) there exists in the Commonwealth a need to assist small business in the Commonwealth in obtaining financing for new business or in the expansion of existing business in order to promote and develop industrial development and to further the long-term economic development of the Commonwealth through the improvement of its tax base and the promotion of employment. The General Assembly finds and determines that and (ii) it is necessary to create a governmental body to provide financial assistance to small business in the Commonwealth by providing loans, guarantees, insurance and other assistance to small business, thereby encouraging the investment of private capital in small business in the Commonwealth. The creation of this governmental body to assist in such matters is essential to the industrial development of the Commonwealth. In making these determinations, the General Assembly has considered and affirmatively expresses its policy to assist small businesses in Virginia, acknowledging that this determination has and will affect competition.~~

~~It is hereby further declared that all of the foregoing are public purposes and that the activities of the Authority will serve a public purpose in that they will promote industry, develop trade and increase employment opportunities for the benefit of the inhabitants of the Commonwealth, either through the increase of commerce or through the promotion of safety, health, welfare, convenience or prosperity; and that the necessity of enacting the provisions herein set forth is in the public interest and is hereby so declared as a matter of express legislative determination.~~

~~B. The Virginia Small Business Financing Authority is created, with such powers and duties as are set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by the Board.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-198 and subsection B is § 9-201. Section 9-198 is not set out in the Code of Virginia, but has been set out here to be consistent with declarations of public purpose found in other Authorities.

~~§ 9-199. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~"Authority" shall mean the Virginia Small Business Financing Authority created by this chapter.~~

~~"Board" shall mean the Board of Directors of the Authority.~~

~~"Bonds" shall mean any bonds, refunding bonds, notes, debentures, interim certificates, or any bond, grant, revenue anticipation notes or any other evidences of indebtedness of the Authority, whether in temporary or definitive form and whether or not exempt from federal taxation.~~

~~"Commonwealth" shall mean the Commonwealth of Virginia.~~

~~"Cost," as applied to the eligible small business, shall mean and shall include without limitation because of enumeration the cost of construction; the cost of acquisition of all lands, structures, rights of way, franchises, easements and other property rights and interests; the cost of demolishing, removing, rehabilitating or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing or operating a project of an eligible small business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other~~

~~expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible small business or the financing of such construction, acquisition or expansion and the placing of a project of an eligible small business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction or acquisition of a project of an eligible small business may be regarded as a part of the cost of a project of an eligible small business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.~~

~~"Eligible small business" shall mean any person engaged in one or more small business enterprises in the Commonwealth which satisfies one or more of the following requirements: (i) has received \$10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (ii) has fewer than 250 employees, (iii) has a net worth of \$2 million or less, or (iv) such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance.~~

~~"Federal Act" shall mean the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as amended from time to time.~~

~~"Indenture" shall mean any trust agreement, deed of trust, mortgage or other security agreement under which bonds authorized pursuant to this chapter shall be issued or secured.~~

~~"Lender" shall mean any federally or state chartered bank, federal land bank, production credit association, bank for cooperatives, state or federally chartered savings institution, building and loan association, small business investment company or any other financial institution qualified within the Commonwealth to originate and service loans, including but not limited to insurance companies, credit unions, investment banking or brokerage companies and mortgage loan companies.~~

~~"Loan" shall mean any lease, loan agreement or sales contract as hereinafter defined:~~

~~(i) "Lease" shall mean any lease containing an option to purchase the project or projects of the eligible small business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds issued in connection with the eligible small business and all interest thereon and principal of and premium, if any, thereon and all other expenses in connection therewith.~~

~~(ii) "Loan agreement" shall mean an agreement providing for a loan of proceeds from the sale and issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an eligible small business and providing for the repayment of such loan including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, by such contracting party or parties and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to which the bonds were issued.~~

~~(iii) "Sales contract" shall mean a contract providing for the sale of one or more projects of an eligible small business to one or more contracting parties and includes but is not limited to a contract providing for payment of the purchase price including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If the sales contract permits title to a project being sold to an eligible small business to pass to such contracting party or parties prior to payment in full of the entire purchase price, it also shall provide for such contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to which the bonds were issued, one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments of the purchase price thereof.~~

~~"Municipality" shall mean any county or incorporated city or town in the Commonwealth.~~

~~"Person" shall mean a natural person, partnership, association, corporation, business trust or other business entity.~~

~~"Revenue Code" shall mean the Internal Revenue Code of 1954, as amended.~~

~~"Revenues" shall mean any and all fees, rates, rentals, profits and receipts collected by, payable to, or otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible small business in furtherance of the purposes of this chapter.~~

~~"Small business enterprise" shall mean (i) any industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining or industry or professional services; (ii) commercial enterprises making sales or providing services to industries described in clause (i) hereof; (iii) enterprises for research and development, including but not limited to scientific laboratories; or (iv) such other businesses as will be in furtherance of the public purposes of this chapter.~~

~~"Statewide Development Company" shall mean the corporation chartered under this chapter for purposes of qualification as a state development company as such term is defined in the Federal Act.~~

~~"Umbrella bonds" shall mean the bonds issued pursuant to § 9-210 of this chapter.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-197), except that the definitions of "Authority," "Board," "Bonds," "Federal agency," and "Person" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX.

~~§ 9-200~~ 2.2-XXX. Construction of chapter.

Nothing contained in this chapter ~~is to~~ shall be construed as a restriction or limitation upon any powers which the Authority might otherwise have under any other law of the Commonwealth, and this chapter supersedes all other laws in conflict herewith and is cumulative to such powers. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling and the powers conferred by this chapter shall be regarded as supplemental and additional to powers conferred by any other laws. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in this chapter.

The provisions of this chapter shall be liberally construed to accomplish the purposes of this chapter.

~~The powers granted and the duties imposed in this chapter shall be construed to be independent and severable. If any one or more sections, subsections, sentences, or parts of any of this chapter shall be adjudged unconstitutional or invalid, such adjudication shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions so held unconstitutional or invalid.~~

DRAFTING NOTE: Technical corrections. The last paragraph has been deleted as duplicative of the general severability provision found in § 1-17.1 of Title 1.

~~§ 9-201. Authority created; powers and duties exercised by Board of Directors.~~

~~The Virginia Small Business Financing Authority is hereby created, with such powers and duties as are set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by the Board of Directors of the Authority.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-198) supra.

~~§ 9-202 2.2-XXX. Membership Board of directors; membership; terms, compensation and expenses; chairman, vice-chairman, secretary and treasurer; quorum; staff.~~

A. The Board shall consist of the State Treasurer or his designee and nine members who are not employees of the Commonwealth or of any political subdivision thereof who shall be appointed by the Governor and who shall have such small business experience as he ~~may deem~~ deems necessary or desirable. The appointment of members of the Board by the Governor shall be subject to confirmation by the General Assembly, ~~if in session when such appointments are made, and if not in session, at the General Assembly's first session subsequent to the date such appointments are made. Unconfirmed appointments shall expire thirty days after the convening of the General Assembly.~~ All members of the Board shall be residents of the Commonwealth. Appointments shall be for terms of four years, except that appointments to fill vacancies shall be made for the unexpired terms. No member appointed by the Governor shall serve more than two complete terms in succession. The members of the Board shall receive no salaries but shall be paid travel and other expenses incurred to attend meetings or while otherwise engaged in the discharge of their duties, all as may be deemed appropriate by the Board.

B. The Governor shall appoint one member as chairman. Five members of the Board shall constitute a quorum for the transaction of all business of the Authority. The Board shall elect one member from the group of nine members appointed by the Governor as vice-chairman who shall exercise the powers of the chairman in the absence of the chairman. ~~The directors~~ Board shall elect ~~from their membership or not, as they desire,~~ a secretary and a treasurer, or a secretary-treasurer, who need not be members of the Board and who shall continue to hold such office until their respective successors shall be are elected. The Department of Business Assistance of the Commonwealth shall serve as staff to the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 9-203 2.2-XXX. Meetings of the Board.~~

~~Meetings of the members of the Board shall be held at the call of the chairman or whenever any four members so request. In any event, the Board shall meet as necessary to attend to the business of the Authority.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-204 2.2-XXX. Executive Director; appointment; duties.~~

The Director of the Department of Business Assistance shall appoint the Executive Director of the Authority. The Executive Director shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and the direction of the Board and the Director of the Department of Business Assistance. Except as otherwise stated in this chapter, the Executive Director shall approve all accounts for allowable expenses for the Authority or of any employee or consultant or other person providing services to the Board, and for expenses incidental to the operation of the Authority subject to approval of the Director of the Department of Business Assistance. The Executive Director shall maintain and be custodian of all books, documents and papers of or filed with the Authority, including but not limited to the minute book or journal of the Authority, and of its official seal. The Executive Director may cause copies to be made of all minutes and other records and documents of the Authority and may in the place and stead of the Secretary of the Authority give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely on such certificates. The Executive Director also shall perform such other duties as ~~may be~~ prescribed by the Board in carrying out the purposes of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 9-205 2.2-XXX. Powers of the Authority.~~

The Authority is ~~hereby~~ granted all powers necessary or appropriate to carry out and effectuate its purposes including, but not limited to, the following powers to:

1. Have perpetual existence as a public body corporate and as a political subdivision of the Commonwealth;
2. Adopt, amend, and repeal bylaws, rules and regulations not inconsistent with this chapter, to regulate its affairs and to carry into effect the powers and the purposes of the Authority ~~as herein stated~~ and for the conduct of its business;
3. Sue and be sued in its name including but not limited to bringing actions pursuant to Article 6 (~~§ 15.4-227-52-15.2-2650~~ et seq.) of Chapter ~~5-426~~ of Title ~~45-415.2~~ to determine the validity of any issuance or proposed issuance of its bonds under this chapter and the legality and validity of all proceedings previously taken or proposed in a resolution of the Authority to be taken for the authorization, issuance, sale and delivery of such bonds and for the payment of the principal thereof and interest thereon;
4. Have an official seal and alter it at will;
5. Maintain an office at such place ~~or places~~ within the Commonwealth as it may designate;
6. Make and execute contracts and all other instruments necessary and convenient for the performance of its duties and the exercise of its powers under this chapter upon such terms and conditions ~~as it deems~~ appropriate;
7. Employ office personnel, advisers, consultants, professionals and agents as may be necessary in its judgment, and to fix their compensation;
8. Procure insurance against any loss in connection with its property and other assets, including but not m d to loans in such amounts and from such insurers as it ~~may deem~~ deems advisable;
9. Borrow money and issue bonds as provided by this chapter;
10. Procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, or, subject to the provisions of and to the extent moneys are available in the fund created by ~~§ 9-244 2.2-XXX~~, insure or guarantee the payment of any bonds issued by the Authority, including the power to pay premiums on any such insurance or guarantees or other instruments of indebtedness;
11. Receive and accept from any source aid or contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter (subject, however, to any conditions upon which grants or contributions are made) including, but not limited to gifts or grants from any department, agency or instrumentality of the United States ~~of America~~;
12. Enter into agreements with any department, agency or instrumentality of the United States ~~of America~~ or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating and providing for the financing or assisting in the financing of any eligible small business or any project thereof;
13. Enter into contracts or agreements with lenders for the servicing and/or processing of loans;
14. Provide technical assistance to local industrial development authorities and to profit and nonprofit entities in the development or operation by, or assistance to, persons engaged in small business enterprises and distribute data and information concerning the encouragement and improvement of small business enterprises in the Commonwealth;
15. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, consent to any modification with respect to the rate of interest, time for, and payment of, any installment of principal or interest, or any other term of any contract, loan, sales contract, lease, indenture or agreement of any kind to which the Authority is a party;

16. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, enter into contracts with any lender containing provisions authorizing the lender to reduce the charges or fees, exclusive of loan payments, to persons unable to pay the regular schedule thereof when, by reason of other income or payment by any department, agency or instrumentality of the United States of America or the Commonwealth, the reduction can be made without jeopardizing the economic stability of the eligible small business being financed;

17. Allocate any of its property to the insurance or guarantee fund established by § ~~9-2442.2-XXX~~ or to any other fund of the Authority, such property consisting of:

a. Moneys appropriated by the Commonwealth;

b. Premiums, fees and any other amounts received by the Authority with respect to financial assistance provided by the Authority;

c. Proceeds as designated by the Authority from the loan or other disposition of property held or acquired by the Authority;

d. Income from investments that were made by the Authority or on the behalf of the Authority from moneys in one or more of its funds; or

e. Any other moneys made available to the Authority consistent with this chapter;

18. ~~To use~~ Use any fund or funds of the Authority for any and all expenses to be paid by the Authority including, ~~by way of example, but not by limitation~~ limited to: (i) any and all expenses for administrative, legal, actuarial, and other services; (ii) all costs, charges, fees and expenses of the Authority relating to the authorizing, preparing, printing, selling, issuing, and insuring of bonds and the funding of reserves; and (iii) all expenses and costs relating to the guaranteeing, insuring or procurement of guarantees, insurance or other instruments providing credit or the enhancement of credit for the bonds;

19. ~~To collect~~ Collect fees and charges, ~~as the Authority determines to be reasonable,~~ in connection with its loans, insurance, guarantees, commitments and servicing thereof;

20. ~~To sell~~ Sell, at public or private sale, with or without public bidding, any obligation held by the Authority;

21. ~~To invest~~ Invest any funds not needed for immediate disbursement, including any funds held in reserve, in any obligations or securities which may be legally purchased by political subdivisions in the Commonwealth or as may be otherwise permitted by § ~~9-230 2.2-XXX~~;

22. ~~To administer~~ Administer the Private Activity Bonds program in Chapter 33.2 (§ ~~15.1-1399.10-15.2-5000 et seq.~~) of Title ~~45-115.2~~ and the Virginia Economic Development Revolving Fund in Chapter 22.1 (§ 59.1-284.1 et seq.) of Title 59.1; ~~and~~

23. Create and establish such funds and accounts as may be necessary or desirable for its purposes; and

~~2324. To take~~ Take any action necessary or convenient for the exercise of the powers granted by this chapter or reasonably implied from them.

DRAFTING NOTE: Technical corrections. Subdivision 23 is derived from existing § 9-228 and has been added here as power of the Authority.

§ ~~9-206 2.2-XXX~~. Power to condemn.

The Authority ~~shall have the power to~~ may condemn property in furtherance of its purposes; provided, that any such condemnation ~~must~~ shall be approved by the governing body of the municipality having jurisdiction over the property so condemned. Any property condemned by the Authority shall not be sold or leased by the Authority

unless the Authority, preceding the consummation of any such sale or lease, finds and determines that such sale or lease is in furtherance of, or incidental to, the main purposes of the Authority under this chapter or that such property is no longer needed in furtherance of, or incidental to, such purposes. Any exercise of the power to condemn as authorized by this section shall be in accordance with the provisions of Title 25 (§ 25-46.1 et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 9-207 2.2-XXX~~. Power to borrow money and issue bonds.

The Authority ~~shall have the power to~~ may borrow money and ~~to issue from time to time its bonds~~ to pay the cost of the projects for which ~~such the~~ bonds have been issued, including but not limited to the power to issue ~~from time to time bonds~~ to renew or to pay bonds, including the interest thereon. Whenever it deems refunding expedient it ~~shall have the power to~~ may refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds. Refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. The Authority may undertake the financing of the cost of a project for an eligible small business from the proceeds of its bonds by one or more of the following methods: (i) entering into a lease for the facilities of the eligible small business being financed; (ii) selling such facilities to the eligible small business under a sales contract; (iii) lending the proceeds of the sale of the bonds under a loan agreement with the eligible small business; (iv) entering into a loans to lenders transaction in the manner described in ~~§ 9-217 2.2-XXX~~; or (v) entering into such other ~~transaction or transactions~~ as the Board deems appropriate to accomplish the purposes of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 9-209 2.2-XXX~~. Power to issue bonds to purchase ninety percent guaranteed portion of loans.

In addition to and not as a limitation upon the powers to issue bonds as elsewhere expressed in this chapter, the Authority may, with proceeds of an issue of its bonds, participate with lenders in making or purchasing small business loans, not exceeding as to any one such loan one million dollars in principal amount, to be serviced by such lenders, provided that:

1. The Authority's share shall not exceed ~~90~~ninety percent of the total principal amount of any such loan, and such participation shall be payable with interest at the same times, but not necessarily at the same interest rate, as the share of the lender, and both shares shall be equally and ratably secured by a valid mortgage on, or security interest in, real or personal property or by any other security satisfactory to the Authority to secure payment of the loan; however, the Authority's share of any such loan may equal 100 percent of the total principal amount of the small business loan if the lender participating in the making or purchasing of such small business loan by servicing the loan, purchases 100 percent of the total amount of the bonds issued by the Authority in connection with or allocable to such small business loan;
2. The total principal amount of the Authority's share shall not exceed ninety percent of the value of the property securing the small business loan, unless the amount in excess of ninety percent is:
 - a. Loaned from available funds which are not proceeds received directly from the sale of the Authority's bonds and are not restricted under the terms of the resolution authorizing, or the indenture securing such bonds, or
 - b. Insured or guaranteed by a federal agency or by a private insurer qualified to write such insurance in the Commonwealth, insuring a percentage of any claim for loss at least equal to that percentage of the value by which the small business loan exceeds ninety percent thereof;
3. The value of the property securing the small business loan is certified by the participating lender, on the basis of such appraisals, bids, purchase orders, and engineers' certificates as the Authority may require; provided that the value of items purchased and constructed from the proceeds of the small business loan shall not be deemed, for purposes of this section, to exceed the contract price in respect of purchase or construction;

4. The Authority shall not disburse funds under a commitment to participate in a small business loan for the construction or substantial improvement of property until the construction or improvement has been completed, unless a lender furnishes an irrevocable letter of credit or a qualified corporate surety furnishes payment and performance bonds, in either event satisfactory to the Authority and in an aggregate amount equal to the cost of such construction or improvement;

5. No other indebtedness may be secured by a mortgage on, or security interest in, property securing a small business loan made or purchased pursuant to this subdivision without the prior express written authorization of the Authority; and

6. The participating lender agrees to use the proceeds of the small business loan to lend to eligible small businesses in the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 9-240~~ 2.2-XXX. Power to issue umbrella bonds.

In addition to, ~~and not as a limitation upon,~~ the powers of the Authority to issue bonds ~~as elsewhere conferred in this chapter, the Authority also shall have the power to~~, it may issue bonds, the proceeds of which, after payment of the costs of issuance thereof, ~~will shall~~ be used to make loans, no single loan to be in excess of ten million dollars in aggregate principal amount, to finance or refinance the projects of eligible small businesses. The Authority shall ~~promulgate~~ adopt such rules and regulations as ~~may be~~ are necessary to carry out the purposes of this section and to provide procedures for the making of such loans and the repayment thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 9-244~~ 2.2-XXX. Insurance or guarantee fund.

There is ~~hereby~~ created an insurance or guarantee fund of the Authority which may be used for any of the following purposes:

1. To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on its bonds;

2. To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained or delivered in connection with the issuance and sale of its bonds; and

3. To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, or other instruments or enhancement of credit for or support from any person in connection with financing assistance provided by the Authority under this chapter including but not limited to working capital loans made by a lender.

DRAFTING NOTE: Technical corrections only.

~~§ 9-242~~ 2.2-XXX. Security for bonds; fees and expenses; limitations.

A. The bonds or instruments with respect to which financial assistance is provided by the Authority shall be secured or unsecured in a manner approved by the Board in its sole discretion.

B. The Board may set the premiums and fees to be paid to it for providing financial assistance under this chapter. The premiums and fees and expenses set by the Board shall be payable in the amounts, at the time and in the manner that the Board, in its discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount among transactions and at different stages during the terms of the transactions.

C. No portion of the proceeds of an issue of the Authority's bonds which are exempt under federal taxation as industrial development bonds under Section 103 (b) of the Revenue Code shall be used to provide facilities prohibited in Section 103 (b) (6) (O) of such Revenue Code.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-212, subsection B is § 9-213, and subsection C is § 9-215.

~~§ 9-213. Fees and expenses.~~

~~The Board may, in its discretion, set the premiums and fees to be paid to it for providing financial assistance under this chapter. The premiums and fees and expenses set by the Board shall be payable in the amounts, at the time and in the manner that the Board, in its discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount among transactions and at different stages during the terms of the transactions.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-212) supra.

~~§ 9-214. Not indebtedness.~~

~~Bonds issued pursuant to the provisions of this chapter shall not constitute an indebtedness within the meaning of any debt limitation or restriction.~~

DRAFTING NOTE: Technical corrections only. This section has been deleted as duplicative of proposed § 2.2-XXX (existing § 9-221).

~~§ 9-215 2.2-XXX. Limitations of use of tax exempt bonds.~~

~~No portion of the proceeds of an issue of the Authority's bonds which are exempt under federal taxation as industrial development bonds under Section 103 (b) of the Revenue Code may shall be used to provide facilities prohibited in Section 103 (b) (6) (O) of such Revenue Code.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 9-212) supra.

~~§ 9-216 2.2-XXX. Public hearing and approval.~~

Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds under Section 103 of the Revenue Code, unless otherwise specified by federal law or regulation, the public hearing for industrial development bonds of the Authority shall be conducted by the Authority and the procedure for the public hearing and public approvals shall be as follows:

1. For a public hearing by the Authority:

a. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the municipality in which the facility to be financed is to be located of intention to provide financing for a named applicant. The applicant shall pay the cost of notification. ~~Such~~ The notice shall also be mailed or otherwise delivered to the clerk of the local governing body of ~~such~~ the municipality. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than twenty-one days after the second notice shall appear in such newspaper. The hearing may be held at any place within the Commonwealth determined by the Board.

b. The notice shall contain (i) the name and address of the Authority; (ii) the name and address of the principal place of business, if any, of the applicant seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

c. Every request for industrial development bond financing when submitted to the Authority shall be accompanied by a statement in the following form:

Name of Applicant:

Facility:

Date:

Maximum amount of financing sought: \$

Estimated taxable value of the facility's real property in the municipality in which it is located. \$

Estimated taxable value of the facility's real property once constructed or expanded. \$

Estimated real property tax per year using present tax rates on the facility's real property once constructed or expanded. \$

Estimated personal property tax per year from property to be located in expanded or constructed facility using present tax rate. \$

Estimated merchants' capital tax per year from property to be located in expanded or constructed facility using present tax rate. \$

Estimated dollar value per year of goods and services that will be purchased in the Commonwealth during construction or expansion of facility. \$

Estimated dollar value per year of goods and services that will be purchased in the Commonwealth for the operation of the facility. \$

Estimated dollar value per year of goods and services that will be produced and sold from the facility. \$

Estimated number of employees during construction or expansion.
.....

Estimated number of regular employees on a year round basis during operation of the facility.

Average annual salary per regular employee during operation of the facility. \$
.....

Estimated payroll for labor during construction or expansion of the facility.

\$

If any of the above questions do not apply to the eligible small business being financed, indicate by writing N/A (not applicable) on the appropriate line.

2. For public approval, the Governor is appointed by this chapter as the applicable elected representative within the meaning of Section 103 (k) of the Revenue Code.

DRAFTING NOTE: Technical corrections only.

~~§ 9-217 2.2-XXX~~. Loans to lenders; conditions.

The Authority may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by ~~such the~~ lenders to make loans to eligible small businesses. Loan commitments or actual loans may be originated through and serviced by any such lender. As a condition to a lender's participating in ~~such the~~ loan, ~~such the~~ lender shall agree to use the proceeds of ~~such the~~ loan within a reasonable period of time to make loans or purchase loans to provide eligible small businesses, or finance the projects of eligible small businesses, in the Commonwealth or, if ~~such the~~ lender has made a commitment to make loans to provide eligible small businesses on the basis of a commitment from the Authority to purchase ~~such the~~ loans, ~~such the~~ lender ~~will shall~~ make ~~such the~~ loans within a reasonable period of time.

DRAFTING NOTE: Technical corrections only.

~~§ 9-218 2.2-XXX~~. Investment in, purchase or assignment of loans; conditions.

The Authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments, of loans made by lenders for the acquisition, construction, rehabilitation, expansion or purchase of a project ~~or projects~~ for eligible small business.

DRAFTING NOTE: Technical corrections only.

~~§ 9-219 2.2-XXX~~. ~~Rules and regulations~~ Regulations of the Authority.

Prior to carrying out the powers granted under §§ ~~9-217 2.2-XXX~~ and ~~9-218 2.2-XXX~~, the Authority shall ~~promulgate rules and adopt~~ regulations governing its activities authorized thereunder, including but not limited to ~~rules and regulations~~ relating to the following:

1. Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment and sale of loans;
2. The reinvestment by a lender of the proceeds, or an equivalent amount, from any loan to a lender in loans to provide financing for eligible small business in the Commonwealth;
3. Assurances that the eligible small business to be financed will improve employment conditions or otherwise improve industrial development in the Commonwealth;
4. Rates, fees, charges, and other terms and conditions for originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;
5. The type and amount of collateral or security to be provided to assure repayment of loans to lenders made by the Authority;
6. The type of collateral, payment bonds, performance bonds or other security to be provided for any loans made by a lender for construction loans;

7. The nature and amount of fees to be charged by the Authority to provide for expenses and reserves of the Authority;

8. Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions and interest rates for loans made, purchased, sold, assigned or committed pursuant hereto;

9. Commitment requirements for financing by lenders involving money provided, directly or indirectly, by the Authority; or

10. Any other appropriate matters related to the duties or exercise of the Authority's powers hereunder.

DRAFTING NOTE: Technical corrections only.

~~§ 9-220~~ 2.2-XXX. How bonds paid and secured.

Except as may otherwise be expressly provided by the Authority in proceedings relating to a particular issue of bonds, every issue of its bonds shall be payable solely out of any revenues of the Authority. The bonds additionally may be secured by a pledge of any grant, contribution or guarantee from the federal government or any person or a pledge by the Authority of any revenues from any source.

DRAFTING NOTE: Technical corrections only.

~~§ 9-224~~ 2.2-XXX. Liability of Commonwealth, political subdivisions and members of Board.

No bonds issued or loans or loan guarantees made by the Authority under this chapter shall constitute a debt, liability or general obligation of the Commonwealth or any political subdivision thereof (other than the Authority), or a pledge of the faith and credit of the Commonwealth or any political subdivision thereof (other than the Authority), but shall be payable solely as provided by the Authority. No member or officer of the Board nor any person executing the bonds, loans, or loan guarantees shall be liable personally on the bonds, loans, or loan guarantees by reason of the issuance thereof. Each bond issued or loan or loan guarantee made under this chapter shall contain on the face thereof a statement that neither the Commonwealth, nor any other political subdivision thereof, shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenue or money pledged by the Authority and that neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision thereof is pledged to the payment of the principal of, or the interest on, such bond, loan, or loan guarantee.

DRAFTING NOTE: Technical corrections only.

~~§ 9-222~~ 2.2-XXX. Authorization of bonds by resolution; contents of bond sale; manner.

The bonds shall be authorized by a resolution of the Board, shall bear such date or dates, and shall mature at such time ~~or times~~ as such resolution may provide, except that no bond shall mature more than fifty years from the date of issue. The bonds shall (i) bear interest at such ~~rate~~ or rates, including variations of such rates; (ii) be in such denominations; (iii) be in such form; (iv) carry such registration privileges; (v) be executed in such manner; (vi) be payable in such medium of payment, at such place ~~or places~~; and (vii) be subject to such terms of redemption, including redemption prior to maturity, as ~~such the~~ resolution may provide. Except as expressly provided otherwise in this chapter, the provisions of other laws of the Commonwealth relating to the issuance of revenue bonds shall not apply to bonds issued by the Authority. Bonds of the Authority may be sold by the Authority at public or private sale, ~~from time to time~~, and at such price ~~or prices~~ as the Authority ~~shall determine~~ determines.

DRAFTING NOTE: Technical corrections only.

~~§ 9-223~~ 2.2-XXX. Resolution authorizing issuance of bonds; provisions.

Any resolution authorizing the issuance of bonds may contain provisions ~~as to~~ for:

1. Pledging all or any part of the revenues of the Authority to secure the payment of the bonds, subject to the terms of the proceedings relating to other bonds of the Authority as may then exist;
2. Pledging all or any part of the assets of the Authority, including loans and obligations securing the same, to secure the payment of the bonds, subject to the terms of the proceedings relating to other bonds of the Authority as may then exist;
3. The use and disposition of the gross income from loans owned by the Authority and payment of the principal of loans owned by the Authority;
4. The setting aside of reserves or sinking funds and the regulations and disposition thereof;
5. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;
6. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;
7. The procedure, if any, by which the terms of any of the proceedings under which the bonds are being issued may be amended or abrogated, the number or percentage of bondholders who or which must consent thereto, and the manner in which the consent may be given;
8. The vesting in a trustee ~~or trustees~~ of such property, rights, powers and duties in trust as the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers and duties of the trustee;
9. Defining the act or omissions to act which shall constitute a default and the obligations or duties of the Authority to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, which rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter; or
10. Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

DRAFTING NOTE: Technical corrections only.

~~§ 9-224~~ 2.2-XXX. Pledge by Authority.

Any pledge made by the Authority shall be valid and binding from the time when the pledge was made. The revenues or properties so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

DRAFTING NOTE: Technical corrections only.

~~§ 9-225~~ 2.2-XXX. Purchase of bonds of Authority.

The Authority, subject to the provisions in proceedings relating to outstanding bonds as may then exist, may purchase bonds out of any funds available therefor, which shall thereupon be cancelled, at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price (and premium, if any) then applicable plus accrued interest to the redemption date thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 9-226~~ 2.2-XXX. Bonds secured by indenture; contents; expenses; how treated.

The bonds may be secured by an indenture by and between the Authority and a corporate trustee which may be any bank or other corporation having the power of a trust company or any trust company within or without ~~this the~~ Commonwealth. ~~Such~~ The indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the indenture for the payment of the proceeds of the bonds and revenues to the trustee under the indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the Authority may determine. If the bonds ~~shall be~~ are secured by an indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

DRAFTING NOTE: Technical corrections only.

~~§ 9-227~~ 2.2-XXX. Signatures of prior members or officers; validity.

In the event that any of the members or officers of the Board ~~shall cease~~ cease to be members or officers of the Board prior to the delivery of any bonds signed by them, their signatures or facsimiles ~~thereof~~ shall nevertheless be valid and sufficient for all purposes, ~~the same~~ as if ~~such members or officers~~ they had remained in office until such delivery.

DRAFTING NOTE: Technical corrections only.

~~§ 9-229~~ 2.2-XXX. Deposit of money; expenditures; security for deposits.

All money of the Authority, except as otherwise authorized ~~in or pursuant to or provided~~ in this chapter, shall be deposited as soon as practicable in a separate account ~~or accounts~~ in banks or trust companies organized under the laws of the Commonwealth or in national banking associations doing business in the Commonwealth. The money in such accounts shall be paid by checks signed by the Executive Director or other officer or employees of the Authority as the Authority shall authorize. All deposits of money shall, if required by the Authority, be secured in such manner as the Authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

DRAFTING NOTE: Technical corrections only.

~~§ 9-230~~ 2.2-XXX. Contracts with holders of bonds; how money secured.

Notwithstanding the provisions of ~~§ 9-229~~ 2.2-XXX, the Authority ~~shall have the power to~~ may contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds, and to carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

DRAFTING NOTE: Technical corrections only.

~~§ 9-234~~ 2.2-XXX. Bondholder protection.

Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds issued under this chapter prior to the enactment of the amendments until the bonds, together with all interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

DRAFTING NOTE: Technical corrections only.

~~§ 9-234~~ 2.2-XXX. Bonds as legal investments and securities.

The bonds issued by ~~and under the authority of this chapter~~ by the Authority ~~are declared to in accordance with this chapter shall~~ be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings institutions, building and loan associations, and investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. ~~Such~~ The bonds ~~are~~ shall also hereby made be securities which may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

DRAFTING NOTE: Technical corrections only.

~~§ 9-232~~ 2.2-XXX. Expenses of Authority; liability of Commonwealth or political subdivision prohibited.

All expenses incurred by the Authority in carrying out the provisions of this chapter shall be payable solely from funds provided under this chapter, and nothing in this chapter shall be construed to authorize the Authority to incur indebtedness or liability on behalf of or payable by the Commonwealth or any other political subdivision thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 9-228~~. Funds created.

~~The Authority may create and establish such funds and accounts as may be necessary or desirable for its purposes.~~

DRAFTING NOTE: Technical corrections. This section now appear as subdivision 23 in proposed § 2.2-XXX (existing § 9-205) supra.

~~§ 9-228.4~~ 2.2-XXX. Creation, administration, and management of Virginia Export Fund.

A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 of § 9-228, there shall be a permanent fund known as the Virginia Export Fund (the Fund). The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the Fund from loans or loan guarantees made against it, (iii) all income from the investment of moneys held by the Fund, and (iv) any other sums designated for deposit to the Fund from any source, public or private. The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be used to provide loans or loan guarantees as provided in § 9-228.4 subsection D. Any balances remaining in the Fund shall not revert to the general fund but shall be retained in order to make additional loans or loan guarantees.

B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.

C. The Authority, or its designated agent, may collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.

D. The Fund shall be used to make loans or to provide a guarantee for up to ninety percent of the principal amount of any commercial loan or line of credit made by a lender for the purpose of facilitating the sale of goods, products, or services outside of the United States by persons, firms, or corporations utilizing a Virginia air, land, or sea port to ship such goods, products, or services. Such guarantee shall not exceed one million dollars.

E. The Authority shall determine the terms and conditions of any loans or loan guarantee made against the Fund and may allow for use of the Fund in single or multiple transactions. No loan shall exceed a term of twelve months, nor shall a loan guarantee exceed a term of eighteen months. In the case of loans, the Authority shall charge an annual interest rate. In the case of guarantees, the Authority shall charge an annual guarantee fee. However, the Authority may waive such guarantee fees in an economically distressed area as defined in § 58.1-439. In connection with applications for loans or loan guarantees made against the Fund, the Authority may require the production of any document, instrument, certificate, legal opinion, or other information it deems necessary or convenient.

F. All loans or loan guarantees made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-228.1, subsection B is § 9-228.2, subsection C is § 9-228.3, and subsections D through F are § 9-228.4. These sections have been combined to clarify that they relate to the Virginia Export Fund.

~~§ 9-228.2. Deposit of moneys.~~

~~All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-228.1).

~~§ 9-228.3. Collection of moneys due to the Fund.~~

~~The Authority, or its designated agent, is empowered to collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 9-228.1).

~~§ 9-228.4. Loans and guarantees made against the Fund.~~

~~A. The Fund shall be used to make loans or to provide a guarantee for up to ninety percent of the principal amount of any commercial loan or line of credit made by a lender for the purpose of facilitating the sale of goods, products, or services outside of the United States by persons, firms, or corporations utilizing a Virginia air, land, or sea port to ship such goods, products, or services. Such guarantee shall not exceed one million dollars.~~

~~B. The Authority shall determine the terms and conditions of any loans or loan guarantee made against the Fund and may allow for use of the Fund in single or multiple transactions. No loan shall exceed a term of twelve months, nor shall a loan guarantee exceed a term of eighteen months. In the case of loans, the Authority shall charge an annual interest rate. In the case of guarantees, the Authority shall charge an annual guarantee fee. However, the Authority may waive such guarantee fees in an economically distressed area as defined in § 58.1-439. In connection with applications for loans or loan guarantees made against the Fund, the Authority is authorized to require the production of any document, instrument, certificate, legal opinion, or other information it deems necessary or convenient.~~

~~C. All loans or loan guarantees made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections D through F in proposed § 2.2-XXX (existing § 9-228.1).

§ 9-228.5 2.2-XXX. Creation, administration, and management of Virginia Small Business Growth Fund.

A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 of § 9-228.2-XXX, there shall be a permanent fund known as the Virginia Small Business Growth Fund (the "Fund"). The fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other sums designated for deposit to the Fund from any source, public or private. The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be used to create special reserve funds to cover potential future losses from the loan portfolios of participating banks and lending institutions as provided in § 9-228.8 subsection D. Any remaining balances in the Fund shall not revert to the general fund but shall be retained in order to create additional special reserve funds.

B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.

C. The Authority, or its designated agent, may collect moneys owed to the Fund. Proceedings to recover moneys owed to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.

D. The Fund shall be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) work with banks and lending institutions to establish a separate account for the Virginia Small Business Growth Fund in each participating bank or lending institution and (ii) deposit into such accounts, moneys from the Fund in an amount equal to the total of the sum of the bank or lending institution's and the individual borrower's deposits into such account. Such matching sum by the Authority shall not exceed seven percent of the principal amount of the loan.

E. The Authority shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Authority may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof. All claims made against each account shall be reported to the Board or an authorized committee thereof.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-228.5, subsection B is § 9-228.6, subsection C is § 9-228.7, and subsections D and E are § 9-228.8. These sections have been combined to clarify that they relate to the Virginia Small Business Growth Fund.

~~§ 9-228.6. Deposit of moneys:~~

~~All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B of proposed § 2.2-XXX (existing § 9-228.5).

~~§ 9-228.7. Collection of moneys due to the Fund:~~

~~The Authority, or its designated agent, is empowered to collect moneys owed to the Fund. Proceedings to recover moneys owed to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 9-228.5).

~~§ 9-228.8. Operation of the Fund:~~

~~A. The Fund shall be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) work with banks and lending institutions to establish a separate account for the Virginia Small Business Growth Fund in each participating bank~~

~~or lending institution and (ii) deposit into such accounts, moneys from the Fund in an amount equal to the total of the sum of the bank or lending institution's and the individual borrower's deposits into such account. Such matching sum by the Authority shall not exceed seven percent of the principal amount of the loan.~~

~~B. The Authority shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Authority is authorized to require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof. All claims made against each account shall be reported to the Board or an authorized committee thereof.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections D and E in proposed § 2.2-XXX (existing § 9-228.5).

~~§ 2.1-64.34:1~~ 2.2-XXX. Creation, administration, and management of the Capital Access Fund for Disadvantaged Businesses.

A. For the purposes of this section:

"Disadvantaged business" means a for-profit small business concern that is majority-owned by one or more economically disadvantaged individuals. In the case of a corporation, a majority of the stock shall be owned by one or more such individuals and the management and daily business operations shall be controlled by one or more of the economically disadvantaged individuals who own it.

"Economically disadvantaged individual" means an individual whose ability to compete in the free market has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area.

B. There is hereby created in the state treasury a permanent nonreverting fund to be known as the Capital Access Fund for Disadvantaged Businesses (the Fund). The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used to provide loan guarantees, loan loss reserves, and interest rate write downs. The Fund shall be managed by the Department of Minority Business Enterprise (the Department) and administered by the Virginia Small Business Financing Authority (the Authority).

C. The operation of the Fund shall be as follows:

1. The Fund may be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) establish with one or more banks and lending institutions one or more accounts or pools for the Capital Access Fund for Disadvantaged Businesses and (ii) deposit into such accounts or pools moneys from the Fund in an amount equal to the total of the sum of the bank or lending institutions and the individual borrower's deposits, cash equivalents or other acceptable securities, including but not limited to letters of credit, for each loan sought to be covered for future losses. Such matching sum by the Authority shall not exceed fourteen percent of the principal amount of the loan. The Authority may require up to a one hundred percent match by the individual borrowers pursuant to established guidelines.

2. The Fund may also be used to guarantee up to ninety percent of the principal amount of any loan to cover potential future losses from the loan portfolios of participating banks and lending institutions to cover specific loans on such terms and conditions as set forth in established guidelines. Such guarantees shall not exceed a term of five years and shall not exceed fifty thousand dollars.

3. The Fund may also be used to provide interest rate write downs or other payments to achieve a concessionary rate of interest which shall be limited to five percent of the balance of the Fund that is

unencumbered by any special reserves or guarantees or the income earned by the Fund from all sources including fees, interest, or other investment income. No interest rate write down or payment to achieve a concessionary rate shall extend for more than five years and such rates shall include provisions for an increase in such rates to a near market rate but not more than the prime rate.

4. Provisions may be made for a borrower to use a combination of subdivisions C 1, C 2, and C 3 pursuant to established guidelines.

D. The determination of economic disadvantage shall be made by the Director of the Department of Minority Business Enterprise pursuant to the guidelines developed in accordance with subsections B and C.

E. The Department and the Authority, or their designated ~~agent~~ agents, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department ~~is authorized to~~ may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department and the Authority.

DRAFTING NOTE: Technical corrections only. This section was moved from the chapter relating to the Department of Minority Business Enterprise (Chapter X) to this chapter since the Virginia Small Business Financing Authority is mandated to administer this fund. A cross reference to this section was added to the powers of Department of Minority Business Enterprise.

~~§ 9-235 2.2-XXX.~~ Annual report; audit.

The Authority shall, within 120 days of the close of each fiscal year, submit an annual report of its activities for the preceding fiscal year to the Governor and the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Each report shall set forth, for the preceding fiscal year, a complete operating and financial statement for the Authority and any loan fund or loan guarantee fund the Authority administers or manages. The Commonwealth's Auditor of Public Accounts or his ~~designee~~ legally authorized representatives shall at least once in a year audit the books and accounts of the Authority and any loan fund or loan guarantee fund the Authority administers or manages.

DRAFTING NOTE: Technical corrections only.

~~§ 9-233 2.2-XXX.~~ Exemption from taxation.

The Authority is ~~hereby~~ declared to be performing a public function and to be a public body corporate and a political subdivision of the Commonwealth. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the Authority, shall at all times be exempt from all taxation by the Commonwealth or any public subdivision thereof. If, after all indebtedness and other obligations of the Authority are discharged, the Authority is dissolved, its remaining assets shall inure to the benefit of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 9-208 2.2-XXX.~~ Administrative Process Act not applicable.

The provisions of the Administrative Process Act (~~§ 9-6-14:1- 2.2-XXX~~ et seq.) shall not apply to this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 9-249.1. Nonstock corporation to assist small businesses.~~

~~The Department of Business Assistance is hereby authorized to establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.), Title 13.1 as an instrumentality to assist the Department in providing support to the small business segment of the economy of the Commonwealth. The Department is further authorized to do all~~

~~things necessary to qualify such corporation as a certified development company under Subchapter V of the Small Business Investment Act of 1958 (15 U.S.C. § 695 et seq.), or any amendment or successor statute thereto, as well as regulations promulgated thereunder by the United States Small Business Administration. Any action by the Department to establish such a corporation prior to July 1, 1986, is hereby ratified and approved.~~

DRAFTING NOTE: Technical corrections. This section was moved to Chapter X, relating to the Department of Business Assistance in Part C of Subtitle I as a more appropriate place.

Chapter X.

Virginia Tourism Authority.

~~§ 2.1-548.53. Short title.~~

~~This chapter shall be known and may be cited as the Virginia Tourism Authority Act.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 2.2-XXX (existing § 2.1-548.54) infra.

~~§ 2.1-548.54 2.2-XXX. Legislative findings and purposes~~Short title; declaration of public purpose; Authority created.

A. This chapter shall be known and may be cited as the Virginia Tourism Authority Act.

B. The General Assembly finds and hereby declares that:

1. There exists in all geographical regions of the Commonwealth a rich plethora of tourist attractions, including cultural, historical, commercial, educational, and recreational activities, locations, and sources of entertainment;

2. Such tourist attractions are of potential interest to millions of people who reside both in and outside the Commonwealth;

3. Promotion of tourism in the Commonwealth is necessary to increase the prosperity of the people of the Commonwealth;

4. A state tourism development authority is therefore necessary to stimulate the tourism segment of the economy by promoting, advertising, and marketing the Commonwealth's many tourist attractions and by coordinating other private and public efforts to do the same; and

5. The film industry is a legitimate and important part of economic development in the Commonwealth.

The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

B. The Virginia Tourism Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and the increase of their commerce and prosperity. The Authority may do business as the "Virginia Tourism Corporation," and any references in the Code or in any regulations adopted thereunder that refer to the Virginia Tourism Corporation shall, whenever necessary, be deemed to refer to the Authority.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-548.53, subsection B is § 2.1-548.54 (except that the definitions of "Authority" and "Board" from § 2.1-548.55 have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX), and subsection C is § 2.1-548.56.

~~§ 2.1-548.55. Definitions.~~

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

~~"Authority" means the Virginia Tourism Authority created by this chapter.~~

~~"Board" or "Board of Directors" means the Board of Directors of the Authority.~~

~~"Member" means a person currently serving a term on the Board of Directors.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-548.53), except that the definitions of "Authority" and "Board" from this section have been consolidated in a single definitional section located at the beginning of this Subpart 1 as § 2.2-XXX. The definition of "Member" has been deleted as unnecessary.

~~§ 2.1-548.56. Creation of Authority.~~

~~The Virginia Tourism Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and the increase of their commerce and prosperity. The Authority is authorized to do business as the "Virginia Tourism Corporation," and any references in the Code or in any regulations promulgated thereunder that refer to the Virginia Tourism Corporation shall, whenever necessary, be deemed to refer to the Authority.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-548.54) supra.

~~§ 2.1-548.57~~ 2.2-XXX. Board of ~~Directors~~ directors; members and officers.

A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a board of directors consisting of the Secretary of Commerce and Trade, the Secretary of Finance, and eleven members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board appointed by the Governor shall serve terms of six years each, except that the original terms of four members appointed by the Governor shall end on June 30, 2000, the original term of four members appointed by the Governor shall end on June 30, 2001, and the original terms of three members appointed by the Governor shall end on June 30, 2002, all as designated by the Governor. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. The Governor shall make appointments in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth.

Each member of the Board shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in ~~§ 2.1-20.32.2-XXX~~ for each day or portion thereof in which the member is engaged in the business of the Authority.

B. The Governor shall designate one member of the Board as chairman. The Board may elect one member as vice-chairman, who shall exercise the powers of chairman in the absence of the chairman or as

directed by the chairman. The Secretary of Commerce and Trade and the Secretary of Finance shall not be eligible to serve as chairman or vice-chairman.

C. Meetings of the Board shall be held at the call of the chairman or of any six members. Seven members of the Board shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the Board shall impair the right of the majority of a quorum of the members of the Board to exercise all the rights and perform all the duties of the Authority.

D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board or by providing service to the Authority.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-548.58~~ 2.2-XXX. Appointment and duties of Executive Director.

The Governor shall appoint an Executive Director of the Authority, who shall serve as President and chief executive officer of the Authority. The Executive Director shall report to, but not be a member of, the Board ~~of Directors~~. The Governor shall set the salary and other compensation of the Executive Director, and shall approve any changes in the Executive Director's salary or compensation. The Executive Director shall serve as the ex officio secretary of the Board and shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and direction of the Board ~~of Directors~~. He shall attend meetings of the Board ~~of Directors~~, shall keep a record of the proceedings of the Board and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as instructed by the Board in carrying out the purposes of this chapter. The Executive Director shall employ or retain such agents or employees subordinate to him as may be necessary to fulfill the duties of the Authority conferred upon the Executive Director, subject to the Board's approval. Employees of the Authority, including the Executive Director, shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-548.59~~ 2.2-XXX. Powers of Authority.

The Authority ~~is shall be~~ granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following to:

1. Have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;
2. Adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs, to carry into effect the powers and purposes of the Authority and the conduct of its business;
3. Sue and be sued in its own name;
4. Have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;
5. Maintain an office at any place within or without the Commonwealth which it designates;

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;
7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements, and hold, manage, operate or improve such property;
8. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;
9. Employ officers, employees, agents, advisers and consultants, including without limitation, financial advisers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;
10. Procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board and its employees and agents;
11. Receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;
12. Enter into agreements with any department, agency or instrumentality of the United States, the Commonwealth, the District of Columbia or any state for purposes consistent with its mission;
13. Establish and revise, amend and repeal, and charge and collect, fees and charges in connection with any activities or services of the Authority;
14. Make grants to local governments with any funds of the Authority available for this purpose;
15. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based on competitive principles;
16. Issue periodicals and carry and charge for advertising therein;
17. Raise money in the corporate, nonprofit, and nonstate communities to finance the Authority's activities;
18. Support and encourage each locality to foster its own tourism development programs;
19. Enter into agreements with public or private entities that provide participating funding to establish and operate tourism centers, funded jointly by the entity and the Authority, as shall be determined by the Executive Director, and as approved by the Authority;
20. Encourage, stimulate, and support tourism in the Commonwealth by promoting, marketing, and advertising the Commonwealth's many tourist attractions and locations;
21. Encourage, stimulate, and support the film industry in the Commonwealth;
22. Do all things necessary or proper to administer and manage the Cooperative Tourism Advertising Fund and the Governor's Motion Picture Opportunity Fund; and
23. Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter and not otherwise inconsistent with state law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.60~~ 2.2-XXX. Cooperative Tourism Advertising Fund.

A. There is hereby established the Cooperative Tourism Advertising Fund (Co-op Fund) for the purpose of encouraging, stimulating, and supporting the tourism segment of the economy of the Commonwealth and the direct and indirect benefits that flow from the success of such industry. To create the public-private partnership envisioned by such Co-op Fund, the Co-op Fund shall be established out of the sums appropriated ~~from time to time~~ by the General Assembly for the purpose of matching private funds to be used for the promotion, marketing, and advertising of the Commonwealth's many tourist attractions and locations. Proposals shall be eligible for matching grant funds under this section only if they promote, market and advertise locations or destinations solely within the territorial limits of the Commonwealth. The Co-op Fund shall be administered and managed by the Authority and expended pursuant to a formula contained in the general appropriation act.

B. In the event more than one person seeks to take advantage of the benefits conferred by this section and the Co-op Fund is insufficient to accommodate all such requests, the matching formula shall be adjusted, to the extent practicable, to afford each request for which there is a valid public purpose an equitable share.

C. All persons seeking to receive or qualify for such matching funds shall apply to the Authority in August of the year preceding the fiscal year for which funds are sought, and to the extent the Governor concurs in such funding request, it shall be reflected in the Governor's Budget Bill filed pursuant to ~~§ 2-1-399~~ 2.2-XXX. ~~Such~~ The application shall set forth the applicant's proposals in detail. The Authority shall develop guidelines setting forth the criteria it will weigh in considering such applications; such guidelines may indicate a preference for proposals submitted by nonprofit organizations.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.61~~ 2.2-XXX. Governor's Motion Picture Opportunity Fund.

There is hereby created a Governor's Motion Picture Opportunity Fund (the Fund) to be used, in the sole discretion of the Governor, to support the film and video industries in Virginia by providing the means for attracting production companies and producers who make their projects in the Commonwealth using Virginia employees, goods and services. The Fund shall consist of any moneys appropriated to it in the general appropriation act or revenue from any other source. The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

The Fund shall be used by the Governor to assist production companies or producers that meet the eligibility requirements set forth in the guidelines. The ~~Virginia Tourism Authority~~ shall assist the Governor in the development of guidelines for the use of the Fund. The guidelines should include provisions for geographic diversity and a cap on the amount of money available for a certain project. The types of projects eligible for consideration will be feature films, children's programs, documentaries, television series or other television programs designed to fit a thirty-minute or longer format slot. Projects not eligible are industrial, corporate or commercial projects, education programs not intended for rebroadcast, adult films, music videos and news shows or reports.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.62~~ 2.2-XXX. Grants from Commonwealth.

The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.65~~ 2.2-XXX. Deposit of money; expenditures; security for deposits.

A. All money of the Authority, except as otherwise authorized by law or this chapter, shall be deposited in accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director or any other officer or employee designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits.

B. Funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § 26-40, (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.66~~ 2.2-XXX. Forms of accounts and records; annual reports; audit.

The Authority shall maintain accounts and records showing the receipt and disbursement of funds from whatever source derived in ~~such a~~ form as prescribed by the Auditor of Public Accounts ~~prescribes~~. Such accounts and records shall correspond as nearly as possible to accounts and records maintained by corporate enterprises.

~~The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives and the costs of such audits shall be borne by the Authority. The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. The Clerk of each House of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Board of Directors. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives and the costs of such audits shall be borne by the Authority.~~

DRAFTING NOTE: Technical corrections. Language contained in this section relating to the audit of the Authority's accounts has been consolidated. The sentence about the Clerks of each House of the General Assembly has been deleted as duplicative of existing law.

~~§ 2-1-548.64~~ 2.2-XXX. Exemption from taxation.

As set forth in ~~§ 2-1-548.56~~ 2.2-XXX, the Authority ~~will~~ shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. ~~The Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom. Agents, lessees, sublessees, or users of tangible personal property owned by or leased to the Authority also shall not be required to pay any sales or use tax upon such property or the revenue derived therefrom.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.63~~ 2.2-XXX. Exemptions from personnel and procurement procedures.

The provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) and the Virginia Personnel Act (§ ~~2-1-110~~ Xref et seq.) shall not apply to the Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.67~~ 2.2-XXX. Sovereign immunity.

No provisions of this chapter nor act of the Authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-548.68~~ 2.2-XXX. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. ~~No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter.~~

DRAFTING NOTE: Technical corrections. The last sentence of this section has been deleted because the Authority is not authorized in this chapter to issue bonds.

Subparts 2 through 5 Drafting Note: To standardize the language relative to the creation of the various boards, commissions, councils, and foundations and other collegial bodies, the Virginia Code Commission has established standard nomenclature which has been used in Subparts 2 through 5 which follow. In deciding the standard nomenclature to be used, the Virginia Code Commission identified five functional elements which should be included in the creation of any board, council, commission, etc. These functional elements include: (i) creation - specifying the branch of government, a statement of purpose for which the board, etc. was created, and delineation of the type of board (i.e., advisory/policy/supervisory); (ii) powers and duties of board; (iii) composition of board, appointment of members, and who appoints; (iv) terms of office, generally providing for staggered terms, how vacancies filled, maximum number of terms, and voting rights (ex officio are presumed to be voting unless statute specifically says they are nonvoting members); (v) election of chair and vice chair; who elects; quorum requirements; when meetings held; (vi) compensation; (vii) staffing; and (viii) cooperation from state agencies upon request of board.

Subpart 2.

Boards.

Chapter X.

Art and Architectural Review Board.

~~§ 2.1-488.1- 2.2-XXX. Art and Architectural Review Council continued as Art and Architectural Review Board; members and officers; travel expenses; quorum.~~

~~The Art and Architectural Review Council within the Department of General Services is continued and shall hereafter be known as the Art and Architectural Review Board.~~ A. The Art and Architectural Review Board (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall consist of six members as follows: the Director of the Department of Historic Resources, or his designee, serving as an ex officio member and five citizen members, appointed by the Governor. ~~One~~ Of the citizen members, one shall be appointed from a list of architects nominated by the governing board of the Virginia Society of the American Institute of Architects; one shall be appointed from a list of persons nominated by the governing board of the University of Virginia; one shall be appointed from a list of persons nominated by the board of trustees of the Virginia Museum of Fine Arts; and two shall be appointed from the Commonwealth at large, one of whom shall be a painter or sculptor.

B. The members of the Board shall be appointed for terms of four years each, except appointments to fill vacancies, which shall be for the unexpired terms. No member shall serve for more than two consecutive four-year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four-year terms in his own right. ~~The Governor shall have authority to fill all vacancies~~ Vacancies shall be filled in the manner of the original appointments. The Director of the Department of Historic Resources shall serve a term coincident with his term of office.

C. Annually, the Board shall elect a chairman and vice-chairman and may elect such other officers as the Board deems proper from among its membership. A majority of the members of the Board shall constitute a quorum.

D. The members of the Board shall serve without compensation, but shall be entitled to receive actual reimbursement for all reasonable and necessary travel expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E. The Division of Engineering and Buildings of the Department of General Services shall provide assistance to the Board in undertaking of responsibilities.

DRAFTING NOTE: Technical corrections. This proposed section is a merger of the following existing sections: subsection A through E are § 2.1-488.1 and subsection E is § 2.1-488.6.

~~§ 2.1-488.3. Meaning of term "work of art".~~

~~The term "work of art" as used in this chapter shall apply to and include all paintings, mural decorations, stained glass, statues, bas-reliefs, tablets, sculptures, monuments, fountains, arches or other structure of a permanent character intended for ornament or commemoration.~~

DRAFTING NOTE: Technical correction. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-488.5) infra.

~~§ 2.1-488.5 2.2-XXX. Works of art accepted by Governor; approval by Council Board; meaning of "work of art".~~

~~A. The Governor is authorized to may accept, in the name of the Commonwealth, gifts to the Commonwealth of works of art as defined in § 2.1-488.3 subsection B. But no work of art shall be so accepted until submitted to the Council Board or otherwise brought to its attention for its advice and counsel to the Governor.~~

~~Nothing herein shall affect pending litigation.~~

B. As used in this chapter, "work of art" means all paintings, mural decorations, stained glass, statues, bas-reliefs, tablets, sculptures, monuments, fountains, arches or other structure of a permanent character intended for ornament or commemoration.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing section: subsection A is § 2.1-488.5 and subsection B is 2.1-488.3.

~~§ 2.1-488.4 2.2-XXX. Governor's approval of works of art; removal, etc.; structures, fixtures and works of art placed on or extending over state property.~~

~~A. Works of art.—Hereafter no No work of art shall become the property of the Commonwealth by purchase, gift or otherwise, unless such the work of art or a design thereof, together with its proposed location, shall have been submitted to and approved by the Governor acting with the advice and counsel of the Council; nor Board. Nor shall any work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the Commonwealth. No existing work of art owned by the Commonwealth shall be removed, relocated or altered in any way without submission to the Governor; provided, that the foregoing provisions~~

This subsection shall not apply to any portrait, tablet or work of art portraying, or pertaining to, a member or former member of the Supreme Court, presented to, or acquired by, the Court and displayed in that part of any building or buildings under the direct supervision and jurisdiction of the Court nor shall they apply to any portrait, tablet or work of art acquired by the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at state public colleges or universities in Virginia.

~~B. Structures and fixtures placed on or extending over state property.—No construction or erection of any building or any appurtenant structure of any nature, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, and no construction or erection of any bridge, arch, gate, fence, or other structure or fixture intended primarily for ornamental or memorial purposes, and which is to be paid for, either wholly or in part by appropriation from the state treasury, and, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, shall be begun, unless the design and proposed location thereof shall have been submitted to the Governor and its artistic character approved in writing by him acting with the advice and counsel of the Council Board, unless the Governor shall have has failed to disapprove in writing the design within thirty days after its submission. Furthermore, no No existing structure of the kinds named and described in this subsection, owned by the Commonwealth, shall be removed, remodeled or added to, nor shall any appurtenant structure be attached thereto without submission to the Governor and the artistic character of the proposed new structure approved in writing by him acting with the advice and counsel of the Council Board, unless the Governor shall have has failed to disapprove in writing the design within thirty days after its submission.~~

~~C. Works of art placed on or extending over state property.—No work of art not owned by the Commonwealth shall be placed in or upon or allowed to extend over any property belonging to the Commonwealth for a period of more than two years unless such work of art or a design thereof shall have has been submitted to and approved by the Governor acting with the advice and counsel of the Council, provided that nothing in this Board.~~

~~This subsection C shall have application not apply to the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at state colleges and universities public institutions of higher education.~~

~~D. Pending litigation.—Nothing herein in this section shall affect pending litigation.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-488.6. Assistance to Council by Division.~~

~~The Division shall provide assistance to the Art and Architectural Review Board in the undertaking of its responsibilities.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX at the beginning of this chapter.

Chapter X.

Chief Information Officer Advisory Board.

~~§ 2.1-51.49 2.2-XXX. Chief Information Officer Advisory Board—created; purpose; membership; duties; compensation.~~

~~A. There is hereby established the The Chief Information Officer Advisory Board (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Board shall be to advise the Chief Information Officer (the "CIO") on the proper planning, practical acquisition, effective development, and efficient use of information technology to serve the needs of agencies and institutions of higher education in the Commonwealth.~~

~~B. Persons appointed to the Board shall be selected for their knowledge of, background in, or experience with information technology in a private, for-profit or not-for-profit organization. No employee of any public body shall be eligible for appointment to the Board.~~

~~C. The Board shall consist of twelve members who shall be appointed by the Governor to serve at his pleasure. Persons appointed to the Board shall be selected for their knowledge of, background in, or experience with information technology in a private, for-profit or not-for-profit organization. No employee of any public body shall be eligible for appointment to the Board. The Governor shall designate one member as the chairman.~~

C. Of the members first appointed, four shall be appointed for terms of four years, four for terms of three years, and four for terms of two years. Thereafter, ~~the successors to the persons first appointed~~ all appointments shall be appointed for terms of four years. Any vacancy occurring other than by expiration of a term shall be filled by the Governor for the unexpired term.

D. The Board shall meet quarterly and at such other times as may be called by the CIO.

E. The disclosure requirements of subsection B of § ~~2.1-639.13~~ 2.2-XXX of the State and Local Government Conflict of Interests Act shall apply to members of the Board.

F. Board members shall ~~be compensated~~ receive compensation for the performance ~~discharge~~ of their duties ~~subject to the provisions of § 2.1-20.3~~ as provided in § 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Design-Build/Construction Management Review Board.

~~§-11-41.2:3~~ 2.2-XXX. Design-Build/Construction Management Review Board ~~created~~; membership; terms; ~~staffing; compensation; staff; seal.~~

A. ~~There is hereby created the~~ The Design-Build/Construction Management Review Board, hereinafter referred to as the Review Board, which shall be composed (the "Review Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government.

B. The Board shall consist of nine members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his designee; two Class A general contractors selected from a list recommended by the Associated General Contractors; one architect and one engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; and four representatives of public bodies other than the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties. Each such list, other than those recommended as representatives of public bodies, shall include the names of at least four persons who are experienced and actively engaged in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The list for representatives of public bodies shall include at least four persons who are experienced in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The Director of the Division of Engineering and Buildings or his designee shall be a nonvoting member of the Review Board, except in the event of a tie vote of the Review Board.

~~B. The initial terms of the Review Board shall be as follows: three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and three members shall be appointed for four-year terms. Thereafter~~ C. After the original appointments, all appointments shall be for terms of four years; except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms, except the Director of the Division of Engineering and Buildings, who shall serve until a successor qualifies.

~~G.~~ D. The Review Board shall elect its chairman and vice-chairman from among its members. ~~Members shall receive no compensation for their services as members of the Review Board, but shall receive reasonable expenses.~~

~~D.~~ The Review Board shall meet monthly to conduct its business as required by §-11-41.2:4 2.2-XXX. However, monthly meetings may be canceled by the chairman if there is no business before the Review Board. Five members shall constitute a quorum.

E. Members of the Review Board shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E-F. Such staff support as is necessary for the conduct of the Review Board's business shall be furnished by the Division of Engineering and Buildings of the Department of General Services pursuant to § 2-1-483.4:2 2.2-XXX.

F-G. The Review Board shall adopt a seal by which it shall authenticate its proceedings.

DRAFTING NOTE: Technical corrections. This section has been relocated here from Title 11 as a more appropriate placement. The Virginia Public Procurement Act, formerly in Title 11, has been relocated to proposed Title 2.2.

~~§ 11-41.2:4 2.2-XXX. Duties-Powers and duties of the Design-Build/Construction Management Review Board; transitional provisions relating to regulations.~~

A. The Review Board shall have the ~~following duties~~power and duty to:

1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances or resolutions to determine if the process for the selection, evaluation and award of a design-build or construction management contract is in compliance with the provisions of subdivision A 1 of ~~§ 11-41.2:2 2.2-XXX;~~

2. Determine if the public body has complied with the provisions of ~~§ 11-41.2:2 2.2-XXX~~ relating to the retention of a licensed architect or engineer;

3. Review the findings and the basis of such findings submitted by the public body to determine if the public body has complied with the requirements of ~~§ 11-41.2:2 2.2-XXX~~ and that the findings made by the public body pursuant to ~~§ 11-41.2:2 2.2-XXX~~ are not unreasonable;

4. Develop guidelines relating to the documents and information to be reviewed by the Review Board;

5. Make post-project evaluations of construction projects procured by design-build or construction management contracts entered into by public bodies other than the Commonwealth, including cost and time savings, effectiveness of the selection, evaluation and award of such contracts, and the benefit to the public body; and

6. Report to the General Assembly and the Governor on or before December 1, ~~1999,~~ of each year concerning the Review Board's evaluation of and findings regarding all design-build and construction management construction undertaken by public bodies other than the Commonwealth ~~since July 1, 1996 within the reporting year,~~ and any recommendations relating to future use of design-build or construction management contracts by such public bodies.

~~B. On or before July 1, 1997, the~~ The Review Board shall adopt regulations, as it deems appropriate, based on the substantive requirements of Chapter IX of the Capital Outlay Manual of the Commonwealth, for a two-step competitive negotiation process which shall be applied to design-build and construction management projects undertaken by public bodies other than the Commonwealth. For construction management projects, such regulations shall also include applicable provisions of the Required Construction Management Contract Terms of the Capital Outlay Manual. Such regulations shall also allow the Review Board to approve deviations from provisions of the Capital Outlay Manual that it deems appropriate. ~~Such regulations, upon final adoption, shall supersede the provisions of subdivisions A 1 a and A 1 b of § 11-41.2:2. Regulations of the Review Board shall be adopted in accordance with the Administrative Process Act (§ 9-6.14:1 2.2-XXX et seq.), except that regulations adopted pursuant to this subsection during the Review Board's first year of operation shall not be subject to the Administrative Process Act. Thereafter, all regulations shall be adopted in accordance with the Administrative Process Act.~~

DRAFTING NOTE: Technical corrections. This section comes from existing § 11-41.2:4 and language hown as stricken has been deleted as obsolete.

~~§ 11-41.2:5 2.2-XXX~~. Review by the Review Board for design-build or construction management approval; effect of disapproval; review of Review Board decision.

The Review Board shall conduct such inquiry it deems appropriate and may require the submission of additional documents or information by the public body, in a form prescribed by the Review Board, to determine if the public body has complied with the provisions of ~~§ 11-41.2:2 2.2-XXX~~.

Within sixty days of the receipt of the request for review, the Review Board shall render a decision, unless a different timetable is agreed to by the public body. If the Review Board determines that the public body has complied with the provisions of ~~§ 11-41.2:2 2.2-XXX~~ and the findings made by the public body pursuant to subdivision A 2 of ~~§ 11-41.2:2 2.2-XXX~~ are not unreasonable, the Review Board shall approve such use. If the Review Board determines that (i) the public body has not complied with the provisions of ~~§ 11-41.2:2 2.2-XXX~~ or (ii) the findings made by the public body pursuant to subdivision A 2 of ~~§ 11-41.2:2 2.2-XXX~~ are unreasonable, it shall disapprove such use, and the public body shall not use a design-build or construction management contract to procure construction for the proposed project. If no decision is made by the Review Board within the sixty-day period or as otherwise agreed to by the public body, the proposed use of a design-build or construction management contract shall be deemed approved.

Any public body other than the Commonwealth which has been aggrieved by any action of the Review Board shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (~~§ 9-6.14:1 2.2-XXX~~ et seq.).

DRAFTING NOTE: Technical corrections. This section comes from existing § 11-41.2:5.

Chapter X.

Migrant and Seasonal Farmworkers Board.

~~§ 9-149. 2.2-XXX. Commission continued as Board; duties Migrant and Seasonal Farmworkers Board; purpose; membership; terms; quorum; compensation; staff; annual report.~~

~~The Migrant and Seasonal Farmworkers Commission is continued and shall hereafter be known as the Migrant and Seasonal Farmworkers Board. The Board shall:~~ A. The Migrant and Seasonal Farmworkers Board (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Board shall be to:

1. Provide for the coordination and evaluation of state and federal services and, to the degree feasible, other governmental, public and private agency services to migrant and seasonal farmworkers within the Commonwealth;
2. Identify and evaluate the needs of migrant and seasonal farmworkers and needs of employers of such workers;
3. Study problems of the target population, provide background information, and recommend options for solutions along with impact projections of such recommendations to the General Assembly, governmental, public and private agencies; and
4. Encourage and foster the development of area migrant and seasonal farmworkers councils for the purpose of seeking problem resolution and communication at the local level.

B. The Board shall consist of fifteen members who shall be appointed by the Governor to serve at his pleasure. The Board shall include representatives of grower communities, migrant and seasonal farmworkers and crew leaders, if practical, and government, public and private agencies and interest groups or citizens concerned with migrant and seasonal farmworkers.

C. A majority of the members of the Board shall constitute a quorum.

D. Members of the Board shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E. The Department of Labor and Industry shall provide staff support to Board and serve as fiscal agent for any funds received.

F. The Department of Labor and Industry shall submit a biennial report to the Governor and General Assembly on or before October 1 of each even-numbered year on the activities of the Board. The biennial report shall be distributed in accordance with § 2.2-XXX (2.1-467).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-149, subsection B is the first two sentences from § 9-150, subsection D is the last sentence from § 9-150, and subsections E and F are from § 9-152. Subsection C was added to clarify the quorum requirements for the Board.

~~§ 9-150. Membership; terms; compensation.~~

~~The Board shall consist of fifteen members who shall be appointed by the Governor and who shall serve at his pleasure. The membership shall include representatives of grower communities, migrant and seasonal farmworkers and crew leaders, if practical, and government, public and private agencies and interest groups or citizens concerned with migrant and seasonal farmworkers. Members of the Board shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred as a result of their membership on the Board.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B and D in proposed § 2.2-XXX.

~~§ 9-151 2.2-XXX. Authority Powers and duties of Board.~~

~~The Board shall serve as an advisory body to the Governor, General Assembly and service deliverers and shall have the following authority power and duty to:~~

~~1. To request Request and receive from any state department, division, board, bureau, commission or other agency, information, assistance and cooperation as will enable it to properly perform its duties;~~

~~2. To request Request, in the name of the Board, information for any governmental, public or private agency, or individual, information, assistance and cooperation as will enable it to carry out its specified functions;~~

~~3. To disperse Disperse information to public and private bodies;~~

~~4. To request Request and receive grants and funds from governmental, public and private agencies and foundations and, with those funds, to enter into agreements and contracts necessary or incidental to the purposes of the Board;~~

~~5. To establish Establish citizen panels as may be requisite or expedient in fulfilling the objectives of the Board; and~~

~~6. To request Request and receive, in the name of the Board and for its benefit and that of the Interagency Migrant Worker Policy Committee, periodic reports from persons or entities receiving federal grants or other federal funding for the purpose of assisting the Commonwealth's migrant and seasonal farm worker population.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-152. Staff support; services; annual report.~~

~~The Department of Labor and Industry shall provide staff support to the Migrant and Seasonal Farmworkers Board and serve as fiscal agent for any funds received.~~

~~The Department shall submit a biennial report to the Governor and General Assembly on or before October 1 of each even-numbered year. The biennial report shall be distributed in accordance with § 2.1-467.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections E and F in proposed § 2.2-XXX.

Chapter X.

Personnel Advisory Board.

~~§ 2.1-113.1 2.2-XXX. Personnel Advisory Committee continued as Personnel Advisory Board; membership; terms; quorum; compensation.~~

~~The Personnel Advisory Committee is continued and shall hereafter be known as the Personnel Advisory Board. A. The Personnel Advisory Board (the "Board") is established, as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall consist of eleven members, as follows: four management state employees; four nonsupervisory state employees; and three members from the public at large, who shall be appointed by the Governor and subject to confirmation by the General Assembly. The members shall serve for four-year terms and no member shall serve for more than two full successive terms. In addition, the Director of the Department of Personnel and Training and the Director of the Department of Employee Relations Counselors shall serve permanently as ex officio members without voting privileges.~~

~~B. The members shall serve for four-year terms and no member shall serve for more than two full successive terms. Vacancies shall be filled in the manner of the original appointments.~~

~~C. The Board shall meet at least once every three months, and on the call of the chairman. A chairman of the Board shall be elected annually by the Board. A majority of the members of the Board shall constitute a quorum.~~

~~D. Members of the Board shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is the second sentence of § 2.1-113.1, subsection B is the third and fourth sentences from § 2.1-113.1, subsection C is the last sentence of § 2.1-113.1 and the first sentence of § 2.1-113.2, and subsection D is the last sentence from § 2.1-113.2. In subsection C, quorum requirements was added to clarify the quorum requirements for the Board.

~~§ 2.1-113.2. Same; meetings; expenses.~~

~~The Personnel Advisory Board shall meet at least once every three months, and on the call of the chairman, when, in his opinion, additional meetings are necessary. Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the discharge of their duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections C and D in proposed § 2.2-XXX supra.

~~§ 2.1-113.3 2.2-XXX. Personnel Advisory Committee continued as Personnel Advisory Board; powers Powers and duties of Board.~~

~~The Personnel Advisory Board shall exercise the following powers and duties and such others as may be provided by law have the power and duty to:~~

1. Advise the Governor, the Director of the Department of Personnel and Training and the Director of the Department of Employee Relations Counselors on all matters relating to personnel administration.
2. Review all public employer-employee relations throughout the Commonwealth.
3. Review the Department of Employee Relations Counselors' program of employee-management relations and make recommendations to improve communications between employees and agencies and instrumentalities of the Commonwealth.
4. Carry out such other functions as the Governor deems appropriate.
5. Review the Department of Personnel and Training's training and management programs, compensation and classification practices, benefit programs, and recruitment practices.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Public Guardian and Conservator Advisory Board.

~~§ 2.1-373.13~~ 2.2-XXX. Public Guardian and Conservator Advisory Board—~~created;—dutiespurpose;~~ membership; terms.

~~There is hereby created the A. The Public Guardian and Conservator Advisory Board (the "Board") which shall be established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner on the means for effectuating the purposes of this article and chapter. shall assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1. The Board shall provide advice and counsel on the provision of high quality guardianship service and avoidance of conflicts of interest, promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this article, and make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 37.1-134.19 to appoint the sheriff as guardian or conservator when the maximum staff to client ratio of the local program is met or exceeded.~~

B. The Board shall consist of no more than fifteen members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association; one representative of the Virginia Area Agencies on Aging, one representative of the Virginia State Bar, one active or retired circuit court judge upon recommendation of the Chief Justice of the Supreme Court, one representative of the Association of Retarded Citizens, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Association of Community Service Boards, the Commissioner of the Department of Social Services or his designee, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his designee, the Director of the Virginia Department for the Rights of Virginians with Disabilities or his designee, and one person who is a member of the Commonwealth Council on Aging and such other individuals who may be qualified to assist in the duties of the Board.

C. The Commissioners of the Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services or their designees, the Director of the Virginia Department for the Rights of Virginians with Disabilities or his designee, and the representative of the Commonwealth Council on Aging, shall serve terms coincident with their terms of office or in the case of designees, the term of the Commissioner or Director. Of the other members of the Board, five of the appointees shall serve for four-year terms and the remainder shall serve for three-year terms. No member shall serve more than two successive terms. A vacancy occurring other than by expiration of term shall be filled for the unexpired term.

D. Each year, the Board shall elect a chairman and a vice-chairman from among its members. Five members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as members of the Board as provided in § 2.2-XXX (2.1-20.8).

DRAFTING NOTE: Technical corrections. The language shown stricken above now appears in proposed § 2.2-XXX, relating to the powers and duties of the Board.

§ 2.2-XXX. Powers and duties of the Board.

The Board shall have the power and duty to:

1. Assist in the coordination and management of the local and regional programs appointed to act as public guardians and conservators pursuant to Chapter 4 (§ 37.1-128.01 et seq.) of Title 37.1;
2. Provide advice and counsel on the provision of high quality guardianship service and avoidance of conflicts of interest;
3. Promote the mobilization of activities and resources of public and private sector entities to effectuate the purposes of this chapter; and
4. Make recommendations regarding appropriate legislative and executive actions, including, but not limited to, recommendations governing alternatives for local programs to follow upon repeal of the authority granted to the courts pursuant to § 37.1-134.19 to appoint the sheriff as guardian or conservator when the maximum staff to client ratio of the local program is met or exceeded.

DRAFTING NOTE: Technical corrections. This proposed section is derived from the first paragraph of existing § 2.1-373.13 supra.

Chapter X.

Small Business Advisory Board.

§ 2.1-548.49 2.2-XXX. Creation of Small Business Advisory Board; membership; terms; quorum; compensation.

There is hereby created the The Small Business Advisory Board (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall consist of the Chairman of the Small Business Financing Authority and the Director of the Department of Minority Business Enterprise or their designees as voting ex officio members; following members: thirteen voting members appointed by the Governor and subject to confirmation by the General Assembly; the Chairman of the Small Business Financing Authority and the Director of the Department of Business Assistance and the District Director for Virginia of the U.S. Small Business Administration or their designees as nonvoting ex officio members. The appointed members of the Board shall represent small businesses as defined by the Small Business Financing Act (§ 9-197 et seq.). There shall be at least one member appointed from each congressional district who does business in that district and three members appointed at large from within the Commonwealth.

B. Terms of the appointed members shall be for four years except that appointments to fill vacancies shall be for the unexpired terms. No member appointed by the Governor shall serve more than two complete terms in succession.

C. The Governor shall appoint one member of the Board to be chairman. The Board shall annually elect one of its members as vice-chairman, and shall also elect annually a secretary, who need not be a member of the Board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. In the absence of both the chairman and the vice-chairman at any meeting, the Board shall elect a chairman pro tempore, who shall preside at such meeting.

D. The Board shall meet at least semiannually, at the call of the chairman, Director of the Department of Business Assistance or Governor or at the request of a majority of the Board members. A majority of the members of the Board shall constitute a quorum.

E. Members of the Board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 2.1-548.49, and subsections C, D, and E are § 2.1-548.50.

~~§ 2.1-548.50. Officers of Board.~~

~~The Governor shall appoint one member of the Board to be Chairman. The Board shall annually elect one of its members as Vice Chairman, and shall also elect annually a Secretary, who may or may not be a member of the Board. 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 the Vice Chairman at any meeting, the Board shall elect a chairman pro tempore, who shall preside at such meeting.~~

~~The Board shall meet at least semiannually, at the call of the Chairman, Director of the Department of Business Assistance or Governor or at the request of a majority of the Board members. A majority of the members shall constitute a quorum for the transaction of the business of the Board, and no vacancy in the membership of the Board shall impair the right of a quorum to exercise all the duties of the Board. Members of the Board shall serve without compensation but shall be reimbursed for actual expenses incurred in the discharge of their official duties, pursuant to § 14.1-5.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections C, D, and E in proposed § 2.2-XXX supra.

~~§ 2.1-548.52. State agencies to furnish information and assistance.~~

~~All agencies of the Commonwealth shall assist the Board upon request and furnish such information and assistance as the Board may require in the discharge of its duties.~~

DRAFTING NOTE: Technical corrections. This section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

~~§ 2.1-548.51 2.2-XXX. Functions/Duties of the Board.~~

The Board shall advise the Department of Business Assistance on the small business programs, including, but not limited to, locally based centers to assist and develop small businesses. It shall make recommendations to the Director, the Secretary of Commerce and Trade, and the Governor concerning the actions that the Department of Business Assistance and the state government might take to enhance the growth of small businesses. Additionally, the Board shall be a resource to the Department of Business Assistance, the Secretary of Commerce and Trade, the Executive Director of the Virginia Economic Development Partnership, and the Governor as they conduct the economic development efforts of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Treasury Board.

§ 2.1-478 2.2-XXX. Treasury Board—generally membership; chairman; quorum; compensation.

~~The State Treasurer, the Comptroller, the Tax Commissioner, and four additional members to be appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, at the first session subsequent to such appointment, which members shall serve at~~

~~the pleasure of the Governor, shall constitute and be known as the Treasury Board.~~ A. The Treasury Board (the Board") is established as a policy board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall consist of seven members to be appointed as follows: four members to be appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor; the State Treasurer, the Comptroller, and the Tax Commissioner. The members appointed by the Governor should have a background and experience in financial management and investments. The State Treasurer, the Comptroller, and the Tax Commissioner shall serve terms coincident with their terms of office. Vacancies shall be filled in the manner of the original appointment.

~~B. The State Treasurer shall act as the Chairman~~ chairman, and the Board shall elect a ~~Secretary either from its own membership or from without~~ secretary who need not be a member of the Board. The Board shall have regularly scheduled meetings at least monthly, and shall keep a regular and sufficient set of books, ~~wherein shall be recorded~~ which include a record of all of their proceedings and any action taken by them with respect to any funds which by any provision of law are required to be administered by the Treasury Board. Four members of the Board shall constitute a quorum. The members appointed by the Governor should have a background and experience in financial management and investments, and

~~C. Members of the Board appointed by the Governor shall receive necessary traveling and other compensation, including all reasonable and necessary expenses incurred in performing official~~ the discharge of their duties as members of the Board as provided in § 2.2-XXX (2.1-20.3).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-179~~ 2.2-XXX. Powers and duties of Treasury Board.

~~The powers and duties of the Treasury Board shall be as follows~~ have the power and duty to:

- ~~1. To exercise~~ Exercise general supervision over all investments of state funds;
- ~~2. To give~~ Give advice and supervision in the financing of state buildings and to make recommendations, as requested, to the Governor on methods by which capital outlay requirements of the Commonwealth, including its agencies and institutions, may be financed;
- ~~3. To control~~ Control and manage all sinking funds and other funds in possession of the Commonwealth in a fiduciary capacity;
- ~~4. To administer~~ Administer the Virginia Security for Public Deposits Act (~~§ 2.1-359~~ 2.2-XXX et seq.);
- ~~5. Notwithstanding any provisions to the contrary, to make~~ Make recommendations to the Governor, ~~notwithstanding any provisions to the contrary, on proposed bond issues or other financing arrangements, to~~ approve the terms and structure of bonds or other financing arrangements executed by or for the benefit of educational institutions and state agencies other than independent state authorities, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements; and agreements relating to the sale of bonds;
- ~~6. As to any tax exempt bonds for which it has issuing authority, either by statute or by act of the General Assembly, to take~~ Take or cause to be taken and omit to take all actions, ~~as to any tax exempt bonds for which it has issuing authority, either by statute or by act of the General Assembly, the taking or omission of which is necessary on behalf of the Commonwealth to prevent such bonds from being or becoming subject to federal income taxation or being considered to be "arbitrage bonds" within the meaning of federal tax laws, including compliance with the arbitrage rebate provisions thereof;~~
- ~~7. Notwithstanding any provisions to the contrary, to approve~~ Approve, notwithstanding any provisions to the contrary, the terms and structure of bonds or other financing arrangements executed by or for the benefit of state agencies, boards and authorities where debt service payments on such bonds or other financing arrangements are expected by such agency, board or authority to be made, in whole or in part, directly or

indirectly, from appropriations of the Commonwealth, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;

8. ~~To establish~~ Establish debt structuring guidelines for bonds or other financing arrangements executed by or for the benefit of all state agencies, institutions, boards, and authorities where the debt service payments on such bonds or other financing arrangements are expected to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth, in which guidelines the ~~Treasury Board~~ may, in its sole discretion, include such items as it deems necessary and appropriate, including, but not limited to, defining terms such as "terms and structure" and "bonds and other financing arrangements" and exempting from its review and approval pursuant to subdivision 5 or 7 of ~~this section~~ (a) specific bond issues and other financing arrangements, (b) certain types or classes of bond issues and other financing arrangements, and (c) bond issues and other financing arrangements that are below a stated dollar amount;

9. ~~To do~~ Do all acts and things necessary or convenient to efficiently carry out and enforce the powers granted to and duties imposed on it by law, including delegating to the State Treasurer or to a committee composed of not less than three members of the ~~Treasury Board~~ such powers and duties, as it ~~may deem~~ deems proper, to the extent designated and permitted by the ~~Treasury Board~~;

10. ~~To exercise~~ Exercise such other powers and perform such other duties as ~~may be conferred~~ or imposed upon it by law, including the local government investment pools authorized by Chapter X (§ 2.2-XXX et seq.) (2.1-234.7) of this title; and

11. ~~To do~~ Do all acts and things necessary or convenient to wind ~~down~~ up the affairs of, and protect the Commonwealth's interests in such matters that may survive the termination of the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority. Nothing herein shall be construed to amend, enhance or otherwise alter such commitments, security interests, guarantees or other pledges entered into by the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority, acting in their official capacity and effective on or before March 31, 1997.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-179.2~~ 2.2-XXX. Approval of financial terms of certain contracts; using agencies to procure certain financial services through Treasury Board.

A. The ~~Treasury Board~~, or the ~~Board's~~ its designee, shall review and approve the financial terms of all contracts for the purchase or financing of the purchase by agencies, institutions, boards and authorities which receive appropriations from the Commonwealth, i.e., the using agencies, of personal property, including personal property to be affixed to realty, whether by lease-purchase, installment purchase or otherwise, where payment of the purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties.

B. The Board may specifically exempt from its review and approval specific purchases, and purchases below a stated amount, and may ~~promulgate rules and adopt~~ regulations governing the financial terms of contracts, as described in subsection A ~~herein~~, including but not limited to the authority to negotiate with a seller or lessor the public or private sale of securities, the security interest which may be granted to a seller or lessor, and the types and value of property which may be acquired under such contracts. Approval of the Board or its designee and compliance with ~~rules and regulations~~ issued-adopted pursuant to this section shall be required in addition to and notwithstanding any other provision of law pertaining to the review, approval or award of contracts by agencies and institutions of the Commonwealth.

C. Notwithstanding any of the foregoing and except as the Board shall direct and authorize otherwise, every using agency shall procure through the ~~Treasury Board~~ all contracts for the financing of the purchases described in subsection A or other financial services needed for the purpose of financing such purchases. The

~~Board is hereby authorized to may~~ acquire such financing services, ~~which may include including,~~ but are not limited to employing financial advisors and private or public placement agents.

D. An agency, institution, board, or authority which receives appropriations from the Commonwealth shall procure state agency energy efficiency projects under this section. State agency energy efficiency projects may include personal property, the installation or modification of an installation in a building, and professional, management, and other special services which are primarily intended to reduce energy consumption and demand, or allow the use of an alternative energy source, and which may contain integral control and measurement devices.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-179.3~~ 2.2-XXX. Use of bond anticipation notes by the Treasury Board.

Whenever the General Assembly has enacted legislation pursuant to Article X, Section 9 (b), (c), or (d) of the Constitution of Virginia authorizing the issuance of bonds for capital projects of the Commonwealth or any state agency, institution, board, or authority (a "state instrumentality") where debt service payments on ~~such the~~ bonds are expected to be made in whole or in part from appropriations of the Commonwealth, the ~~Treasury Board,~~ ~~by and with the consent of the Governor, is hereby authorized to may~~ borrow money in anticipation of the issuance of ~~such the~~ bonds to provide funds, with any other available funds, to pay the costs of acquiring, constructing, renovating, enlarging, improving, and equipping any one or more of the capital projects for which such bonds have been authorized. Any such borrowing shall be evidenced by notes of the Commonwealth which shall be in such form, shall be executed in such manner, shall bear interest at such ~~rate or rates,~~ either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the ~~Treasury Board,~~ or the State Treasurer when authorized by the ~~Treasury Board,~~ may determine. Such notes may bear interest at a rate ~~or rates~~ subject to inclusion in gross income for federal income tax purposes as ~~may be determined by the Treasury Board,~~ ~~by and with the consent of the Governor.~~ Such notes may be made payable from the proceeds of the bonds, other notes, or other sources of funds authorized by the General Assembly. The proceeds of the notes, to the extent not required to pay the principal or interest on maturing notes, or expenses associated therewith, shall be paid or otherwise made available to the Commonwealth or appropriate state instrumentality to pay the costs of such capital projects; ~~however.~~ However, the undertaking and obligation of (i) the ~~Treasury Board~~ to make such note proceeds available to the state instrumentality and (ii) the state instrumentality to pay or provide for the payment of the interest and principal coming due on the notes and to issue its own bonds or otherwise retire the notes within five years of the date of their initial issuance shall be set forth in a written agreement between the ~~Treasury Board~~ and the state instrumentality. No such notes shall be issued by the ~~Treasury Board~~ for or on behalf of a state instrumentality unless the ~~Treasury Board shall have first determined~~ determines that such written agreement provides reasonable assurance of the full and timely payment of the debt service on the notes.

No law authorizing the issuance of bonds and notes for which bond anticipation notes have been issued by the ~~Treasury Board~~ shall be repealed or otherwise vitiated without first providing for the payment of the related bond anticipation notes of the ~~Treasury Board~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-179.4~~ 2.2-XXX. Issuance of refunding bonds by the Treasury Board.

The ~~Treasury Board is authorized, by and may,~~ with the consent of the Governor, ~~to sell and issue, from time to time,~~ refunding bonds of the Commonwealth to refund any or all of the Commonwealth's bonds or other debt. The aggregate principal amount of such refunding bonds shall not exceed the amount required to redeem or otherwise provide for the payment of the unpaid principal of and interest on and any redemption premium payable on the bonds to be refunded to their date of redemption or payment, plus all expenses incurred in such refunding transaction.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-179.5~~ 2.2-XXX. Combined issuance of general obligation debt by the Treasury Board.

Bonds and notes issued by the Treasury Board may be issued and sold at the same time with other bonds and notes issued by the Treasury Board either as separate issues, a combined issue, or a combination of both.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Veterans' Affairs, Board on.

§ 2.1 741 2.2-XXX. Board on Veterans' Affairs; appointment membership; terms; quorum; compensation; staff.

A. There shall be a Board on Veterans' Affairs, sometimes referred to in this chapter as "the Board," in the Department of Veterans' Affairs consisting of ten members appointed by the Governor. ~~Three~~ The Board on Veterans' Affairs (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall consist of ten members appointed by the Governor as follows: three members shall be chosen from a list of nominees submitted by the Speaker of the House of Delegates and two members shall be chosen from a list of nominees submitted by the Senate Committee on Privileges and Elections. In making appointments the Governor shall endeavor to select appointees of such qualifications and experience as will qualify them to advise the Department and the Director on matters affecting the veterans of Virginia and afford a balanced geographical representation on the Board. No appointee to the Board shall be an officer or employee of the Department.

B. Members After the original appointments, members of the Board shall be appointed for terms of four years each beginning July 1, 1988. ~~Of the members first appointed, two shall be for terms of one year, two shall be for terms of two years, three shall be for terms of three years, and three shall be for terms of four years.~~ Thereafter, the appointments shall be for terms of four years, except that any appointment to fill a vacancy shall be for the unexpired term. No person shall be eligible to serve more than two successive full terms. However, any person heretofore or hereafter appointed to fill a vacancy may be eligible for two additional successive full terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.

C. ~~Before entering upon the discharge of his duties, each member of the Board shall take the usual oath of office.~~ The Board shall select a chairman from its membership and, pursuant to rules adopted by it, may elect one of its members as vice-chairman. It shall elect one of its members as secretary. The Board shall meet at such times as it deems appropriate and on call of the chairman. A majority of the members of the Board shall constitute a quorum.

D. The Board shall receive compensation for the performance of their duties as provided in § 2.2-XXX (2.1-20.3).

E. Staff to support the activities of the Board shall be provided by the Office of the Secretary of Administration.

DRAFTING NOTE: Technical corrections. Existing subsection C has been deleted as duplicative of existing law. This proposed section is comprised of the following existing sections: subsections A and B are § 2.1-741, subsection C is § 2.1-742, and subsection E is § 2.1-744. Subsection D was added to clarify the compensation received by the Board as is currently provided in § 2.1-20.4. The last sentence in subsection B has been deleted as contrary to general law (§ 2.1-43) which provides the method for the removal of members of boards, councils, and commissions, etc.

§ 2.1 742. Board officers and meetings.

The Board shall select a chairman from its membership and, pursuant to rules adopted by it, may elect one of its members as vice chairman. It shall elect one of its members as secretary. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are expedient or necessary. A majority of the current membership of the Board shall constitute a quorum for all purposes.

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX supra.

~~§ 2.1-743~~ 2.2-XXX. ~~General powers~~ Powers and duties of Board.

A. The Board shall have the following ~~powers and duties~~ power and duty to:

1. ~~To advise~~ Advise the Director and, when requested, to confer with and advise him upon such matters as may arise in the performance of his duties;
2. ~~To investigate~~ Investigate questions and consider problems when requested by the Director or the Governor and report its findings and conclusions;
3. ~~To initiate~~ Initiate investigations and consider problems and make recommendations to the Director or to the Governor of its own motion;
4. ~~To study~~ Study all matters affecting the welfare of Virginia citizens who are veterans or dependents or survivors of such veterans, and to consider and recommend legislation for their benefit;
5. ~~To keep~~ Keep advised on the administration of all laws concerning veterans and their dependents; and
6. ~~To submit~~ Submit a report to the Governor and General Assembly ninety days prior to the convening of each even-numbered year Session of the General Assembly, setting forth its findings and recommendations.

B. The Board may make recommendations to acquire land, buildings, furnishings, and equipment for the establishment of a state veterans' cemetery or cemeteries. In connection with the establishment of a cemetery, the Board may make recommendations to accept gifts, apply for and receive grants, and expend funds made available by the federal government, private individuals, veterans' organizations, and all other sources. The Board shall recommend to the Governor candidates for the position of director of a veterans' cemetery.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-744~~. ~~Staff for the Board.~~

~~Staff to support the activities of the Board shall be provided by the Office of the Secretary of Administration and shall perform the administrative and support services that the Division of Legislative Services provided to the Commission on Veterans' Affairs prior to July 1, 1988.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX supra.

Chapter X.

Virginia Geographic Information Network Advisory Board.

~~§ 2.1-563.41~~ 2.2-XXX. Virginia Geographic Information Network Advisory Board ~~created~~; membership; terms; meetings; quorum; compensation.

A. The Virginia Geographic Information Network Advisory Board (the "Board") is hereby ~~created and established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government.~~ The Board shall advise the Geographic Information Network Division (the "Division") of the Department of Technology Planning on issues related to the exercise of the Division's powers and duties.

B. The Board shall consist of seventeen members appointed as follows: (i) eleven members to be appointed by the Governor, including: ~~four state agency officials or their designees consisting of the Commonwealth Transportation Commissioner, the Executive Director of the Economic Development Partnership Authority, an agency director from one of the natural resources agencies, and one official from a state university,~~

or their designees; one elected official representing a local government in the Commonwealth; one member of the Virginia Association of Surveyors; one elected official who serves on a planning district commission; two representatives of utilities or transportation industries utilizing geographic data; and two representatives of private businesses with expertise and experience in the establishment, operation, and maintenance of geographic information systems; and (ii) five members of the General Assembly, three of whom shall be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, and two of whom shall be members of the Senate, to be appointed by the Senate Committee on Privileges and Elections. The Director of the Council on Information Management shall serve as an ex officio, voting member. Any members of the Board who are representatives of private businesses that provide geographic information services, and their companies, are precluded from contracting to provide goods or services to the Division.

C. The gubernatorial appointees to the Board shall serve five-year terms, except that of the initial appointees, three initial appointees shall serve three-year terms, three shall serve four-year terms, and the remainder shall serve five-year terms. Members appointed by the Governor shall serve no more than two consecutive full terms. All members of the Board appointed by the Governor shall be confirmed by each house of the General Assembly. Legislative members' terms shall be coincident with their terms of office.

D. The Board shall elect from its membership a chairman, vice chairman, and any other officers deemed necessary. The duties and terms of the officers shall be prescribed by the members. A majority of the Board shall constitute a quorum. The Board shall meet at least quarterly or at the call of its chairman or the Director.

E. Members of the Board shall receive no compensation for their services, but the nongovernmental members shall receive actual expenses in accordance with § 14.1-5 be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10). The Board shall meet at least quarterly or at the call of its chairman or the Director.

DRAFTING NOTE: Technical corrections. The last sentence in proposed subsection E now appears as the last sentence in subsection D.

Chapter X.

Virginia-Israel Advisory Board.

§ 9-350 2.2-XXX. Virginia-Israel Advisory Board established; purpose; membership; terms; compensation; staff.

The Virginia-Israel Advisory Board (the "Board") is hereby established and is hereafter referred to in this chapter as the "Board." as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Board shall be to advise the Governor on ways to improve economic and cultural links between the Commonwealth and the State of Israel, with a focus on the areas of commerce and trade, art and education, and general government.

B. The Board shall consist of twenty-nine members to be appointed as follows: six citizen members appointed by the Speaker of the House of Delegates, who may be members of the House or other state or local elected officials; six citizen members appointed by the Senate Committee on Privileges and Elections, who may be members of the Senate or other state or local elected officials; and thirteen members appointed by the Governor who represent business, industry, education, the arts, and government, and the president, or his designee, of each of the four Jewish Community Federations serving the Richmond, Northern Virginia, Tidewater and Peninsula regions. The Secretaries of Commerce and Trade, and Education, or their designees shall serve as ex officio members of the Board.

C. Citizen members shall serve for terms of four years. The Secretaries of Commerce and Trade, and Education, or their designees, shall serve terms coincident with their terms of office. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.

D. The members of the Board shall elect a chairman and vice-chairman annually from among its membership. A majority of the members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services.

F. The Office of the Governor shall serve as staff to the Board.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-350, subsections B through E are from § 9-351, and subsection F is the first sentence from § 9-353. The second sentence in subsection D was added to clarify the quorum requirements for the Board.

~~§ 9-351. Membership; terms; vacancies; chairman.~~

~~The Board shall consist of twenty nine members to be appointed as follows: six citizen members appointed by the Speaker of the House of Delegates, who may be members of the House or other state or local elected officials; six citizen members appointed by the Senate Committee on Privileges and Elections, who may be members of the Senate or other state or local elected officials; and thirteen members appointed by the Governor who represent business, industry, education, the arts, and government, and the president, or his designee, of each of the four Jewish Community Federations serving the Richmond, Northern Virginia, Tidewater and Peninsula regions. The Secretaries of Commerce and Trade, and Education, or their designees shall serve as ex-officio members of the Board.~~

~~Citizen members shall serve for terms of four years. The Secretaries of Commerce and Trade, and Education, or their designees, shall serve terms coincident with their terms of office. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.~~

~~The members of the Board shall elect a chairman and vice chairman annually.~~

~~Members shall receive no compensation for their services.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through D in proposed § 2.2-XXX supra.

~~§ 9-352 2.2-XXX. Powers and duties of the Board.~~

The Board shall have the power and duty to:

1. Undertake studies and gather information and data in order to accomplish its purposes as set forth in § 9-350 2.2-XX, and to formulate and present its recommendations to the Governor and the General Assembly.

2. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources, including any matching funds as may be designated in the appropriation act, to enable it to better carry out its purposes.

3. Report annually its findings and recommendations to the Governor. The Board may make interim reports to the Governor as it deems advisable.

4. Account annually on its fiscal activities, including any matching funds received or expended by the Board.

DRAFTING NOTE: Technical corrections only.

~~§ 9-353. Staff; cooperation from other state agencies.~~

~~The Office of the Governor shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.~~

DRAFTING NOTE: Technical corrections. The first sentence of this section now appears as subsection F in proposed § 2.2-XXX supra. The last sentence in this section now appears in Chapter X, General provisions, at the beginning of this Part D.

Chapter X.

Virginia Public Broadcasting Board.

~~§ 2.1-563.27:1~~ 2.2-XXX. Declaration of public purpose; ~~Board created.~~

A. ~~It is hereby~~ found and determined by the General Assembly that there exists in the Commonwealth a need to support and capitalize on the universal access of public broadcasting to: (i) enrich the lives of all citizens of the Commonwealth without regard to their geographic location or economic status by providing them with programs and services that educate, inform and enlighten; (ii) improve and enhance the educational opportunities available to children from pre-kindergarten through secondary schools, adults, home educators, and students and personnel at colleges and universities of the Commonwealth; (iii) provide the citizens of the Commonwealth with comprehensive information on the activities of state government; (iv) maintain and improve the public broadcasting stations' infrastructures for distribution of broadcast and related services; (v) promote economic development through the wider availability of worker-training and job-skills enhancements; (vi) promote tourism through the widespread distribution of programming that recognizes and displays Virginia's historical, educational, recreational and cultural resources; and (vii) improve efficiency in state government through the use of public broadcasting production and distribution systems.

~~B. To achieve these public purposes, there is hereby created the Virginia Public Broadcasting Board under the direction and supervision of the Secretary of Administration. The exercise by the Board of the powers conferred by this article shall be deemed and held to be the performance of essential governmental functions.~~

DRAFTING NOTE: Technical corrections. Subsection B has been moved to proposed § 2.2-XXX (existing § 2.1-563.27:3) in subsection A.

~~§ 2.1-563.27:2~~ 2.2-XXX. Definitions.

~~As used in this article, except in those instances where the chapter, unless context requires otherwise a different meaning:~~

"Board" means the Virginia Public Broadcasting Board.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information which may be transmitted by means of electronic communications, and any related materials and services provided by such stations.

"Public broadcasting station" means any noncommercial, educational television or radio station which (i) is licensed and regulated by the Federal Communications Commission as a noncommercial, educational broadcasting station; (ii) is operated by a public agency or a nonprofit private foundation, corporation, or association; (iii) has offices, studios, and transmitters located in Virginia; and (iv) on or before January 1, 1997, was qualified to receive or was the recipient of a Virginia community service grant or other instructional television service funds, or, after January 1, 1997, was qualified by the Board to receive state funds under standards and criteria established by the Board pursuant to ~~§ 2.1-563.27:4~~ 2.2-XXX, but shall not include any institution of higher education which produces or transmits distance education and other credit and noncredit television programs, unless such institution requests qualification as a public broadcasting station and the Board approves its request.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-563.27:3~~ 2.2-XXX. Virginia Public Broadcasting Board; membership; terms; chairman and vice chairman; duties; compensation.

A. To achieve the public purposes set forth in § 2.2-XXX (2.1-563.27:1), the Virginia Public Broadcasting Board (the "Board") is established as a policy board within the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall be under the direction and supervision of the Secretary of Administration. The exercise by the Board of the powers conferred by this chapter shall be deemed and held to be the performance of essential governmental functions.

B. The Board shall consist of fifteen members. The Governor shall appoint eleven members, one from each congressional district of the Commonwealth, each of whom shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Three of the appointees shall have expertise in at least one of the areas of education, tourism, telecommunications, and economic development, and two shall be participating members of different public broadcasting stations in the Commonwealth. The president of the State Board of Education and the chairmen of the State Council of Higher Education, the State Board of Community Colleges, and the Board of Trustees of the Virginia Museum of Fine Arts, or their designees, shall serve as Board members concurrent with their terms in office. No Board member shall be the chief executive officer or head of any state agency, a member of the General Assembly, or an officer, director, employee, or member of the board of directors of any public broadcasting station.

~~B. All C. After the original appointments, all other appointments shall be for four-year terms; however, the initial terms of the gubernatorial appointees shall be as follows: three for four-year terms, three for three-year terms, two for two-year terms, and three for one-year terms. No appointee shall be eligible to serve more than two successive four-year terms; however, a A member appointed to an initial term may serve one additional four-year term.~~

~~C. D. Vacancies for unexpired terms shall be filled by the Governor in the same manner as the original appointment; after the expiration of such term, the appointee may serve one additional four-year term. If the General Assembly refuses or fails to confirm any appointment, such person shall not be eligible for reappointment.~~

~~D. E. The Governor shall designate a Board member to serve as chairman, who shall preside over meetings of the Board, communicate on behalf of the Board to the outside entities interested in public broadcasting, and perform additional duties as may be set by resolution of the Board. Board members may elect a vice-chairman from their membership and appoint a secretary who may or may need not be a member of the Board. The Board shall meet at the call of its chairman. A majority of the Board members shall constitute a quorum.~~

~~E. F. Board members shall be reimbursed for the reasonable and necessary expenses incurred in performance discharge of their duties as provided in § 2.2-XXX (2.1-20.8). Such reimbursements and other expenses of the Board shall be paid from funds which the Department of Planning and Budget shall annually withhold from appropriations to public broadcasting stations in an amount sufficient to defray the estimated reasonable and necessary expenses of the Board.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-563.27:4~~ 2.2-XXX. Powers and duties of the Board.

The Board shall have ~~all the powers necessary or convenient to carry out the purposes and provisions of this article, including, without limitation, power and duty to:~~

1. Receive, allocate, and dispense funds appropriated by the General Assembly and any funds received by the Board from other sources, subject to the approval of the Director of the Department of Planning and Budget;

2. Develop reasonable and fair formulas for allocating and distributing state funds and other funds of the Board to Virginia's public broadcasting stations consistent with the intent of such appropriations;

3. Apply for, accept, and receive grants of federal funds and funds from other public and private sources;

4. Adopt, administer, and apply standards and criteria by which the Board may permit television and radio stations to qualify as public broadcasting stations if those stations did not qualify for or receive Virginia community service grants or other instructional television service funds as of January 1, 1997, but otherwise qualify as such under the definition of a public broadcasting station in ~~§ 2-1-563.27:2~~ 2.2-XXX. To avoid unnecessary duplication of public broadcasting services, the Board shall consider the: (i) adequacy of existing programming, coverage, and other public broadcasting services in the geographic area to be served and the extent to which those services would be duplicated by an additional public broadcasting station and (ii) sufficiency of funds administered by the Board to support existing or proposed public broadcasting stations;

5. Coordinate such strategic planning by the public broadcasting stations as the Board deems appropriate and identify and communicate to the Governor and the General Assembly the funding and other requirements of Virginia's public broadcasting stations; and

6. Enter into contracts with public broadcasting stations, state agencies and institutions, public schools and private entities for goods and services.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-563.27:5~~ 2.2-XXX. Funds of the Board.

The Director of the Department of Planning and Budget shall oversee and approve the disbursement of all funds appropriated to the Board. Upon approval, the funds of the Board shall be ~~dispensed~~ disbursed for the following general purposes:

1. ~~Community services.~~ Annual operating grant-funding to public broadcasting stations for developing, acquiring, producing, and distributing programs and related services which support local needs of pre-school and adult education; disseminating information to the citizenry regarding the government and its affairs; promoting tourism and enhancing the Commonwealth's economic development; and supporting other programs which inform, educate, and entertain the citizenry with noncommercial programming.

2. ~~Instructional services.~~ Annual contract-funding to public broadcasting stations to regionally manage and provide programming and related services which directly support the instructional activities of local schools and home educators.

3. ~~Capital improvements.~~ Matching capital-funding to public broadcasting stations for construction and equipment modernization to keep Virginia stations consistent with industry standards.

4. ~~Special appropriations.~~ Funding for specific programs and projects to be provided by a public broadcasting station which may not be included in another funding category.

DRAFTING NOTE: Technical corrections only. Subdivision catchlines has been deleted as contrary to practice in setting out the Code of Virginia.

~~§ 2-1-563.27:7~~ 2.2-XXX. Staff and employees prohibited; ~~cooperation of other agencies.~~

The Board shall not be ~~authorized to hire, employ, or contract for its own staff or employees,~~ but may request administrative support from the public broadcasting stations. The Department of Information Technology shall, upon request, provide to the Board and public broadcasting stations the same scope of technical communications and related services which it provided on or before July 1, 1997, to the Virginia Public Telecommunications Board and to Virginia's public telecommunications entities and public broadcast stations. ~~All departments, commissions, boards, agencies, officers, and institutions of the Commonwealth or any political subdivision thereof shall cooperate with the Board in carrying out the purposes of this article.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section now appears in Chapter X, general provisions, at the beginning of this Part D.

~~§-2.1-563-27:8~~ 2.2-XXX. Forms of accounts and records; audit; annual report.

The accounts and records of the Board showing the receipt and disbursement of funds from whatever source derived shall be in ~~such a form as prescribed by~~ the Auditor of Public Accounts ~~prescribes~~. The Auditor of Public Accounts, or his legally authorized representatives, shall annually examine the accounts and books of the Board.

The Board shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. ~~Such~~ The report shall contain the audited annual financial statements of the Board for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of ~~§-2.1-467~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-563-27:6~~ 2.2-XXX. Exemption from Virginia Public Procurement Act.

State agencies, institutions, and political subdivisions of the Commonwealth may enter into contracts with public broadcasting stations for program production, broadcasting, transmission, distribution, and related communications services without competitive sealed bidding or competitive negotiation as required by the Virginia Public Procurement Act (§ 11-35 et seq.).

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Public Buildings Board.

~~§-2.1-486~~ 2.2-XXX. Public Buildings Commission continued as Virginia Public Buildings Board; purpose; membership; terms; compensation.

~~The Virginia Public Buildings Commission is continued and shall hereafter be known as the Virginia Public Buildings Board. The Virginia Public Buildings Board (the "Board") is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to assist and advise the Governor and the Department of General Services in the preparation and maintenance of a long-range site plan at the seat of government, and in the determination of need for the acquisition of land, buildings and improvements, through purchases or construction.~~

B. The Board shall consist of nine members, to be appointed as follows: three of whom members shall be appointed by the Speaker of the House of Delegates from the membership of the House of Delegates, two of whom members shall be appointed by the Committee on Privileges and Elections of the Senate from the membership of the Senate; such members shall be appointed for a term to expire on the date of the convening of the first regular session of the General Assembly in even-numbered years following their appointments. The Governor shall appoint three members of the Board appointed by the Governor from the public at large, who shall serve for terms coincident with his own. The and the Director of the Department of General Services who shall be serve as an ex officio member of the Board.

C. Legislative members shall serve terms coincident with their terms of office. The citizen members shall serve for terms coincident with that of the Governor. The Director of the Department of General Services shall serve a term coincident with his term of office. Vacancies for unexpired terms shall be filled in the same manner as the original appointments.

D. The members of the Board shall elect a chairman and vice-chairman annually. A majority of the members of the Board shall constitute a quorum.

E. The members of the Board shall receive their actual expenses incurred in the discharge of their duties, to be paid from the funds transferred from other state departments, agencies or institutions under § 2.2-XXX (2.1-493), or from any funds which may be appropriated or made available for such purposes.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-487, subsections B and C are from § 2.1-486, and subsection E is from § 2.1-488. Subsection D was added to clarify the election of a chairman and vice-chairman and the quorum requirements for the Board.

~~§ 2.1-487. Board to assist and advise Governor and Department.~~

~~The Board shall assist and advise the Governor and the Department of General Services in the preparation and maintenance of a long-range site plan at the seat of government, and in the determination of need for the acquisition of land, buildings and improvements, through purchases or construction.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 2.2-XXX supra.

~~§ 2.1-488. Expenses of members of Board.~~

~~The members of the Board shall receive their actual expenses incurred in the performance of the duties imposed by this article to be paid from the funds transferred from other state departments, agencies or institutions under § 2.1-493, or from any funds which may be appropriated or made available for such purposes.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX supra.

Chapter X.

Virginia Veterans' Care Center Board of Trustees.

~~§ 2.1-744.4 2.2-XXX. Virginia Veterans Care Center Board of Trustees; purpose; appointments membership; terms; quorum.~~

A. The Virginia Veterans Care Center Board of Trustees (the "Board") is hereby established and shall be referred to in this chapter as the Board. ~~The Board is as a supervisory board within the meaning of § 9-6.25 and 2.1-XXX in the executive branch of state government.~~ The Board shall operate as an agency under the supervision and direction of the Secretary of Administration. The Board shall govern and oversee the administration of the Virginia Veterans Care Center, located in the City of Roanoke, adjacent to the United States Veterans Administration hospital. The purpose of the Virginia Veterans Care Center is to provide adult home and nursing home care for Virginia residents who are veterans of the armed forces of the United States or those who were Virginia residents at the time of their entry in the armed forces.

B. The Board shall ~~be composed~~ consist of ten members, all residents of the Commonwealth, to be appointed by the Governor. Three members shall be chosen from a list of nominees submitted by the Speaker of the House of Delegates. Two members shall be chosen from a list of nominees submitted by the Senate Committee on Privileges and Elections. In making appointments, the Governor shall select members who possess the qualifications and experience necessary to control the operations of the Virginia Veterans Care Center, so as to provide financially sound, high quality care to its residents.

C. Members of the Board shall be appointed for four-year terms. Any appointment to fill a vacancy shall be for the unexpired term. No person shall be eligible to serve for more than two successive four-year terms. However, any person appointed to fill a vacancy may be eligible for two successive full terms after the term of the vacancy for which he was appointed has expired. ~~Members of the Board may be removed by the Governor at his pleasure.~~

D. The Board shall elect from its members a chairman and other such officers as its bylaws may provide. The Board shall meet at such times as it deems appropriate and on call of the chairman. A majority of the members of the Board shall constitute a quorum.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A, B, and C are § 2.1-744.1, and subsection D is from § 2.1-744.2. The last sentence in subsection C has been deleted as contrary to general law (§ 2.1-43) which provides the method for the removal of members of boards, councils, and commissions, etc.

~~§ 2.1-744.2. Board bylaws; officers; meetings; executive committee.~~

~~The Board shall adopt bylaws governing its organization and procedures and may, from time to time, amend the same. The Board shall elect from its members a chairman and other such officers as its bylaws may provide. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are necessary. A majority of the current membership of the Board shall constitute a quorum for all purposes. The Board also shall appoint an executive committee, composed of not less than five members, which shall exercise the powers vested in and perform the duties imposed upon the Board by this chapter to the extent permitted by the Board in its bylaws.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 2.2-XXX (existing § 2.1-744.1) supra, and as subdivisions 8 and 9 in proposed § 2.2-XXX (existing § 2.1-744.3) infra.

~~§ 2.1-744.3 2.2-XXX. General powers-Powers and duties of Board.~~

The Board shall have the power and duty to:

1. Manage, control, maintain, and operate the Virginia Veterans' Care Center and all its assets;
2. Set fees for residence and care at the Virginia Veterans' Care Center;
3. Adopt rules and regulations for the use of, residence in, and care at the Center;
4. Enter into contracts with one or more entities to operate the Center on behalf of the Board;
5. Employ and discharge from employment an executive director and such other persons as may be necessary to assist the Board in carrying out its powers and duties;
6. Determine which programs and activities will be offered at the Center; ~~and~~
7. Determine eligibility criteria for residence or care in the Center;
8. Adopt bylaws governing its organization and procedures and may amend the same; and
9. Appoint an executive committee, composed of not less than five members, which shall exercise the powers and duties imposed upon the Board by this chapter to the extent permitted by the Board in its bylaws.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivisions 1 through 7 are from § 2.1-744.3 and subdivisions 8 and 9 are from § 2.1-744.2.

~~§ 2.1-744.4 2.2-XXX. Gifts, grants, bequests, etc.; property.~~

A. The Board is ~~authorized to~~ may seek, promote, and stimulate gifts, grants, bequests, and devises for the endowment, maintenance, and improvement of the Center and its operation. With the approval of the Governor, the Board may apply for, expend, and administer such grants, gifts, bequests, or devises from any source as may become available in connection with its duties under this chapter, and comply with ~~such~~ the conditions and requirements ~~as may be imposed~~ in connection therewith.

B. The Board ~~is authorized to~~ may sell, dispose of, liquidate, and change the form of any funds, securities, or other property, real or personal, provided that such action is consistent with the terms of any gift, grant, bequest, or devise by which the property may have been obtained, and to take all actions necessary with respect to any property held by the Board. However, the land and improvements which constitute the Virginia Veterans Care Center may be leased only to a contractor who is to operate the Virginia Veterans Care Center. Such land and improvements may be otherwise disposed of or encumbered only with the prior approval of the Governor and in accordance with the general provisions for the management of real property contained in §§ ~~2.1-504 2.2-XXX~~ through ~~2.1-512 2.2-XXX~~.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Veterans' Cemetery Board.

~~§ 2.1-739.1 2.2-XXX. Virginia Veterans Cemetery Board created; purpose; membership; terms; compensation; staff.~~

A. The Virginia Veterans Cemetery Board (the Board) is hereby created and shall be an advisory board within the meaning of § ~~9-6.25 2.2-XX~~, in the executive branch of state government. The Board shall purpose of the Board shall be to advise and make recommendations to the Department of Veterans' Affairs (the Department) regarding the control and operation of such veterans' cemeteries as may be established in the Commonwealth pursuant to § ~~2.1-739 2.2-XXX~~.

B. The Board shall consist of ten members as follows: three members from the House of Delegates, to be appointed by the Speaker of the House; two members from the Senate, to be appointed by the Senate Committee on Privileges and Elections; and five members from the Commonwealth at large, each of whom shall be a member in good standing of a veteran service organization recognized by the U.S. Department of Veteran Affairs, to be appointed by the Governor.

C. All appointments to the Board shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Legislative members shall serve terms coincident with the terms of office. Vacancies shall be filled in the manner of the original appointments.

Any member may be reappointed for successive terms.

D. The members of the Board shall elect a chairman and a vice chairman annually. The Board shall meet at such times as it deems appropriate and on call of the chairman. A majority of the members of the Board shall constitute a quorum.

E. Legislative members of the Board shall receive such compensation as is set forth in § 30-19.12 and all members shall be reimbursed for the reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

F. The Department shall serve as staff to the Board.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-739.1, subsections B through E are from § 2.1-739.2, and subsection F is from § 2.1-739.4.

~~§ 2.1-739.2. Membership; terms; vacancies; chairman and vice chairman; compensation.~~

~~A. The Board shall consist of ten members as follows: three members from the House of Delegates, to be appointed by the Speaker of the House; two members from the Senate, to be appointed by the Senate Committee on Privileges and Elections; and five members from the Commonwealth at large, each of whom shall be a member in good standing of a veteran service organization recognized by the U.S. Department of Veteran Affairs, to be appointed by the Governor.~~

~~B. All appointments to the Board shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Board, and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any member may be reappointed for successive terms.~~

~~C. The members of the Board shall elect a chairman and a vice chairman annually. The Board shall meet at such times as it deems appropriate and on call of the chairman when, in his opinion, meetings are expedient or necessary. A majority of the membership of the Board shall constitute a quorum for all purposes.~~

~~D. Legislative members of the Board shall receive such compensation as is set forth in § 14.1-18, and all members shall be reimbursed for the actual expenses incurred by them in the performance of their Board duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through E in proposed § 2.2-XXX supra.

~~§ 2.1-739.3 2.2-XXX. Powers and duties of the Board.~~

With regard to ~~such the~~ veterans' cemeteries as may be established in the Commonwealth pursuant to § ~~2.1-739 2.2-XXX~~, the Board shall make recommendations and provide advice to the Department of Veterans' Affairs regarding: (i) care, maintenance, and upkeep; (ii) fees and costs; and (iii) acceptance of gifts and grants and expenditure of funds.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-739.4. Staff; cooperation from other state agencies.~~

~~The Department shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection F in proposed § 2.2-XXX supra. The last sentence in this section now appears in Chapter X, General provisions, at the beginning of this Part D.

Subpart 4.

Councils.

Chapter X.

Advisory Council on the Virginia Business-Education Partnership Program.

~~§ 9-325 2.2-XXX. Advisory Council on the Virginia Business-Education Partnership Program established; membership; terms; compensation; chairman and vice chairman.~~

A. The Advisory Council on the Virginia Business-Education Partnership Program (the "Council") is hereby established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to assist the Secretary of Education in implementing the Virginia Business-Education Partnership Program and in facilitating the development of strategic partnerships between the public and private sectors to enhance public education and workforce training.

B. The Council shall be composed of twenty members as follows: the Secretary of Education or his designee, the Secretary of Commerce and Trade or his designee, and eighteen members appointed by the Governor to include one representative each from the Department of Education and the Office of Volunteerism; one member each from the House of Delegates and the Senate; one representative of the Virginia Chamber of Commerce; and thirteen members who represent business, industry, education, and employees, including one community college president, one president of a four-year institution of higher education, one school

superintendent, one public school teacher, one school board member, and at least five representatives of private business and industry. Interested organizations may submit nominations for membership to the Governor. Members appointed by the Governor shall represent the various geographical areas of the Commonwealth.

C. Initial appointments by the Governor shall be as follows: nine members for two-year terms and nine members for one-year terms. Thereafter, all appointments shall be for terms of two years, except that appointments to fill vacancies shall be for the unexpired terms. No appointed member shall be eligible to serve for or during more than four successive two-year terms, but after the expiration of a term of one year or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, four additional two-year terms may be served by such member if appointed thereto.

D. The Governor shall select a chairman and a vice chairman from among Council members. A majority of the members of the Council shall constitute a quorum.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-325 and subsection B through D are from § 9-326. The last sentence in subsection D was added to clarify the quorum requirements for the Council.

~~§ 9-326. Membership; chairman; vice chairman; executive committee.~~

~~A. The Advisory Council shall be composed of twenty members as follows: the Secretary of Education or his designee, the Secretary of Commerce and Trade or his designee, and eighteen members appointed by the Governor to include one representative each from the Department of Education and the Office of Volunteerism; one member each from the House of Delegates and the Senate; one representative of the Virginia Chamber of Commerce; and thirteen members who represent business, industry, education, and employees, including one community college president, one president of a four-year institution of higher education, one school superintendent, one public school teacher, one school board member, and at least five representatives of private business and industry. Interested organizations may submit nominations for membership to the Governor. Members appointed by the Governor shall represent the various geographical areas of the Commonwealth.~~

~~B. Initial appointments by the Governor shall be as follows: nine members for two-year terms and nine members for one-year terms. Thereafter, all appointments shall be for terms of two years, except that appointments to fill vacancies shall be for the unexpired terms. No appointed member shall be eligible to serve for or during more than four successive two-year terms, but after the expiration of a term of one year or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, four additional two-year terms may be served by such member if appointed thereto.~~

~~C. The Governor shall select a chairman and a vice chairman from among Council members.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through D in proposed § 2.2-XXX (existing § 9-325) supra.

~~§ 9-327 2.2-XXX. Executive director.~~

The Secretary of Education shall appoint an executive director for the Council, who shall be authorized to may employ such staff as necessary to enable the ~~Advisory~~ Council to perform its duties as set forth in this chapter. The Secretary is authorized to may determine the duties of such staff and to fix salaries and compensation from such funds as may be appropriated or received.

DRAFTING NOTE: Technical corrections only.

~~§ 9-328 2.2-XXX. Meetings; powers Powers and duties of the Council; acceptance of gifts and grants.~~

A. The Advisory Council shall meet quarterly and shall:

1. Assist the Secretary of Education in the implementation of the Virginia Business-Education Partnership program;
2. Serve as an advisor to the Workforce 2000 Advocacy Council; and
3. Perform any act or function which is in accord with the purposes of this chapter.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-328 and subsection B is § 9-329.

~~§ 9-329. Application for and acceptance of gifts and grants.~~

~~The Advisory Council is authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-328) supra.

Chapter X.

Blue Ridge Economic Development Advisory Council.

~~§ 9-145.35 2.2-XXX. Blue Ridge Economic Development Advisory Council—established; membership; terms; quorum; staff; Blue Ridge defined.~~

~~A. The Blue Ridge Economic Development Advisory Council is hereby established and shall be referred to in this chapter as the Council as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed consist of eleven members, all residents of the Blue Ridge region, to be appointed by the Governor as follows: one member from each of the six different marketing groups in the Blue Ridge region; the chairman of the Blue Ridge Economic Development Commission or, if the Commission has expired, a member of the Virginia General Assembly; a representative of a major bank headquartered in the region involved in economic development efforts in the region; a representative of the major electric utility in the region; a representative of a major railroad headquartered in the region; and a representative knowledgeable about economic development from Virginia Polytechnic Institute and State University.~~

~~B. Of the members to be appointed in 1992, three shall be appointed for two-year terms, four shall be appointed for three-year terms and four shall be appointed for four-year terms. Thereafter, After the original appointments, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.~~

~~C. Each member of the Council, before assuming the duties of this office, shall take and subscribe the oath prescribed in § 49-1.~~

~~D. Six A majority of the members of the Council shall constitute a quorum, and the affirmative vote of a majority of the quorum present shall be necessary for any action taken by the Council.—No vacancy in the membership of the Council shall impair the right of a quorum to exercise all the rights and perform the duties of the it.~~

D. The Council shall elect a chairman from its membership.

E. Planning district commissions in the region shall provide staff support to the Council as requested.

F. For purposes of this chapter, "Blue Ridge" shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, Rockbridge and Wythe and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton and Waynesboro.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D are § 9-145.38, subsection E is § 9-145.39, and subsection F is § 9-145.36. Existing subsection C has been deleted as duplicative of § 49-1. There is a lack of uniformity among the definitions of "Blue Ridge" found here and in the Blue Ridge Regional Education and Training Council and the Blue Ridge Regional Tourism Council.

~~§ 9-145.36. Blue Ridge region defined.~~

~~For purposes of this chapter, "Blue Ridge" shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, Rockbridge and Wythe and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton and Waynesboro.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection F in proposed § 2.2-XXX (existing § 9-1435.35) supra.

~~§ 9-145.372.2-XXX. Responsibilities; duties Duties of the Council.~~

The Council shall:

1. Encourage Blue Ridge counties, cities and towns to work cooperatively to promote the region's strengths and advantages;
2. Allow the six different marketing groups to plan a coordinated effort to maximize the region's marketing efforts;
3. Support and encourage each locality or group of localities to foster its own marketing programs, growth strategies and individual identities;
4. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;
5. Establish a pilot export program to encourage the region's industry to consider exporting as a way to increase sales; and
6. Identify and assist in the implementation of affordable child-care options in the region.

DRAFTING NOTE: Technical corrections only.

~~§ 9-145.39. Cooperation of state agencies; planning district commissions.~~

~~All agencies of the Commonwealth shall cooperate with the Council and, upon request, assist the Council in the performance of its duties and responsibilities. Planning district commissions in the region shall provide staff support to the Council as requested.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D. The first sentence of this section now appears as subsection E in proposed § 2.2-XXX (existing § 9-145.35) supra.

Chapter X.

Blue Ridge Regional Education and Training Council.

~~§ 9.145.30 2.2-XXX. Blue Ridge Regional Education and Training Council established; duties; membership; terms; staff; Blue Ridge defined.~~

~~The Blue Ridge Regional Education and Training Council (the "Council") is hereby established and shall be referred to in this chapter as the Council. For the purposes of this chapter and the work of the Council, the "Blue Ridge" region shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, and Rockbridge, and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton, and Waynesboro. The Council shall perform the following functions:~~

~~1. Provide general leadership in the region for education and business partnership programs and excellence in education;~~

~~2. Encourage and expand business participation and involvement in public education and to foster partnerships between the public and private sectors to enhance public education in the Blue Ridge region;~~

~~3. Collect, generate, and disseminate ideas and information regarding educational innovations and effective instructional practices pertinent to the Blue Ridge region;~~

~~4. Coordinate with business and industry throughout the region to ascertain those skills, education, and training that businesses seek from entry level workers;~~

~~5. Serve as a resource and referral center for area school divisions by maintaining and disseminating information on existing educational programs and resources;~~

~~6. Develop, in coordination with the Department of Education and local school boards, specific goals for public education in the Blue Ridge region and, to annually evaluate the local school boards' progress toward these goals, and to adjust local plans if the need arises;~~

~~7. Promote the coordination of elementary, secondary, and higher education and adult education and worker training;~~

~~8. Sponsor a series of seminars throughout the region to discuss, plan, and receive comments on how to upgrade the region's adult workforce;~~

~~9. Develop, in coordination with the Department of Education and local school boards, incentives for school systems that subscribe to integrated applied educational programs which prepare students for post high school education or employment;~~

~~10. Promote and expand, in coordination with the Department of Labor and Industry, apprenticeship training for youth and adults in the region; and~~

~~11. Investigate and formulate a model student volunteer program and assist school systems in developing and implementing such programs.~~

~~as a policy council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed of twenty-one members to be appointed by the Governor as follows: nine members representing business and industry; six members representing the education community, including one representative of the Roanoke Graduate Center, one representative of a four-year private college or university, one community college president or dean, one school superintendent, one public school teacher, and one school board member; four local elected officials; and two citizen members. Council members shall be chosen from among residents of the Blue Ridge region of the Commonwealth.~~

~~B. After the original appointments, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive four-year terms, but after the expiration of a term of three years or less, or after the~~

expiration of the remainder of a term to which appointed to fill a vacancy, two additional four-year terms may be served by such member if appointed thereto.

C. The Council shall elect a chairman and a vice chairman from among its members. The Council shall meet at least four times a year and at such dates and times as they determine. A majority of the members of the Council shall constitute a quorum.

D. Members of the Council shall not receive compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E. For the purposes of this chapter, the "Blue Ridge" region shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, and Rockbridge, and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton, and Waynesboro.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D and subsection F are from §§ 9-145.30 and 9-145.31, and subsection E is the last sentence of § 9-145. The last sentence in subsection C was added to clarify the quorum requirements for the Council. Language stricken relating the duties of the Council now appears in proposed § 2.2-XXX infra. There is a lack of uniformity among the definitions of "Blue Ridge" found here and in the Blue Ridge Advisory Council and the Blue Ridge Regional Tourism Council.

~~§ 9-145.31. Membership; terms; compensation; chairman and vice chairman; meetings.~~

~~A. The Council shall be composed of twenty one members to be appointed by the Governor as follows: nine members representing business and industry; six members representing the education community, including one representative of the Roanoke Graduate Center, one representative of a four-year private college or university, one community college president or dean, one school superintendent, one public school teacher, and one school board member; four local-elected officials; and two citizen members. Council members shall be chosen from among residents of the Blue Ridge region of the Commonwealth.~~

~~B. Of the members to be appointed in 1992, seven shall be appointed for two-year terms, seven shall be appointed for three-year terms, and seven shall be appointed for four-year terms. Thereafter, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive four-year terms, but after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional four-year terms may be served by such member if appointed thereto.~~

~~C. Members of the Council shall be reimbursed for their actual expenses incurred in the performance of their duties in the work of the Council.~~

~~D. The Council shall elect a chairman and a vice chairman from among its members. The Council shall meet at least four times a year and at such dates and times as they determine.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections A through D in proposed § 2.2-XXX supra.

§ 2.2-XXX. Duties of the Council; acceptance of gifts and grants.

A. The Council shall perform the following functions:

1. Provide general leadership in the region for education and business partnership programs and excellence in education;

2. Encourage and expand business participation and involvement in public education and to foster partnerships between the public and private sectors to enhance public education in the Blue Ridge region;

3. Collect, generate, and disseminate ideas and information regarding educational innovations and effective instructional practices pertinent to the Blue Ridge region;

4. Coordinate with business and industry throughout the region to ascertain those skills, education, and training that businesses seek from entry level workers;

5. Serve as a resource and referral center for area school divisions by maintaining and disseminating information on existing educational programs and resources;

6. Develop, in coordination with the Department of Education and local school boards, specific goals for public education in the Blue Ridge region and, to annually evaluate the local school boards' progress toward these goals, and to adjust local plans if the need arises;

7. Promote the coordination of elementary, secondary, and higher education and adult education and worker training;

8. Sponsor a series of seminars throughout the region to discuss, plan, and receive comments on how to upgrade the region's adult workforce;

9. Develop, in coordination with the Department of Education and local school boards, incentives for school systems that subscribe to integrated-applied educational programs which prepare students for post-high school education or employment;

10. Promote and expand, in coordination with the Department of Labor and Industry, apprenticeship training for youth and adults in the region; and

11. Investigate and formulate a model student volunteer program and assist school systems in developing and implementing such programs.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-145.30 and subsection B is § 9-145.33.

~~§ 9-145.32~~ 2.2-XXX. Executive director; staff support; location.

The Council shall appoint an executive director, who ~~shall be authorized to~~ may employ such staff as necessary to enable the Council to perform its duties as set forth in this chapter. The Council ~~is authorized to~~ may determine the duties of such staff and to fix salaries and compensation from such funds as may be appropriated or received. Regional resource personnel from the Department of Education shall also provide staff support to the Council. The Council's offices shall be housed at Virginia Western Community College.

DRAFTING NOTE: Technical correction only.

~~§ 9-145.33~~. ~~Application for and acceptance of gifts and grants.~~

~~The Council is authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (Duties of the Council) supra.

~~§ 9-145.33~~:4 2.2-XXX. Blue Ridge Regional Education and Training Council Fund.

From such funds as may be received pursuant to subsection B of § 9-145.33- 2.2-XXX or appropriated by the General Assembly, there is hereby established the Blue Ridge Regional Education and Training Council Fund (the "Fund") to support the Council's education and training programs. The Fund shall be established on the books of the Comptroller. Moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.

DRAFTING NOTE: Technical corrections only.

~~§ 9-145.34. Cooperation of other agencies.~~

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

DRAFTING NOTE: Technical corrections. This section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

Chapter X.

Blue Ridge Regional Tourism Council.

~~§ 9-145.39:1 2.2-XXX. Blue Ridge Regional Tourism Council established; duties; membership; meetings; Blue Ridge defined.~~

~~The Blue Ridge Regional Tourism Council (the "Council") is hereby established and shall be referred to in this chapter as the Council. For the purposes of this chapter and the work of the Council, the "Blue Ridge" region shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, Rockbridge, and Wythe and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton, and Waynesboro as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed of one representative of each of the destination marketing organizations (DMOs) located in the Blue Ridge region and the Director of Tourism for the Virginia Economic Development Partnership.~~

~~B. The Council shall elect a chairman and a vice chairman from among its members. The Council shall meet at least four times a year at such dates and times as they determine.~~

~~C. For the purposes of this chapter, the "Blue Ridge" region shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, Rockbridge, and Wythe and the Cities of Bedford, Buena Vista, Clifton Forge, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton, and Waynesboro.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A, B, and C are §§ 9-145.39:1 and 9-145.39:2. There is a lack of uniformity among the definitions of "Blue Ridge" found here and in the Blue Ridge Regional Education and Training Council and the Blue Ridge Advisory Council.

~~§ 9-145.39:2. Membership; chairman and vice chairman; meetings.~~

~~A. The Council shall be composed of one representative of each of the destination marketing organizations (DMOs) located in the Blue Ridge region, as defined in § 9-145.39:1 and the Director of Tourism for the Virginia Economic Development Partnership.~~

~~B. The Council shall elect a chairman and a vice chairman from among its members. The Council shall meet at least four times a year at such dates and times as they determine.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections A and B in proposed § 2.2-XXX (existing § 9-145.39:1) supra.

~~§ 9-145.39:32.2-XXX. Duties of the Council; acceptance of gifts and grants.~~

~~A. The Council shall perform the following functions:~~

- ~~1. Assist localities in the region, as well as the General Assembly, with the problems, concerns and issues of the tourism industry in the Blue Ridge region;~~
- ~~2. Encourage a cooperative attitude among the localities of the region and assist in the establishment of successful tourism partnerships between private and public organizations;~~
- ~~3. Develop and assist in the implementation of a plan to increase tourism revenue within the Blue Ridge region;~~
- ~~4. Review and disseminate information to the localities in this region concerning statewide and national tourism associations;~~
- ~~5. Encourage localities in the region to participate in the Virginia Local Tourism Accreditation Program;~~
- ~~and~~
- ~~6. Encourage localities to invest in tourism development as an integral part of their overall economic development.~~

~~B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-145.39:3 and subsection B is § 9-145.39:4.

~~§ 9-145.39:4. Application for and acceptance of gifts and grants.~~

~~The Council is authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-145.39:3) supra.

Chapter X.

Capitol Square Preservation Council.

~~§ 9-304.1. Definitions.~~

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

~~"Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad and Ninth Streets. The term also includes the exterior of all state buildings that are at least fifty years old and bordering the boundary streets. The term does not include the interiors of the General Assembly Building, the Washington Building, the Jefferson Building, or the Governor's Mansion.~~

~~"Council" means the Capitol Square Preservation Council.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX infra. This chapter relating to the Capitol Square Preservation Council, created pursuant to chapter 976 of the 1999 Acts of Assembly, supercedes the Commission for the Preservation of the Capitol.

§ 9-304.2 2.2-XXX. Capitol Square Preservation Council—created; membership; terms; meetings; compensation; "Capitol Square" defined.

A. ~~There is hereby created the~~ The Capitol Square Preservation Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed—consist of fourteen members including three ex officio members as follows: three members selected by the Speaker of the House, one each from lists of nominations provided by the governing bodies of The Garden Club of Virginia, the Historic Richmond Foundation and the Association for the Preservation of Virginia Antiquities; two members selected by the Senate Committee on Privileges and Elections, one each from lists of nominations provided by the governing bodies of the Virginia Society of the American Institute of Architects and the Virginia Museum of Fine Arts; and six members selected by the Governor, one each from lists of nominations provided by the governing bodies of the Virginia Chapter of the American Society of Landscape Architects and the Virginia Historical Society, one each from the memberships of the Virginia Public Buildings Board and the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion and two citizens at large. The Secretary of Administration, or his designee, and the Clerks of the House of Delegates and the Senate shall serve ex officio with voting privileges.

B. All appointments to the Council shall be for terms of three years, except that initial appointments shall ~~have be~~ be for the following terms: of those appointed by the Speaker of the House, one shall have a three-year term, one shall have a two-year term and one shall have a one-year term; of those appointed by the Senate Committee on Privileges and Elections, one shall have a three-year term, and one shall have a two-year term; of those appointed by the Governor, two shall have three-year terms, two shall have two-year terms and two shall have one-year terms. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term in the same manner as the original appointment. Any member may be reappointed for any number of multiple terms, except that members may not be reappointed to more than two successive three-year terms. No member shall be eligible to serve more than two successive four-year terms. However, after expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

C. The members of the Council shall elect from among its membership a chairman and a vice-chairman for two-year terms. The chairman and vice-chairman may not succeed themselves to the same position. The Council shall hold meetings quarterly, or upon the call of the chairman. A majority of the members of the Council shall constitute a quorum.

D. ~~All members—~~ Members of the Council shall not receive compensation, but shall be reimbursed for their actual reasonable and necessary expenses incurred by them in the performance—discharge of their duties in the work of the Council as provided in § 2.2-XXX (2.1-20.10).

E. For the purposes of this chapter, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad and Ninth Streets. The term also includes the exterior of all state buildings that are at least fifty years old and bordering the boundary streets. The term does not include the interiors of the General Assembly Building, the Washington Building, the Jefferson Building, or the Governor's Mansion.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D are § 9-304.2 and subsection D is from § 9-304.1. The last sentence in subsection B was added to clarify the quorum requirements for the Board. In subsection B, language relating to serving additional terms was clarified.

§ 9-304.3 2.2-XXX. Council powers—Powers and duties of the Council; executive director; annual report.

A. With regard to the architectural, historical, archeological and landscape features of Capitol Square and antiquities contained therein, the Council shall:

1. Inventory and assess their condition;

2. Develop plans and recommendations for their maintenance and preservation and for the enhancement of their historical and architectural integrity;

3. Develop recommendations for the promotion of activities and efforts that will enhance interpretive and educational opportunities; and

4. Review all plans or proposals for alterations, improvements, additions, renovations or other disposition that is structural or architectural in nature. No implementation of such plans or proposals shall take place prior to review by the Council. The Council shall report its findings on each plan or proposal to the Governor and the agency responsible for the plan or proposal. However, the Council's executive director and the Director of the Department of General Services shall enter into a memorandum of agreement describing the type of plans and proposals that are of such a routine or operational nature to not require review by the Council.

B. The Council may employ an executive director and determine his duties and compensation within the amounts appropriated therefor. The executive director shall be qualified to carry out the duties to which he is assigned and shall work at the pleasure of the Council. The Council may also obtain such assistance as it may deem necessary, and may employ, within the amounts appropriated therefor, experts who have special knowledge of the issues before the Council.

C. The Council may, unless otherwise restricted by the Governor or the General Assembly, under terms approved by the Attorney General, accept gifts and grants in furtherance of its duties. This provision shall be deemed to be in addition to and not in conflict with any other powers or authorities related to the acceptance of gifts and grants under other provisions of this Code.

D. The Council may enter into contracts in the furtherance of its duties in accordance with the Virginia Public Procurement Act.

E. The Council shall make a report on its activities and recommendations, if any, annually by December 1 to the Governor and the General Assembly. The Council shall make such further interim reports to the Governor and the General Assembly as it deems advisable or as required by the General Assembly.

DRAFTING NOTE: Technical corrections. Subsection E is derived from existing § 9-304.6.

~~§ 9-304.4 2.2-XXX. Executive Duties of the executive director.~~

A. The executive director shall serve as curator for the architectural, historical, archeological and landscape features of Capitol Square. Neither the Council nor the executive director in fulfilling his responsibilities as curator shall act in a manner inconsistent with ~~§ 2-1-499 2.2-XXX.~~

B. The executive director shall work under the direction and control of the Council and shall exercise ~~such~~ the powers and perform such duties as are conferred upon him by law or requested by the Council pursuant to authorities conferred ~~upon it~~ by this chapter.

C. The executive director shall be vested with the authority of the Council when it is not in session, subject to ~~such~~ guidelines or delegations as prescribed by the Council ~~may prescribe.~~

D. The executive director shall, upon request, act as an advisor to the Governor, the Art and Architectural Review Board, the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion and other state agencies dealing with architectural, historical, archeological and landscape features of Capitol Square.

DRAFTING NOTE: Technical corrections only.

~~§ 9-304.5. Assistance to Council.~~

~~All agencies of the Commonwealth shall assist the Council upon request.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

~~§ 9-304.6. Annual report.~~

~~The Council shall make a report on its activities and recommendations, if any, annually by December 1 to the Governor and the General Assembly. The Council shall make such further interim reports to the Governor and the General Assembly as it shall deem advisable or as may be required by the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX (existing § 9-304.3) supra.

Chapter X.

Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

~~§ 9-84.5 2.2-XXX. Committee continued as Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion; membership; to be purpose as a nonprofit charitable organization; membership; terms; officers and executive groups; compensation.~~

~~The Citizens' Advisory Committee on Furnishing and Interpreting the Executive Mansion is continued and shall hereafter be known as the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.~~
A. ~~The Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion (the "Council") is established as an advisory council in the executive branch of state government to operate as a nonprofit charitable organization. No part of the Council's net earnings shall inure to the benefit of any private individual nor shall it carry on propaganda or otherwise attempt to influence legislation or participate in any political campaign on behalf of any candidate for public office.~~

B. ~~The Council shall not exceed thirty members, who shall be appointed by the Governor. No employee of the Commonwealth or member of the General Assembly shall be eligible for appointment as a member of the Council. All members shall be deemed members-at-large charged with the responsibility of serving the best interests of the whole Commonwealth and no member shall act as representative of any particular region or of any particular agency or activity.~~

~~The Council shall operate as a nonprofit charitable organization and no part of its net earnings shall inure to the benefit of any private individual nor shall it carry on propaganda or otherwise attempt to influence legislation or participate in any political campaign on behalf of any candidate for public office.~~

C. ~~The term of office of each member shall be five years. However, of the members first appointed, nine shall be appointed for terms of one year, nine for terms of three years, and the remaining number for terms of five years. After the original appointment, all appointments shall be for five-year terms. No member of the Council who serves a full five-year term shall be eligible for reappointment; provided, however, that one year after the termination of his or her appointment, a member shall be eligible for reappointment. All vacancies shall be filled for the unexpired term in the same manner as the original appointments.~~

D. ~~The spouse of the Governor, if any, shall be the honorary chairperson of the Council. The Governor shall designate one member of the Council to serve as chairman of an executive group, such executive group to be determined by the Council, and to be composed of members of the Council. Other advisory and cooperative groups may be appointed by the chairman. After the chairman has served three years, the Council thereafter shall elect its chairman.~~

E. ~~Members of the Council shall not receive any compensation or reimbursement of expenses for their services.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 9-84.5 and subsections B through E are § 9-84.6. In subsection D, the term "wife" was replaced with "spouse."

~~§ 9-84.6. Terms; vacancies; officers; executive and other groups; compensation.~~

~~The term of office of each member shall be five years; provided, however, that of the members first appointed, nine shall be appointed for terms of one year, nine for terms of three years, and the remaining number for terms of five years. After the original appointment, each subsequent appointment shall be for a full five year term. No member of the Council who serves a full five year term shall be eligible for reappointment; provided further, however, that one year after the termination of his or her appointment, a member shall be eligible for reappointment. All vacancies shall be filled for the balances of the unexpired term in the same manner as the original appointments. The wife of the Governor of Virginia shall be the honorary chairman of the Council. The Governor shall designate one member of the Council to serve as chairman of an executive group, such executive group to be determined by the Council, and to be composed of members of the Council. Other advisory and cooperative groups may be appointed by the chairman. After the chairman has served three years, the Council thereafter shall elect its chairman. Members of the Council shall not receive any compensation or reimbursement of expenses for their services.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through E in proposed § 2.2-XXX (existing § 9-84.5) supra.

~~§ 9-84.7 2.2-XXX. Powers and duties of Council; compensation for consultants.~~

~~A. The Council shall have the following powers and responsibilities and shall perform the following duties:~~

~~(a) 1. Promote a greater understanding and awareness of the history and significance of the Executive Mansion;~~

~~(b) 2. Take the leadership in guiding the development of research and publications on the history of the Executive Mansion, thus establishing a continuity of effort in this area;~~

~~(c) 3. Encourage, approve, and accept contributions and bequests and gifts or loans of furniture, works of art, memorabilia, and other property for its use in carrying out the purposes of this chapter;~~

~~(d) 4. Purchase appropriate period furnishings and works of art for the Executive Mansion, and exchange or sell property, tangible or intangible, which has been acquired by the Council through gifts or otherwise from the Commonwealth or other public or private organizations, associations, or individuals;~~

~~(e) 5. Acquire or provide for accession and replacement of objects for the Executive Mansion, either directly or through the Virginia Museum of Fine Arts;~~

~~(f) 6. Administer all funds, public and private, made available to the Council and to disburse such funds in accordance with the purposes of this chapter.~~

~~B. The Council may employ and fix the compensation of researchers, writers, curators, and other such consultants and professional personnel as it may deem necessary to assist in the exercise and performance of its duties and powers.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-84.7 and subsection B is § 9-84.8.

~~§ 9-84.8. Compensation of consultants and professional personnel.~~

~~The Council may employ and fix the compensation of researchers, writers, curators, and other such consultants and professional personnel as it may deem necessary to assist in the exercise and performance of its duties and powers.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-84.7) supra.

~~§ 9-84.9. Cooperation of other agencies.~~

~~All departments, commissions, boards, agencies, officers, and institutions of the Commonwealth or political subdivisions thereof shall cooperate with the Council in carrying out its powers and the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

~~§ 9-84.10 2.2-XXX. Disposition of moneys and property received.~~

~~All moneys received by the Council shall be paid into the state treasury of Virginia and segregated as a special fund to be used by the Council to carry out the purposes of this chapter. All moneys so paid into the fund are hereby appropriated to the Council for the purpose of administering the provisions of this chapter. All other property, tangible or intangible, which is acquired by the Council shall become the property of the Commonwealth upon such acquisition. Such other intangible property may be held in the name of a nominee to facilitate its sale or exchange by the Council, and such other tangible property may be sold or exchanged by the Council as agent for the Commonwealth notwithstanding any other provision of law concerning the sale or exchange of property of the Commonwealth.~~

DRAFTING NOTE: Technical corrections. The stricken language has been deleted as an unconstitutional appropriation of money for a period exceeding 30 months.

Chapter X.

Commonwealth Attorneys Services Council.

~~§ 2-1-64.28:4 2.2-XXX. Commonwealth Attorneys Services Council—created; supervision; purpose; membership; organization, etc terms; compensation.~~

~~In order-~~ A. The Commonwealth Attorneys Services Council is established as a supervisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to ensure the upgrading of criminal justice administration by providing and coordinating training, education and services for attorneys for the Commonwealth, there is hereby—created in the executive branch the Commonwealth's Attorneys' Services Council which shall be under the direction and control of the Governor.

~~B. The Council shall be composed—~~consist of not more than sixteen members, as follows: one attorney for the Commonwealth for each congressional district in the Commonwealth to be elected as provided in ~~§ 2-1-64.28:2 2.2-XXX~~; the president, the president-elect, the vice-president and the secretary-treasurer of the Virginia Association of Commonwealth's Attorneys, and the immediate past president of the Virginia Association of Commonwealth's Attorneys. The president of the Association shall be the chairman of the Council; the president-elect and vice-president shall be first and second vice-chairmen, respectively, and the secretary-treasurer shall serve as secretary of the Council.

C. The initial terms of the members elected from congressional districts shall be as follows: for the members from the odd-numbered districts, until July 1 of the next following even-numbered year after their election; for the members from the even-numbered districts, until July 1 of the next following odd-numbered year after the election; thereafter, all terms shall be for two years.

The election for members shall be held annually at the annual meeting of the Virginia Association of Commonwealth's Attorneys. One member shall be elected initially, and every two years thereafter, from each of the several congressional districts by the membership of the Association at large. Each such member shall be an attorney for the Commonwealth holding office within his congressional district.

~~The Council shall establish its own bylaws, procedures and requirements with respect to quorum, place and conduct of its meetings and its other business matters, provided, that such bylaws shall include a provision~~

~~that the Council hold no less than ten meetings a year, and that other meetings be held when called by the chairman, or, in the absence of the chairman, the first vice chairman, or upon the written request of four members.~~

D. Upon the termination of the office of any member as attorney for the Commonwealth, his membership on the Council shall be terminated. Vacancies shall be filled for the congressional district in which the former member resided for the unexpired term by a majority vote of the Council. Members shall be eligible for more than one term.

E. The Council shall establish its own bylaws, procedures and requirements with respect to quorum, place and conduct of its meetings and its other business matters, provided, that such bylaws shall include a provision that the Council hold no less than ten meetings a year, and that other meetings be held when called by the chairman, or, in the absence of the chairman, the first vice-chairman, or upon the written request of four members.

F. Members of the Council shall receive no salaries but shall be reimbursed their reasonable and necessary traveling and subsistence expenses incurred in the performance discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A, B, and E are § 2.1-64.28:1 and subsections C, D and F are § 2.1-64.28:2.

~~§ 2.1-64.28:2. Terms and election of members.~~

~~The initial terms of the members elected from congressional districts shall be as follows: for the members from the odd-numbered districts, until July 1 of the next following even-numbered year after their election; for the members from the even-numbered districts, until July 1 of the next following odd-numbered year after the election; thereafter, all terms shall be for two years.~~

~~The election for members shall be held annually at the annual meeting of the Virginia Association of Commonwealth's Attorneys. One member shall be elected initially, and every two years thereafter, from each of the several congressional districts by the membership of the Association at large. Each such member shall be an attorney for the Commonwealth holding office within his congressional district.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections C, D, and F in proposed § 2.2-XXX (existing § 2.1-64.28:1) supra.

~~§ 2.1-64.28:4~~ 2.2-XXX. Powers and duties of Council.

The Council, in order to (i) strengthen the criminal justice system in the Commonwealth, ~~to~~ (ii) provide a professional organization for the education, training, service and coordination of technical efforts of state prosecutors; and ~~to~~ (iii) maintain and improve prosecutor efficiency and effectiveness in enforcing the law of the Commonwealth, shall have, but shall are not be limited to, the following powers and duties:

1. Organize, supervise and perform functions consistent with this chapter;
2. Coordinate training and continuing legal education activities for attorneys for the Commonwealth;
3. Contract or enter into agreements with state or federal agencies or education institutions;
4. Gather and disseminate information to attorneys for the Commonwealth relative to their official duties, including changes in the law affecting their office;
5. Coordinate with the Department of Criminal Justice Services and the Judicial Conference in reference o training and interdisciplinary criminal justice matters;
6. Obtain statistical reports from attorneys for the Commonwealth relating to their performance, function and work-load;

7. Receive and establish an equitable distribution plan for the allocation of any funds from public or private sources;

8. Maintain close contact with the office of the Attorney General and with all attorneys for the Commonwealth and assistant attorneys for the Commonwealth in the discussion of problems or recommendations concerning necessary research, minimum standards, educational needs and other matters relative to upgrading the professional status of attorneys for the Commonwealth; and

9. Perform such other acts as may be necessary for the effective performance of its duties.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-64-28-3~~ 2.2-XXX. Administrator.

The Council, with the concurrence of the Governor, shall appoint an administrator, who shall serve under the supervision and at the pleasure of the Council. He shall perform ~~such the duties~~ and exercise ~~such the functions as the Council may assign assigns to him, and he shall serve under the supervision of the Council~~. He shall receive a salary for his services to be paid by the Council subject to the approval of the Governor.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Commonwealth Competition Council.

~~§-9-340~~ ~~Short title:~~

~~This chapter shall be known and may be cited as the "Virginia Government Competition Act of 1995."~~

DRAFTING NOTE: Technical correction. This section has been deleted as ~~unnecessary unnecessary~~ and to conform with all other chapters in this Part D.

~~§-9-344~~ 2.2-XXX. Definitions.

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

"Commercial activity" means performing services or providing goods which can normally be obtained from private enterprise.

"Commercial source" means any business or other concern that is eligible for a contract award in accordance with the Virginia Public Procurement Act.

"Competitive process" means the process approved by the Council to determine the most cost-effective privatization technique.

"Council" means the Commonwealth Competition Council.

"Fully allocated cost" means a cost which includes all direct personnel costs, materials and supplies, equipment, capital and equipment depreciation costs, rent, maintenance and repairs, utilities, insurance, travel, operations overhead, and general administrative overhead as these terms are defined in the Council's "Compete" cost comparison program.

"Managed competition" means a competitive process between a state agency and the private sector in which (i) the state agency submits its own proposal after completing the fully allocated cost of the commercial activity and (ii) the proposal is based on its most efficient proposed organization to compete with a private sector bid or proposal for the provision of the commercial activity.

"Privatization" means a variety of techniques and activities which promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.

"State agency" means any board, council, authority, department, agency, or institution of the Commonwealth which employs state or nonstate personnel.

DRAFTING NOTE: Technical corrections only.

~~§ 9-343 2.2-XXX. Membership; appointment; Commonwealth Competition Council; membership; terms; vacancies; chairman; quorum; compensation; staff.~~

A. The Commonwealth Competition Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed of fifteen members to be appointed as follows: four employees of executive branch agencies to be appointed by the Governor; two members of the House of Delegates to be appointed by the Speaker of the House; two members of the Senate to be appointed by the Senate Committee on Privileges and Elections; three members of the private sector to be appointed by the Governor; two members of the private sector to be appointed by the Speaker of the House; and two members of the private sector, who shall be private sector members of the Small Business Commission, to be appointed by the Senate Committee on Privileges and Elections.

B. Legislative members shall serve on the Council until the expiration of their terms of office or until their successors shall qualify. Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor shall be appointed for terms of one year. Two of the members who are employees of executive branch agencies and two members from the private sector appointed by the Governor shall be appointed for terms of two years. The nonlegislative members appointed by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections shall be appointed for terms of three years. Thereafter all nonlegislative members of the Council shall be appointed for terms of three years.

C. Appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive three-year terms. Executive branch agency members shall serve only as long as they retain their positions.

D. The Council shall annually elect its chairman and vice chairman from among its members. A majority of the members of the Council shall constitute a quorum.

~~E. Eight members of the Council shall constitute a quorum. No action shall be taken by the Council without the concurrence of at least eight members.~~

~~F. Legislative members shall be compensated as specified in § 14.1-48 30-19.12, and all members of the Council shall be reimbursed for their actual reasonable and necessary expenses incurred in the performance discharge of their duties as provided in § 2.2-XXX (2.1-20.10).~~

F. The Council shall employ such staff as necessary to enable it to perform its duties as directed in the appropriation act.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through E are § 9-343, and subsection F is subsection A from § 9-345.

~~§ 9-342 2.2-XXX. Commonwealth Competition Council created; duties Duties of Council; acceptance of gifts and grants; annual report.~~

~~There is hereby created in the executive branch the Commonwealth Competition Council.~~ A. The Council shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Council's findings and recommendations.

2. Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government.

3. Establish a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without harming the public.

4. Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.

5. Advocate, develop and accelerate implementation of a competitive program for state entities to ensure competition for the provision or production of government services, or both, from both public and private sector entities.

6. Establish approval, planning, and reporting processes required to carry out the functions of the Council.

7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity which is subject to a privatization recommendation.

9. To the extent practicable and to the extent that resources are available, make its services available for a fair compensation to any political subdivision of the Commonwealth.

10. Review the practices of government agencies and nonprofit organizations which may constitute inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity which provides a gift, donation or grant shall be eligible for a contract award which results from action of a Council recommendation.

C. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

D. The Council shall annually by December 1 report its findings and recommendations to the Governor, the General Assembly and the Small Business Commission created pursuant to § 2.2-XXX. The Council may make interim reports to the Governor, the General Assembly and the Small Business Commission as it deems advisable.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-342, subsections B and C are subsection B of § 9-345, and subsection D is § 9-349.

~~§ 9-344. Cooperation of other state agencies.~~

~~All agencies of the Commonwealth shall cooperate with the Council and, upon request, assist the Council in the performance of its duties and responsibilities. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

~~§ 9-345. Staff support; application for an acceptance of gifts and grants.~~

~~A. The Council shall employ such staff as necessary to enable it to perform its duties as directed in the appropriation act.~~

~~B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity which provides a gift, donation or grant shall be eligible for a contract award which results from action of a Council recommendation.~~

DRAFTING NOTE: Technical corrections. Subsection A of this section now appears in proposed § 2.2-XXX (existing § 9-343) as subsection F, and subsection B now appears as subsection B in proposed § 2.2-XXX (existing § 9-345) supra.

~~§ 9-346 2.2-XXX. Unsolicited proposals.~~

The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any commercial activity for which the Council has received a qualifying unsolicited proposal from a private entity which is consistent with the Council's purposes and duties as provided in ~~§ 9-342 2.2-XXX.~~

The provisions of this section shall not apply to transportation-related projects initiated pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56.

DRAFTING NOTE: Technical corrections only.

~~§ 9-347 2.2-XXX. Public/private performance analysis.~~

A. The Council shall use the procurement methods cited in the Virginia Public Procurement Act (§ 11-35 et seq.) to solicit proposals and bids from private entities in order to make cost comparison decisions. However, the Council shall not execute contracts.

B. The Council shall explore methods to encourage state agencies to compete for contracts.

DRAFTING NOTE: Technical corrections only.

~~§ 9-348 2.2-XXX. Duties of the Department of Planning and Budget.~~

The Department of Planning and Budget shall determine the amount of the existing appropriation no longer needed by the a state agency or institution where all or a portion of such agency's function has been privatized in accordance with the recommendations of the Council, and shall unallot such funding. The Department shall also ensure that all appropriate reporting requirements to the Governor and the General Assembly are met. Nothing in this section shall preclude the Governor from recommending in future budget submissions the restoration of a portion of the original appropriation to the state agency or institution.

DRAFTING NOTE: Technical corrections only.

~~§ 9-349. Reports to Governor, General Assembly and Small Business Commission.~~

~~The Council shall annually by December 1 report its findings and recommendations to the Governor, the General Assembly and the Small Business Commission created pursuant to § 9-336. The Council may make interim reports to the Governor, the General Assembly and the Small Business Commission as it deems advisable.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 2.2-XXX (existing § 9-342) supra.

Chapter X.

Commonwealth Council on Aging.

~~§ 2.1-373.02- 2.2-XXX.~~ Commonwealth Council on Aging; ~~created;~~ purpose; membership; terms; duties.

~~A. There is hereby created in the executive branch the Commonwealth Council on Aging, hereinafter referred to as the Council. The Commonwealth Council on Aging (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to promote an efficient, coordinated approach by state government to meeting the needs of older Virginians. The Council shall be composed of persons selected from the Commonwealth at large without regard to political affiliation but with due consideration of geographical representation. Appointees shall be selected for their ability, and all appointments shall be of such nature as to aid the work of the Council and to inspire the highest degree of cooperation and confidence.~~

~~B. The Council shall consist of nineteen voting members appointed as follows: one member from each of the eleven congressional districts of the Commonwealth appointed by the Governor subject to confirmation by a majority of each House of the General Assembly at its next regular session; four at-large members appointed by the Speaker of the House of Delegates; and four at-large members appointed by the Senate Committee on Privileges and Elections. The Council shall also include the following nonvoting, ex officio members: the Commissioner of the Department for the Aging, the Director of the Department of Medical Assistance Services, the Commissioner of Social Services and the Secretary of Health and Human Resources, or their designees. The Council shall be composed of persons selected from the Commonwealth at large without regard to political affiliation but with due consideration of geographical representation. Appointees shall be selected for their ability, and all appointments shall be of such nature as to aid the work of the Council and to inspire the highest degree of cooperation and confidence.~~

~~C. For initial appointments made by the Governor, the terms shall be as follows: five members shall serve four-year terms, four members shall serve three-year terms and two members shall serve two-year terms. For initial appointments made by the Speaker of the House of Delegates, two members shall be appointed for four-year terms and two members shall be appointed to two-year terms. For the initial appointments by the Senate Committee on Privileges and Elections, two members shall be appointed for four-year terms and two members shall be appointed for two-year terms. Thereafter, all appointments shall be for four-year terms.~~

~~In making initial appointments, the Governor, the Speaker of the House, and the Senate Committee on Privileges and Elections shall give due consideration to the appointment of members of the current Governor's Advisory Board on Aging.~~

~~Appointments to fill vacancies shall be for the unexpired term. No person having served on the Council for two consecutive terms shall be eligible for reappointment to the Council for two years thereafter.~~

~~G-D. The Council shall elect a chairman and a vice-chairman from among its members and shall appoint a secretary and such other officers as it deems necessary and prescribe their duties and terms of office.~~

~~D. The duties of the Council shall be as follows:~~

~~1. Examine the needs of older Virginians and ways in which state government can most effectively and efficiently assist in meeting these needs;~~

~~2. Advise the Governor and General Assembly on aging issues and aging policy for the Commonwealth;~~

~~3. Advise the Governor on any proposed regulations deemed by the Director of the Department of Planning and Budget to have a substantial and distinct impact on older Virginians. Such advice shall be provided in addition to other regulatory reviews required by the Administrative Process Act;~~

~~4. Advocate and develop the Commonwealth's planning for meeting the needs of the growing number of older Virginians; and~~

~~5. Advise the Governor and General Assembly regarding the activities of the Department.~~

~~E. The Council is authorized to apply for and expend such grants, gifts, or bequests from any source as may become available in connection with its duties under this section, and is authorized to comply with such conditions and requirements as may be imposed in connection therewith.~~

DRAFTING NOTE: Technical corrections. Subsection D now appears as proposed § 2.2-XXX, Duties of the Council, infra.

§ 2.2-XXX. Duties of the Council.

The Council shall have the following duties:

1. Examine the needs of older Virginians and ways in which state government can most effectively and efficiently assist in meeting those needs;

2. Advise the Governor and General Assembly on aging issues and aging policy for the Commonwealth;

3. Advise the Governor on any proposed regulations deemed by the Director of the Department of Planning and Budget to have a substantial and distinct impact on older Virginians. Such advice shall be provided in addition to other regulatory reviews required by the Administrative Process Act;

4. Advocate and develop the Commonwealth's planning for meeting the needs of the growing number of older Virginians; and

5. Advise the Governor and General Assembly regarding the activities of the Department for the Aging.

E. The Council may apply for and expend such grants, gifts, or bequests from any source as may become available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connection therewith.

F. For the purposes of this section, "older Virginians" means persons aged sixty years and older.

DRAFTING NOTE: Technical corrections. This proposed section comes from subsection D from existing § 2.1-373.02. Subsection F was added to clarify the term "older Virginian" which is defined in Chapter X, Department for the Aging, in Part C of subtitle I.

Chapter X.

Council on Indians.

~~§ 9-138.1 2.2-XXX. Appointment and terms of members Council on Indians; membership; terms; chairman.~~

~~The Council on Indians is continued.~~ A. The Council on Indians (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed of thirteen members to be appointed by the Governor as follows: (i) the eight Virginia tribes officially recognized by the Commonwealth shall be entitled but not required to be represented by one member from each tribe, (ii) two members at-large from the Indian population residing in Virginia, and (iii) one member from the Commonwealth at-large, all of whom shall be appointed by the Governor; and (iii)-(iv) one member from the House Delegates of Virginia appointed by the Speaker of the House of Delegates, (iv) and (v) one member from the Senate of Virginia appointed by the Senate Committee on Privileges and Elections, and (v) one member from the Commonwealth at-large. If a recognized tribe elects not to be represented, then that seat on the Council shall be

filled by appointment of an additional member from the at-large Indian population of Virginia. The Secretary of Health and Human Resources shall be an ex officio member of the Council.

~~B. The present members of the Council shall continue to serve for the terms to which they have been appointed. The initial terms of the new members appointed from those tribes not represented on the Council as of January 1, 1989, shall expire June 30, 1993. Subsequent~~After the original appointments, all appointments shall be for terms of three years except appointments to fill vacancies, which shall be for the unexpired terms. No member shall be eligible to serve more than two terms in succession, provided that appointments to terms commencing prior to July 1, 1988, shall not be considered in determining such limit, nor shall appointments to fill vacancies for an unexpired term be included.

~~C. The Governor shall appoint one of the members appointed pursuant to (i) or (ii) of this section subsection A as Chairman~~ chairman, who shall serve in such position at the pleasure of the Governor.

~~No member shall be eligible to serve more than two terms in succession, provided that appointments to terms commencing prior to July 1, 1988, shall not be considered in determining such limit, nor shall appointments to fill vacancies for an unexpired term be included.~~

~~D. Members of the Council shall receive no compensation for their services, but shall receive their ordinary and necessary travel expenses to Council meetings~~ be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).

DRAFTING NOTE: Technical corrections only.

~~§ 9-138.2 2.2-XXX. Powers and duties; cooperation of state agencies of Council; acceptance of gifts and grants; reporting requirement.~~

~~A. The Council shall gather information on and make studies and conduct research into the Indian tribes in this the Commonwealth and suggest ways in which Indians may reach their potential and make their full contribution, as wage earners and citizens, to society and this the Commonwealth.~~

~~B. The Council may apply for, accept and expend gifts, grants or donations from public or private sources to enable it to better carry out its objectives.~~

~~C. The Council shall report its findings and recommendations to the Governor and the General Assembly not less than sixty days prior to the convening of the session of the General Assembly held in each even-numbered year.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-138.2, subsection B is § 9-138.3 and subsection C is § 9-138.4.

~~§ 9-138.3. Application for and acceptance of gifts and grants.~~

~~The Council is authorized to apply for, accept and expend gifts, grants or donations from public or private sources to enable it to better carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-138.2) supra.

~~§ 9-138.4. Reports to Governor and General Assembly.~~

~~The Council shall report its findings and recommendations to the Governor and the General Assembly not less than sixty days prior to the convening of the session of the General Assembly held in each even-numbered year.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 9-138.2) supra.

Chapter X.

Council on the Status of Women.

~~§ 9-116 2.2-XXX. Commission continued as Council on the Status of Women; purpose; appointment and membership; terms of members; chairman.~~

~~The Commission on the Status of Women is continued and shall hereafter be known as the Council on the Status of Women, whose purpose—~~A. The Council on the Status of Women (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to identify ways in which women can reach their potential and make their full contribution to society and this Commonwealth as wage earners and citizens.

~~B. The Council shall be composed—~~consist of nineteen members, to be appointed by the Governor from the Commonwealth at large. Appointments shall be for terms of three years except appointments to fill vacancies, which shall be for the unexpired terms. A majority of the membership of the Council shall constitute a quorum.

~~C. The Governor shall appoint the chairman of the Council. Appointments shall be for terms of three years except appointments to fill vacancies, which shall be for the unexpired terms.~~

DRAFTING NOTE: Technical corrections. The last sentence of subsection B was added to clarify the quorum requirements for the Council.

~~§ 9-116.1 2.2-XXX. Powers and duties of Council.~~

The Council shall have the following powers and duties to :

~~To determine—~~1. Defermine the studies and research to be conducted by the Council;

~~To collect—~~2. Collect and disseminate information regarding the status of women in ~~this~~ the Commonwealth and the nation;

~~To advise—~~3. Advise the Governor, General Assembly and Secretary of Health and Human Resources on matters pertaining to women in ~~this~~ the Commonwealth and the nation;

~~To establish—~~4. Establish and award scholarships pursuant to regulations and conditions prescribed by the Council; and

~~To review—~~5. Review and comment on all budgets, appropriation requests and grant applications concerning the Council, prior to their submission to the Secretary of Health and Human Resources or the Governor.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Human Rights Council.

~~§ 2-1-718 2.2-XXX. Human Rights Council—created; Chairperson membership; terms; quorum; and compensation.~~

~~A. There is hereby created in the Office of the Governor the Council on Human Rights, hereafter referred to as the Council.—~~The Human Rights Council (the "Council") is established as a policy council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall consist of nine members, who shall

be appointed by the Governor, subject to confirmation by the General Assembly ~~as provided in § 2.1-41.2~~. The members appointed by the Governor shall, insofar as possible, be diverse with respect to economic status, race, sex, color, ethnicity, age, disabilities, political affiliation and marital status.

~~B. The Governor shall designate one of the members of the Council to be Chairperson. The Chairperson shall preside at all the meetings of the Council and perform all the duties and functions of the Chairperson. The Council by majority vote shall elect one of its members as Vice Chairperson who, in the absence of the Chairperson, shall perform all the duties and functions of the Chairperson.~~

~~C. Of the members first appointed, four shall be appointed to two-year terms, and five shall be appointed to four-year terms. Thereafter members shall be appointed to four-year terms, except members appointed to fill vacancies shall be appointed for the remainder of the unexpired term.~~

~~D. In the case of vacancies on the Council during a recess of the General Assembly, the Governor shall make an appointment to fill the vacancy, and the appointee shall hold office until thirty days after the commencement of the next session of the General Assembly and, if confirmed by the General Assembly, for the remainder of the unexpired term.~~

C. The Governor shall designate one of the members of the Council to be chairperson. The chairperson shall preside at all the meetings of the Council. The Council by majority vote shall elect one of its members as vice-chairperson who, in the absence of the chairperson, shall perform all the duties and functions of the chairperson.

~~E. D. A simple majority of the members serving on the Council shall constitute a quorum. No power pursuant to § ~~2.1-720- 2.2-XXX~~ may be exercised by the Council unless agreed to by a majority of the nine members of the Council appointed. Vacancies in the Council shall not impair the authority of remaining members to exercise all the powers of the Council.~~

~~F. E. Members of the Council shall be reimbursed for actual expenses incurred by them in the performance of their duties and shall receive compensation of fifty dollars for each day or part of day of service in an official capacity, pursuant to § ~~2.1-20.3~~ receive compensation for the discharge of their duties as provided in § ~~2.2-XXX~~ (§ ~~2.1-20.3~~).~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-719 2.2-XXX~~. Human Rights Director.

~~A. There is established under the Council the position of Human Rights Director, hereafter referred to as the Director (the "Director"). The Director shall be appointed by and serve at the pleasure of the Governor.~~

~~B. The Director shall have authority may, within guidelines established by the Council to:~~

- ~~1. Accept and investigate complaints of alleged unlawful discriminatory practices or alleged unfounded charges of unlawful discrimination filed in writing within 180 days of the alleged discriminatory events;~~
- ~~2. Attempt to conciliate any complaint of unlawful discrimination under this chapter;~~
- ~~3. In the event conciliation fails, recommend to the Council that a hearing be held or other appropriate action be taken;~~
- ~~4. Carry out the policies of the Council and any other duty assigned by this chapter.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-720 2.2-XXX~~. Powers and duties of Council.

In addition to the other powers and duties prescribed in this chapter, the Council ~~has~~ shall have the following powers to:

1. ~~To meet~~ Meet and function at any place in the Commonwealth;
2. ~~To establish~~ Establish and maintain an office;
3. ~~To select~~ Select, and fix the compensation of, such technical advisors and employees as it ~~may deem~~ deems necessary, or to authorize such action by the Director. The Attorney General shall represent the Council in all litigation to which the Council is a party;
4. ~~To appoint~~ Appoint and compensate qualified hearing officers from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia;
5. ~~To promote~~ Promote creation of local commissions to aid in effectuating the policies of this chapter and to enter into cooperative worksharing or other agreements with federal agencies or local commissions, including the deferral of complaints of discrimination to federal agencies or local commissions;
6. ~~To adopt~~ Adopt, promulgate, amend and rescind regulations consistent with this chapter pursuant to the Virginia Administrative Process Act (§ ~~9-6-14:1-2.2-XXX~~ et seq.). No such regulation shall be inconsistent with any state or federal law or regulation. However, the Council shall not have the authority to ~~promulgate~~ adopt regulations on a substantive matter when another state agency is authorized to adopt such regulations;
7. ~~To receive~~ Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the Virginia Administrative Process Act, and make findings and recommendations upon complaints alleging unlawful discriminatory practices;
8. ~~To make~~ Make studies and appoint advisory councils to effectuate the purposes and policies of the chapter and to make the results thereof available to the public;
9. ~~To accept~~ Accept public grants or private gifts, bequests, or other payments, as appropriate;
10. ~~To render~~ Render at least annually a comprehensive written report to the Governor and to the General Assembly;
11. ~~To furnish~~ Furnish technical assistance upon request of persons subject to this chapter to further comply with the chapter or an order issued thereunder;
12. ~~To inquire~~ Inquire into incidents which may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law, and to take such action within the Council's authority ~~as may be designed~~ to prevent such acts;
13. ~~To create~~ Create an official seal that shall be judicially noticed;
14. ~~With~~ Seek, with the approval of the Attorney General, ~~to seek,~~ through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice; ~~however,~~ However, the Council itself shall have no power to issue subpoenas, award damages, or grant injunctive relief.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-724~~ 2.2-XXX. Procedure for issuance of subpoena duces tecum.

Whenever the Council has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, and the Council, after a good faith effort to obtain the date and information necessary to determine whether a violation has occurred, has been unable to obtain such information, it may request the Attorney General to apply to the judge of the circuit court of the jurisdiction in which the respondent

resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employment agency, labor organization, joint labor-management committee, or an agent thereof.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-722~~ 2.2-XXX. Filing with Council deemed filing with other state agencies.

Filing of a written complaint with the Council shall be deemed filing with any state agency for the purpose of complying with any time limitation on the filing of a complaint, provided the time ~~limits~~ limit for filing with the other agency has not expired. The time limit for filing with other agencies ~~will shall~~ be tolled while the Council is either investigating the complaint or making a decision to refer it. Complaints under this chapter shall be filed with the Council within 180 days of the alleged discriminatory event.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-723~~ 2.2-XXX. Confidentiality of information; penalty.

A. It shall be unlawful for any officer, employee or member of the Council to make public, prior to a public hearing pursuant to ~~§-2.1-720~~ 2.2-XXX, investigative notes and other correspondence and information furnished to the Council in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice; ~~however,~~

B. ~~However,~~ nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

A-C. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-724~~ 2.2-XXX. Powers of local commissions.

A local human rights or human relations commission established prior to the effective date of this chapter, in addition to the powers granted under this chapter, may exercise any such additional powers as may have been granted heretofore to that commission pursuant to applicable provisions of ~~§§ 15.1-687.3, 15.1-783.1 and 15.1-783.2~~ 15.2-725, 15.2-853, and 15.2-854 or municipal charter provisions.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-725~~ 2.2-XXX. Causes of action not created.

A. Nothing in this chapter creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C ~~of this section.~~

B. No employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, or of age if the employee is forty years or older.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 180 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate as provided in § 6.1-330.54. However, if the court finds that either party engaged in tactics to

delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.1-715-2.2-XXX shall be deemed to alter, supersede, or otherwise modify the authority of the Council on Human Rights or of any local human rights or human relations commissions established pursuant to §§ 15.1-37.3:8 and 15.1-783.1-15.2-965 or 15.2-853 or subject to the provisions of § 2.1-724 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Interagency Coordinating Council on Housing for the Disabled.

§ 2.1-703.4 2.2-XXX. Interagency Coordinating Council on Housing for the Disabled; membership; chairman.

~~There shall be an Interagency Coordinating Council on Housing for the Disabled, hereinafter referred to as "Council." A. The Interagency Coordinating Council on Housing for the Disabled (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall consist of one representative, to be appointed by the agency executive, from each of the following: Department of Professional and Occupational Regulation, Department of Housing and Community Development, Virginia Housing Development Authority, Department for Rights of Virginians With Disabilities, Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, Department of Social Services and Department for the Visually Handicapped. The Secretary of Commerce and Trade and Secretary of Health and Human Resources shall serve ex officio on the Council. The appropriate agency executive may appoint additional members as required.~~

B. The Council shall annually elect a chairman. Each agency shall contribute a pro rata share of the required support services.

~~The Council shall provide and promote cross-secretariat interagency leadership for comprehensive planning and coordinated implementation of proposals to increase and maximize use of existing low-income housing for the disabled and to ensure development of accompanying community support services. The Council shall stimulate action by government agencies and enlist the cooperation of the nonprofit and private sectors. The Council shall develop a state policy on housing for the disabled for submission to the Governor. The policy shall be reviewed and updated as necessary. The Council shall submit to the Governor and various agency executives a report and recommendations at least annually.~~

DRAFTING NOTE: Technical corrections. The second paragraph deleted above now appears as proposed § 2.2-XXX, Powers of the Council, infra.

§ 2.2-XXX. Powers of the Council; annual report.

A. The Council shall

1. Provide and promote cross-secretariat interagency leadership for comprehensive planning and coordinated implementation of proposals to increase and maximize use of existing low-income housing for the disabled and to ensure development of accompanying community support services;

2. Stimulate action by government agencies and enlist the cooperation of the nonprofit and private sectors;

3. Develop a state policy on housing for the disabled for submission to the Governor. The policy shall be reviewed and updated as necessary.

B. The Council shall submit to the Governor and various agency executives a report and recommendations at least annually.

DRAFTING NOTE: Technical corrections. This proposed section moved from the second paragraph in existing § 2.1-703.1. supra.

~~§ 2.1-765~~ 2.2-XXX. Virginia Interagency Coordinating Council; composition and duties.

A. The Virginia Interagency Coordinating Council is hereby continued to promote and coordinate early intervention services in the Commonwealth. The membership and operation of the Council shall be as required by Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). The agency representatives shall be appointed by the member of their agency who serves on the early intervention agencies committee. Agency representatives shall regularly inform their agency head of the Council's activities and the status of the implementation of an early intervention services system in the Commonwealth.

B. The Council's duties shall include advising and assisting the lead agency in the following:

1. Performing its responsibilities for the early intervention services system;
2. Identifying sources of fiscal and other support for early intervention services, recommending financial responsibility arrangements among agencies, and promoting interagency agreements;
3. Developing strategies to encourage full participation, coordination, and cooperation of all appropriate agencies;
4. Resolving interagency disputes;
5. Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;
6. Preparing federal grant applications; and
7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.

DRAFTING NOTE:

Chapter X.

Maternal and Child Health Council.

~~§ 9-347~~ 2.2-XXX. Maternal and Child Health Council; purpose; membership; terms; meetings.

A. The Maternal and Child Health Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Virginia Maternal and Child Health purpose of the Council is hereby created shall be to improve the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health.

B. The Council shall be chaired by the Secretary of Health and Human Resources. The Commissioner of the Department of Health, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Social Services, the Superintendent of Public Instruction and the Commissioner of the Department

of Mental Health, Mental Retardation and Substance Abuse Services shall be members of the Council by virtue of their positions.

The Governor shall appoint as members: five representatives of the health professions with expertise in maternal or child health, two representatives of private nonprofit organizations involved in the promotion of maternal and child health, one representative of private industry, one representative of the religious community, one local public official, and one representative of a hospital involved in maternal and child health care. Interested organizations may submit nominations for membership to the Governor. Members appointed by the Governor shall represent the various geographical areas of the Commonwealth. Initial appointments by the Governor shall be for terms as follows: three members for two years; four members for three years; and four members for four years. Thereafter, all appointments shall be for four-year terms. Members appointed by the Governor shall not be eligible to serve more than two consecutive full terms.

One member shall be appointed by the Speaker of the House of Delegates from the membership thereof, and one member shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate. Legislative members shall be appointed for four-year terms and shall not be eligible to serve more than two consecutive full terms. If a legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Council, and the appointing authority who appointed the member shall make an appointment from the respective house to complete the term.

C. The Council shall meet at least four times in every fiscal year.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-317, subsection B is § 9-318, and subsection C is part of § 9-319.

~~§ 9-318. Membership.~~

~~The Council shall be chaired by the Secretary of Health and Human Resources. The Commissioner of the Department of Health, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Social Services, the Superintendent of Public Instruction and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be members of the Council by virtue of their positions.~~

~~The Governor shall appoint as members: five representatives of the health professions with expertise in maternal or child health, two representatives of private nonprofit organizations involved in the promotion of maternal and child health, one representative of private industry, one representative of the religious community, one local public official, and one representative of a hospital involved in maternal and child health care. Interested organizations may submit nominations for membership to the Governor. Members appointed by the Governor shall represent the various geographical areas of the Commonwealth. Initial appointments by the Governor shall be for terms as follows: three members for two years; four members for three years; and four members for four years. Thereafter, all appointments shall be for four year terms. Members appointed by the Governor shall not be eligible to serve more than two consecutive full terms.~~

~~One member shall be appointed by the Speaker of the House of Delegates from the membership thereof, and one member shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate. Legislative members shall be appointed for four year terms and shall not be eligible to serve more than two consecutive full terms. If a legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Council, and the appointing authority who appointed the member shall make an appointment from the respective house to complete the term.~~

DRAFTING NOTE: Technical correction. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-317) supra.

~~§ 9-319 2.2-XXX. Meetings; powers-Powers and duties of the Council; appointment of subcommittees.~~

~~A. The Council shall meet at least four times in every fiscal year and shall:~~

1. Examine trends and causes of maternal and child morbidity and mortality;
2. Review and evaluate the Commonwealth's maternal and child health programs and services;
3. Identify maternal and child health problems and issues including fragmentation and gaps in services and programs;
4. Develop policies, principles and priorities which guide programs and services for mothers and children in the Commonwealth;
5. Advise and report to the Governor and General Assembly annually regarding potential program and policy initiatives in maternal and child health;
6. Promote public-private partnerships or systems of care and coordination of agency efforts in the area of maternal and child health;
7. Review and disseminate information on maternal and child health issues and developments; and
8. Select and guide ad hoc professional and technical advisors or committees to address particular issues and prepare periodic reports for the Council.

B. The Council may appoint subcommittees to assist it in its work, including a subcommittee on infant mortality and a subcommittee on perinatal services.

DRAFTING NOTE: Technical corrections. The meetings provision of this section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-317) supra.

Chapter X.

Specialized Transportation Council.

§ 9-320 2.2-XXX. Specialized Transportation Council; purpose; membership; staff; disabled defined.

~~The Specialized Transportation Council is hereby created.~~ A. The Specialized Transportation Council (the "Council") is established as a policy council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to support the development of safe, cost-effective, coordinated, and specialized transportation services for elderly Virginians and disabled Virginians. For the purposes of this chapter, "disabled" means persons who are unable to use fixed-route public transportation because of a physical or mental disability.

B. The Secretary of Health and Human Resources shall serve as the chairman of the Council and the Secretary of Transportation shall serve as vice-chairman. The Governor shall appoint eight members, including a representative of a large urban public transportation provider, a small urban public transportation provider, and a rural transportation provider; three consumers; and two at-large members. Members of the Council shall represent the various geographical areas of the Commonwealth.

C. Initial appointments by the Governor shall be for terms as follows: two members for two years; three members for three years; and three members for four years. Thereafter, all appointments shall be for four-year terms. Members of the Council shall not be eligible to serve more than two consecutive full terms. The Secretaries of Health and Human Resources and Transportation shall serve terms coincident with their terms of office.

D. Staff to the Council shall be provided by the Office of the Secretary of Health and Human Resources.

E. For the purposes of this chapter, "disabled" means persons who are unable to use fixed-route public transportation because of a physical or mental disability.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A and E are § 9-320, and subsection B through D are § 9-321.

~~§ 9-321. Membership.~~

~~The Secretary of Health and Human Resources shall serve as the chairman of the Council and the Secretary of Transportation shall serve as vice chairman. The Governor shall appoint eight members, including a representative of a large urban public transportation provider, a small urban public transportation provider, and a rural transportation provider; three consumers; and two at-large members. Members appointed by the Governor shall represent the various geographical areas of the Commonwealth. Initial appointments by the Governor shall be for terms as follows: two members for two years; three members for three years; and three members for four years. Thereafter, all appointments shall be for four year terms. Members appointed by the Governor shall not be eligible to serve more than two consecutive full terms. Staff shall be provided by the Office of the Secretary of Health and Human Resources.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B through D in proposed § 2.2-XXX (existing § 9-320) supra.

~~§ 9-322 2.2-XXX. Powers and duties; compliance with guidelines of Council.~~

The Council's powers and duties shall include but ~~not be~~ are not limited to:

1. Recommending strategies, standards, policies, and guidelines for the development of coordinated specialized transportation services for elderly persons and disabled persons;
2. Developing a comprehensive statewide specialized transportation plan based upon regional and local coordination of participating public transportation systems, private for-profit and nonprofit transportation providers, human service transportation providers, and local volunteer resources;
3. Developing criteria for and administering the Specialized Transportation Incentive Fund and other funds under its authority to fund innovative and coordinated specialized transportation planning and projects;
4. Identifying barriers to coordinated delivery of transportation services and recommending corrective actions;
5. Developing incentives for public-private partnerships;
6. Developing initiatives for eliminating constraints upon volunteers who provide transportation and recommending incentives for those volunteers;
7. Developing safety, maintenance and operational guidelines for human service transportation providers;
8. Composing and directing the work of a specialized transportation technical advisory committee; and
9. Advising and reporting to the Governor and the General Assembly annually on potential program and policy initiatives in specialized transportation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-323 2.2-XXX. Specialized Transportation Technical Advisory Committee.~~

~~A- In accordance with § 2.2-XXX (9-322 #8) the Specialized Transportation Technical Advisory Committee shall be created to assist the Council. The Committee shall be composed of representatives from the following agencies: the Department for the Aging, the Department for the Deaf and Hard-of-Hearing, the Department of Education, the Department of Medical Assistance Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department for Rights of Virginians with Disabilities, the Department of~~

Rehabilitative Services, the Department of Social Services, the Department of Transportation's Directorate of Rail and Public Transportation or its successor agency and the Department for the Visually Handicapped and three representatives of public transportation providers or transportation district commissions to be appointed by the Council.

DRAFTING NOTE: Technical corrections only.

§ 9-324 2.2-XXX. Specialized Transportation Incentive Fund.

The Specialized Transportation Incentive Fund (the "Fund") is hereby established and shall be used to assist participating planning districts in the development of coordinated specialized transportation plans and projects. In order to be eligible to receive funds from the ~~Specialized Transportation Incentive Fund~~, a planning district commission or single locality shall establish, in consultation with its metropolitan planning organization if one exists, an advisory transportation coordination committee and shall submit to the ~~Specialized Transportation Council~~ a plan for cost-effective coordination of specialized transportation services in the planning district or in localities within the planning district. Single localities may appoint an advisory transportation coordinating committee independent of the planning district commission and receive specialized transportation incentive funds if the locality is located in a regional planning district in which all other localities are recipients of the federal funds and subject to the provisions of Title II of the Americans with Disabilities Act, Public Law 101-336. The advisory transportation coordination committee shall guide planning for the coordination and administration of specialized transportation with human service agencies, participating public transportation systems and, where appropriate, with private for-profit and nonprofit transportation providers. Advisory transportation coordination committees shall be composed of, but not limited to, elderly and disabled persons, providers of specialized transportation systems, participating public transportation systems, and local private for-profit and nonprofit transportation providers. Localities and public transportation systems subject to Title II of the Americans with Disabilities Act, Public Law 101-336, shall not be required to participate in coordinated specialized transportation plans, but may participate at their option.

DRAFTING NOTE: Technical corrections only.

Chapter X.

State Executive Council for Comprehensive Services for At-Risk Youth and Families.

§ 2-1-746 2.2-XXX. State Executive Council for Comprehensive Services for At-Risk Youth and Families; members; duties membership; meetings.

~~The members of the state executive council shall be the~~ A. Commissioners of Health, of Mental Health, Mental Retardation and Substance Abuse Services and of Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Juvenile Justice; an elected or appointed local official, to be appointed by the Governor; a private provider representative as a nonvoting, ex officio member, to be appointed by the Governor, who may appoint from nominees recommended by the Virginia Coalition of Private Provider Associations; and a parent representative. The parent representative shall be appointed by the Governor for a term not to exceed three years and shall not be an employee of any public or private program which serves children and families. B. ~~The council~~ Council shall annually elect a chairman who shall be responsible for convening the council. ~~The council~~ Council shall meet, at a minimum, semiannually, to oversee the administration of this chapter and make such decisions as may be necessary to carry out its purposes.

The ~~state executive council~~ Council shall have the following powers and duties:

1. Appoint the members of the state management team in accordance with the requirements of § 2-1-747 2.2-XXX (2.1-747);

2. Provide for the establishment of interagency programmatic and fiscal policies developed by the state management team, which support the purposes of ~~this chapter~~ the Comprehensive Services Act (§ 2.2-XXX et

seq.), through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;

3. Provide for a public participation process for programmatic and fiscal guidelines developed for administrative actions which support the purposes of ~~this chapter~~ the Comprehensive Act (§ 2.2-XXX et seq.). ~~Such~~ The public participation process shall include, at a minimum, sixty days of public comment, and the distribution of these guidelines;

4. Oversee the administration of state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

5. Provide for the administration of necessary interagency functions which support the work of the state management team;

6. Review and take appropriate action on issues brought before it by the state management team;

7. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and operational changes which facilitate interagency service development and implementation, communication and cooperation;

8. Provide administrative support and fiscal incentives for the establishment and operation of local comprehensive service systems;

9. Oversee coordination of early intervention programs to promote comprehensive, coordinated service delivery, local interagency program management, and co-location of programs and services in communities. Early intervention programs include state programs under the administrative control of the state executive council member agencies;

10. Oversee the development and implementation of a mandatory uniform assessment instrument and process to be used by all localities to identify levels of risk of Comprehensive Services Act (CSA) youth;

11. Oversee the development and implementation of uniform guidelines to include initial intake and screening assessment, development and implementation of a plan of care, service monitoring and periodic follow-up, and the formal review of the status of the youth and the family;

12. Oversee the development and implementation of uniform guidelines for documentation for CSA-funded services;

13. Oversee the development and implementation of mandatory uniform guidelines for utilization management; each locality receiving funds for activities under the Comprehensive Services Act shall have a locally determined utilization management plan following the guidelines or use of a process approved by the ~~State Executive Council~~ for utilization management, covering all CSA-funded services;

14. Oversee the development, implementation, and collection of uniform data collection standards, and the development of outcome measures; including, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services;

15. Oversee the establishment of a dispute resolution procedure, which includes a notice and an appeals process, should the ~~State Executive Council~~ find, upon a formal finding, that a Community Policy and Management Team (CPMT) failed to comply with any provision of this Act, and the procedure shall also include provisions for remediation by the CPMT;

16. ~~Have the authority to deny~~ Deny state funding to a CPMT that fails to comply with the provisions of ~~his Act~~ the Comprehensive Services Act, in accordance with subdivision 15; and

17. Biennially publish and disseminate to members of the General Assembly and community policy and management teams a state progress report on comprehensive services to children, youth and families and a plan for such services for the next succeeding biennium. The state plan shall:

a. Provide a fiscal profile of current and previous years' federal and state expenditures for a comprehensive service system for children, youth and families;

b. Incorporate information and recommendations from local comprehensive service systems with responsibility for planning and delivering services to children, youth and families;

c. Identify and establish goals for comprehensive services and the estimated costs of implementing these goals, report progress toward previously identified goals and establish priorities for the coming biennium; and

d. Include such other information or recommendations as may be necessary and appropriate for the improvement and coordinated development of the state's comprehensive services system.

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle I, under the heading of "Councils". This section is derived from existing § 2.1-746.

Chapter X.

State Health Benefits Advisory Council.

~~§ 2.1-20.1:04~~ 2.2-XXX. State Health Benefits Advisory Council; purpose; membership; terms; chairman.

~~There is hereby created a State Health Benefits Advisory Council. The Council shall~~ A. The State Health Benefits Advisory Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to advise the Secretary of Administration on issues and concerns of state retirees and active employees regarding health insurance coverage and other health-related benefits.

B. The Council shall consist of seventeen members. Nine members, two of whom have retired from state service, three of whom are state employees in management positions and four of whom are state employees in nonmanagement positions, shall be appointed by the Governor; four members shall be appointed by the Speaker of the House of Delegates; and four members shall be appointed by the Senate Committee on Privileges and Elections. The Speaker and the Committee shall each appoint one state employee in a management position, one state employee in a nonmanagement position and two citizen members. Appointees shall be subject to confirmation by the General Assembly.

C. Members shall serve for two-year terms and no member shall serve for more than two full successive terms. The present members of the Council shall continue to serve for the terms to which they have been appointed. Of the members to be appointed in 1993, half shall be appointed for a one-year term and half shall be appointed to a two-year term. All appointments shall expire on June 30th of the year in which the term expires.

D. A chairman shall be elected annually. A majority of the members of the Council shall constitute a quorum.

E. Members of the Council shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D are § 2.1-20.1:01, and subsection E was added to clarify that members of the Council are entitled to reimbursement of their expense in accordance with existing § 2.1-20.10. The last sentence in subsection D was added to clarify the quorum requirements for the Council.

Chapter X.

Technology Services, Council on.

~~§ 2-1-51.48~~ 2.2-XXX. Council on Technology Services ~~created; purpose; membership; duties chairman.~~

~~A. There is hereby established a~~ The Council on Technology Services (the "COTS") ~~is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to advise and assist the Secretary of Technology in exercising the powers and performing the duties conferred by this chapter~~ Chapter X (§ 2.2-XXX et seq.).

B. The COTS shall consist of no more than twenty-six nor fewer than twenty members, to be appointed by the Governor upon recommendation of the Secretary of Technology, as follows: at least one representative from the Secretariats of Administration, Commerce and Trade, Education, Finance, Health and Human Resources, Natural Resources, Public Safety, and Transportation; at least four representatives from ~~state-supported public~~ institutions of higher education; at least one representative from an independent agency of state government; and at least three representatives from public bodies other than the Commonwealth selected from a list of names submitted by the Virginia Local Government Information Technology Executives. For terms coincident with their terms of office, the following shall serve as ex officio, voting members of the COTS: Director of the Department of Information Technology, Director of the Department of Technology Planning, Director of Information Systems of the Supreme Court of Virginia, and Director of the Division of Legislative Automated Systems.

~~B.~~—In making appointments, the Governor shall include not only information systems and telecommunications professionals, but also managers and directors in agencies who are responsible for business and strategic planning. Members of the Council shall serve at the pleasure of the Governor. Members shall be appointed for a term of two years and shall be eligible for reappointment.

C. The Secretary of Technology shall be the chairman of the COTS. The COTS shall meet quarterly and t such other times as may be called by the chairman.

DRAFTING NOTE: Technical corrections only.

DRAFTING NOTE: Technical corrections.

Chapter X.

Virginia Advisory Council for Adult Education.

~~§ 2-1-51.21:3~~ 2.2-XXX. Virginia Advisory Council for Adult Education and Literacy ~~established; purpose; membership; terms; powers and duties; biennial state plan; office space and agency cooperation compensation.~~

~~A. There is hereby created the Virginia Advisory Council for Adult Education and Literacy, hereinafter referred to as the "Advisory Council." The Advisory Council shall, through the exercise of its powers and performance of its duties,~~ The Virginia Advisory Council for Adult Education and Literacy (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to recommend an integrated and coordinated multi-agency approach for the delivery of quality adult education and literacy programs, services, and philosophies.

~~For the purposes of this section, "adult education and literacy" means adult basic education, adult literacy education, adult secondary education, and the General Education Development (G.E.D.) preparation program.~~

B. The Advisory Council shall consist of fifteen members, eleven of whom are to be appointed by the Governor as follows: one representative each from the Board of Education, Board for Virginia Community Colleges, Board of Correctional Education, Board of Social Services, State Library Board, Governor's Job Training Coordinating Council, Department of Business Assistance, Virginia Employment Commission, State Council of Higher Education, Virginia Literacy Foundation Board, and Virginia Board for People with Disabilities. The Secretaries of Education, Health and Human Resources, Public Safety, and Commerce and Trade or their designees shall serve as ex officio members. ~~The chairman and vice chairman of the Advisory Council shall be appointed by the Governor from among its membership.~~

~~C. All appointed members shall serve for four-year terms. Appointments to fill vacancies shall be made for the unexpired terms. Members shall not be eligible to serve more than two consecutive four-year terms, except that any member appointed to fill an initial term of less than four years or any member appointed to fill an unexpired term of less than four years shall be eligible to serve two additional consecutive four-year terms.~~

~~D. The chairman and vice chairman of the Council shall be appointed by the Governor from among its membership. The Advisory Council shall meet at least four times a year, upon the call of the chairman.~~

~~E. Members of the Advisory Council shall not be compensated; however, such members, but shall be reimbursed for reasonable and necessary expenses incurred in the performance discharge of their duties on behalf of the Advisory Council pursuant to § 2.1-20.3 as provided in § 2.2-XXX (2.1-20.10).~~

~~B. The powers and duties of the Advisory Council shall be to:~~

~~1. Facilitate the coordination of adult education and literacy services and programs among agencies of the Commonwealth;~~

~~2. Receive information and advice from state agency heads and representatives as necessary;~~

~~3. Recommend those policies, legislation, and funding that are needed to advance its purpose to the relevant Cabinet Secretaries, state agencies and boards;~~

~~4. Promote public/private partnerships and collaboration for adult education and literacy programs throughout the Commonwealth;~~

~~5. Promote education and literacy services for adults in need of such services;~~

~~6. Promote education and literacy services for foreign-born adults in need of such services; and~~

~~7. Represent and participate on behalf of the public sector in the Virginia Literacy Initiative, a public/private partnership for adult literacy education.~~

~~C. The Council shall develop a biennial state plan for adult education and literacy which shall include recommendations for policies and goals for adult education and literacy services; identify adult education and literacy needs and gaps in services; and address identified needs for adult education and literacy programs in the Commonwealth. The biennial state plan shall be submitted to the Secretaries of Education, Commerce and Trade, Health and Human Resources, and Public Safety by July 1 of any year preceding each biennium budget year.~~

DRAFTING NOTE: Technical corrections. ~~Existing~~Existing subsections B and C now appear in proposed § 2.2-XXX, Powers and Duties of Council, infra.

§ 2.2-XXX. Powers and duties of Council; adult education and literacy defined.

A. The powers and duties of the Council shall be to:

1. Facilitate the coordination of adult education and literacy services and programs among agencies of the Commonwealth;

2. Receive information and advice from state agency heads and representatives as necessary;

3. Recommend those policies, legislation, and funding that are needed to advance its purpose to the relevant Cabinet Secretaries, state agencies and boards;

4. Promote public/private partnerships and collaboration for adult education and literacy programs throughout the Commonwealth;

5. Promote education and literacy services for adults in need of such services;

6. Promote education and literacy services for foreign-born adults in need of such services; and

7. Represent and participate on behalf of the public sector in the Virginia Literacy Initiative, a public/private partnership for adult literacy education.

B. The Council shall develop a biennial state plan for adult education and literacy which shall include recommendations for policies and goals for adult education and literacy services; identify adult education and literacy needs and gaps in services; and address identified needs for adult education and literacy programs in the Commonwealth. The biennial state plan shall be submitted to the Secretaries of Education, Commerce and Trade, Health and Human Resources, and Public Safety by July 1 of any year preceding each biennium budget year.

C. For the purposes of this chapter, "adult education and literacy" means adult basic education, adult literacy education, adult secondary education, and the General Education Development (G.E.D.) preparation program.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of subsections B and C of existing § 2.1-51.21:3 supra.

~~§-2.1-51.21:4~~ 2.2-XXX. Executive Director; appointment; responsibilities.

The Secretary of Education shall appoint an Executive Director of the ~~Advisory~~ Council who shall serve at his pleasure. The Executive Director ~~of the Advisory Council~~ shall supervise and manage the Council's staff, prepare an annual work plan, and perform such other duties and responsibilities as may be assigned by the Council and the Secretary of Education.

The Department of Education shall, at the request of the Secretary of Education, provide office space and administrative support services for the Executive Director and the Council's staff.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Equal Employment Opportunity Council.

~~§-2.1-116.10~~ 2.2-XXX. ~~Purpose of chapter~~ Virginia Equal Employment Opportunity Council; purpose; membership; meetings; compensation; staff.

A. It is hereby found, determined and declared that it is the policy of the Commonwealth to provide equal employment opportunity to applicants and employees of the Commonwealth of Virginia on the basis of fitness and merit without regard to race, color, religion, national origin, political affiliation, handicap, sex or age. The purpose of this chapter is to create and empower an advisory committee which shall be capable of providing direction to meet these stated commitments.

B. To achieve the objectives of subsection A, the Virginia Equal Employment Opportunity Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall consist of sixteen members selected from state employees and non-state employees. Members and a chairperson shall be appointed by the Governor to serve at the pleasure of the Governor but no member shall serve more than eight consecutive years.

C. The Council may meet as often as the proper and efficient discharge of its duties shall require but not less than once every two months or upon call of the chairperson. A majority of the members of the Council shall constitute a quorum.

D. The members of the Council shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E. The State Director of Equal Opportunity and Employee Programs shall serve as executive secretary to the Council, and shall maintain and distribute to the Council members minutes of all meetings.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-116.10, subsections B and E are § 2.1-116.11, subsection C is § 2.1-116.12, and subsection D is § 2.1-116.13.

~~§ 2.1-116.11. Committee continued as Council; appointment and terms of members and chairperson; executive secretary; minutes of meetings.~~

~~The Virginia Equal Employment Opportunity Committee is continued and shall hereafter be known as the Virginia Equal Employment Opportunity Council. The Council shall be composed of sixteen members selected from state employees and non-state employees. Members and a chairperson shall be appointed by the Governor to serve at the pleasure of the Governor but no member shall serve more than eight consecutive years. The State Director of Equal Opportunity and Employee Programs shall serve as executive secretary to the Council, and shall maintain and distribute to the Council members minutes of all meetings.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B and E in proposed § 2.2-XXX (existing § 2.1-116.10) supra.

~~§ 2.1-116.12. Meetings; quorum.~~

~~The Council may meet as often as the proper and efficient discharge of its duties shall require but not less than once every two months or upon call of the chairperson. A majority of the members of the Council shall at all times constitute a quorum for the transaction of its business.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-116.10) supra.

~~§ 2.1-116.13. Compensation and expenses.~~

~~The members of the Council shall serve without compensation, but shall receive their necessary expenses incurred in the discharge of their official duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 2.2-XXX (existing § 2.1-116.10) supra.

~~§ 2.1-116.14 2.2-XXX. Duties and powers of Council.~~

A. The Council shall be charged with the responsibility of monitoring the Commonwealth's equal employment opportunity practices so as to ~~assure~~ensure that such practices fulfill the Commonwealth's obligations of providing equal opportunity to all employees and applicants. The Council may (i) call upon the Director of Personnel and Training and other state officials for information and reports to assist them in their work; (ii) act as a communications channel for groups both inside and outside of state government that wish to have their views on equal employment opportunity expressed to state government; (iii) make recommendations to state agencies concerning the implementation of their affirmative action plans and programs.

B. The Council members shall refer employees who have work related discrimination complaints to the Director of Equal Opportunity and Employee Programs. Once the discrimination complaint is referred to the Director, the matter shall be reviewed in accordance with the Equal Employment Opportunity Complaint Procedure of the Department of Personnel and Training, or at the employee's option, the State Grievance Procedure. The Committee shall audit and review the Commonwealth's equal opportunity posture at least once a year and recommend improvements to the Governor.

C. The Council shall review the progress of state agency affirmative action plans and programs, and make recommendations for changes as warranted.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Council on Coordinating Prevention.

~~§ 9-267~~ 2.2-XXX. Definitions.

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

"Council" means the Virginia Council on Coordinating Prevention.

"Early intervention" means prevention efforts for individuals who are at-risk for developing problems based on biological, psychological or social/environmental factors.

"Local prevention advisory team" means an inclusive community team designated by local government to develop, implement, monitor, and evaluate the community-based prevention plan.

"Plan" means the Comprehensive Prevention Plan.

"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development

DRAFTING NOTE: Technical corrections only.

~~§ 9-268~~ 2.2-XXX. Virginia Council on Coordinating Prevention; members; terms; chairman; compensation;
staff.

A. The Virginia Council on Coordinating Prevention (the "Council") is hereby established. ~~There shall be as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall consist of twenty-eight members appointed as follows:~~ four members from the House of Delegates to be appointed by the Speaker of the House and two members from the Senate to be appointed by the Senate Committee on Privileges and Elections. ~~There shall be:~~ one member each from the Advisory Board for the Aging, Board of Correctional Education, State Board of Corrections, State Board of Juvenile Justice, Criminal Justice Services Board, State Board of Education, State Board of Health, Board of Medical Assistance Services, State Mental Health, Mental Retardation and Substance Abuse Services Board, Virginia Board for People with Disabilities, Board of Social Services, Department of Motor Vehicles, Medical Advisory Board, Alcoholic Beverage Control Board, Comprehensive Services State Executive Council, and the Substance Abuse Council and Prevention Task Force of the Virginia Association of Community Services Boards, to be appointed by the chairman of the respective board or council. Persons appointed to the Council by virtue of their membership on a board or council listed above may serve on the Council only while a member of the respective board or council and may not serve on the Council for more than two consecutive terms-

~~Five;~~ and five members who shall be representatives of the private sector who are interested in prevention, to be appointed by the Governor. Representatives of the private sector shall serve for terms of four years. Members appointed to the Council by the Governor shall not be eligible to serve more than two consecutive full terms.

The Secretary of Health and Human Resources shall be an ex officio member of the Council.

C. The Governor shall appoint a chairman from the membership of the Council. The Council shall meet at least twice a year.

D. Members of the Council shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (2.1-20.10).

E. Staff support shall be provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A, B, and C are § 9-268, subsection D is § 9-269, and subsection E is subsection C from § 9-270.

~~§ 9-269. Meetings; compensation.~~

~~The Council shall meet at least twice a year. Members of the Council shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties on behalf of the Council.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections C and D in proposed § 2.2-XXX (existing § 9-268) supra.

~~§ 9-270 2.2-XXX. Powers and duties of the Council.~~

A. The Council shall have the power and duty to:

1. Review and comment on the Comprehensive Prevention Plan and submit these comments to the Governor biennially prior to submission of the budget;

2. Recommend to the Governor policies, legislation, regulations, and funding that will further the purposes of the Council and local prevention programs;

3. Recommend, in order of priority, prevention issues to be addressed by government and the private sector;

4. Recognize outstanding prevention programs and initiatives;

5. Recommend methods by which the Commonwealth may provide technical assistance and training to state and local, public and private agencies, organizations or individuals to promote the development and implementation of prevention initiatives;

6. Develop recommendations for the establishment and operation of a clearinghouse for information pertinent to prevention initiatives, record keeping of existing prevention programs, and methods by which information concerning those programs may be communicated to the public; and

7. Recommend methods by which the Commonwealth may collect data on the effectiveness of prevention programs.

B. In carrying out the purposes of this chapter, the Council shall consider prevention activities, issues and programs to be those governmental and private sector programs and/or services which promote the maximum independence of individuals and strengthen families; which avoid or minimize physical or mental disability or dysfunction; which reduce the likelihood of dependency on governmental and private sector support, treatment and rehabilitative services; and which encourage future cost savings through early intervention or treatment.

~~G. Staff support shall be provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

C. In order to provide for the planning and coordination of all state services to children and to enhance the role of the family as the primary and fundamental influence on child development, the Council shall:

1. Develop a program to inform the public and professionals, who work with children, of the state and local services available to children;

2. Aid in the provision of technical assistance and training in support of efforts to initiate or improve programs and services for children; and

3. Assist in the planning of children's services and to facilitate the exchange of information and ideas on children's issues.

DRAFTING NOTE: Technical corrections. Existing subsection C (show as stricken) now appears as subsection E in proposed § 2.2-XXX (existing § 9-268) supra. Proposed subsection C is existing § 9-271.

~~§ 9-270.1. Additional powers and duties of Council.~~

~~In order to provide for the planning and coordination of all state services to children and to enhance the role of the family as the primary and fundamental influence on child development, the Council shall also have the following powers and duties:~~

~~1. To develop a program to inform the public and professionals, who work with children, of the state and local services available to children;~~

~~2. To aid in the provision of technical assistance and training in support of efforts to initiate or improve programs and services for children; and~~

~~3. To assist in the planning of children's services and to facilitate the exchange of information and ideas on children's issues.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing §9-270) supra.

~~§ 9-271~~ 2.2-XXX. Comprehensive Prevention Plan.

A Comprehensive Prevention Plan shall be jointly developed biennially by the following agencies:

Department for the Aging, Department of Alcoholic Beverage Control, Department of Correctional Education, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Education, Department of Health, Department of Medical Assistance Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Motor Vehicles, Department for Rights of Virginians With Disabilities, and Department of Social Services. The Secretary of Health and Human Resources shall designate an agency to coordinate development of the Plan.

The Comprehensive Prevention Plan shall coordinate and integrate the planning efforts of the state agencies listed above and the private sector in order to provide a broad prevention agenda for the Commonwealth, enable communities to design and implement prevention programs that meet the identified needs of the community and facilitate the development of interagency and broad-based community involvement in the development of prevention programs. The Comprehensive Prevention Plan shall identify priority prevention issues and challenges, prevention goals and objectives and public and private strategies to achieve goals and objectives.

For the purposes of the Plan, prevention activities, issues and programs shall be those activities which promote the objective identified in subsection B of ~~§ 9-270~~ 2.2-XXX. The Plan with a cost analysis of the proposed strategies shall be submitted to the House Committee on Health, Welfare and Institutions and the Senate Committees on Rehabilitation and Social Services and Education and Health for the purpose of analysis, review and comment prior to implementation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-272~~ 2.2-XXX. State agency responsibilities.

The agencies listed in ~~§ 9-271~~ 2.2-XXX shall have the duty to:

1. Participate in the development of the Comprehensive Prevention Plan, based on risks, protective factors, and clearly defined benchmarks, and shall include cost estimates for implementation and long-term cost savings;
2. Develop and implement, to the extent authorized by law, programs that support the Comprehensive Prevention Plan;
3. Facilitate the involvement of local service providers in interagency, broad-based community development and implementation of local prevention programs consistent with the Comprehensive Prevention Plan;
4. Require that the planning process for all agency programs that relate to the priority issues identified by the Council include an analysis of their prevention component or potential and their potential impact on budgetary requests;
5. Set funding priorities and recommend regulations and guidelines to the Council to administer the Community Prevention Initiative Grants Program;
6. Support the development of a state prevention activities database that includes risk and protective factors;
7. Develop and implement a set of essential elements of a community-based prevention plan to be used by state agencies that provide grant funding for prevention services;
8. Provide coordinated and comprehensive training and technical assistance to localities for prevention planning and implementation; and
9. Facilitate the involvement of local service providers in the development and implementation of the community-based prevention plan as prepared by the local prevention advisory team.

DRAFTING NOTE: Technical corrections only.

~~§ 9-272.4~~ 2.2-XXX. Community Prevention Initiative Grants Program.

With such funds as may be appropriated for this purpose, the Community Prevention Initiative Grants Program is created and ~~will~~ shall provide grants to local units of government to engage in programs to prevent substance abuse, delinquency, dropping out of school, and related negative behaviors and conditions. All political subdivisions shall be eligible to receive such grants provided the following conditions are met:

1. The locality has conducted an assessment of the needs of "at risk" youth in the community, identified all existing preventive programs and resources, and documented the need for additional programs;
2. The locality has developed a plan to implement the proposed project. The plan ~~must~~ shall contain a component to evaluate its effectiveness and a component to ensure private sector involvement. Private sector involvement includes citizens, businesses and corporations, and private programs and organizations; and
3. The locality ~~will~~ shall comply with all regulations which will ensure program effectiveness, cost efficiency, and sound fiscal management.

The agencies listed in ~~§ 9-271~~ 2.2-XXX shall jointly evaluate the funded programs.

DRAFTING NOTE: Technical corrections only.

~~§ 9-273~~ 2.2-XXX. Analysis of prevention potential by executive branch.

The executive branch of state government shall incorporate in its planning process, whenever possible, an analysis of the prevention potential or component of all legislation and initiatives related to the priorities identified in the Comprehensive Prevention Plan.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Military Advisory Council.

~~§ 9-95.5 2.2-XXX. Virginia Military Advisory Council created; composition; purpose; membership; staff.~~

~~The Virginia Military Advisory Council is hereby created.~~ A. The Virginia Military Advisory Council (the "Council") is established as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to maintain a cooperative and constructive relationship between the Commonwealth and the leadership of the several Armed Forces of the United States and the military commanders of such Armed Forces stationed in the Commonwealth.

B. The Council shall be composed consist of not more than twenty-five members and shall include the Lieutenant Governor, the Attorney General, the Adjutant General, the Chairman of the Board of Military Affairs, the Chairman of the House Committee on Militia and Police and the Chairman of the Senate Committee on General Laws or their designees, four members to be appointed by and serve at the pleasure of the Governor and not more than fifteen members, including representatives of major military commands and installations located in the Commonwealth or in jurisdictions adjacent thereto, who shall be appointed by the Governor from persons nominated by the Secretaries of the Armed Forces of the United States and who shall serve at the pleasure of the Governor. The provisions of § 49-1 shall not apply to federal civilian officials and military personnel appointed to the Council.

C. Staff support for the conduct of the Council's business shall be furnished by the Office of the Governor, the Office of the Secretary of Public Safety, the Department of Military Affairs, and such other executive agencies designated by the Governor.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 9-95.5 and subsection C is § 9-95.6.

~~§ 9-95.6 2.2-XXX. Duties of Council; staff support.~~

The Council shall identify and study and provide advice and comments to the Governor on issues of mutual concern to the Commonwealth and the Armed Forces of the United States, including exclusive and concurrent jurisdiction over military installations, educational quality and the future of federal impact aid, transportation needs, alcoholic beverage law enforcement, substance abuse, social service needs, possible expansion and growth of military facilities in the Commonwealth and such other issues as the Governor or the Council may determine to be appropriate subjects of joint consideration.

~~Such staff support as is necessary for the conduct of the Council's business shall be furnished by the Office of the Governor, the Office of the Secretary of Public Safety, the Department of Military Affairs, and such other executive agencies as the Governor may designate.~~

DRAFTING NOTE: Technical corrections. The last paragraph in this section now appears as subsection C in proposed § 2.2-XXX (existing § 9-95.5) supra.

Chapter X.

Virginia Recycling Markets Development Council.

~~§ 9-145.47 2.2-XXX. The Virginia Recycling Markets DevelopmentDevelopment Council established; duties and responsibilities; membership; meetings; staff.~~

A. The Virginia Recycling Markets Development Council (the "Council") is hereby established and shall be referred to in the chapter as the Council. The Council shall have the following functions:

- ~~1. To promote and coordinate state agencies' and authorities' efforts to enhance markets for recycled or recovered materials;~~
- ~~2. To promote the purchase of products made from recycled or recovered material;~~
- ~~3. To identify and evaluate financial and other incentives which may attract new businesses that can use recycled or recovered materials generated in Virginia;~~
- ~~4. To identify barriers to the development of markets for recycled materials including existing state policies, regulations and procedures, and recommend alternatives to overcome such obstacles;~~
- ~~5. To develop recommendations for the establishment of a regional or interstate marketing system for recycled materials;~~
- ~~6. To encourage the use of uniform recycling definitions and standards throughout the state;~~
- ~~7. To promote and encourage public/private market development initiatives;~~
- ~~8. To report annually its findings and recommendations to the Governor and the General Assembly; and~~
- ~~9. To determine the volume of materials by varying categories or commodities which is being recycled in the Commonwealth and to report its findings in its 1998 annual report. The Council shall investigate the frequency of situations in which, because of market conditions or other factors, materials collected for recycling are otherwise disposed of, and determine measures to avoid the recurrence of such situations. The Department of Environmental Quality shall provide staff to the Council for the purposes of this subdivision and shall cooperate with the Council in the preparation of the report.~~

~~B. The Council shall develop and monitor the implementation of a plan to strengthen Virginia's recycling infrastructure and markets which will (i) improve the supply and quantity of recyclables available, (ii) expand the capacity of collectors, processors and manufacturers to handle and use secondary materials, and (iii) incorporate strategies to increase the use of specific materials. as an advisory council within the meaning of § 2.2-XXX, in the executive branch of state government. The Council shall be composed of nineteen members as follows: the Directors, or a policy-making designee, of the Departments of Economic Development, Environmental Quality, General Services and Transportation; and fifteen citizen members appointed by the Governor. The citizen members shall be appointed from among residents of the Commonwealth who are knowledgeable about recycling and the development of markets for recyclable materials. Of the fifteen citizen members one member shall be a representative of county governments selected from nominations submitted by the Virginia Association of Counties; one member representing municipal government selected from nominations submitted by the Virginia Municipal League; one member representing urban Planning District Commissions and one member representing rural Planning District Commissions selected from nominations submitted from the Association of Planning Districts; one member from the general public; and one representative each, selected from nominations submitted by recognized industry associations representing solid waste collection and disposal, recycling, glass, paper, aluminum, plastic, tire, oil, scrap metal and organic waste.~~

~~B. Citizen members of the Council shall serve four-year terms. They shall not receive a per diem, compensation for their service, or travel expenses.~~

~~C. The Council shall elect a chairman and vice chairman annually from among its members. The Council shall meet at least quarterly on such dates and at such times as they determine. A majority of the members of the Council shall constitute a quorum.~~

~~D. Staff support shall be provided by the members of the Council.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-149, subsection B is the first two sentences from § 9-150, subsection D is the last sentence from § 9-150, and subsections E and F are from § 9-152. The stricken language in existing subsections A and B now appear in proposed § 2.2-XXX, Powers and duties of the Council, infra.

§ 2.2-XXX. Powers and duties of Council.

The Council shall have the power and duty to:

1. Promote and coordinate state agencies' and authorities' efforts to enhance markets for recycled or recovered materials;
2. Promote the purchase of products made from recycled or recovered material;
3. Identify and evaluate financial and other incentives which may attract new businesses that can use recycled or recovered materials generated in Virginia;
4. Identify barriers to the development of markets for recycled materials including existing state policies, regulations and procedures, and recommend alternatives to overcome such obstacles;
5. Develop recommendations for the establishment of a regional or interstate marketing system for recycled materials;
6. Encourage the use of uniform recycling definitions and standards throughout the state;
7. Promote and encourage public/private market development initiatives;
8. Report annually its findings and recommendations to the Governor and the General Assembly; and
9. Determine the volume of materials by varying categories or commodities which is being recycled in the Commonwealth and to report its findings in its annual report. The Council shall investigate the frequency of situations in which, because of market conditions or other factors, materials collected for recycling are otherwise disposed of, and determine measures to avoid the recurrence of such situations. The Department of Environmental Quality shall provide staff to the Council for the purposes of this subdivision and shall cooperate with the Council in the preparation of the report.

B. The Council shall develop and monitor the implementation of a plan to strengthen Virginia's recycling infrastructure and markets which will (i) improve the supply and quantity of recyclables available, (ii) expand the capacity of collectors, processors and manufacturers to handle and use secondary materials, and (iii) incorporate strategies to increase the use of specific materials.

DRAFTING NOTE: Technical corrections. This proposed section is derived from existing subsections A and B of § 9-145.47.

~~§ 9-145.48. Membership; meetings; and staffing.~~

~~A. The Council shall be composed of nineteen members as follows: the Directors, or a policy-making designee, of the Departments of Economic Development, Environmental Quality, General Services and Transportation; and fifteen citizen members appointed by the Governor. The citizen members shall be appointed from among residents of the Commonwealth who are knowledgeable about recycling and the development of markets for recyclable materials. Of the fifteen citizen members one member shall be a representative of county governments selected from nominations submitted by the Virginia Association of Counties; one member representing municipal government selected from nominations submitted by the Virginia Municipal League; one member representing urban Planning District Commissions and one member representing rural Planning District Commissions selected from nominations submitted from the Association of Planning Districts; one member from the general public; and one representative each, selected from nominations submitted by recognized industry~~

~~associations representing solid waste collection and disposal, recycling, glass, paper, aluminum, plastic, tire, oil, scrap metal and organic waste.~~

~~B. Citizen members of the Council shall serve four-year terms. They shall not receive a per diem, compensation for their service, or travel expenses.~~

~~C. The Council shall elect a chairman and vice chairman annually from among its members. The Council shall meet at least quarterly on such dates and at such times as they determine. Ten members of the Council shall constitute a quorum.~~

~~D. Staff support shall be provided by the members of the Council.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through D in proposed § 2.2-XXX (existing § 9-145.47) supra.

~~§ 9-145.49. Cooperation of other agencies.~~

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

DRAFTING NOTE: Technical corrections. The last sentence in this section was consolidated with other like sections and now appears in Chapter X, General provisions, at the beginning of this Part D.

Chapter X.

Virginia Workforce Council.

~~§ 9-329.4 2.2-XXX. Virginia Workforce Council established; purpose; membership; terms; chairman and vice chairman; compensation; staff; Virginia Workforce Development Program established.~~

A. The Virginia Workforce Council (the "Council") is hereby established as a policy council within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Council shall be to assist the Governor in meeting workforce training needs in the Commonwealth.

~~B. The Secretary of Commerce and Trade and the Council shall assist the Governor in complying with the provisions of the federal Workforce Investment Act (P.L. 105-220), hereinafter referred to as "the WIA," including the creation of Virginia's Workforce Development Program.~~

~~C. The Council shall be composed consist of the following forty-three members: the Governor; the Secretaries of Commerce and Trade, Education, Health and Human Resources, and Technology; the Director of the Department of Business Assistance; the Chancellor of the Virginia Community College System; the Director of the State Council of Higher Education; the President of the Center for Innovative Technology; the Executive Director of the Virginia Economic Development Partnership; the Director of the Governor's Employment and Training Department; the Commissioner of the Virginia Employment Commission; the president of the Virginia AFL-CIO; and one other labor representative, appointed by the Governor.~~

The Governor shall also appoint twenty-two members representing the business community, to include the presidents of the Virginia Chamber of Commerce and the Virginia Manufacturer's Association; one representative of private nonprofit institutions; one representative of proprietary schools; and the remaining eighteen members who are business owners, chief executive officers, chief operating officers, or other business executives or employers with optimum policy-making or hiring authority and who shall represent diverse regions of the state, to include urban, suburban, and rural areas; and members of the local workforce investment boards, representing businesses with employment opportunities that reflect the employment opportunities of the state, and who are appointed from among individuals nominated by state business organizations and business trade associations.

The Governor shall also appoint one mayor, one chairperson of a county board of supervisors, and one representative of a community-based organization delivering workforce activities.

The Council shall also include two members of the House of Delegates to be appointed by the Speaker of the House; and two members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

~~C.~~ Initially, of the twenty-one members who are serving as representatives of business and industry, other than the presidents of the Virginia Chamber of Commerce and the Virginia Manufacturer's Association, seven shall serve four-year terms; six shall serve three-year terms; and six shall serve two-year terms. Thereafter, all appointments shall be for four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. No appointed member shall be eligible to serve for more than two successive four-year terms, but after the expiration of the remainder of a term to which a member was appointed to fill a vacancy, two additional four-year terms may be served by such member if appointed. Legislative members shall serve terms coincident with their terms of office.

~~D.~~ The Governor shall select a chairman and vice-chairman from among the twenty-one business representatives appointed in accordance with subsection ~~CB~~. The Council shall meet regularly.

~~E.~~ Appointed members of the Council shall not be compensated; however, they receive compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance discharge of their duties on behalf of the Council as provided in § 2.2-XXX (2.1-20.10).

~~F.~~ The Council shall assist the Governor in the following areas with respect to workforce development: development of the WIA State Plan; development and continuous improvement of a statewide system of activities that are funded under the WIA or carried out at a one-stop delivery system; development of linkages to ensure coordination and nonduplication among programs and activities; review of local plans; commenting at least once annually on the measures taken pursuant to §§ 121(a)(1)(D)(i) and 122(c)(16) and (c)(21) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. § 2301 et seq.); designation of local areas; development of allocation formulas; development and continuous improvement of comprehensive state performance measures; preparation of the annual report to the U.S. Secretary of Labor; development of a statewide employment statistics system; and development of incentive grant applications.

~~The Council shall share information regarding its meetings and activities with the public.~~

~~G.~~ Each local workforce investment board shall develop and submit a local plan to the Governor; designate or certify one-stop operators; identify eligible providers of youth activities; identify eligible providers of intensive services if unavailable at one-stop; develop a budget; conduct local program oversight in partnership with its local chief elected official; negotiate local performance measures; assist in developing statewide employment statistics; coordinate workforce investment activities with economic development strategies and develop linkages; develop and enter into memoranda of understanding with one-stop partners; and promote participation by the private sector.

~~Each local workforce investment board shall share information regarding its meetings and activities with the public.~~

~~H.~~ Each chief local elected official shall consult with the Governor regarding designation of local workforce investment areas; appoint members to the local board in accordance with state criteria; serve as the local grant recipient unless another entity is designated in the local plan; negotiate local performance measures with the Governor; and collaborate with the local workforce investment board on local plans and program oversight.

~~I.~~ The Virginia Secretary of Commerce and Trade, and at his direction, the Virginia Employment Commission, shall be responsible for the coordination of the Virginia Workforce Development Program and the implementation of the WIA.

~~J.~~ The Virginia Employment Commission and the Virginia Community College System shall serve as staff to the Council as directed by the Secretary of Commerce and Trade. The Virginia Employment Commission shall act as fiscal agent for the Council and the WIA.

~~K. Regional workforce training centers shall be established at institutions within the Virginia Community College System in the Peninsula, Southside, Central Virginia, and Western Tidewater regions to assist the Council in (i) coordinating specific high skill training, (ii) developing industry standards and related curricula, and (iii) providing skills assessments.~~

~~The Virginia Community College System shall evaluate other regional workforce center locations and recommend to the Council their establishment as such needs are identified. The Virginia Community College System shall support regional workforce training centers created by the Regional Competitiveness Act (§ 15.2-1306 et seq.) in which community colleges participate.~~

DRAFTING NOTE: Technical corrections. Existing subsections B, F, G, H, and J, shown here as stricken, now appear as proposed subsection C through G in proposed § 2.2-XXX (existing § 9-329.2) infra. Existing subsection K, shown here as stricken, now appears in proposed § 2.2-XXX, Regional workforce training centers, infra.

§ 9-329.2. Meetings; powers Powers and duties of the Council; Virginia Workforce Development Program created.

A. ~~The Council shall meet regularly and shall also undertake~~ the following to implement and foster workforce training, exclusive of the vocational and technical education programs provided through and administered by the public school system:

1. Identify current and emerging workforce needs of the business community;
2. Assess potential markets for increasing the number of workers available to business and industry;
3. Forecast and identify training requirements for the new workforce;
4. Create strategies that will match trained workers with available jobs;
5. Certify noncredit courses and programs of training, exclusive of apprenticeship programs and federally sponsored programs conducted under Public Law 97-300, as appropriate offered by public, private, and proprietary institutions and responding to the needs of business and industry in the Commonwealth;
6. Make alterations from time to time in such approved programs;
7. With the assistance of regional workforce centers, seek to identify other specific and existing workforce needs in sectors of the economy, including public education, which have high potential for sustained demand or growth;
8. Meet with representatives of each regional workforce center at least annually to assess and discuss subdivisions 1 through 4 ~~of this section~~ within their service region;
9. Provide an annual report to the Governor concerning its actions and determinations under subdivisions 1 through 4 and 7 ~~of this section~~; and
10. Perform any act or function that is in accord with the purposes of this chapter.

B. The Council shall establish at least two committees as follows: one committee to accomplish the aims of the WIA and one committee to focus on high-technology workforce training needs.

C. The Secretary of Commerce and Trade and the Council shall assist the Governor in complying with the provisions of the federal Workforce Investment Act (P.L. 105-220), hereinafter referred to as "the WIA," including the creation of Virginia's Workforce Development Program.

D. The Council shall assist the Governor in the following areas with respect to workforce development: development of the WIA State Plan; development and continuous improvement of a statewide system of activities that are funded under the WIA or carried out at a one-stop delivery system; development of linkages to ensure coordination and nonduplication among programs and activities; review of local plans; commenting at least once annually on the measures taken pursuant to §§ 121(a)(1)(D)(i) and 122(c)(16) and (c)(21) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. § 2301 et seq.); designation of local areas; development of allocation formulas; development and continuous improvement of comprehensive state performance measures; preparation of the annual report to the U.S. Secretary of Labor; development of a statewide employment statistics system; and development of incentive grant applications.

The Council shall share information regarding its meetings and activities with the public.

E. Each local workforce investment board shall develop and submit a local plan to the Governor; designate or certify one-stop operators; identify eligible providers of youth activities; identify eligible providers of intensive services if unavailable at one-stop; develop a budget; conduct local program oversight in partnership with its local chief elected official; negotiate local performance measures; assist in developing statewide employment statistics; coordinate workforce investment activities with economic development strategies and develop linkages; develop and enter into memoranda of understanding with one-stop partners; and promote participation by the private sector.

Each local workforce investment board shall share information regarding its meetings and activities with the public.

F. Each chief local elected official shall consult with the Governor regarding designation of local workforce investment areas; appoint members to the local board in accordance with state criteria; serve as the local grant recipient unless another entity is designated in the local plan; negotiate local performance measures with the Governor; and collaborate with the local workforce investment board on local plans and program oversight.

G. The Virginia Secretary of Commerce and Trade, and at his direction, the Virginia Employment Commission, shall be responsible for the coordination of the Virginia Workforce Development Program and the implementation of the WIA.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 9-329.2, subsections C through G are from § 9-329.1.

§ 2.2-XXX. Regional workforce training centers.

A. Regional workforce training centers shall be established at institutions within the Virginia Community College System in the Peninsula, Southside, Central Virginia, and Western Tidewater regions to assist the Council in (i) coordinating specific high-skill training, (ii) developing industry standards and related curricula, and (iii) providing skills assessments.

B. The Virginia Community College System shall evaluate other regional workforce center locations and recommend to the Council their establishment as such needs are identified. The Virginia Community College System shall support regional workforce training centers created by the Regional Competitiveness Act (§ 15.2-1306 et seq.) in which community colleges participate.

C. Approved noncredit workforce training programs offered by community colleges may receive general fund support as provided in the appropriation act.

DRAFTING NOTE: Technical corrections. Subsections A and B of this proposed section are derived from subsection K of existing § 9-329.1, and subsection C is derived from existing § 9-329.5.

~~§ 9-329.3~~ 2.2-XXX. Authorization of facilities use and equipment rental; fees.

Workforce training students at local community college boards and public institutions of higher education may be required to pay facility use and equipment rental fees beyond regular tuition charges for workforce training programs requiring specialized facilities or equipment. Such fees shall either be paid by such students directly to the provider of the facility or equipment or to the college for reimbursement to such provider. The fees shall be no more than the normal fees charged to the general public for the same or similar facilities or equipment. The nature of each fee authorized by this section shall be described in course schedules. All fees authorized by this section shall be reported annually to the Virginia Community College System and public institutions' boards.

DRAFTING NOTE: Technical corrections only.

~~§ 9-329.4 2.2-XXX. Trade secrets.~~

Trade secrets that a nonpublic body submits as an offeror in connection with a proposed workforce training program shall not be subject to disclosure under the Virginia Freedom of Information Act (~~§ 2-1-340-2.2-XXX~~ et seq.). However, such offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

DRAFTING NOTE: Technical corrections only.

~~§ 9-329.5. Funds for workforce training programs.~~

~~Approved noncredit workforce training programs offered by community colleges may receive general fund support as provided in the appropriation act.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX, relating to regional workforce training centers, supra.

§ 9-329.6. Workforce Training Access Program and Fund.

A. To facilitate the employment of residents of this Commonwealth, to provide a qualified and competent workforce for Virginia's employers, and to promote the industrial and economic development of the Commonwealth, which purposes are hereby declared and determined to be public purposes, there is hereby created the Workforce Training Access Program, to be administered by the Secretary of Finance as provided in this section.

B. From such funds as are appropriated for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf, there is hereby created in the state treasury a special nonreverting fund to be known as the Workforce Training Access Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The assets of the Fund shall be reserved, invested, and expended solely pursuant to and for the purposes of this section and shall not be expended or otherwise transferred or used by the Commonwealth for any other purpose. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Finance only as a guaranty of payment of workforce training loans made by a national student loan marketing association pursuant to the provisions of this section.

C. The Secretary of Finance is authorized to enter into an agreement with a national student loan marketing association that shall originate, fund and service workforce training loans in accordance with the provisions of this section, to persons enrolled in workforce training courses and programs which the Statewide Workforce Training Council has certified to be responding to the technology needs of business and industry in the Commonwealth pursuant to § 9-329.2.

The terms and conditions of such workforce training loans shall be consistent with market conditions, and shall provide a repayment sufficient to amortize the cost of the training over its expected useful life, not to exceed sixty months. No person may receive a workforce training loan or loans which would result in that person owing an outstanding amount in excess of the tuition and required fees for the certified workforce training course or program in which such person participates.

Only persons (i) who have established domicile in Virginia, as provided in § 23-7.4 or (ii) who are employed in Virginia and whose employers make loan repayments directly by payroll deduction or tuition assistance, before providing for the training needs of other students in such certified courses, shall be eligible to receive workforce training loans. Nothing herein shall be construed to impose an obligation upon an employer to make loan payments or to continue tuition assistance after termination of the student's employment.

Consistent with Sections 10 and 11 of Article VIII of the Constitution of Virginia, the assets of the Fund shall be pledged as a guaranty of payment of workforce training loans made by such national student loan marketing association and may be expended in satisfaction of the guaranty obligations incurred thereby. Neither the Commonwealth, nor any of its agencies, political subdivisions, nor employees shall have any other or further liability in connection with such workforce training loans.

The agreement shall provide for annual evaluation by such national student loan marketing association and the Secretary of Finance, or his designee, of the aggregate unpaid amount of workforce training loans which such national student loan marketing association shall make available hereunder. Such association shall agree to make available workforce training loans in an aggregate unpaid amount of not less than five times the amount of all cash, cash equivalents, investments, and other assets which would then be available in the Fund.

D. If such association ceases to make workforce training loans available as provided under the agreement, the Fund will revert to the general fund of the Commonwealth, free of the restrictions imposed by this section, after payment of or provision for any outstanding obligations which the Fund guarantees.

DRAFTING NOTE:

Subpart 5.
Foundations and Other Collegial Bodies.
Chapter X.
Virginia Arts Foundation.

~~§ 9-84.08 2.2-XXX. Virginia Arts Foundation created; board of trustees; compensation; staff.~~

~~There is hereby created the Virginia Arts Foundation, hereinafter referred to as the Foundation, The Virginia Arts Foundation (the "Foundation"), is established to serve as an advisory foundation within the meaning of § 2.2-XXX, in the executive branch of state government and shall be deemed a body politic and corporate to be organized and to have such powers and duties as hereinafter provided in this chapter.~~

B. The Foundation shall be governed by a board of trustees, consisting of the members of the Virginia Commission for the Arts.

C. Any person designated by the board of trustees to handle the funds of the Foundation, shall give bond, with corporate surety, in a penalty fixed by the Governor, conditioned upon the faithful discharge of his duties. Any premium on the bond shall be paid from funds available to the Foundation.

D. The board of trustees, acting as members of the Virginia Commission for the Arts, shall be entitled to reimbursement for all actual and necessary expenses, as provided by § 2.2-XXX (9-84.02).

E. The Director of the Virginia Commission for the Arts shall serve as the chairman, and the staff of such Commission shall serve as staff for the Foundation.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-84.08 and subsections B through E are from § 9-84.09.

~~§ 9-84.09. Administration of Foundation.~~

~~A. The Foundation shall be governed by and administered by a board of trustees, consisting of the members of the Virginia Commission for the Arts.~~

~~B. The Director of the Commission shall serve as the chairman and the staff of the Commission shall serve as staff for the Foundation.~~

~~C. Any person designated by the board to handle the funds of the Foundation, shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. Any premium on the bond shall be paid from funds available to the Foundation.~~

~~D. Trustees of the Foundation, acting as members of the Virginia Commission for the Arts, shall be entitled to reimbursement for all actual and necessary expenses, as provided by § 9-84.02.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through E in proposed § 2.2-XXX (existing § 9-84.08) supra.

~~§ 9-84.09:2 2.2-XXX. Powers of Foundation.~~

~~The Foundation is authorized to may:~~

1. Make expenditures from the Fund's interest and income to assist the Virginia Commission for the Arts in promoting the arts in the Commonwealth in accordance with ~~§ 9-84.03 2.2-XXX~~.

2. Accept, hold and administer gifts and bequests of money, securities, or other property, absolutely or in trust, for the purposes for which the Foundation is created.

3. Enter into contracts and execute all instruments necessary and appropriate to carry out the Foundation's purposes.

4. Explore and make recommendations concerning other possible dedicated revenue sources for the Fund.

5. Perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-84.09:4 2.2-XXX. Virginia Arts Foundation Fund.~~

~~A. There is hereby created the Virginia Arts Foundation Fund, a special nonreverting trust fund on the books of the Comptroller, to be administered by the Foundation.~~

~~B. The Fund shall include such funds as may be appropriated by the General Assembly from time to time; revenues transferred to the Fund from the special license plates for Virginians for the Arts program pursuant to § 46.2-749.2:2; voluntary contributions collected through the income tax checkoff for the arts pursuant to § 58.1-346.6; and designated gifts, contributions and bequests of money, securities, or other property of whatsoever character.~~

~~C. All money, securities, or other property designated for the Fund and any interest or income therefrom shall remain in the Fund and shall not revert to the general fund. The Fund's principal shall not be subject to expenditure by the Foundation.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-84.09:4. (Effective until June 30, 2000) Moratorium on use of Fund's interest and income earned.~~

~~Interest and income earned on money, securities or property deposited in the Fund shall remain in the Fund and shall not be subject to expenditure by the Foundation. This section shall expire on June 30, 2000.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete since it will expire by its own terms on June 30, 2000, which date is before the effective date of this proposed title revision.

~~§ 9-84.09:3 2.2-XXX. Gifts and bequests; exemption from taxation.~~

~~Gifts and bequests of money, securities, or other property to the Fund, and the interest or income therefrom, shall be deemed gifts to the Commonwealth, and the Fund shall be exempt from all state and local taxes. Unless otherwise restricted by the terms of the gift or bequest, the Foundation is authorized to may sell, exchange, or otherwise dispose of such gifts and bequests; ~~the~~. The proceeds from such transactions shall be deposited to the credit of the Fund. The Foundation shall not actively solicit private donations for the Fund; however, this limitation shall not prevent the Foundation from actively encouraging financial support for the Foundation through the special license plate and income tax checkoff programs.~~

DRAFTING NOTE: Technical corrections.

Chapter X.

Virginia War Memorial Foundation.

~~§ 2-1 51.27:4 2.2-XXX. Virginia War Memorial Foundation; purpose; membership; expenses; names of Virginians "Missing in Action." terms; compensation; staff.~~

~~A. There is hereby created the Virginia War Memorial Foundation, hereinafter referred to as the Foundation. The Virginia War Memorial Foundation (the "Foundation") is established to serve as a policy foundation within the meaning of § 2.2-XXX, in the executive branch of state government. The Foundation shall be governed and administered by a board of trustees for the purpose of honoring 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.~~

~~B. The Foundation shall consist of the Secretary of Administration, who shall serve ex officio, and fifteen other persons as follows: ~~(i)~~ three members of the House of Delegates to be appointed by the Speaker of the House; ~~(ii)~~ two members of the Senate to be appointed by the Committee on Privileges and Elections of the Senate; and ~~(iii)~~ ten other persons appointed by the Governor, subject to confirmation by the General Assembly. A majority of the trustees shall be members or veterans of the armed forces of the United States or the Virginia National Guard. Members appointed should include representatives of some or all of the various veterans organizations active in Virginia, as the Governor ~~may deem most deems~~ deems appropriate.~~

~~Of the trustees first appointed, all of whom shall begin their terms on July 1, 1992, five shall be appointed for a term of one year, five shall be appointed for a term of two years, and five shall be appointed for a term of three years. Thereafter, C. Except for initial appointments, all appointments shall be for a term of three years. Appointments to fill vacancies shall be made for the unexpired term. No person shall be eligible to serve for more than two successive full three-year terms; ~~however.~~ However, any person appointed to an initial term of less than three years or to a vacancy shall be eligible to serve two additional successive full three-year terms thereafter. Trustees may be removed by the Governor at his pleasure.~~

~~D. Trustees shall be reimbursed for their actual expenses incurred while attending meetings of the trustees or performing other duties. However, such reimbursement shall not exceed the per diem rate established for members of the General Assembly pursuant to § 14.1-18 30-19.12.~~

~~E.~~ The Secretary of Administration shall designate a state agency ~~or agencies~~ to provide the Foundation with administrative and other services.

~~B. F.~~ The trustees shall adopt bylaws governing their organization and procedures and may ~~from time to time~~ amend the same. The trustees shall elect from their number a chairman and such other officers as their bylaws may provide. They shall also appoint an executive committee, composed of not less than five trustees, which committee shall exercise the powers ~~vested in and perform the duties imposed upon~~ on the Foundation by this section to the extent permitted by the trustees in their bylaws.

~~G.~~ ~~The names and homes of record designation of all Virginians "Missing In Action" as a result of the Vietnam War and all Virginians "Killed in Action" as a result of the Persian Gulf Conflict shall be placed in the Virginia War Memorial.~~

DRAFTING NOTE: Technical corrections. Existing subsection C now appears as subsection A in proposed § 2.2-XXX (§ 2.1-51.27:4) infra.

~~§ 2.1-51.27:2~~ 2.2-XXX. Authority of Foundation.

The Foundation is vested with full authority to:

1. Manage, control, maintain, and operate the Virginia War Memorial, including the contents, furnishings, grounds, funds, property and endowments thereof;

2. Set fees for the use of the Memorial;

3. Adopt ~~rules and regulations~~ for the use and visitation to the Memorial, which ~~rules and regulations~~ shall be exempt from the provisions of the Administrative Process Act, ~~Title 9, Chapter 1.1:1 (§ 9-6.14:1 et seq.)~~ (§ 2.2-XXX et seq.) of this title;

4. Participate with the military forces of the United States and the Commonwealth and with veterans organizations in the planning, development and execution of appropriate programs and events that further the purposes of the Memorial;

5. Employ and discharge from employment such persons as may be necessary to manage, control, maintain, operate and raise funds for the Memorial;

6. Determine what programs and activities may and should be carried out at the Memorial;

7. Enter into contracts with respect to the duties and responsibilities imposed upon the Foundation herein; all such contracts shall be approved by the Attorney General;

8. Establish a nonprofit corporation as an instrumentality to assist in the details of administering the affairs of the Foundation;

9. Create, invest and use an endowment fund for the purposes set forth in this section;

10. Take such actions as may be reasonably necessary to seek, promote and stimulate contributions for the endowment, maintenance, and improvement of the Memorial and activities therein;

11. Receive, expend and administer on behalf of the Commonwealth donations, gifts, grants, bequests and devises of real and personal property for the endowment of the Memorial or for any special purpose designated by the donor which is consistent with the purposes of the Memorial set forth ~~herein in the chapter~~; and

12. Change the form of any funds, securities, or other property, real or personal, provided that such change is consistent with the terms of the instrument under which the same was acquired.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.27:3~~ 2.2-XXX. Form of accounts and records; annual audit.

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be established by the Auditor of Public Accounts in a manner similar to other organizations. The Auditor of Public Accounts or his legally authorized representative shall annually audit the accounts of the Foundation, and the cost of such audit services shall be borne by the Foundation.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-51.27:4~~. Ownership 2.2-XXX. Names of Virginians "Missing in Action"; ownership of War Memorial.

A. The names and homes of record designation of all Virginians "Missing In Action" as a result of the Vietnam War and all Virginians "Killed in Action" as a result of the Persian Gulf Conflict shall be placed in the Virginia War Memorial.

B. The Virginia War Memorial, its grounds, all its contents, furnishings, funds, endowments, and other property, now owned or hereafter acquired, are and shall remain property of the Commonwealth of Virginia.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is from subsection C of § 2.1-51.27:1 and subsection B is § 2.1-51.27:4.

Chapter X.

World Trade Alliance of the Blue Ridge.

~~§ 9-145.39:5~~. 2.2-XXX. World Trade Alliance established; members of the Blue Ridge; membership; terms; staff; location.

A. The World Trade Alliance of the Blue Ridge (the "Alliance") is hereby established to and shall be referred to in this chapter as the Alliance serve an advisory function within the meaning of §2.2-XXX.

B. The Alliance shall be composed of twenty-one members representing the Virginia General Assembly and local and regional government and business leaders. The members shall be selected as follows: four members of the House of Delegates to be appointed by the Speaker of the House; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and fourteen citizen members appointed by the Governor. At least five of the citizen members shall be associated with business enterprises actively engaged in exporting Virginia goods or services.

B. Of the members to be appointed in 1993, seven shall be appointed for two year terms, seven shall be appointed for three year terms and seven shall be appointed for four year terms. Thereafter, C. After the original appointments, all appointments shall be for terms of four years, except the appointments to fill vacancies shall be for the unexpired terms. Vacancies for unexpired terms shall be filled in the same manner as the original appointments. No person shall be eligible to serve for more than two successive four-year terms; however, after the expiration of a term of three years or less, or after the expiration of the remainder of a term to which appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

~~G-D.~~ D. The Alliance shall elect a chairman and vice chairman from among its members.

E. The Alliance shall be staffed by the Virginia Economic Development Partnership. The Alliance's offices shall be housed in the Export Promotion Division of the Virginia Economic Development Partnership.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D are from § 9-145.39.5 and subsection E is from § 9-245.39.7.

~~§ 9-145.39:6~~ 2.2-XXX. Duties of the Alliance; application for and acceptance of gifts and grants.

A. The Alliance shall:

1. Focus on the strengths and needs of the Blue Ridge region through the following five program areas: ~~(i)-(a)~~ international trade conferences, ~~(ii)-(b)~~ trade missions, ~~(iii)-(c)~~ mentor programs, ~~(iv)-(d)~~ student work placements and ~~(v)-(e)~~ a world trade data base.

2. Advise and make recommendations to businesses, localities and the Commonwealth concerning the promotion of exports of Virginia goods and services, especially in the following areas:

a. Policies, legislation and programs to foster export activity by businesses in the Blue Ridge region;

b. Identification of Virginia goods and services with the greatest potential for export;

c. Identification of foreign countries and businesses with the greatest potential to purchase Virginia goods and services from businesses in the region;

d. Strategies for promoting the export of Virginia goods and services;

e. Means to improve the awareness of businesses in the Blue Ridge region of the opportunities and need for trade in international markets;

f. National and international economic and trade initiatives and trends that potentially impact the export activities of businesses in the Blue Ridge region;

g. Means by which the scope and quality of international education programs in education institutions in the Blue Ridge region can be improved; and

h. Promotion and improvement of educational programs by both public and private entities relating to the means and methods of exporting.

B. The Alliance is authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-145.39:6 and subsection B is 9-145.39:8.

~~§ 9-145.39:7. Staff support; location.~~

~~The Alliance will be staffed by the Virginia Economic Development Partnership. The Alliance's offices will be housed in the Export Promotion Division of the Virginia Economic Development Partnership.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 2.2-XXX (existing § 9-145.39:5).

~~§ 9-145.39:8. Application for and acceptance of gifts and grants.~~

~~The Alliance is authorized to apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-145.39:6).

Chapter X.

Boating Advisory Committee.

§ 2.1-51.9:1 2. -XXX. Boating Advisory Committee; purpose; membership; meetings; compensation.

~~The Boating Advisory Committee shall~~ A. The Boating Advisory Committee (the "Committee" is established as an advisory committee within the meaning of § 2.2-XXX, in the executive branch of state government. The purpose of the Board shall be to advise and make recommendations to the Board of Game and Inland Fisheries, the Marine Resources Commission and other state agencies concerning any proposed regulations, policies or other issues which would directly affect the recreational boating public.

B. The Committee shall consist of eleven members to be appointed by the Secretary of Natural Resources, as follows: members shall represent the United States Power Squadrons; the United States Coast Guard Auxiliary; the Chesapeake Bay Yacht Clubs Association; and the general boating public of this Commonwealth.

C. Members of the Boating Advisory Committee shall meet at least once a year and serve without compensation but shall be reimbursed for their reasonable and necessary expenses incurred in the performance discharge of their duties ~~as committee members~~ as provided in § 2.2-XXX (2.1-20.10).

DRAFTING NOTE: Technical corrections only.

Chapter X.

Debt Capacity Advisory Committee.

~~§ 2.1-304.2~~ 2.2-XXX. Debt Capacity Advisory Committee—created; membership; terms; chairman; compensation; staff.

A. The Debt Capacity Advisory Committee (the "Committee") is hereby ~~created~~ established as an advisory committee within the meaning of § 2.2-XXX, in the executive branch of state government.

B. The ~~membership~~ Committee shall consist of the Secretary of Finance; the State Treasurer; the Director of the Department of Planning and Budget; the Auditor of Public Accounts; the Director of the Joint Legislative Audit and Review Commission; and two citizen members who have expertise in financial matters to be appointed by the Governor.

~~The Secretary of Finance shall be the chairperson of the Committee. The Department of Treasury shall serve as staff to the Committee.~~

C. Of the citizen members appointed for terms beginning July 1, 1994, one shall be appointed for an initial term of three years and the other for an initial term of five years. Successors shall be appointed to serve for terms of four years each. Vacancies occurring other than by expiration of term shall be filled by appointment of the Governor for the remainder of the unexpired term. All appointments shall be subject to confirmation by the General Assembly. Members shall continue to hold office until their successors have been appointed and qualified.

D. The Secretary of Finance shall be the chairperson of the Committee.

E. All members of the ~~Debt Capacity Advisory Committee~~ shall serve without compensation. ~~Citizen members, but~~ shall receive necessary and reasonable and necessary expenses incurred in performing the discharge of their duties ~~as members of the Debt Capacity Advisory Committee~~ as provided in § 2.2-XXX (2.1-20.10).

F. The Department of the Treasury shall serve as staff to the Committee.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-304.3~~ 2.2-XXX. Powers and duties of the Committee.

The Committee shall have the power and duty to:

1. Annually review the size and condition of the Commonwealth's tax-supported debt and submit to the Governor and to the General Assembly an estimate of the maximum amount of new tax-supported debt that prudently may be authorized for the next biennium. The estimate shall be advisory and in no way bind the Governor or the General Assembly;

2. Annually review the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities, for which the (i) Commonwealth has a contingent or limited liability or (ii) General Assembly is permitted to replenish reserve funds if deficiencies occur, and submit to the Governor and the General Assembly an annual report with the Committee's recommendation to ensure the prudent use of such obligations. Such review shall be submitted on or before January 1 of each year; and

3. Conduct ongoing reviews of the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities not secured by the full faith and credit of the Commonwealth or for which the General Assembly is not permitted to replenish reserve funds, and when appropriate, shall recommend limits on such additional obligations to the Governor and to the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-304.4~~ 2.2-XXX. Estimated amount of prudent tax-supported debt; affordability considerations.

Before January 1 of each year, the Committee shall submit to the Governor and to the General Assembly the Committee's estimate of tax-supported debt which prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate. In developing its annual estimate and in preparing its annual report, the Committee shall, at a minimum, consider:

1. The amount of tax-supported debt that, during the next fiscal year and annually for the following nine fiscal years (i) will be outstanding and (ii) has been authorized but not yet issued;

2. A projected schedule of affordable, state tax-supported debt authorizations for the next biennium. The assessment of the affordability of the projected authorizations shall include but not be limited to the considerations specified in this section;

3. Projected debt-service requirements during the next fiscal year and annually for the following nine fiscal years based upon (i) existing outstanding debt, (ii) previously authorized but unissued debt, and (iii) projected bond authorizations;

4. The criteria that recognized bond rating agencies use to judge the quality of issues of Commonwealth bonds;

5. Any other factor that is relevant to (i) the ability of the Commonwealth to meet its projected debt service requirements for the next two fiscal years; (ii) the ability of the Commonwealth to support additional debt service in the upcoming biennium; (iii) the requirements of the statewide capital plan; and (iv) the interest rate to be borne by, the credit rating on, or any other factor affecting the marketability of such bonds; and

6. The effect of authorizations of new tax-supported debt on each of the considerations of this section.

DRAFTING NOTE: Technical corrections only.

PART E.
State Officers and Employees.
Chapter X.
General Provisions.

~~§ 2.1-30~~ 2.2-XXX ~~Holding office under United States~~ Disability to hold state office.

No person shall be capable of holding any office of honor, profit or trust under the Constitution of Virginia, who (i) holds any office or post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of the United States, ~~or who~~; (ii) is in the employment of such government; ~~or who~~ (iii) receives from it in any way any emolument whatever; ~~and the~~. The acceptance of any ~~such~~ office, post, trust, or emolument, or the acceptance of any emolument whatever under ~~such the~~ government of the United States, shall, ipso facto, vacate any office, or post of profit, trust or emolument under the government of ~~this the~~ Commonwealth or under any county, city, or town thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-33~~ 2.2-XXX. (~~For effective date—See note~~) Further Disability to hold state office; exceptions.

A. Section ~~2.1-30~~ 2.2-XXX shall not be construed to prevent:

1. ~~To prevent members~~ Members of Congress from acting as visitors of the University of Virginia or the Virginia Military Institute, or from holding offices in the militia;

2. ~~To exclude from offices under the state, city or town government or offices under any county, a person to whom a pension has been granted by the United States or who receives retirement compensation in any manner from the United States, or any person receiving or entitled to receive benefits under the Federal Old Age and Survivors' Insurance System or under the Federal Railroad Retirement Act;~~

3. ~~To exclude from such office or post, officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty;~~

4. ~~To prevent~~ 2. United States commissioners or United States census enumerators, supervisors, or the clerks under the supervisor of the United States census, or fourth-class or third-class postmasters, or United States caretakers of the Virginia National Guard of Virginia, from acting as notaries, school board selection commission members, or supervisors, or from holding any district office under the government of any county, or the office of councilman of any town or city in ~~this the~~ Commonwealth;

5. ~~To prevent any~~ 3. Any United States rural mail carrier, or star route mail carrier from being appointed and acting as notary public or holding any county or district office;

6. ~~To prevent any~~ 4. Any civilian employee of the United States government from being appointed and acting as notary public;

7. ~~To prevent any~~ 5. Any United States commissioners or United States park commissioners from holding the office of commissioner in chancery, bail commissioner, jury commissioner, commissioner of accounts, assistant commissioner of accounts, substitute or assistant civil justice, or assistant judge of a municipal court of any city or assistant judge of a juvenile and domestic relations district court of any city, or judge of any county court or juvenile and domestic relations district court of any county, or the municipal court or court of limited jurisdiction, by whatever name designated, of any incorporated town;

8. ~~To prevent any~~ 6. Any person employed by, or holding office or a post of profit, trust or emolument, civil, legislative, executive or judicial, under the government of the United States, from being a member of the militia or

holding office therein, or from being a member or director of any board, council, commission or institution of the Commonwealth who serves without compensation except one who serves on a per diem compensation basis;

~~9. To prevent foremen,~~ 7. Foremen, quartermen, leading men, artisans, clerks or laborers, employed in any navy yard or naval reservation in Virginia from holding any office under the government of any city, town or county in ~~this the~~ Commonwealth;

~~10. To prevent any~~ 8. Any United States government clerk from holding any office under the government of any town or city; or from being appointed as special policemen for a county by the circuit court or judge thereof as provided for in ~~§ 15.1-144~~ 15.2-1737;

~~11. To prevent any~~ 9. Any person holding an office under the United States government from holding a position under the management and control of the State Board of Health;

~~12. To prevent any~~ 10. Any state federal director of ~~this the~~ Commonwealth in the employment service of the United States Department of Labor from holding the office of Commissioner of Labor of ~~this the~~ Commonwealth;

~~13. To prevent clerks~~ 11. Clerks and employees of the federal government engaged in the departmental service in Washington from acting as school trustees;

~~14. To prevent any~~ 12. Any person, who is otherwise eligible, ~~holding any office or post of profit, trust or emolument, civil or military, legislative, executive or judicial, under the government of the United States, or who is in the employment of such government or receives from it in any way any emolument whatever from serving as a member of the governing body or school board of any county, city or town, or as a member of any public body who is appointed by such governing body or school board, or as an appointive officer or employee of any county, city or town or the school board thereof;~~

~~15. To prevent game~~ 13. Game management agents of the United States Fish and Wildlife Service or United States deputy game wardens from acting as special game wardens;

~~16. To prevent any~~ 14. Any appointive state or local official or employee from serving, with compensation, on an advisory board of the federal government;

~~17. To prevent any~~ 15. Any state or local law-enforcement officer from serving as a United States law-enforcement officer; however, this ~~provision-subdivision~~ shall not be construed to authorize any law-enforcement officer to receive double compensation;

~~18. To prevent any~~ 16. Any United States law-enforcement officer from serving as a state or local law-enforcement officer when requested by the chief law-enforcement officer of the subject jurisdiction; however, this ~~provision-subdivision~~ shall not be construed to authorize any law-enforcement officer to receive double compensation;

~~19. To prevent any~~ 17. Any attorney for the Commonwealth or assistant attorney for the Commonwealth from serving as or performing the duties of a special assistant United States attorney or assistant United States attorney; however, this ~~provision-subdivision~~ shall not be construed to authorize any attorney for the Commonwealth or assistant attorney for the Commonwealth to receive double compensation;

~~20. To prevent any~~ 18. Any assistant United States attorney from serving as or performing the duties of an assistant attorney for the Commonwealth when requested by the attorney for the Commonwealth of the subject jurisdiction; however, this ~~provision-subdivision~~ shall not be construed to authorize any assistant United States attorney to receive double compensation;

~~21. To prevent any~~ 19. Any elected state or local official from serving, without compensation, on an advisory board of the federal government; however, this ~~provision-subdivision~~ shall not be construed to prohibit reimbursement for actual expenses;

~~22. To prevent sheriffs'~~ 20. Sheriffs' deputies from patrolling federal lands pursuant to contracts between federal agencies and local sheriffs;

~~23. To prevent state~~ 21. State judicial officers from performing acts or functions with respect to United States criminal proceedings when such acts or functions are authorized by federal law to be performed by state judicial officers; or

~~24. To prevent any~~ 22. Any member of the Armed Forces of the United States from serving on the Virginia Military Advisory Council.

B. Nor shall § 2.2-XXX be construed to exclude:

1. A person to whom a pension has been granted by the United States or who receives retirement compensation in any manner from the United States, or any person receiving or entitled to receive benefits under the Federal Old-Age and Survivors' Insurance System or under the Federal Railroad Retirement Act.

2. Officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty.

DRAFTING NOTE: Technical corrections. Existing subdivisions 2 and 3 were relocated to the end of this proposed section as subdivisions 1 and 2, respectively, of subsection B.

~~§ 2.1-34~~ 2.2-XXX. Exception as to public officer or employee engaging in war service or called to active duty with the armed forces.

No state, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of either engaging in the war service of the United States ~~or when called forth by the Governor pursuant to the provisions of § 44-75.1, or when called to active duty in the armed forces of the United States; and any.~~ Any such officer or employee who, voluntarily or otherwise, enters upon such war service or is called to service ~~as provided may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon be relieved from the duties of his office or position during the period of such service; and the.~~ The officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in such service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-32~~ 2.2-XXX. Exception as to public officer or employee serving in the Selective Service System of the United States.

No state, county or municipal officer or employee shall forfeit or vacate, ~~or be held to have forfeited or vacated,~~ his office or position, by reason of serving or of having served as an officer, member, agent or employee, or in any other position or capacity, in the Selective Service System of the United States.

No person shall be ineligible to hold any state, county or municipal office or position by reason of being engaged in service in Virginia in the Selective Service System of the United States.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-32.1~~ 2.2-XXX. Selective Service compliance.

Any person who has failed to meet the federal requirement to register for the Selective Service shall be ineligible for employment by or service for the Commonwealth, or a political subdivision of the Commonwealth, including all boards and commissions, departments, agencies, institutions, and instrumentalities. A person shall not be denied employment under this section by reason of failure to present himself for and submit to the federal registration requirement if: (i) the requirement for the person to so register has terminated or become inapplicable to the person and (ii) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-34~~ 2.2-XXX. Members of military or naval reserve force, etc armed forces; reserve forces.

No person shall, by reason of being a member of the armed forces of the United States ~~military or naval reserve force, whether active or reserved,~~ or by reason of being a retired officer of the armed forces of the United States army, navy or marine corps, and receiving pay therefor, be disqualified from holding any office under the government of the Commonwealth, or under any county, city, town, magisterial district or school district thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-35~~ 2.2-XXX. Holding other office by officers of state institutions.

No person serving as a member of the governing board of any institution, supported in whole or in part by funds paid out of the state treasury, or as rector of such institution, or as president or chairman of the governing board thereof, shall ~~hereafter hold~~, during his term of office, any other office or position with the institution on the board of which he is serving; ~~and if~~. If any such person ~~shall hereafter accept~~ accepts any such office or position, ~~such the~~ acceptance shall ipso facto vacate his office as a member of such board. Nothing in this section shall be construed to prevent members of boards of agricultural colleges from doing field or extension work.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.04~~ 2.2-XXX. Prohibition against holding two elected offices simultaneously; exceptions.

No person shall hold more than one elected office at the same time. This section shall apply to every office elected by the qualified voters of the Commonwealth or any political subdivision or part thereof.

The qualification for and taking of the oath for a second elected office by any person shall operate to vacate any other elected office held by him.

~~This section is enacted pursuant to the powers reserved to the General Assembly by Article II, Section 5 of the Constitution of Virginia to define and prescribe improper dual officeholding.~~

This section shall not be construed to repeal or affect provisions of law authorizing the sharing of elected offices by two or more jurisdictions. Any person serving in more than one elected office on July 1, 1993, shall be entitled to complete the terms for which he was elected.

A person may serve as a Presidential elector while holding any other elective office of the Commonwealth or any political subdivision or part thereof, and this section shall not be construed to prohibit such dual officeholding.

DRAFTING NOTE: Technical corrections. As enacted, this section contained, in the second paragraph, a restatement of Article II, Section 5 of the Constitution of Virginia which has been deleted as unnecessary.

~~§ 2-1-37~~ 2.2-XXX. Acts under color of office; contracts in violation of chapter.

All judgments given, and all acts executed or done by any person by authority or color of any office or post, or the deputation thereof, before his removal therefrom, shall be as valid as they would be if this chapter had not been enacted; but every contract or security made or obtained in violation of this chapter shall be void.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-11.1~~ 2.2-XXX. Bonds of certain officers required; condition; form; effect of failure to give bond; additional bonds.

Certain officers ~~as may be~~ designated by the Governor shall each give bond with sufficient surety to the Commonwealth. The bond shall be conditioned upon the faithful discharge of the duties of his office in such penalty as ~~may be~~ fixed by the Governor.

The form of bond shall be prescribed by the Attorney General and when given by such officer shall bear the certification of the Attorney General and the approval of the Governor.

If the bond required of such officer is not given ~~and or~~ not deemed to be proper within thirty days after his appointment, the appointment of such officer shall be deemed void and his office shall be deemed vacant.

Whenever in the opinion of the Governor it is necessary for the protection of the public interest, that a new bond or a bond in addition to the one already given by such officer, it shall be given within ~~such a~~ reasonable time ~~as prescribed by the Governor shall prescribe~~ after the officer has been notified of the requirement. If the officer ~~shall fail or refuse~~ fails or refuses to give the new or additional bond required, his office shall be deemed vacant.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-12~~ 2.2-XXX. Premiums on such bonds.

The Comptroller may pay out of the state treasury the premiums on the surety bonds of all ~~State state~~ officials who are required to be bonded, for a period of more than one year when a discount for advanced payment of ~~such the~~ premiums may be obtained under the rates, ~~rules and regulations promulgated~~ adopted by the State Corporation Commission according to law.

If any such surety bond ~~be is~~ cancelled prior to its expiration, the portion of the premium to be returned shall be calculated on the basis of the regular annual rate of premiums for the duration of the bond as such refunds are prescribed by the rates, ~~rules and regulations promulgated~~ adopted by the State Corporation Commission according to law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-15~~ 2.2-XXX. Where bonds filed.

The bonds of all officers and employees of all the departments, institutions, agencies, boards, commissions and authorities of the Commonwealth, except the Department of Accounts, shall, after being recorded by the Secretary of the Commonwealth, as required by § 49-12, be transmitted to the Comptroller and be filed in the office of the Comptroller, ~~and the~~.

The bonds of all officers and employees in the Department of Accounts shall be filed in the office of the Secretary of the Commonwealth; ~~provided, however, that nothing~~. Nothing in this section shall be construed to apply to notaries public, nor to commissioners of the revenue, attorneys for the Commonwealth, clerks of courts and treasurers of the counties and cities who are covered by other sections of the Code; nor to other similar officers of a purely local character.

DRAFTING NOTE: Technical corrections only.

§ 2.1-20.04 2.2-XXX. Employment of personnel.

A. Notwithstanding any other provision of law to the contrary, the agency administrator of each executive branch agency, except those that by law are appointed by their respective boards, shall employ ~~such the~~ personnel ~~as may be necessary~~ for the proper performance of all responsibilities of their agency subject to ~~Chapter 10 (§ 2.1-110 et seq.)~~ the Virginia Personnel Act (§ 2.2-XXX et seq.) of ~~Title 2.1~~ this title and within the limits of appropriations made therefor by law.

B. Notwithstanding any other provision of law to the contrary, any employee of an ~~executive branch~~ agency in the executive branch of state government, who is promoted within the same agency to a higher position classification ~~and must shall~~ serve a period ~~or periods~~ of time in a probationary status incident to such promotion, and shall be offered to be returned to such employee's previous classified position or an equivalent position for which a vacancy exists if, for any reason other than misconduct, the probationary period of employment is not satisfied or completed.

DRAFTING NOTE: Technical corrections only.

§ 2.2-XXX. Definitions; compensation and expense payments from state funds for certain executive department services.

A. As used in this chapter:

"Compensation" means any amount paid in addition to reimbursement for expenses.

"Expenses" means all reasonable and necessary expenses incurred in the performance of duties.

"Salary" means a fixed compensation for services, paid to part-time and full-time employees on a regular basis.

B. Subject to the provisions of subsections C and D, members of boards, commissions, committees, councils and other collegial bodies, who are appointed at the state level, shall be compensated at the rate of fifty dollars per day, unless a different rate of compensation is specified for such members, plus expenses for each day or portion thereof in which the member is engaged in the business of that body.

C. Full-time employees of the Commonwealth or any of its local political subdivisions, including full-time faculty members of public institutions of higher education, shall be limited to reimbursement for such employee's expenses.

D. No person shall receive total compensation of more than fifty dollars per day for services performed on any one day. Whenever a member attends two or more meetings in a single day, compensation and expenses shall be prorated among the bodies served.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is existing § 2.1-20.2, subsections B, C and D are existing § 2.1-20.3.

§ 2.1-20.5 2.2-XXX. (Effective October 1, 1998) How salaries, expenses and other allowances paid; time of payment.

The salaries, expenses and other allowances, including mileage, mentioned in this chapter, Chapter ~~5~~ (§ 2.1-38Xref et seq.) of this title and Chapter 1.1 (§ 30-19.11 et seq.) of Title 30 shall, except where otherwise specifically provided, be paid out of the state treasury after being duly audited, and the Comptroller shall draw his warrants on the State Treasurer for the payment thereof. Salaries shall be paid every two weeks, semimonthly or monthly, at the discretion of the Comptroller, upon such dates as the Comptroller may prescribe. Expenses shall be paid when they ~~shall~~ have been incurred, and the other allowances shall be paid when the services ~~shall~~ have been rendered or the travel ~~shall have~~ has been performed; ~~but~~. However, members of the General Assembly and

others traveling to the seat of government who would be entitled to mileage for traveling home may receive such mileage before going home.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.6~~ 2.2-XXX. (Effective October 1, 1998) Increase in salaries.

The salary of no state officer or employee payable by the Commonwealth and not specifically fixed by law shall be hereafter increased, or authorized to be increased, without the written consent of the Governor.

The salary of no officer or employee of any state institution, board, commission or agency payable by the Commonwealth and not specifically fixed by law, shall be hereafter increased, or authorized to be increased, without prior written authorization of such board or commission and the written consent of the Governor.

Any violation of this section shall constitute misfeasance in office. Nothing herein shall apply to teachers in the elementary ~~and high or secondary~~ schools of the Commonwealth or to employees receiving compensation not in excess of \$100 per month.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.7~~. (Effective October 1, 1998) Liability of salary of officer for debt he owes Commonwealth; how enforced; when officer's right to file petition barred.

A. Whenever any officer, other than one whose office is created by the Constitution of ~~this Commonwealth~~ Virginia, is indebted to the Commonwealth for money collected by him or improperly drawn by him or upon his order from the state treasury during his term of office and, after payment of such indebtedness is demanded by the Comptroller, such officer continues in default, the Comptroller shall not issue his warrant for, nor shall the State Treasurer pay, any part of the salary due, or to become due, to such officer until he ~~shall have~~ has made good his default. He may, however, file his petition in the Circuit Court of the City of Richmond against the Comptroller, asserting his claim to his salary, and ~~praying asking~~ for payment thereof. The Comptroller shall answer the petition, and ~~thereupon~~ the proceedings shall be held according to the provisions of Article 18 (§ 8.01-192 et seq.) of Chapter 3 of Title 8.01 and § 8.01-255. If it ~~be is~~ found that the petitioner is indebted ~~as aforesaid~~, the Commonwealth shall be credited on his salary then due with the amount of such indebtedness and if, after such credit is ~~thus~~ given, there is a balance in his favor, judgment ~~therefor~~ shall be rendered ~~in on~~ his behalf. If the indebtedness exceeds his salary then due, judgment for the excess shall be rendered against him and the amount thereof, unless sooner paid, shall be credited to the Commonwealth on his salary thereafter becoming due. The Comptroller shall issue his warrant on the State Treasurer for the payment of any judgment ~~thus~~ rendered ~~in on~~ behalf of the petitioner. In the proceeding by petition the Attorney General shall represent the Commonwealth, unless he ~~be is~~ interested; ~~and if he be interested in which case~~, the Comptroller shall employ other counsel to represent the Commonwealth ~~in the case~~.

B. If ~~such the~~ officer fails to file a petition under this section within twelve months after payment of any installment of his salary is withheld ~~as aforesaid~~, his right to file the ~~same~~ petition shall be barred; ~~and in~~. In such case the Comptroller shall credit the Commonwealth on the officer's salary with the amount of his indebtedness, and make that fact appear on the books of his office.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.4~~ 2.2-XXX. Health and related insurance for state employees.

A.4. The ~~Governor~~ Department of Personnel and Training shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The Department of Personnel and Training shall administer this section. The plan chosen shall provide means whereby coverage for the families or

dependents of state employees may be purchased. The Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

~~2-~~Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. ~~a-~~Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age thirty-five through thirty-nine, one such mammogram biennially to persons age forty through forty-nine, and one such mammogram annually to persons age fifty and over and may be limited to a benefit of fifty dollars per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

~~b-~~In order to be considered a screening mammogram for which coverage shall be made available under this section:

~~(1)-a.~~ The mammogram ~~must~~ shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization physician, (ii) performed by a registered technologist, (iii) interpreted by a qualified radiologist, and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report ~~must~~ shall be sent or delivered to the health care practitioner who ordered it;

~~(2)-b.~~ The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

~~(3)-c.~~ The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

3. Include coverage for postpartum services providing inpatient care and a home visit or visits which shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

4. ~~a-~~Include an appeals process for resolution of written complaints concerning denials or partial denials of claims that shall provide reasonable procedures for resolution of such written complaints and shall be published and disseminated to all covered state employees. ~~Such~~ The appeals process shall include a separate expedited emergency appeals procedure which shall provide resolution within one business day of receipt of a complaint concerning situations requiring immediate medical care. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more impartial health entities to review such decisions. Impartial health entities may include medical peer review organizations and independent utilization review companies. The Department shall adopt regulations to assure that the impartial health entity conducting the

reviews has adequate standards, credentials and experience for such review. The impartial health entity shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the impartial health entity shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

b.—Prior to assigning an appeal to an impartial health entity, the Department shall verify that the impartial health entity conducting the review of a denial of claims has no relationship or association with (i) the covered employee, (ii) the treating health care provider, or any of its employees or affiliates, (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates, or (iv) the development or manufacture of the drug, device, procedure or other therapy which is the subject of the final denial of a claim. The impartial health entity shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an impartial health entity for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

5. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services which enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

6. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

7. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

8. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

9. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a healthcare professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

10. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two

breasts. For persons previously covered under the plan, there ~~may~~ shall be no denial of coverage due to preexisting conditions.

11. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

12. Include coverage providing a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified radical mastectomy and twenty-four hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

13. Include coverage (i) to persons age fifty and over and (ii) to persons age forty and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a twelve-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

14. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

15. ~~a-~~ Include provisions allowing employees to continue receiving health care services for a period of up to ninety days from the date of the primary care physicians notice of termination from any of the plan's provider panels. ~~b-~~ The plan shall notify any provider at least ninety days prior to the date of termination of the provider, except when the provider is terminated for cause.

~~c-~~ For a period of at least ninety days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

~~d-~~ Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

e. ~~Notwithstanding the provisions of subdivision 1, any provider shall be permitted by the plan to may~~ continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861 (dd) (3) (A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

f. A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

16. a. ~~Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.~~

b. ~~The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.~~

e. ~~For purposes of this subdivision:~~

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

d. Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

e. The treatment described in ~~subdivision d~~ the previous paragraph shall be provided by a clinical trial approved by:

(1) ~~a.~~ The National Cancer Institute;

(2) ~~b.~~ An NCI cooperative group or an NCI center;

~~(3)~~ c. The FDA in the form of an investigational new drug application;

~~(4)~~ d. The federal Department of Veterans Affairs; or

~~(5)~~ e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

f. The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

g. Coverage under this section shall apply only if:

~~(1)~~ a. There is no clearly superior, noninvestigational treatment alternative;

~~(2)~~ b. The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and

~~(3)~~ c. The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

17. Include coverage providing a minimum stay in the hospital of not less than twenty-three hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and forty-eight hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

18. (Effective until July 1, 2004) ~~a.~~ Include coverage for biologically based mental illness.

~~b.~~ For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

~~e.~~ Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

~~f.~~ Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

~~e.~~ In no case, however, shall coverage for mental disorders provided pursuant to this section be diminished or reduced below the coverage in effect for such disorders on January 1, 1999.

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be

eemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing Information.

"State employee" means state employee as defined in § 51.1-124.3, employee as defined in § 51.1-201, the Governor, Lieutenant Governor and Attorney General, judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth, interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Medical College of Virginia Hospitals Authority as provided in § 23-50.16:24.

E. Provisions shall be made for retired employees to obtain coverage under the above plan. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Personnel and Training which utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. ~~The plan established by the Department~~ shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan. This section shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. ~~4.~~ Any self-insured group health insurance plan established by the Department of Personnel that includes coverage for prescription drugs on an outpatient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

~~2.~~ If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescribing physician, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

I. Any plan, established by the Department of Personnel and Training in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan, established by the Department of Personnel and Training in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least thirty days before such reductions become effective.

K. No contract between a provider and any plan established by the Department of Personnel and Training in accordance with this section shall include provisions which require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. 4. The Department of Personnel and Training shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

2. The Ombudsman shall:

a1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

b2. Answer inquiries from covered employees by telephone and electronic mail.

c3. Provide to covered employees information concerning the state health plans.

d4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

e5. Make available, either separately or through an existing Internet web site utilized by the Department of Personnel and Training, information as set forth in subdivision d4 and such additional information as he deems appropriate.

f6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

g7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only with that employee's express written consent. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

h8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

i9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. 4. The plan established by the Department of Personnel and Training in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

2. For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.1-02. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions.~~

~~A. The Department of Personnel and Training shall establish a plan or plans subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees. The plan or plans shall be created separately from the plan established pursuant to § 2.1-20.1 to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations promulgated by the Department.~~

~~B. The plan established by the Department shall satisfy the requirements of the Virginia Public Procurement Act (§ 11-35 et seq.), shall consist of a flexible benefits structure which permits the creation of multiple plans of benefits and may provide for separate rating groups based upon criteria established by the Department. The Department shall promulgate regulations regarding the establishment of such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and egress, mandatory employer contributions and financial reserves, and the administration of the plan or plans. The Department may engage the services of other professional advisors and vendors as necessary for the prudent administration of the plan or plans. The assets of the plan or plans, together with all appropriations, premiums and other payments, shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge reasonable fees to recover the actual costs of investing the assets of the plan or plans.~~

~~In establishing the participation requirements, the Department may provide that those employees, officers, and teachers without access to employer sponsored health care coverage may participate in the plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.~~

~~C. In the administration of the plan or plans, the Department shall take into consideration the recommendations made by an advisory committee. Such advisory committee shall be composed of at least five members to be appointed by the Governor, with at least one member representing each of the following groups: local governments, local officers, local school boards, teachers, and retirees. Committee members shall be reimbursed for the expenses incurred by them as members of the committee but shall not be otherwise compensated for their services. The terms of service for the advisory committee members shall be established by the Department.~~

~~D. In the event that the financial reserves of the plan fall to an unacceptably low level as determined by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to raise the reserve level to one which is considered adequate. The State Treasurer is hereby authorized to make such a loan, to be repaid on such terms and conditions as established by him.~~

~~E. For the purposes of this section, the following terms shall have the meanings indicated:~~

~~"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.1-20, 15.1-21, or similar statutes, provided that the officers and employees of a social services department, welfare board, mental health, mental retardation and substance abuse services board, or library board of a county, city, or town shall be deemed to be employees of local government.~~

~~"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.~~

~~"Teacher" means any employee of a county, city, or other local public school board.~~

~~F. Any stock and cash distributed to the Commonwealth pursuant to the conversion of Blue Cross and Blue Shield of Virginia, doing business as Trigon Blue Cross Blue Shield, from a mutual insurance company to a stock corporation known as Trigon Healthcare, Inc., that is directly attributable to the health insurance plan or plans established for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers and retirees, pursuant to subsection A (hereinafter referred to as the "local choice plan distribution") shall be deposited in the state treasury to the credit of the employee health insurance fund to be used as provided in this subsection. Such distribution shall not include any cash paid by Blue Cross and Blue Shield of Virginia or its successor to the Commonwealth in connection with such conversion which was assumed as general fund revenue in Chapter 912 of the 1996 Acts of Assembly. All other stock and cash received by the Commonwealth pursuant to such conversion of Blue Cross and Blue Shield of Virginia to a stock corporation shall be allocated as provided in subsection B of § 23-284.~~

~~The State Treasurer shall sell any stock received pursuant to the local choice plan distribution as soon as practicable following its receipt, subject to any lockup period or other restriction on its sale, and the proceeds therefrom shall be deposited in the state treasury to the credit of the employee health insurance fund. Notwithstanding any other provision of law to the contrary, the State Treasurer shall not be liable for any losses incurred from the sale or distribution of such stock.~~

~~The Department of Personnel and Training shall use any stock, or the proceeds therefrom, and cash received pursuant to the local choice plan distribution to reduce premiums payable by employers participating in a plan or plans established pursuant to subsection A. In setting health insurance premiums for such plan or plans, the Director of the Department of Personnel and Training shall allocate the value of such stock, or proceeds therefrom, and cash among each participating employer. Such allocation shall be based on the proportionate amounts of premiums previously paid by each participating employer. If a participating employer withdraws from such plan or plans before all of the value allocated to it has been used for the benefit of the participating employer, the remaining value shall be transferred to such participating employer upon his withdrawal.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Part C of Subtitle I in Chapter X, Department of Personnel and Training, since it deals with health insurance programs for local government employees and teachers and not state employees.

~~§ 2-1-20.1:03 2.2-XXX. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired state employee.~~

~~A. The surviving spouse and any dependents of an active state employee or a retired state employee shall be entitled may, upon proper application to the Department of Personnel and Training, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the state employee participated in a health insurance plan administered by the Department of Personnel and Training pursuant to § 2-1-20.12.2-XXX or § 2-1-20.1:02 2.2-XXX and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plans administered by the Department of Personnel and Training pursuant to § 2-1-20.12.2-XXX or § 2-1-20.1:022.2-XXX shall provide means whereby coverage for the spouse and dependents of active or retired state employees may be purchased.~~

~~B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department of Personnel and Training within sixty days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.~~

~~C. In addition to any necessary information requested by the Department of Personnel and Training, the application shall state whether conditions (i) and (ii) set forth in subsection A of this section have been met. If the~~

Department states that such conditions have not been met, the Department shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § 9-6-14:142.2-XXX of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the Administrative Process Act (§ 9-6-14:1-Xref et seq.) shall apply thereafter.

D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department of Personnel and Training. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § 2-1-20.1 2.2-XXX or § 2-1-20.1:02 2.2-XXX.

F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2-1-20.12.2-XXX or § 2-1-20.1:022.2-XXX.

G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2-1-20.12.2-XXX or § 2-1-20.1:02 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-20.1:04. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired local law enforcement officer, firefighter, etc.~~

~~A. The surviving spouse and any dependents of an active or retired law enforcement officer of any county, city, or town of this Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of this Commonwealth as an integral part of the official safety program of such county, city or town; or a member of an emergency medical services department, whose death occurs as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, shall be entitled, upon proper application to the Department of Personnel and Training, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated in a health insurance plan administered by the Department of Personnel and Training pursuant to § 2-1-20.1:02 and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plan administered by the Department of Personnel and Training pursuant to § 2-1-20.1:02 shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased. The spouse and any dependents of the deceased who purchase continued health insurance coverage pursuant to this section shall pay the same portion of the applicable premium as active employees pay for the same class of coverage, and the local government employer that employed the deceased shall pay the remaining portion of the premium.~~

~~B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department of Personnel and Training within sixty days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.~~

~~G. In addition to any necessary information requested by the Department of Personnel and Training, the application shall state whether conditions (i) and (ii) set forth in subsection A of this section have been met. If the Department states that such conditions have not been met, the Department shall conduct an informal fact finding conference or consultation with the applicant pursuant to § 9-6.14:11 of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply thereafter.~~

~~D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.~~

~~E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department of Personnel and Training. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § 2-1-20.1:02. However, at no time shall a surviving spouse or dependents pay more for continued health insurance coverage than active employees pay under the same plan for the same class of coverage.~~

~~F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2-1-20.1:02.~~

~~G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty one, unless the dependent is (a) a full time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty five or until such time as the dependent ceases to be a full time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2-1-20.1:02.~~

~~§ 2-1-20.1:03. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired state employee.~~

~~A. The surviving spouse and any dependents of an active state employee or a retired state employee shall be entitled, upon proper application to the Department of Personnel and Training, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the state employee participated in a health insurance plan administered by the Department of Personnel and Training pursuant to § 2-1-20.1 or § 2-1-20.1:02 and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plans administered by the Department of Personnel and Training pursuant to § 2-1-20.1 or § 2-1-20.1:02 shall provide means whereby coverage for the spouse and dependents of active or retired state employees may be purchased.~~

~~B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department of Personnel and Training within sixty days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.~~

~~C. In addition to any necessary information requested by the Department of Personnel and Training, the application shall state whether conditions (i) and (ii) set forth in subsection A of this section have been met. If the Department states that such conditions have not been met, the Department shall conduct an informal fact finding conference or consultation with the applicant pursuant to § 9-6.14:11 of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply thereafter.~~

~~D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.~~

~~E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department of Personnel and Training. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § 2.1-20.1 or § 2.1-20.1:02.~~

~~F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2.1-20.1 or § 2.1-20.1:02.~~

~~G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department of Personnel and Training governing health insurance plans administered pursuant to § 2.1-20.1 or § 2.1-20.1:02.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Part C of Subtitle I in Chapter X, Department of Personnel and Training, since it deals with health insurance programs for local law enforcement officers and fire fighters and not state employees.

~~§ 2.1-20.1:05. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active local law enforcement officer, firefighter, etc.~~

~~A. For the purposes of this section, "plan sponsor" means a local government employer which has established a plan of health insurance coverage for its employees, retirees and dependents of employees as are described in subsection B.~~

~~B. The surviving spouse and any dependents of an active law enforcement officer of any county, city, or town of this Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of this Commonwealth as an integral part of the official safety program of such county, city or town; or a member of an emergency medical services department; whose death occurs as the direct or proximate result of the performance of his duty shall be entitled, upon proper application to the appropriate plan sponsor, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated in a health insurance plan administered by the plan sponsor and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plan administered by the plan sponsor shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased.~~

~~C. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the plan sponsor within sixty days of the date of the deceased's death. The time for making application may be extended by the plan sponsor for good cause shown.~~

~~D. In addition to any necessary information requested by the plan sponsor, the application shall state whether conditions (i) and (ii) set forth in subsection B of this section have been met. If the plan sponsor states that such conditions have not been met, the plan sponsor, notwithstanding the provisions of § 9-6.14:4.1, shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § 9-6.14:11 of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the local government's grievance procedure for nonprobationary, permanent employees shall apply thereafter.~~

~~E. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.~~

~~F. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the plan sponsor. The plan sponsor may increase the cost of coverage consistent with its administration of health insurance plans under § 2.1-20.1:02. However, at no time shall the surviving spouse or dependents pay more for continued health insurance coverage than the active employee rate under the same plan for the same class of coverage.~~

~~G. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.~~

~~H. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.~~

DRAFTING NOTE: Technical corrections. This section has been moved to Part C of Subtitle I in Chapter X, Department of Personnel and Training, since it deals with health insurance programs for local law enforcement officers and fire fighters and not state employees.

~~§ 2.1-20.1:06~~ 2.2-XXX. Purchase of health insurance coverage by part-time state employees.

A. Any part-time state employee employed by the Commonwealth and working twenty or more hours per week for a period of at least six months may, upon proper application to the Department of Personnel and Training (the Department), to purchase health insurance coverage for himself through a health insurance plan administered by the Department. This plan for part-time employees may differ from the other plans sponsored by the Department for state employees and shall be exempt from all mandates contained in ~~§ 2.1-20.12.2-XXX~~.

B. Applications to purchase health insurance coverage hereunder under this section shall be made on an application form prescribed by the Department. In addition to his application, the applicant shall provide any necessary supporting documents requested by the Department.

C. Upon payment of the required premiums, coverage shall be effective retroactive to the date of the application.

D. The terms, conditions, and costs of health insurance coverage purchased hereunder under this section shall be subject to administration by the Department. The Department may increase the cost of coverage consistent with its administration of the health insurance plans under ~~§ 2.1-20.12.2-XXX~~.

E. Health insurance coverage purchased hereunder under this section shall automatically terminate upon the occurrence of any of the following: (i) the applicant's death, (ii) alternate health insurance coverage being obtained by the applicant, (iii) the applicant's separation from state service, or (iv) any applicable condition outlined in the policies and procedures of the Department governing its administration of health insurance plans pursuant to ~~§ 2.1-20.1 2.2-XXX~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.1:12.2-XXX~~. Ownership of patents and copyrights developed by state employees.

Patents, copyrights or materials which were potentially patentable or copyrightable developed by a state employee during working hours or within the scope of his employment or when using state-owned or state-controlled facilities shall be the property of the Commonwealth of Virginia. The Governor shall set such policies as he deems necessary to implement this ~~provision~~ section.

This ~~provision~~ section shall not apply to employees of ~~state-supported~~ public institutions of higher education who shall be subject to the patent and copyright policies of the institution employing them.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.8 2.2-XXX. (Effective October 1, 1998)~~ Traveling expenses on state business; public or private transportation.

A. Pursuant to ~~§ 2.1-20.10 2.2-XXX~~, any person traveling on state business shall be entitled to reimbursement for certain actual expenses as are necessary and ordinarily incidental to ~~such~~ travel. If transportation is by public means, reimbursement shall be at the actual cost thereof. If transportation is by private means, reimbursement shall be at the rate as specified in the current general appropriation act ~~of the Commonwealth~~.

B. Mileage allowed under subsection A or § 30-19.15 shall be construed to include all costs incident to the maintenance and operation of private transportation except storage and parking fees, turnpike, tunnel, ferry and bridge tolls.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-20.8 and subsection B is § 2.1-20.12.

~~§ 2.1-20.9 2.2-XXX. (Effective October 1, 1998)~~ Monitoring travel expenses while on state business.

It shall be the duty of the head of each state agency, commission, or board, or his designee, or any other official granted supervisory control for the expending of state funds to ~~scrutinize~~ examine all applications for the reimbursement of personal funds expended by any employee of such agency, commission, or board for travel while conducting official business for state government. All such expenditures shall be necessary and reasonable for the efficient and effective operation of the agency, commission or board.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.10 2.2-XXX. (Effective October 1, 1998)~~ Reimbursement for certain travel expenditures; restrictions on reimbursement.

Persons conducting official business of the Commonwealth shall be reimbursed for their reasonable and necessary travel expenditures which shall include transportation as provided in ~~§ 2.1-20.8 2.2-XXX~~, parking, and lodging. Receipts for lodging and transportation, if by other than privately owned automobile or state-owned vehicle, shall be submitted with any travel expense account presented to the Comptroller for payment. Transportation by common carrier shall be limited to the cost for travel by the most direct and practical route, and in amounts not exceeding those for tourist or coach class accommodations, if such accommodations are available. Travel shall be over the most direct and practical route. Reimbursement for the cost of transportation shall not be certified to the Comptroller for payment by state agencies in excess of the reimbursement allowed in ~~§ 2.1-20.8 2.2-XXX~~ except in an emergency or, when in the interest of the Commonwealth, a greater expense is justified, the facts in each such instance to be stated in the expense account.

Persons conducting official business of the Commonwealth shall be reimbursed for the reasonable and necessary actual costs of meals, gratuities, and other incidental expenses. At the discretion of the governing

authority, a per diem payment may be made in lieu of this reimbursement for meals, gratuities, and other incidental expenses.

The Comptroller shall establish policies on travel expenses for all agencies in the executive branch of state government. Policies on travel expenses for the legislative branch, judicial branch, and independent agencies shall be established by the appropriate governing authority.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-20.14 2.2-XXX. (Effective October 1, 1998) Travel expense accounts; review by Comptroller.~~

All travel expense accounts shall be submitted on forms prescribed or approved by the Comptroller. Review shall be made by the Comptroller of such accounts subject to the provisions of ~~§ 2.1-227 2.2-XXX~~. If accounts do not conform to the provisions of ~~§ 2.1-20.10 2.2-XXX~~, the Comptroller shall return those accounts ~~not in conformity~~ to the agency or commission with an explanation of why they do not conform. The agency or commission may correct the accounts and resubmit them to the Comptroller.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-804 2.2-XXX. Definitions Restriction on agency employee access via computers to materials with sexually explicit content:~~

A. For the purpose of this chapter section.

"Agency" means any agency, authority, board, department, division, commission, institution, public institution of higher education, bureau, or like governmental entity of the Commonwealth, except the Department of State Police.

"Information infrastructure" means telecommunications, cable, and computer networks and includes the Internet, the World Wide Web, Usenet, bulletin board systems, on-line systems, and telephone networks.

"Sexually explicit content" means (i) any description of or (ii) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, coprophilia, urophilia, or fetishism.

B. Except to the extent required in conjunction with a bona fide, agency-approved research project or other agency-approved undertaking, no agency employee shall utilize agency-owned or agency-leased computer equipment to access, download, print or store any information infrastructure files or services having sexually explicit content. Agency approvals shall be given in writing by agency heads, and any such approvals shall be available to the public under the provisions of the Virginia Freedom of Information Act (§Xref et seq.) of this title.

C. All agencies shall immediately furnish their current employees copies of this section's provisions, and shall furnish all new employees copies of this section concurrent with authorizing them to use agency computers.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-804, subsection B is § 2.1-805, and subsection C is § 2.1-806.

~~§ 2.1-805. Restriction on agency employee access via computers to materials with sexually explicit content.~~

~~Except to the extent required in conjunction with a bona fide, agency approved research project or other agency approved undertaking, no agency employee shall utilize agency owned or agency leased computer equipment to access, download, print or store any information infrastructure files or services having sexually explicit content. Such agency approvals shall be given in writing by agency heads, and any such approvals shall~~

~~be available to the public under the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of Title 2.1.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-804) supra.

~~§ 2.1-806. Agencies to inform employees of chapter's provisions.~~

~~All agencies shall immediately furnish their current employees copies of this chapter's provisions, and shall furnish all new employees copies of this chapter concurrent with authorizing them to use agency computers.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-804) supra.

~~§ 2.1-20.12. (Effective October 1, 1998) What included in mileage under §§ 2.1-20.8 and 30-19.15.~~

~~Mileage allowed under §§ 2.1-20.8 and 30-19.15 shall be construed to include all costs incident to the maintenance and operation of private transportation except storage and parking fees, turnpike, tunnel, ferry and bridge tolls.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B of proposed § 2.2-XXX (existing § 2.1-20.8) supra.

~~§ 2.1-17 2.2-XXX. How certain officers removed from office.~~

The Secretary of the Commonwealth, the State Treasurer, the Comptroller, the Superintendent of Public Instruction or the Commissioner of Agriculture and Consumer Services may be removed from office by joint vote of the two houses of the General Assembly, or, during the recess thereof, may be suspended by the Governor. This power shall not be exercised by the Governor except for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law. In any case in which this power is so exercised by the Governor, he shall fill the office by a temporary appointment, and report to the General Assembly, at the beginning of the next session thereof, the fact of such suspension and the cause therefor, whereupon the General Assembly shall determine whether such officer shall be restored or finally removed.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-17.4 2.2-XXX. Disappearance of public officer; when office presumed vacant.~~

Notwithstanding any other provision of law relating to the length of time after which the continued absence of a person shall create a presumption of death, when a petition alleging that a person who is a public officer elected by the people or by the General Assembly or appointed by the Governor has disappeared and after diligent search cannot be found is presented to a court of record in the city or county in which the last known residence of the person is located, and when it appears to the satisfaction of the court that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person ~~has suffered death from accidental or violent means~~ is dead, then the office held by such person shall be presumed to be vacant and the court shall enter an order to that effect.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-18 2.2-XXX. Governor to fill vacancy in any state office where no other provision is made by law; term of appointment; benefits.~~

A. When a vacancy occurs in any state office, whether the officer ~~be is~~ elected by the people or the General Assembly, or ~~be is~~ appointed by the Governor, and no other provision is made for filling the same, it shall be filled by the Governor.

B. If the office is one filled by election by the people, the appointee shall hold such office until the next general election, and thereafter until his successor qualifies, according to law. If the office is filled by an election by the General Assembly or appointment by the Governor, and such appointment requires confirmation of the Senate or the General Assembly, the appointee shall temporarily hold such office until thirty days after the commencement of the next session of the General Assembly. Notwithstanding any provision of law to the contrary, any individual temporarily appointed under this section shall be eligible for, receive, and accrue all benefits, retirement, health and life insurance, personnel and otherwise, due such appointee by virtue of his holding such office.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-18 and subsection B is § 2.1-19.

~~§ 2.1-19. Term of such appointment; benefits.~~

~~If such office be one filled by election by the people, the appointee shall hold such office until the next general election, and thereafter until his successor qualifies, according to law. If it is to be filled by an election by the General Assembly or appointment by the Governor, and such appointment requires confirmation of the Senate or the General Assembly, the appointee shall temporarily hold such office until thirty days after the commencement of the next session of the General Assembly. Notwithstanding any provision of law to the contrary, any individual temporarily appointed under this section shall be eligible for, receive, and accrue all benefits, retirement, health and life insurance, personnel and otherwise, due such appointee by virtue of his holding such office.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-18) supra.

Chapter X.

Virginia Personnel Act.

~~§ 2.1-110 2.2-XXX.~~ Short title; purpose.

This chapter shall be known and may be cited as the "Virginia Personnel Act."

The purpose of this chapter is to ensure for the Commonwealth a system of personnel administration based on merit principles and objective methods of appointment, promotion, transfer, layoff, removal, discipline, and other incidents of state employment.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-111 2.2-XXX.~~ Appointments, promotions and tenure based upon merit and fitness.

A. In accordance with the provisions of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. ~~Persons who, on such date, had left the service of the Commonwealth for service in any of the armed forces of the United States shall be deemed to have held the positions which they had thus left as though they had received appointment under the terms of this chapter, and all such persons, as well as persons who thereafter have been conscripted by the Selective Service System into active military duty of the United States and leave the service of the Commonwealth for service in such any of the armed forces of the United States, shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within ninety calendar~~

days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished; and any Any such former employee returning to, or applying for, employment in the state service, as provided by this section, shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service had been continuous.

~~Provided, however, that with respect to state employees who enter on active military duty in the armed forces of the United States after June 30, 1956, such rights shall extend only to such employees who (a) have appointments other than temporary in state service prior to entering on active military duty, and (b) serve not more than four years on active military duty or such longer periods as shall be fixed by the Governor, and (c) have a certificate attesting that the military duty was satisfactorily completed, and (d) apply for reinstatement in state service not later than ninety calendar days following separation from active military duty unless a longer period be approved by the Governor.~~

C. No establishment of a position or rate of pay, and no change in rate of pay shall become effective except on order of the appointing authority and approval by the Governor; ~~provided, however, that~~ However, this ~~paragraph-subsection~~ shall not apply to any position the compensation of which is at a rate of \$1,200 per annum or less.

D. ~~Provided, further, however, that in~~ In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Personnel and Training and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

DRAFTING NOTE: In proposed subsection B, the phrase "have been conscripted by the Selective Service System into active military duty of the United States and" has been added to make this section applicable only to those persons who have been drafted into military service and not to enlisted personnel. This represents a substantive change in the law. Language in the beginning of the third paragraph and in the fourth paragraph has been deleted as obsolete.

~~§ 2-1-111.1 2.2-XXX. (Effective December 1, 1997)~~ Use of tobacco products by state employees.

No employee of or applicant for employment with the Commonwealth shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment, provided that this section shall not apply to those classes of employees to which § 27-40.1 or § 51.1-813 is applicable.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-112 2.2-XXX. (Effective July 1, 1998)~~ Grade or rating increase and other preferences for veterans.

A. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is based on the passing of any written examination, the veteran's grade or rating on such examination shall be increased by five percent. However, if the veteran has a service-connected disability rating fixed by the United States Veterans Administration, his grade or rating shall be increased by ten percent on such written examination. Such increases shall apply only if the veteran passes such examination.

B. In a manner consistent with federal and state law, if any veteran applies for employment with the Commonwealth which is not based on the passing of any examination, such veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position.

C. If any veteran is denied employment with the Commonwealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial.

D. For purposes of this section, "veteran" means any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States Army, Navy, Air Force, Marines, Coast Guard, or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Veterans Administration.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-113. Governor to be Chief Personnel Officer; Director of Personnel and Training; assistants and employees; assignment of duties; expenses.~~

~~The Governor shall be the Chief Personnel Officer of the Commonwealth. He shall direct the execution of this chapter. The Governor shall appoint a Director of Personnel and Training, who shall hold his position at the pleasure of the Governor. The Director of Personnel and Training shall, under the direction and control of the Governor, exercise such powers and perform such duties as are delegated to him by the Governor or conferred or imposed by law upon him; and he shall perform such other duties as may be required of him by the Governor. The Governor may employ such other competent personnel assistants and employees as he may require to carry out its provisions. At his discretion he may assign to officers and employees of the Commonwealth such duties as he sees fit in connection with the administration of this chapter; such officers and employees shall receive no extra compensation for such duties but shall be reimbursed for necessary travel and other expenses.~~

DRAFTING NOTE: Technical corrections. This section now appears in Subtitle I, Part A in Chapter X relating to the powers and duties of the Governor.

~~§ 2-1-114.1~~ 2.2-XXX. Classification of persons who have passed certified professional secretary examination.

Clerical personnel who have passed all parts of the certified professional secretary examination, evidenced by certification by the Institute for Certifying Secretaries, a department of the National Secretaries Association (International), or the professional legal secretary examination, evidenced by certification by the Certifying Board of the National Association of Legal Secretaries (International), shall be assured that this certification will be taken into consideration when opportunity for promotion becomes available.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-116~~ 2.2-XXX. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents, and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
12. County, city, town and district officers, deputies, assistants and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The officers and employees of the Virginia Retirement System;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
16. Employees of the State Lottery Department;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
- ~~18. [Repealed]~~
- ~~18~~18. Employees of the Medical College of Virginia Hospitals Authority;
- ~~20~~19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of ~~Chapter 10.01 (§ 2.1-116.01~~ the State Grievance Procedure (§ 2.2-XXX et seq.) of ~~Title 2.1~~ this title;
- ~~21~~20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;
- ~~22~~21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of ~~Chapter 10.01 (§ 2.1-116.01~~ the State Grievance Procedure (§ 2.2-XXX et seq.) of ~~Title 2.1~~ this title;
- ~~23~~22. Officers and employees of the Virginia Port Authority;
- ~~24~~23. Employees of the Virginia Higher Education Tuition Trust Fund; and
- ~~25~~24. Directors of state facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.1-42.2.

DRAFTING NOTE: Technical corrections only.

Chapter X.
State Grievance Procedure.

~~§ 2.1-116.04~~ 2.2-XXX. ~~Responsibilities~~-Policy of the Commonwealth; ~~responsibilities~~responsibilities of state agencies under this chapter.

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2.2-XXX.

AB. To fully achieve the objectives of this chapter and to create uniformity, each agency in the executive branch agency or department listed in Title 2.1 of state government shall:

1. Require supervisory personnel to be trained in the grievance procedure, personnel policies, and conflict resolution;
2. Familiarize employees with their grievance rights and promote the services of the Department of Employee Relations Counselors;
3. Cooperate with investigations conducted pursuant to the authority granted by ~~subdivision 4 (iii) of § 2.1-116.03~~Xref;
4. Participate in the mediation program; and
5. Evaluate supervisors on the effectiveness of employee relations management, including, but not limited to, their handling of grievances.

BC. The Department of Employee Relations Counselors shall monitor agencies' activities under this section.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is subsection A of § 2.1-116.05, and subsection B is § 2.1-116.04.

~~§ 2.1-116.09~~ 2.2-XXX. State employees.

A. Unless exempted by law, all nonprobationary state employees shall be ~~included in~~covered by the grievance procedure established pursuant to this chapter and any regulations ~~promulgated~~adopted pursuant thereto. Employees not covered by ~~such~~the grievance procedure may be covered by an alternative grievance procedure approved by the Department of Employee Relations Counselors which is consistent with the provisions of this chapter and any regulations ~~promulgated~~adopted pursuant thereto.

B. The Office of the Attorney General and every legislative, judicial, and independent agency which is not subject to the state grievance procedure shall establish and administer a grievance procedure.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.013~~ 2.2-XXX. Exemptions from chapter.

The provisions of this chapter shall not apply to:

1. Appointees of elected groups or individuals except as provided in subsection B of ~~§ 2.1-116.09~~ 2.2-XXX;

2. Agency heads or chief executive officers of government agencies and public institutions of higher education appointed by boards and commissions;

3. Law-enforcement officers as defined in § ~~2-1-116.1~~2.2-XXX whose grievances are subject to Chapter ~~10-1~~ (§ ~~2-1-116.1~~Xref et seq.) and who have elected to resolve such grievances under those provisions; and

4. Employees in positions designated in § ~~2-1-116.2~~2-XXX as exempt from the Virginia Personnel Act (§ ~~2-1-110~~Xref et seq.).

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-116.05~~ 2.2-XXX. Grievance procedure generally.

~~A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees must be able to freely, and without retaliation, discuss their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes which may arise between state agencies and those employees who have access to the procedure under § 2-1-116.09.~~

~~BA.~~ As part of the Commonwealth's program of employee relations management, the Department of Employee Relations Counselors shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

~~GB.~~ Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

~~DC.~~ An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within thirty calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

~~ED.~~ Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

~~FE.~~ Pursuant to § ~~2-1-342.01-A~~ 42.2-XXX of the Virginia Freedom of Information Act and § ~~2-1-3822.2-XXX~~ of the Virginia Privacy Protection Act of 1976, all information relating to the actions grieved shall be made available to the employee by the agency, except as otherwise provided by law. Information pertaining to other employees that is relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the complaint or dispute.

~~GF.~~ All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

~~HG.~~ Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency ~~must shall~~ be made to the agency head. The Director of the Department of Employee Relation Counselors shall render all decisions related to procedural compliance, and such decisions shall be final.

H. Grievances qualified pursuant to § ~~2-1-116.06~~ 2.2-XXX that have not been resolved through the grievance resolution steps shall advance to a hearing which shall be the final step in the grievance procedure.

DRAFTING NOTE: Technical corrections. Existing subsection A has been moved to proposed § 2.2-XXX (existing § 2.1-116.04) as new subsection A in that section, supra.

§ ~~2-1-116.06~~ 2.2-XXX. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to: (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee. The employee may appeal the denial of a hearing by the agency head to the Director of the Department of Employee Relation Counselors (the "Director"). Upon receipt of an appeal, the agency shall transmit the entire grievance record to the Department of Employee Relations Counselors within five workdays. The Director shall render a decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

E. Proceedings for review of the decision of the Director may be made by an employee filing a notice of appeal within five workdays of receipt of the decision. Within five workdays thereafter, the agency shall transmit to the clerk of the circuit court in the jurisdiction in which the grievance arose a copy of the grievance record. The court, on motion of the grievant, may issue a writ of certiorari requiring the Director to transmit the record on or before a certain date. Within thirty days of receipt of such records, the court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the Director or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is shall be final and is shall not be appealable. The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

F. The hearing pursuant to § ~~2-1-116-07~~2.2-XXX shall be held in the locality in which the employee is employed or in any other locality agreed to by the employee, employer, and hearing officer. The employee and the agency may be represented by legal counsel or a lay advocate, the provisions of § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and be cross-examined.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-116-07~~2.2-XXX. Hearing officers; duties; decisions; costs.

A. The Director of the Department of Employee Relations Counselors shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, on a rotating basis, from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § ~~9-6.14:14.1~~2.2-XXX. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall attend annually at least one day of training in employment law or state personnel policies and organizations. ~~Such~~The training shall be conducted by the Department of Employee Relations Counselors or an organization approved by the Virginia State Bar for continuing legal education.

B. Hearing officers shall have the following powers and duties:

1. Hold conferences for the settlement or simplification of issues;
2. Dispose of procedural requests;
3. Issue orders requiring testimony or the production of evidence;
4. Administer oaths and affirmations;

5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee an accurate~~a~~ verbatim recording of the evidence;

6. For those issues qualified for a hearing, order appropriate remedies. Relief may include reinstatement, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies; and

7. Take other actions as necessary or specified in the grievance procedure.

C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy. In grievances initiated by state employees, the Director of the Department of Personnel and Training shall determine whether the decision is consistent with policy. In grievances arising out of the Department of Mental Health, Mental Retardation and Substance Abuse Services which challenge allegations of patient abuse, the Director of the Department of Employee Relations Counselors shall determine whether the decision is consistent with law. The hearing officer's decision is effective from the date issued and shall be implemented immediately unless circumstances beyond the control of the agency delay such implementation.

D. Either party may petition the circuit court having jurisdiction in the locality in which the employee is employed for an order requiring implementation of the hearing officer's decision. The court may award attorneys' fees to either party if such party substantially prevails on the merits of the case and the opposing party's position is not substantially justified, unless special circumstances would make an award unjust.

E. Except for the employee's counsel or advocate fees, the agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.08~~ 2.2-XXX. Certain employees of the Departments of Corrections and Juvenile Justice.

A. Employees of the Departments of Corrections and Juvenile Justice who work in institutions or juvenile correctional centers or have client, inmate, or resident contact and who are terminated on the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on probation under the provisions of § 18.2-251, may appeal their termination only through the grievance resolution steps.

B. If no resolution is reached by the conclusion of the last grievance step, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54.1-3904.

C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or policy. The decision of the court shall be final and binding.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.012~~ 2.2-XXX. Employees of local constitutional officers.

~~The employees of constitutional~~ Constitutional officers shall not be required to be covered by provide a grievance procedure for their employees; however, such employees may be accepted in a local governing body's grievance procedure or personnel system if agreed to by the constitutional officer and the local governing body.

DRAFTING NOTE: Technical corrections only.

Chapter X.

State and Local Employees Conflicts of Interest Act.

Article 1.

General Provisions.

~~§ 2.1-639.1~~ 2.2-XXX. Policy; application; construction.

The General Assembly of Virginia, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conflict of such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ ~~45.1-73~~ 415.2-852, ~~45.1-486~~ 415.2-2289, and ~~45.1-494~~ 15.2-2287 and ordinances adopted pursuant thereto shall remain in force and effect.

This chapter shall be liberally construed to accomplish its purpose.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.2~~ 2.2-XXX. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or

personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

"Personal interest in a contract" means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or represents any individual or business and such property, business or represented individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

"State and local government officers and employees" shall not include members of the General Assembly.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

DRAFTING NOTE: Technical corrections only.

Article 2.

Generally Prohibited and Unlawful Conduct.

~~§ 2-1-639.3~~ 2.2-XXX. Application.

This article applies to generally prohibited conduct which shall be unlawful and to state and local government officers and employees.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.4~~ 2.2-XXX. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

4. Use for his own economic benefit or that of another party confidential information which he has acquired by reason of his public position and which is not available to the public;

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political

contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9 (§ 24.2-900 et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.4-1~~ 2.2-XXX. Prohibited conduct for certain officers and employees of state government.

In addition to the prohibitions contained in ~~§ 2-1-639.4~~ 2.2-XXX, no state officer or employee shall, during the one year after the termination of his public employment or service, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer or employee.

For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a salary grade of sixteen or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

The prohibitions of this section shall apply only to persons engaged in activities that would require registration as a lobbyist under ~~§ 2-1-782~~ 2.2-XXX.

Any person subject to the provisions of this section may apply to the Attorney General, as provided in ~~§ 2-1-639.23~~ 2.2-XXX, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

DRAFTING NOTE: Technical corrections only.

Article 3.

Prohibited Conduct Relating to Contracts.

~~§ 2-1-639.5~~ 2.2-XXX. Application.

This article proscribes certain conduct relating to contracts by state and local government officers and employees.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.6~~ 2.2-XXX. Prohibited contracts by officers and employees of state government.

A. No officer or employee of any governmental agency of state government shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 11-37 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not be ~~applicable~~ apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency which accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education in additional contracts of employment with his own governmental agency which accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution, (ii) the governing board of the educational institution finds that it is in the best interests of the institution and the Commonwealth for such dual employment to exist, and (iii) after such finding, the board ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a state institution of higher education and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. Subject to approval by the board of visitors, an employee's personal interest in a contract between a ~~state public~~ institution of higher education which operates a school of medicine or dentistry and a not-for-profit nonstock corporation which operates a clinical practice within such state institution and of which such employee is a member or employee;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a ~~state public~~ institution of higher education and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by the ~~state public~~ institution of higher education prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.1-639.15 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education; and (iv) no later than December 31 of each year,

the institution files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's employee responsible for administering each contract, the details of the institution's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

8. Subject to approval by the board of visitors, an employee's personal interest in a contract between a ~~state public~~ institution of higher education and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.1-639.15 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's decision to contract; (iv) the president of the institution finds and certifies in writing that the contract is for goods and services needed for quality patient care by the institution's medical center, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's employee responsible for administering each contract, the details of the institution's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.7~~ 2.2-XXX. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

A. No person elected or appointed as a member of the governing body of a county, city or town shall have personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency which is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

B. The provisions of this section shall not ~~be applicable~~ apply to:

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 ~~of the Code of Virginia~~, as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.7:1~~ 2.2-XXX. Prohibited contracts by members of school boards.

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency which is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not ~~be applicable~~ apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.8~~ 2.2-XXX. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government shall have a personal interest in a contract with any other governmental agency which is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 11-37 or is awarded as a result of a procedure embodying competitive principles as authorized by subsection D of § 11-35, or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not ~~be applicable~~ apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency which accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. An officer's or employee's personal interest in a contract of employment with any other governmental agency which is a component part of the government of his county, city or town;

3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;

4. Members of local governing bodies who are subject to ~~§ 2.1-639.7~~ 2.2-XXX; or

5. Members of local school boards who are subject to ~~§ 2.1-639.7:1~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.9~~ 2.2-XXX. Further exceptions.

A. The provisions of ~~§§ 2.1-639.6 through 2.1-639.8~~ Article 3 of this chapter shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;

2. The publication of official notices;

3. Contracts between the government or school board of a town or city with a population of less than 10,000 and an officer or employee of that town or city government or school board when the total of such contracts between the town or city government or school board and the officer or employee of that town or city government or school board or a business controlled by him does not exceed \$10,000 per year or such amount exceeds \$10,000 and is less than \$25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.1-639.14;

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of \$10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

5. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

6. Contracts for the purchase of goods or services when the contract does not exceed \$500;

7. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency; or

8. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of this title at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f) (4) of § 2.1-348 of Chapter 22 of this title in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is \$22,500 or more.

DRAFTING NOTE: Technical corrections only.

Article 4.

Prohibited Conduct Relating to Transactions.

~~§ 2-1-639.10 2.2-XXX~~. Application.

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.14 2.2-XXX~~. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if the transaction has application solely to property or a business in which he has a personal interest or he is unable to participate pursuant to subdivision 2 or 3 ~~of this subsection~~. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by ~~§ 2-1-639.13 E 2.2-XXX~~ or ~~§ 2-1-639.14 E 2.2-XXX~~ and shall not vote or in any manner act on behalf of his agency in the transaction;

2. May participate in the transaction if he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and he complies with the declaration requirements of ~~§ 2-1-639.13 F 2.2-XXX~~ or ~~§ 2-1-639.14 G 2.2-XXX~~; or

3. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. If disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and ~~§ 15.1-307 15.2-2100~~, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances which violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A ~~of this section~~ shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A ~~of this section~~ shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

DRAFTING NOTE: Technical corrections only.

Article 5.

Disclosure Statements Required to be Filed.

~~§ 2-1-639.12~~ 2.2-XXX. Application.

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.13~~ 2.2-XXX. Disclosure by state officers and employees.

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and members of the State Lottery Board and other persons occupying such offices or positions of trust or employment in state government as may be designated by the Governor or, in the case of officers or employees of the legislative branch, by the joint rules committees of the General Assembly, shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in ~~§ 2-1-639.15~~ 2.2-XXX and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of policy and supervisory boards, commissions and councils as designated in ~~Chapter 1.4 (§ 9-6.25 et seq.) of Title 9 Xref~~, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the State Lottery Board, shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in ~~§ 2-1-639.15:4~~ 2.2-XXX and thereafter shall file such form annually on or before January 15. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in ~~§ 2-1-639.15:4~~ 2.2-XXX.

C. The disclosure forms required by subsections A and B ~~of this section~~ shall be provided by the Secretary of the Commonwealth to each officer and employee so designated not later than November 30 of each year. Disclosure forms shall be filed and maintained as public records for five years in the Office of the Secretary of the Commonwealth.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to ~~§ 2-1-639.11-A-1~~ 2.2-XXX, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to ~~§ 2-1-639.11-A-2~~ 2.2-XXX, shall declare his interest do so by stating (i) the transaction involved; (ii) the nature of the officer's or employee's personal interest affected by the transaction; (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make this declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to

participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.14~~ 2.2-XXX. Disclosure by local government officers and employees.

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500, and persons occupying such positions of trust appointed by such bodies as may be designated to file by ordinance of the governing body, and persons occupying such positions of employment as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in ~~§ 2-1-639.15~~ 2.2-XXX and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in ~~§ 2-1-639.15~~ 2.2-XXX and thereafter shall file such form annually on or before January 15.

C. The disclosure forms required by subsections A and B ~~of this section~~ shall be provided by the Secretary of the Commonwealth to the clerks of the governing bodies and school boards not later than November 30 of each year, and the clerks of the governing body and school board shall distribute the forms to designated individuals no later than December 10 of each year. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board.

D. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by ~~§ 24.2-502~~.

E. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to ~~§ 2-1-639.14~~ 2.2-XXX A 1, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

F. In addition to any disclosure required by subsections A and B ~~of this section~~, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city or town on or before January 15. Such disclosures shall be filed and maintained as public records for five years. Forms for the filing of such reports shall be prepared and distributed by the Secretary of the Commonwealth to the clerk of each governing body.

G. An officer or employee of local government who is required to declare his interest pursuant to ~~§ 2-1-639.14~~ 2.2-XXX A 2 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes of his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain

and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.14.1~~ 2.2-XXX. Disclosure by certain constitutional officers.

For the purposes of this ~~Act~~ chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court and commissioner of the revenue of each county and city, shall be deemed to be local officers and shall be required to file the Statement of Economic Interests set forth in ~~§ 2-1-639.15~~ 2.2-XXX. These officers shall file statements pursuant to ~~§ 2-1-639.14.2~~ 2.2-XXX and candidates shall file statements as required by § 24.1-167.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.15~~ 2.2-XXX. Disclosure form.

The disclosure form to be used for filings required by ~~§ 2-1-639.13.2~~ 2.2-XXX A and D, and ~~§ 2-1-639.14.2~~ 2-XXX A and D shall be substantially as follows:

STATEMENT OF ECONOMIC INTERESTS.

Name
Office or position held or sought
Home address
Names of members of immediate family

DEFINITIONS AND EXPLANATORY MATERIAL.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Dependent" means any person, whether or not related by blood or marriage, who receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" does not mean an association based on the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed. "Close financial association" does not include an association based on the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has had no communications with the state governmental agency.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. "Relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships.

Are you or a member of your immediate family a paid officer or paid director of a business?

EITHER check NO / / OR check YES / / and complete Schedule A.

2. Personal Liabilities.

Do you or a member of your immediate family owe more than \$10,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.)

EITHER check NO / / OR check YES / / and complete Schedule B.

3. Securities.

Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of \$10,000 invested in one business? Account for mutual funds, limited partnerships and trusts.

EITHER check NO / / OR check YES / / and complete Schedule C.

4. Payments for Talks, Meetings, and Publications.
 During the past 12 months did you receive lodging, transportation, money, or anything else of value with a combined value exceeding \$200 for a single talk, meeting, or published work in your capacity as an officer or employee of your agency?
 EITHER check NO / / OR check YES / / and complete Schedule D.
5. Gifts.
 During the past 12 months did a business, government, or individual other than a relative or personal friend (i) furnish you with any gift or entertainment at a single event, and the value received by you exceeded \$50 in value or (ii) furnish you with gifts or entertainment in any combination and the value received by you exceeded \$100 in total value; and for which you neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded \$50 in value. Account for all business entertainment (except if related to your private profession or occupation) even if unrelated to your official duties.
 EITHER check NO / / OR check YES / / and complete Schedule E.
6. Salary and Wages.
 List each employer that pays you or a member of your immediate family salary or wages in excess of \$10,000 annually. (Exclude state or local government or advisory agencies.)
 If no reportable salary or wages, check here / / .

7. Business Interests.
 Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of \$10,000 in a business?
 EITHER check NO / / OR check YES / / and complete Schedule F.
8. Payments for Representation and Other Services.
- 8A. Did you represent any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past 12 months in excess of \$1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)
 EITHER check NO / / OR check YES / / and complete Schedule G-1.
- 8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent any businesses before any state governmental agency for which total compensation was received during the past 12 months in excess of \$1,000? (Officers and employees of local governmental and advisory agencies do NOT need to answer this

question or complete Schedule G-2.)

EITHER check NO / / OR check YES / / and complete Schedule G-2.

8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia for which total compensation in excess of \$1,000 was received during the past 12 months?

EITHER check NO / / OR check YES / / and complete Schedule G-3.

9. Real Estate.

9A. State Officers and Employees.

Do you or a member of your immediate family hold an interest, including a partnership interest, valued at \$10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

EITHER check NO / / OR check YES / / and complete Schedule H-1.

9B. Local Officers and Employees.

Do you or a member of your immediate family hold an interest, including a partnership interest, valued at \$10,000 or more in real property located in the county, city or town in which you serve or in a county, city or town contiguous to the county, city or town in which you serve (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

EITHER check NO / / OR check YES / / and complete Schedule H-2.

10. Real Estate Contracts with Governmental Agencies.

Do you or a member of your immediate family hold an interest valued at more than \$10,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past 12 months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than \$1,000? Account for all such contracts whether or not your interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

EITHER check NO / / OR check YES / / and complete Schedule I.

Statements of Economic Interests are open for public inspection.

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

Signature.....
Commonwealth of Virginia

.....of.....to wit:
 The foregoing disclosure form was acknowledged before me
 This.....day of....., 19.., by,
 Notary Public
 My commission expires.....

(Return only if needed to complete Statement.)

SCHEDULES
 TO
 STATEMENT OF ECONOMIC INTERESTS.

NAME.....

SCHEDULE A - OFFICES AND DIRECTORSHIPS.

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

Name of Business	Address of Business	Position Held
.....
.....
.....
.....

RETURN TO ITEM 2

SCHEDULE B - PERSONAL LIABILITIES.

Report personal liability by checking each category. Report only debts in excess of \$10,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan. Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

	Check appropriate categories	Check one	
		\$10,001 to \$50,000	More than \$50,000
Banks
Savings institutions
Other loan or finance companies
Insurance companies
Stock, commodity or other brokerage

companies
 Other businesses:
 (State principal business activity
 for each creditor.)

 Individual creditors:
 (State principal business or
 occupation of each creditor.)

2. The personal debts of the members of my immediate family are as follows:

Check appropriate categories	Check one \$10,001 to \$50,000	Check one More than \$50,000
Banks
Savings institutions
Other loan or finance companies
Insurance companies
Stock, commodity or other brokerage companies
Other businesses: (State principal business activity for each creditor.)
.....
.....
Individual creditors: (State principal business or occupation of each creditor.)
.....

RETURN TO ITEM 3

SCHEDULE C - SECURITIES.

<p>"Securities" INCLUDES stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts.</p>	<p>"Securities" EXCLUDES certificates of deposit, money market funds, annuity contracts, and insurance policies.</p>
------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------

Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of

\$10,000.

Do not list U.S. Bonds or other government securities not issued by the Commonwealth of Virginia or its authorities, agencies, or local governments. Do not list organizations that do not do business in this Commonwealth, but most major businesses conduct business in Virginia. Account for securities held in trust.

If no reportable securities, check here / /.

Name of Issuer	Type of Entity	Type of Security (stocks, bonds, mutual funds, etc.)	Check one	
			\$10,001 to \$50,000	More than \$50,000
.....
.....
.....
.....

RETURN TO ITEM 4

SCHEDULE D - PAYMENTS FOR TALKS, MEETINGS, AND PUBLICATIONS.

List each source from which you received during the past 12 months lodging, transportation, money, or any other thing of value (excluding meals or drinks coincident with a meeting) with combined value exceeding \$200 for your presentation of a single talk, participation in one meeting, or publication of a work in your capacity as an officer or employee of your agency.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, check here / /.

Payer	Approximate Value	Circumstances	Type of Payment
			(e.g., honoraria, Travel reimbursement, etc.)
.....
.....
.....
.....

SCHEDULE E - GIFTS.

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded \$50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded \$100 in total value; and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded \$50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9 (§ 24.2-900 et seq.) of Title 24.2 of the Code of Virginia.

Name of Business, Organization, or Individual	City or County and State	Gift or Event	Approximate Value
.....
.....
.....
.....

SCHEDULE F - BUSINESS INTERESTS.

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of \$10,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise, give the address of each property. Account for business interests held in trust.

Name of Business, Corporation, Partnership, Farm; Address of Rental Property	City or County and State	Nature of Enterprise (farming, law, rental property, etc.)	Gross Income	
			\$50,000 or less	More than \$50,000
.....
.....
.....
.....

 RETURN TO ITEM 8

SCHEDULE G-1 - PAYMENTS FOR REPRESENTATION BY YOU.

List the businesses you represented before any state governmental agency, excluding any court or judge, for which you received total compensation during the past 12 months in excess of \$1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by you.

Identify each business, the nature of the representation and the amount received by dollar category from each such business. You may state the type, rather than name, of the business if you are required by law not to reveal the name of the business represented by you.

Only STATE officers and employees should complete this Schedule.

Name of Business	Type of Business	Purpose of Representation	Name of Agency	Amount Received				
				\$1,001 to \$10,000	\$10,001 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$250,000	\$250,001 and over
.....
.....
.....
.....

SCHEDULE G-2 - PAYMENTS FOR REPRESENTATION BY ASSOCIATES.

List the businesses that have been represented before any state

governmental agency, excluding any court or judge, by persons who are your partners, associates or others with whom you have a close financial association and who received total compensation in excess of \$1,000 for such representation during the past 12 months, excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such businesses by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Only STATE officers and employees should complete this Schedule.

Type of Business	Name of State Governmental Agency
.....
.....
.....

SCHEDULE G-3 - PAYMENTS FOR SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association and for which total compensation in excess of \$1,000 was received during the past 12 months.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

	Check if ser- vices were ren- dered	Type of ser- vice ren- dered	Value of Compensation				
			\$1,001 to \$10,000	\$10,001 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$250,000	\$250,001 and over
Electric utilities
Gas utilities
Telephone

utilities
 Water util-
 ities
 Cable tele-
 vision
 companies
 Interstate
 transporta-
 tion com-
 panies
 Intrastate
 transporta-
 tion com-
 panies
 Oil or gas
 retail com-
 panies
 Banks
 Savings
 institutions.....
 Loan or fi-
 nance com-
 panies

 Manufactur-
 ing com-
 panies (state
 type of pro-
 duct, e.g.,
 textile, fur-
 niture, etc.).....
 Mining com-
 panies
 Life insur-
 ance com-
 panies
 Casualty in-
 surance com-
 panies
 Other insur-
 ance com-
 panies
 Retail com-
 panies
 Beer, wine
 or liquor
 companies or
 distributors.....
 Trade asso-
 ciations
 Professional
 associations.....
 Associations
 of public

employees or
officials
Counties,
cities or
towns
Labor organi-
zations
Other

RETURN TO ITEM 9

SCHEDULE H-1 - REAL ESTATE - STATE OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at \$10,000 or more. You may list each parcel of real estate individually if you wish.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.
.....
.....
.....
.....
.....

SCHEDULE H-2 - REAL ESTATE - LOCAL OFFICERS AND EMPLOYEES.

List real estate located in your county, city, or town, and any contiguous county, city, or town other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at \$10,000 or more. You may list each parcel of real estate individually if you wish.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.
.....

~~§ 2-1-639.15~~ 2.2-XXX. Disclosure form; certain citizen members.

A. The financial disclosure form to be used for filings required pursuant to subsection B of § ~~2-1-639.13~~ 2.2-XXX and subsection B of § ~~2-1-639.14~~ 2.2-XXX shall be substantially as follows:

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the filer, who is a dependent of the filer or of whom the filer is a dependent.

"Dependent" means any person, whether or not related by blood or marriage, who receives from the filer or provides to the filer, more than one-half of his financial support.

"Personal interest" means, for the purposes of this form only, a personal and financial benefit or liability accruing to a filer or a member of his immediate family. Such interest shall exist by reason of (i) ownership in real or personal property, tangible or intangible; (ii) ownership in a business; (iii) income from a business; or (iv) personal liability on behalf of a business; however, unless the ownership interest in a business exceeds three percent of the total equity of the business, or the liability on behalf of a business exceeds three percent of the total assets of the business, or the annual income, and/or property or use of such property, from the business exceeds \$10,000 or may reasonably be anticipated to exceed \$10,000, such interest shall not constitute a "personal interest."

Name
Office or position held or to be held
.....
Address

I. FINANCIAL INTERESTS

My personal interests and those of my immediate family are as follows:

Include all forms of personal interests held at the time of filing: real estate, stocks, bonds, equity interests in proprietorships and partnerships. You may exclude:

1. Deposits and interest bearing accounts in banks, savings institutions and other institutions accepting such deposits or accounts;
2. Interests in any business, other than a news medium, representing less than three percent of the total equity value of the business;
3. Liability on behalf of any business representing less than three percent of the total assets of such business; and
4. Income (other than from salary) less than \$10,000 annually from any business. You need not state the value of any interest. You must state the name or principal business activity of each business in which you have a personal interest.

A. My personal interests are:

1. Residence, address, or, if no address, location
2. Other real estate, address, or, if no address, location
3. Name or principal business activity of each business in which stock, bond or equity interest is held

B. The personal interests of my immediate family are:

1. Real estate, address or, if no address, location

2. Name or principal business activity of each business in which stock, bond or equity interest is held

II. OFFICES, DIRECTORSHIPS AND SALARIED EMPLOYMENTS

The paid offices, paid directorships and salaried employments which I hold or which members of my immediate family hold and the businesses from which I or members of my immediate family receive retirement benefits are as follows:

(You need not state any dollar amounts.)

A. My paid offices, paid directorships and salaried employments are:

Position held	Name of business
.....
.....
.....

B. The paid offices, paid directorships and salaried employments of members of my immediate family are:

Position held	Name of business
.....
.....
.....

III. BUSINESSES TO WHICH SERVICES WERE FURNISHED

A. The businesses I have represented before any state governmental agency, excluding any court or judge, for which I have received total compensation in excess of \$1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by name and name the state governmental agencies before which you appeared on behalf of such businesses.

Name of business	Name of governmental agency
.....
.....
.....

 B. The businesses that, to my knowledge, have been represented before any state governmental agency, excluding any court or judge, by persons with whom I have a close financial association and who received total compensation in excess of \$1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by type and name the state governmental agencies before which such person appeared on behalf of such businesses.

Type of business	Name of state governmental agency
.....
.....

C. All other businesses listed below that operate in Virginia to which services were furnished and for which total compensation in excess of \$1000 was received during the preceding year:

Check each category of business to which services were furnished.

- Electric utilities
- Gas utilities
- Telephone utilities
- Water utilities
- Cable television companies
- Intrastate transportation companies
- Interstate transportation companies
- Oil or gas retail companies
- Banks
- Savings institutions
- Loan or finance companies
- Manufacturing companies (state type of product, e.g.,
 textile, furniture, etc.)
- Mining companies
- Life insurance companies
- Casualty insurance companies
- Other insurance companies
- Retail companies
- Beer, wine or liquor companies or distributors
- Trade associations
- Professional associations
- Associations of public employees or officials
- Counties, cities or towns

Labor organizations

IV. COMPENSATION FOR EXPENSES

The persons, associations, or other sources other than my governmental agency from which I or a member of my immediate family received remuneration in excess of \$200 during the preceding year, in cash or otherwise, as honorariums or payment of expenses in connection with my attendance at any meeting or other function to which I was invited in my official capacity are as follows:

Name of Source	Description of occasion	Amount of remuneration for each occasion
.....
.....

B. The provisions of Part III A and B of the disclosure form prescribed by this section shall not be applicable to officers and employees of local governmental and local advisory agencies.

C. Except for real estate located within the county, city or town in which the officer or employee serves or a county, city or town contiguous to the county, city or town in which the officer or employee serves, officers and employees of local governmental or advisory agencies shall not be required to disclose under Part I of the form any other interests in real estate.

DRAFTING NOTE: Technical corrections only.

Article 6.

School Boards and Employees of School Boards.

~~§ 2.1-639.16~~ 2.2-XXX. Additional provisions applicable to school boards, and employees of school boards.

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or

2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or

3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions 1, 2, and 3 of subsection B shall apply only if the prior employment has been in the same school division where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

DRAFTING NOTE: Technical corrections only.

Article 7.

Penalties Penalties and Remedies.

~~§ 2-1-639.17~~ 2.2-XXX. Knowing violation of chapter a misdemeanor.

Any person who knowingly violates any of the provisions of Articles 2 through 6 (~~§§ 2-1-639.3- 2.2-XXX~~ through ~~2-1-639.16 2.2-XXX~~) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § 2-1-639.11 A-2.2-XXX or subsection C or E of § 2-1-639.14 C or E 2.2-XXX shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.18~~ 2.2-XXX. Advisory opinions.

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General and the opinion was made after a full disclosure of the facts.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth and the opinion was made after a full disclosure of the facts.

C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his city, county or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.19~~ 2.2-XXX. Knowing violation of chapter constitutes malfeasance in office or employment.

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of ~~said-such~~ office or employment.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.20~~ 2.2-XXX. Invalidation of contract; rescision of sales.

A. Any contract made in violation of § ~~2-1-639.42.2-XXX~~ or §§ ~~2-1-639.62.2-XXX~~ through ~~2-1-639.82.2-XXX~~ may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § ~~2-1-639.42.2-XXX~~ or §§ ~~2-1-639.62.2-XXX~~ through ~~2-1-639.82.2-XXX~~ may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.21~~ 2.2-XXX. Forfeiture of money, etc., derived from violation of this chapter.

In addition to any other fine or penalty provided by law, any money or other thing of value derived by an officer or employee from a violation of §§ ~~2-1-639.42.2-XXX~~ through ~~2-1-639.112.2-XXX~~ shall be forfeited and, in the event of a knowing violation, there may also be imposed a civil penalty in an amount equal to the amount of money or thing of value forfeited to the Commonwealth or the local government as the case may be. If the thing of value received by the officer or employee in violation of this chapter should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of forfeiture.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.22~~ 2.2-XXX. Limitation of actions.

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.23~~ 2.2-XXX. Enforcement.

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters which come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;

2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;

3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (~~§ 2-1-639.12~~ Xref et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.24~~ 2.2-XXX. Venue.

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Workforce Transition Act.

~~§ 2.1-116.20~~ 2.2-XXX. Short title; purpose.

A. This chapter shall be known as the Workforce Transition Act of 1995.

B. The purpose of this chapter is to provide a transitional severance benefit, under the conditions specified, to eligible state employees who are involuntarily separated from their employment with the Commonwealth. "Involuntary separation" includes, but is not limited to, terminations and layoffs from employment with the Commonwealth, or being placed on leave without pay-layoff or equivalent status, due to budget reductions, agency reorganizations, workforce down-sizings, or other causes not related to the job performance or misconduct of the employee, but shall not include voluntary resignations. As used in this chapter, a "terminated employee" shall mean an employee who is involuntarily separated from employment with the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.21~~ 2.2-XXX. Duties of Department of Personnel and Training and executive branch agencies to involuntarily separated employees.

A. Prior to terminating or placing on leave without pay-layoff or equivalent status any employee of an agency or institution in the executive branch of state government, the management of the agency or institution shall make every effort to place the employee in any vacant position within the agency for which the employee is qualified. If reemployment within the agency or institution is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, the name of the employee shall be forwarded to the Department of Personnel and Training (the "Department").

B. Any preferential employment rights vested in the employee under the Commonwealth's layoff policy shall not be denied, abridged, or modified in any way by the ~~Department of Personnel and Training~~. The Department shall coordinate the preferential hiring of the employee, at the same salary classification, in any agency or institution of the executive branch of state government. The Department shall also establish a program to assist employees in finding employment outside of state government.

C. If, as of the date the employee is terminated from employment or placed on leave without pay-layoff or equivalent status, reemployment within his agency or institution or any other agency or institution of the executive branch of state government is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, then the employee shall be deemed to be involuntarily separated. If such employee is otherwise eligible, he shall be entitled, under the conditions specified, to receive the transitional severance benefit conferred by this chapter.

D. The ~~Department of Personnel and Training~~ shall report all involuntary separations in the executive branch of state government to the Department of Planning and Budget, which shall make an appropriate reduction, pursuant to ~~§ 2.1-394~~ 2.2-XXX, in the terminating agency's maximum employment level in preparing its executive budget for the next session of the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.22~~ 2.2-XXX. Eligibility for transitional severance benefit.

A. Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (~~§ 2.1-110~~ ~~Xref~~ et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to ~~subdivision A~~ ~~subdivisions 2, A-4~~ (except those persons specified in subsection C of this section), ~~A-7, A-15 or A-16~~ ~~of subsection A of § 2.1-116 2.2-XXX~~, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the State Lottery Department, (vii) who is employed by the Medical College of Virginia Hospitals and the University of Virginia Medical Center, or (viii) who is employed at a state educational institution as administrative or professional faculty (including presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, and (a) who, on or after January 1, 1995, is involuntarily separated, or is involuntarily separated on or after July 1, 1994, if at the time of involuntary separation had attained age fifty and had fifteen or more years of service, and (b) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ 51.1-300 et seq.) and officers elected by popular vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.23~~ 2.2-XXX. Transitional severance benefit conferred.

A. On his date of involuntary separation, an eligible employee with (i) two years' service or less to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary; (ii) three years through and including nine years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary plus one additional week of salary for every year of service over two years; (iii) ten years through and including fourteen years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to twelve weeks of salary plus two additional weeks of salary for every year of service over nine years; or (iv) fifteen years or more of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to two weeks of salary for every year of service, not to exceed thirty-six weeks of salary.

B. Transitional severance benefits shall be computed by the terminating agency's payroll department. Partial years of service shall be rounded up to the next highest year of service.

C. Transitional severance benefits shall be paid in the same manner as normal salary. In accordance with § 60.2-229, transitional severance benefits shall be allocated to the date of involuntary separation. The right of any employee who receives a transitional severance benefit to also receive unemployment compensation pursuant to § 60.2-100 et seq. shall not be denied, abridged, or modified in any way due to receipt of the transitional severance benefit; however, any employee who is entitled to unemployment compensation shall have his transitional severance benefit reduced by the amount of such unemployment compensation. Any offset to a

terminated employee's transitional severance benefit due to reductions for unemployment compensation shall be paid in one lump sum at the time the last transitional severance benefit payment is made.

D. For twelve months after the employee's date of involuntary separation, the employee shall continue to be covered under the (i) health insurance plan created in § ~~2-1-20.12.2-XXX~~ for the Commonwealth's employees, if he participated in such plan prior to his date of involuntary separation, and (ii) group life insurance plan administered by the Virginia Retirement System pursuant to Chapter 5 (§ 51.1-500 et seq.) of Title 51.1. During such twelve months, the terminating agency shall continue to pay its share of the terminated employee's premiums. Upon expiration of such twelve month period, the terminated employee shall be eligible to purchase continuing health insurance coverage under COBRA.

E. Transitional severance benefit payments shall cease if a terminated employee is reemployed or hired in an individual capacity as an independent contractor or consultant by any agency or institution of the Commonwealth during the time he is receiving such payments.

F. All transitional severance benefits payable pursuant to this section shall be subject to applicable federal laws and regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-146.24~~ 2.2-XXX. Retirement program:

A. In lieu of the transitional severance benefit provided in § ~~2-1-146.23~~ 2.2-XXX, any otherwise eligible employee who, on the date of involuntary separation, is also (i) a vested member of the Virginia Retirement System or the State Police Officers' Retirement System and (ii) at least fifty years of age, may elect to have the Commonwealth purchase on his behalf years to be credited to either his age or creditable service or a combination of age and creditable service, except that any years of credit purchased on behalf of a member of the Virginia Retirement System or the State Police Officers' Retirement System who is eligible for unreduced retirement shall be added to his creditable service and not his age. The cost of each year of age or creditable service purchased by the Commonwealth shall be equal to fifteen percent of the employee's present annual compensation. The number of years of age or creditable service to be purchased by the Commonwealth shall be equal to the quotient obtained by dividing (i) the cash value of the benefits to which the employee would be entitled under subsections A and D of § ~~2-1-146.23~~ 2.2-XXX by (ii) the cost of each year of age or creditable service. Partial years shall be rounded up to the next highest year. Deferred retirement under the provisions of subsection C of §§ 51.1-153 ~~and § 51.1-205-G, respectively~~, and disability retirement under the provisions of § 51.1-156 et seq. and § 51.1-209, shall not be available under this section.

B. In lieu of the (i) transitional severance benefit provided in § ~~2-1-146.23~~ 2.2-XXX and (ii) the retirement program provided in subsection A, any employee who is otherwise eligible may take immediate retirement pursuant to § 51.1-155.1.

C. The retirement allowance for any employee electing to retire under this section who, by adding years to his age, is between ages fifty-five and sixty-five, shall be reduced on the actuarial basis provided in subdivision A 2 of § 51.1-155.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-146.25~~ 2.2-XXX. Costs associated with this chapter; payment.

A. The terminating agency shall pay all costs associated with the provisions of this chapter within the twelve months following the date of an employee's involuntary separation, or within such shorter period as may be required. The costs shall be paid first from appropriations available to the terminating agency. If such sums are insufficient, then, if the agency's governing authority certifies that the agency is unable to pay the costs when due from appropriations available to the terminating agency without affecting the agency's ability to deliver essential

services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations.

B. As used ~~herein in this section~~, the "governing authority" shall mean (i) for an agency in the executive branch, the Governor or his designee; (ii) for an agency in the judicial branch, the Supreme Court of Virginia; (iii) and for an agency in the legislative branch or an independent agency, the appropriate collegial body.

C. Any treasury loan made pursuant to subsection A shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the ~~Appropriations Act~~ appropriation act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-116.26~~ 2.2-XXX. Review of program.

The Senate Committee on Finance ~~Committee~~ and the House Committee on Appropriations ~~Committee~~ shall periodically review the transitional severance program established by this chapter, and ~~shall~~ report their findings to the Governor and the members of the General Assembly every three years beginning on July 1, 1998 and ~~every three years thereafter~~.

DRAFTING NOTE: Technical corrections only.

SUBTITLE II.
ADMINISTRATION OF STATE GOVERNMENT.

Part A.

General Provisions.

Chapter X.

State Holidays and Other Special Days.

CHAPTER DRAFTING NOTE: After review of this chapter, the Virginia Code Commission has adopted a policy that "special days" not be set out in the Code of Virginia.

§ ~~2-1-24~~ 2.2-XXX. Legal holidays.

It is the policy of the Commonwealth to fix and set aside certain days in the calendar year as legal holidays for the people of Virginia ~~to honor and commemorate such holidays so established~~. In each year, the following days are designated as legal holidays:

January 1 - New Year's Day.

The third Monday in January - Lee-Jackson-King Day to honor Robert Edward Lee (1807-1870), Thomas Jonathan (Stonewall) Jackson (1824-1863), and Martin Luther King, Jr., (1929-1968), defenders of causes.

The third Monday in February - George Washington Day to honor George Washington (1732-1799), the first President of the United States ~~of America~~.

The last Monday in May - Memorial Day to honor all persons who made the supreme sacrifice in giving their lives in defense of Virginia and the United States ~~of America~~ in the following wars and engagements and otherwise: Indian Uprising (1622), French and Indian Wars (1754-1763), Revolutionary War (1775-1783), War of 1812 (1812-1815), Mexican War (1846-1848), War Between the States (1861-1865), Spanish-American War (1898), World War I (1917-1918), World War II (1941-1945), Korean War (1950-1953), Vietnam War (1965-1973), and Operation Desert Shield-Desert Storm (1990-1991). On this day all flags, national, state, and local, shall be flown at half staff or mast to honor and acknowledge respect for those who made the supreme sacrifice.

July 4 - Independence Day to honor the signing of the Declaration of Independence.

The first Monday in September - Labor Day to honor all people who work ~~for a livelihood~~ in Virginia.

The second Monday in October - Columbus Day and Yorktown Victory Day to honor Christopher Columbus (1451-1506), a discoverer of the Americas, and the final victory at Yorktown on October 19, 1781, in the Revolutionary War.

November 11 - Veterans Day to honor all persons who served in the Armed Forces of Virginia and the United States ~~of America~~ in the following wars and engagements and otherwise: Indian Uprising (1622), French and Indian Wars (1754-1763), Revolutionary War (1775-1783), War of 1812 (1812-1815), Mexican War (1846-1848), War Between the States (1861-1865), Spanish American War (1898), World War I (1917-1918), World War II (1941-1945), Korean War (1950-1953), Vietnam War (1965-1973), and Operation Desert Shield-Desert Storm (1990-1991).

The fourth Thursday in November and the Friday next following - Thanksgiving Day to honor and give thanks in each person's own manner for the blessings bestowed upon the people of Virginia and honoring the first Thanksgiving in 1619.

December 25 - Christmas Day.

Whenever any of such days falls on Saturday, the Friday next preceding such day, or whenever any of such days falls on Sunday, the Monday next following such day, and any day so appointed by the Governor of this the Commonwealth or the President of the United States, shall be a legal holiday as to the transaction of all business.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-22~~ 2.2-XXX. Acts, business transactions, legal proceedings, etc., on holidays valid.

No contract made, instrument executed, or act done on any of the legal holidays named in ~~§ 2.1-24~~ 2.2-XXX, or on any Saturday, ~~whether before or after twelve o'clock, noon,~~ shall be thereby rendered invalid, ~~and nothing.~~ Nothing in ~~such section~~ § 2.2-XXX (2.1-21) shall be construed to prevent or invalidate the entry, issuance, service or execution of any writ, summons, confession, judgment, order or decree, or other legal process whatever, or the session of the proceedings of any court or judge on any of ~~such the~~ legal holidays or Saturdays, ~~either before or after twelve o'clock, noon,~~ nor to prevent any bank, banker, banking corporation, firm or association from keeping their doors open and transacting any lawful business on any of ~~such the~~ legal holidays or Saturdays.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-23~~. Saturday closing of banks.

~~It shall be lawful for any bank as defined in § 6.1-4, including national banking associations and federal reserve banks, to permit any one or more or all of its offices to remain closed on any one or more or all Saturdays, as the bank, by resolution of its board of directors, may from time to time determine. Any Saturday on which an office of a bank shall remain closed, as herein permitted, shall as to such office, constitute a legal holiday, and any act authorized, required or permitted to be performed at, by or with respect to any such office on a Saturday on which the office is so closed, may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.~~

DRAFTING NOTE: Technical corrections only. This section has been relocated to Title 6.1 as § 6.1-XX.

~~§ 2.1-24.1~~ 2.2-XXX. Observance of Yorktown Day.

The nineteenth day of October of each year shall be recognized and celebrated as Yorktown Day throughout the Commonwealth. The observance of Yorktown Day shall not be considered a paid state holiday.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-24.2~~ 2.2-XXX. Observance of Motherhood and Apple Pie Day in recognition of the need to prevent infant mortality.

A. ~~January 26~~ The twenty-sixth day of January of each year shall be recognized and celebrated as Motherhood and Apple Pie Day throughout the Commonwealth. Upon this date, all citizens of the Commonwealth are urged to reflect upon the need to continue efforts to reduce the state's infant mortality rate to preserve our heritage and to ensure the health and well-being of future generations.

B. On the third Thursday of every session of the Virginia General Assembly, the General Assembly shall give proper recognition to Motherhood and Apple Pie Day in the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-24~~ 2.2-XXX. Display of flags on Mother's Day.

The Governor ~~is authorized to~~ may issue annually a proclamation calling upon state officials to display the flag of the United States and of the Commonwealth on all public buildings, and the people of the Commonwealth to display such flags at their homes and other suitable places on the second Sunday in May, known as "Mother's Day," as a public expression of love and reverence for the mothers of ~~this the~~ the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-24.2~~ 2.2-XXX. Commonwealth Day of Prayer.

The first Thursday in May of each year shall be designated the "Commonwealth Day of Prayer" and shall be a day on which the people of ~~this the~~ the Commonwealth may turn to God in prayer and meditation and may celebrate the religious freedom secured for them by the laws of ~~this the~~ the Commonwealth and nation.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-25~~ 2.2-XXX. Arbor Day.

The second Friday in April of each year shall be designated and known as "Arbor Day."

DRAFTING NOTE: Technical corrections only.

~~§-2.1-26~~ 2.2-XXX. Dogwood Day.

The third Saturday in April of each year shall be known and designated as "Dogwood Day."

DRAFTING NOTE: Technical corrections only.

~~§-2.1-27~~ 2.2-XXX. First Lady's Day in Virginia.

Martha Washington's birthday, ~~June 2, 1960, and the same day~~ the second day of June of each ~~succeeding year~~ is shall be designated as First Lady's Day in Virginia in special tribute to Martha Washington as America's first First Lady and to each of her successors as First Ladies of this Nation; ~~and upon~~ Upon this date, in perpetuity, all citizens, groups and appropriate agencies in and of the Commonwealth of Virginia and of the ~~Nation~~ nation are urged to reflect upon and give appropriate recognition to the magnificent contribution of this Nation's First Ladies to the heritage of the United States ~~of America~~.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-27.2~~ 2.2-XXX. Pearl Harbor Remembrance Day.

~~The seventh day of December 7, 1983, and the same day of each succeeding year,~~ is shall be designated as Pearl Harbor Remembrance Day in the Commonwealth in special tribute to those members of our armed forces who lost their lives, and also to those who survived, the attack on Pearl Harbor, Territory of Hawaii, December 7, 1941. Upon this date, in perpetuity, all citizens of the Commonwealth and the nation are urged to pay homage to the members of our armed forces for the manner in which they bore the attack.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-27.3~~ 2.2-XXX. Vietnam War Memorial Dedication and Veterans' Recognition Day.

The second Saturday of November ~~is of each year shall be~~ designated as Vietnam War Memorial Dedication Day and Veterans' Recognition Day in the Commonwealth, to honor in perpetuity the men and women who have served their country as members of the armed forces during the Vietnam Conflict.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.6~~ 2.2-XXX. Day of recognition for early childhood and day-care providers and professionals.

The twenty-second day of October of each year shall be designated as a day of recognition for early childhood and day-care providers and professionals to acknowledge the contributions of and pay tribute to early childhood and day-care providers and professionals who serve the children of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.7~~ 2.2-XXX. Day of recognition for bone marrow donor programs.

The eighth day of April of each year shall be designated as a day of recognition for bone marrow donor programs to acknowledge the critical value of these initiatives in facilitating bone marrow transplant therapy and to increase awareness among the citizens of the Commonwealth regarding opportunities to participate in these programs as donors and volunteers.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.8~~ 2.2-XXX. Virginia Drug Free Day.

The Saturday of the last week in October of each year shall be designated and known as "Virginia Drug Free Day" to recognize and support education about the dangers of drug abuse, the penalties for drug crimes, the availability of substance abuse programs, and the need to eradicate drug abuse in Virginia's communities.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.10~~ 2.2-XXX. Bill of Rights Day.

The fifteenth day of December ~~15~~ of each year shall be designated and known as the "Bill of Rights Day" in recognition of the ratification of the first ten amendments to the United States Constitution.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-24.4~~ 2.2-XXX. Citizenship Day and Constitution Week.

The Governor shall annually issue a proclamation setting ~~apart~~ the seventeenth day of September as Citizenship Day and September seventeen through twenty-three as Constitution Week and recommending that they be observed by the Commonwealth with appropriate exercises in the schools and otherwise so that the eventful day on which the Constitution of the United States was formally adopted may forever remain enshrined in the hearts and minds of all citizens and so that they may be reminded on that date annually of the blessings of liberty which they enjoy by the adoption of the United States Constitution, the Bill of Rights and all other amendments thereto.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.11~~ 2.2-XXX. Landscape Architecture Week in Virginia.

The second full week of April ~~is of each year shall be~~ designated as Landscape Architecture Week in Virginia in recognition of the value and importance of the profession of landscape architecture, which encourages environmental stewardship, promotes energy conservation, enhances the preservation of the Commonwealth's historical heritage, and ensures that the place known as Virginia is preserved through wise design, management, and maintenance of its landscape.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-27.1~~ 2.2-XXX. Virginia Championship Applebutter Making Contest.

The Virginia Championship Applebutter Making Contest, held in Winchester in conjunction with the Rotary Club's Apple Harvest Festival, shall be the third week in September of each year.

DRAFTING NOTE: Technical corrections only.

§ 2-1-28 2.2-XXX. Virginia and American History Month.

~~That period of time between January 19 and nineteenth through February 22, 1961, twenty-second both inclusive, and the same period of time of each succeeding year is shall be~~ designated as Virginia and American History Month in special tribute to the founders, builders, and preservers of ~~this the~~ Commonwealth and Nation.

DRAFTING NOTE: Technical corrections only.

§ 2-1-27.4. American Indian Month and Day of Appreciation.

The month of November ~~is shall be~~ designated as " American Indian Month" in Virginia, to honor the culture and heritage of the American Indian, to recognize the historic and continuing contribution of that heritage to American society, and in particular to commemorate the special place of the tribes native to Virginia in the life and history of ~~this the~~ Commonwealth. Further, the Wednesday immediately preceding Thanksgiving of each year is designated a special Day of Appreciation for American Indians residing in the Commonwealth ~~of Virginia.~~

DRAFTING NOTE: Technical corrections only.

§ 2-1-27.9 2.2-XXX. Month for Children in Virginia.

The month of May ~~is shall be~~ designated as the "Month for Children" in Virginia to focus on children's special contributions to family, school, and community; to counter the manifold ills that afflict children in the Commonwealth, the nation, and the world; and to encourage the citizens of Virginia to rededicate themselves and to redouble their efforts to improve the lives and ensure the futures of children everywhere.

DRAFTING NOTE: Technical corrections only.

§ 2-1-27.5 2.2-XXX. Virginia Mushroom Festival.

The Annual Front Royal and Warren County Mushroom Festival, in conjunction with the Appalachian Mushroom Growers Association's annual meeting, is ~~hereby~~ designated as the Virginia Mushroom Festival, and ~~will shall~~ be designated as the official state mushroom festival within the Commonwealth ~~of Virginia.~~

DRAFTING NOTE: Technical corrections only.

§ 2-1-29 2.2-XXX. Office hours to be in accordance with executive orders of Governor.

The offices of all state officers, departments, boards, bureaus, commissions, divisions and institutions in the executive branch of state government required by law to maintain regular business quarters at the seat of government shall ~~hereafter~~ be kept open for the transaction of public business in accordance with ~~such~~ executive order ~~or orders of issued by~~ the Governor ~~as may be issued from time to time.~~

This section shall not apply to the offices of the legislative and judicial departments of the state government.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Interpreters for the Deaf in Agency Proceedings.

~~§ 2.1-570~~ 2.2-XXX. Definitions.

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

4. "Agency" means any state board, department, commission, agency or other unit of state government except a county, city, town or any agency thereof.

2. "Deaf person" means any person whose hearing is so seriously impaired as to prohibit the person from understanding oral communications spoken in a normal conversational tone.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-571~~ 2.2-XXX. Agency proceedings and determinations; application for licenses and services.

A. In the case of any agency proceeding or determination as to whether there is a violation of law or regulation by a deaf person or whether such person may obtain or retain a license or other right or benefit, and when the agency or deaf person requests an interpreter for the deaf, ~~such the~~ agency shall request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter or shall appoint such an interpreter from a list of qualified interpreters supplied by the Department to interpret the proceedings to the deaf person and to interpret any testimony the deaf person may give.

B. Whenever a deaf person applies for or receives any license, service, assistance or other right or benefit provided by an agency, the agency shall either request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter for the deaf or appoint such an interpreter from the list of qualified interpreters maintained by the Department to assist the deaf person in communicating with agency personnel.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-571 and subsection B is § 2.1-572.

~~§ 2.1-572. Applications for licenses, services, assistance, etc.~~

~~Whenever a deaf person applies for or is receiving any license, service, assistance or other right or benefit provided by an agency, the agency shall either request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter for the deaf or appoint such an interpreter from the list of qualified interpreters maintained by the Department to assist the deaf person in communicating with agency personnel.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-571) supra.

~~§ 2.1-573~~ 2.2-XXX. How interpreters paid.

An interpreter for the deaf appointed pursuant to ~~§ 2.1-571~~ 2.2-XXX ~~or § 2.1-572~~ shall be paid by the agency out of such state and federal funds as may be available for the purpose or, if the agency has insufficient funds to pay an interpreter, the Virginia Department for the Deaf and Hard-of-Hearing may appoint and pay an interpreter from ~~such the~~ funds as it may have available for the purpose.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Information Technology Access Act.

~~§ 2.1-807~~ 2.2-XXX. Findings; policy.

A. The General Assembly finds that (i) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology; (ii) use of interactive visual display

terminals by state and state-assisted organizations is becoming a widespread means of access for employees and the public to obtain information available electronically, but nonvisual access, whether by speech, Braille, or other appropriate means has been overlooked in purchasing and deploying the latest information technology; (iii) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment; (iv) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is possible by both visual and nonvisual means; and (v) the goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that the segments of society with particular needs (including individuals unable to use visual displays) will not be left out of the information age.

B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) individuals who are blind or visually impaired have the right to full participation in the life of the Commonwealth, including the use of advanced technology which is provided by such covered entities for use by employees, program participants, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be adaptable for access by individuals who are blind or visually impaired. The implementation of nonvisual access technology under this Act chapter shall be determined on a case-by-case basis as the need arises.

DRAFTING NOTE: Technical corrections only.

§ 2-1-808 2.2-XXX. Definitions.

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

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public ~~colleges and universities~~ institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"Telecommunications" means the transmission of information, images, pictures, voice or data by radio, video, or other electronic or impulse means, but shall not include public broadcasting services as defined in § 2-1-563-27:2 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

§ 2-1-809 2.2-XXX. Assurance of nonvisual access.

In general, the head of each covered entity shall ensure that information technology equipment and software used by blind or visually impaired employees, program participants, or members of the general public (i) provide access (including interactive use of the equipment and services) which is equivalent to that provided to

individuals who are not blind or visually impaired; (ii) are designed to present information (including prompts used for interactive communications) in formats adaptable to both visual and nonvisual use; and (iii) have been purchased under a contract which includes the technology access clause required pursuant to ~~§ 2-1-810 2.2-XXX~~.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-810 2.2-XXX~~. Procurement requirements.

A. The technology access clause specified in clause (iii) of ~~§ 2-1-809 2.2-XXX~~ shall be developed by the Secretary of Technology ~~created pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty three (1998)~~, and shall require compliance with the nonvisual access standards established in subsection B of this section. The clause shall be included in all future contracts for the procurement of information technology by, or for the use of, entities covered by this Act chapter on or after the effective date of this Act chapter.

B. At a minimum, the nonvisual access standards shall include the following: (i) the effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-811 2.2-XXX~~. Implementation.

A. The head of any covered entity may, with respect to nonvisual access software or peripheral devices, approve the exclusion of such the technology access clause only to the extent that the cost of such the software or devices for the covered entity would increase the total cost of the procurement by more than five percent. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Technology ~~created pursuant to Executive Order Nine (1998), as amended by Executive Order Thirty three (1998)~~.

B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual access when the information technology is being used exclusively by individuals who are not blind or visually impaired shall not be required.

C. Notwithstanding the provisions of subsection B, the applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

D. Compliance with this Act chapter for information technology purchased prior to September 1, 2000, shall be achieved at the time of procurement of an upgrade or replacement of the existing equipment or software.

DRAFTING NOTE: Technical corrections only.

Chapter X.

State Government Volunteers Act.

~~§ 2.1-554. Declaration—Short title; declaration of legislative intent; short title.~~

A. This chapter may be cited as the Virginia State Government Volunteers Act.

B. Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others, the Commonwealth would be wise to make use of volunteers in state service wherever practically possible. Effective use of volunteers in state service, however, requires that state agencies be provided guidelines for the development of volunteer programs and the utilization of volunteers. The General Assembly intends by this chapter to assure that people of Virginia may derive optimal benefit from volunteers, and that the time and talents of volunteers in state service may be put to their best use.

~~This chapter may be cited as the Virginia State Government Volunteers Act.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-555 2.2-XXX. Definitions.~~

As used in this chapter, the following terms shall have the following meanings unless another may clearly be inferred from the content the context requires a different meaning:

1—"Volunteer" shall mean—means any person who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the Commonwealth;

2—"Regular-service volunteer" shall mean—means any person engaged in specific voluntary service activities on an ongoing or continuous basis;

3—"Occasional-service volunteer" shall mean—means any person who provides a one-time or occasional voluntary service;

4—"Material donor" shall mean—means any person who, without financial gain, provides funds, materials, employment, or opportunities for clients of agencies, instrumentalities, or political subdivisions of the Commonwealth;

5—"Department" shall mean and include—includes all departments and divisions enumerated in § 2.1-1.1 established in the executive branch of state government and local agencies under the jurisdiction or supervision thereof, and for the purposes of §§ ~~2.1-556 2.2-XXX, 2.1-557.1-2.2-XXX and 2.1-558 2.2-XXX~~, shall include political subdivisions of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-556. Scope of chapter; status of volunteers; reimbursements.~~

A. Every department, through its executive head, is hereby authorized to—may develop volunteer programs and accept the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs carried out or administered by that department.

B. Volunteers recruited, trained, or accepted by any department shall, to the extent of their voluntary service, be exempt from all provisions of law relating to state employment, hours of work, rate of compensation, leave time, and employee benefits except those enumerated in or consistent with ~~§ 2.1-558 2.2-XXX~~. Volunteers shall, however, at all times comply with applicable work rules.

C. Every department utilizing the services of volunteers is hereby authorized to—may provide volunteers with such incidental reimbursements as are consistent with the provisions of ~~§ 2.1-558 2.2-XXX~~, including transportation costs, lodging, and subsistence, as the department deems appropriate to assist volunteers in performing their duties.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-557~~ 2.2-XXX. Responsibilities of departments.

Each department utilizing the services of volunteers shall:

1. Take ~~such actions as are~~ necessary and appropriate to develop meaningful opportunities for volunteers involved in its programs and to improve public services;
2. Develop written rules governing the recruitment, screening, training, responsibility, utilization and supervision of volunteers;
3. Take ~~such actions as are~~ necessary to ensure that volunteers and paid staff understand their respective duties and responsibilities, their relationship to each other, and their respective roles in fulfilling the objectives of their department;
4. Take ~~such actions as are~~ necessary and appropriate to ensure a receptive climate for citizen volunteers;
5. Provide for the recognition of volunteers who have offered exceptional service to the Commonwealth; and
6. Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience established by the Department of Personnel and Training.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-557.1~~ 2.2-XXX. Solicitation of aid from community.

Each department ~~shall be authorized~~ may, through ~~such the officer or officers, agent or agents, or employee or employees~~ primarily responsible for the utilization of volunteers in that department, ~~to solicit~~ volunteers and voluntary assistance for that department from the community.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-558~~ 2.2-XXX. Volunteer benefits.

- A. Meals may be furnished without charge to regular-service volunteers, provided scheduled work assignments extend over an established meal period. Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.
- B. Lodging, if available, may be furnished temporarily, at no charge, to regular-service volunteers.
- C. Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Rates or amounts of such reimbursement shall not exceed those provided in ~~§ 14.1-5~~ 2.2-XXX (2.1-20.8). Volunteers may utilize state vehicles in the performance of their duties, subject to those ~~rules and regulations~~ governing use of state vehicles by paid staff.
- D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

DRAFTING NOTE: Technical corrections only.

Part B.
Transaction of Public Business.
Chapter X.
Virginia Freedom of Information Act.

§ 2.1-340 2.2-XXX. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or public official specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and public officials shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body which conflicts with the provisions of this chapter shall be void.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-340 and subsection B is § 2.1-340.1.

§ 2.1-340.1. Policy of chapter.

~~By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or public official specifically elects to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.~~

~~The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.~~

All public bodies and public officials shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body which conflicts with the provisions of this chapter shall be void.

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-340) supra.

~~§ 2.1-344~~ 2.2-XXX. Definitions.

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

"Closed meeting" means a meeting from which the public is excluded.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to ~~§ 2.1-343.1~~ 2.2-XXX, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body; any authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include any committee, ~~or subcommittee, or other entity~~ however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee ~~or subcommittee or entity~~ because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

"Public records" means all writings and recordings which consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

"Scholastic records" means those records containing information directly related to a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-344.1~~ 2.2-XXX. Notice of chapter.

A. Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment.

B. Public officials shall read and familiarize themselves with the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-341.2~~ 2.2-XXX. Public bodies and records to which chapter inapplicable; voter registration and election records.

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

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by ~~§ 2.1-342~~ 2.2-XXX and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to ~~§ 2.1-753~~ 2.2-XXX; and

4. The Virginia State Crime Commission.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-342~~ 2.2-XXX. Public records to be open to inspection; procedure for requesting records and responding to request; charges.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body which is subject to this chapter and which is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, make one of the following responses:

1. The requested records will be provided to the requester.

2. The requested records will be entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with reasonable particularity the volume and subject matter of withheld records, and (iii) cite, as to each category of withheld records, the specific Code section which authorizes the withholding of the records.

3. The requested records will be provided in part and withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall (i) be in writing, (ii) identify with reasonable particularity the subject matter of withheld portions, and (iii) cite, as to each category of withheld records, the specific Code section

which authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall be in writing and specify the conditions which make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the three preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsections G and H, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

H. Every public body of state government shall compile, and annually update, an index of computer databases which contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by

the Director of the Department of Information Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-342:04 2.2-XXX~~. Exclusions to application of chapter.

A. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records of all investigations of applications for licenses and permits, and all licensees and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

2. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

3. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of eighteen years. For scholastic records of students under the age of eighteen years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

4. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is eighteen years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

5. Medical and mental records, except that such records may be personally reviewed by the subject person or a physician of the subject person's choice. However, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in ~~§ 2.1-342~~ 2.2-XXX. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a public institution of higher education, the right of access may be asserted by the subject person.

6. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to ~~§ 2.1-39.4~~ 2.2-XXX.

7. Written advice of the county, city and town attorneys to their local government clients and any other records protected by the attorney-client privilege.

8. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter which is properly the subject of a closed meeting under ~~§ 2.1-344~~ 2.2-XXX.

9. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

10. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

11. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

12. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

13. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

14. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2-4-344 2.2-XXX. However, no record which is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

15. Reports, documentary evidence and other information as specified in §§ 2-4-373-2 2.2-XXX and 63.1-55.4.

16. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or § 62.1-134.1.

17. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

18. Vendor proprietary information software which may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

19. Financial statements not publicly available filed with applications for industrial development financings.

20. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

21. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

22. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations,

used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

23. Information which was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

24. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

25. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

26. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Personnel and Training. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

27. Fisheries data which would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

28. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

29. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under ~~§ 2.1-639.40~~ 2.2-XXX or of formulating advisory opinions to members on standards of conduct, or both.

30. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

31. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (~~§ 2.1-714~~ 2.2-XXX et seq.). However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

32. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

33. Personal information, as defined in ~~§ 2.1-379~~ 2.2-XXX, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to §

36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

34. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, 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.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article ~~5.4 X~~ (§ ~~2.1-526.1~~ 2.2-XXX et seq.) of Chapter ~~32 X~~ of this title, or by any county, city, or town.

41. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

42. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

43. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; or (iv) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records

disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

44. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

45. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

46. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

47. In the case of corporations organized by the Virginia Retirement System (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate, the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

48. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

49. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

50. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

51. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

52. Information required to be provided pursuant to § 54.1-2506.1.

53. Confidential information designated as provided in subsection D of ~~§ 41-52.2-XXX~~ as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of ~~§ 41-46.2-2-XXX~~.

54. All information and records acquired during a review of any child death by the State Child Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local or regional child

fatality review team established pursuant to § 32.1-283.2, and all information and records acquired during a review of any death by a family violence fatality review team established pursuant to § 32.1-283.3.

55. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

56. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible public entity for purposes related to the development of a qualifying transportation facility; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995.

57. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public; or records of emergency service agencies to the extent that such records contain specific tactical plans relating to antiterrorist activity.

58. All records of the University of Virginia or the University of Virginia Medical Center which contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center.

59. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

60. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented.

61. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made

public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997 where such information was provided pursuant to a promise of confidentiality.

62. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority which relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

63. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

64. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

65. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

66. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

67. Personal information, as defined in ~~§ 2.1-379~~ 2.2-XXX, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

68. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

69. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security or employee safety of (i) the Virginia Museum of Fine Arts or any of its warehouses; (ii) any government store or warehouse controlled by the Department of Alcoholic Beverage Control; (iii) any courthouse, jail, detention or law-enforcement facility; or (iv) any correctional or juvenile facility or institution under the supervision of the Department of Corrections or the Department of Juvenile Justice.

70. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

B. Neither any provision of this chapter nor any provision of Chapter ~~26~~ X (~~§ 2-1-377-2.2-XXX~~ et seq.) of this title shall be construed as denying public access to (i) contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 4 of subsection A; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

C. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including, but not limited to, his rights to call for evidence in his favor in a criminal prosecution.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-342-2~~ 2.2-XXX. Disclosure of criminal records; limitations.

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

"Law-enforcement official" includes the attorneys for the Commonwealth.

B. Law-enforcement officials shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement officials relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Complaints, memoranda, correspondence and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity; and

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment.

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this section except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;

2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or

3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-343 2.2-XXX~~. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in ~~§ 2-1-344 2.2-XXX~~.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in §§ ~~2-1-343-4 2.2-XXX~~, ~~2-1-343-4:4 2.2-XXX~~ or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted; in the office of the clerk of the public body, or in the case of a public body which has no clerk, in the office of the chief administrator. Publication of meeting notices by electronic means shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address (if available), and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim study commissions and committees, including the Virginia Code Commission, (iii) study committees or commissions appointed by the Governor, or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board. Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter. Audio or audio/visual records of open meetings shall be public records which shall be produced in accordance with § 2.1-342.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-343-1~~ 2.2-XXX. Electronic communication meetings.

A. It shall be a violation of this chapter for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government or any committee thereof to conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. For purposes of this section, "public body" means any public body of the Commonwealth, but excludes any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government.

State public bodies may conduct any meeting, except closed meetings held pursuant to ~~§ 2.1-344~~ 2.2-XXX, wherein the public business is discussed or transacted through telephonic or video means. Where a quorum of a public body of the Commonwealth is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through telephonic means provided such participation is available to the public.

C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the locations for the meeting. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video

broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Thirty-day notice shall not be required for telephonic or video meetings continued to address an emergency as provided in subsection F or to conclude the agenda of a telephonic or video meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment.

The public body shall provide the Director of the Department of Information Technology with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials which will be distributed to members of the public body and which have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by telephonic or video means shall be recorded as required by ~~§ 2.1 343~~ 2.2-XXX. Votes taken during any meeting conducted through telephonic or video means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium is used, or an audio/visual recording, if the meeting is held by video means. The recording shall be preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any public body which meets by telephonic or video means shall file with the Director of the Department of Information Technology by July 1 of each year a statement identifying the total number of meetings held during the preceding fiscal year, the dates on which the meetings were held and the number and purpose of those conducted through telephonic or video means.

F. Notwithstanding the limitations imposed by subsection E, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The nature of the emergency shall be stated in the minutes.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1 343.1:1. (Effective until July 1, 2000) Meetings of Board of Visitors of the University of Virginia.~~

~~A. Members of the Board of Visitors of the University of Virginia may participate by video, telephone, or video and telephone at their meetings or meetings of their committees, where (i) at least two thirds of the membership of such board or its committees is physically assembled at its regular or primary location, (ii) any such meeting is duly convened with advance public notice in accordance with § 2.1 343, and (iii) a speaker phone is provided where at least two thirds of such membership is physically present. No more than twenty five percent of all meetings held annually by such board or its committee, including meetings of any ad hoc committees, may be held by telephonic or video means.~~

~~B. Where at least two thirds of such board or its committees is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such board or its committees may participate in the meeting through telephonic means provided the public is permitted to hear and observe such participation. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.~~

~~C. Except as otherwise provided in this section, all meetings shall be conducted in accordance with this chapter. Any meeting conducted pursuant to this section shall not be considered an "electronic communication meeting" for purposes of § 2.1 343.1, provided such board or its committees comply with the provisions of~~

~~subsection D of § 2-1-343.1, requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. Votes taken by those participating by telephone or video shall also be publicly recorded by name in roll-call fashion and shall be included in the minutes, which shall be approved by such board or its committees in public session.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete since it will expire July 1, 2000 which will be before the effective date of this title revision.

~~§ 2-1-343.2 2.2-XXX.~~ Transaction of public business other than by votes at meetings prohibited.

Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-344 2.2-XXX.~~ Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters concerning any student of any public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation which has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a public institution of higher education shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations or other records excluded from this chapter pursuant to § 2.1-342.01 A 11.

12. Discussion, consideration or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a 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 an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to ~~§ 2.1-342.01 A 5~~ subdivision 5 of subsection A of § 2.2-XXX, and those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation or Department of Health Professions conducted pursuant to ~~§ 9-6.14:11~~ 2.2-XXX or ~~§ 9-6.14:12~~ 2.2-XXX during which the board deliberates to reach a decision.

16. Discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivisions 37 and 38 of subsection A of ~~§ 2-1-342.04~~ 2.2-XXX.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Discussion, consideration, review and deliberations by local community corrections resources boards regarding the placement in community diversion programs of individuals previously sentenced to state correctional facilities.

19. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

20. Discussion of plans to protect public safety as it relates to terrorist activity.

21. In the case of corporations organized by the Virginia Retirement System, discussion or consideration of (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors and (ii) the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

22. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

23. Those portions of meetings of the University of Virginia Board of Visitors and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center, including its business development or marketing strategies and its activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center.

24. In the case of the Medical College of Virginia Hospitals Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

25. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

26. Meetings or portions of meetings of the Board of the Virginia Higher Education Tuition Trust Fund wherein personal information, as defined in § ~~2-1-379~~ 2.2-XXX, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least thirty days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-344.1~~ 2.2-XXX. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion which (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § ~~2.1-343~~ 2.2-XXX or subsection A of § ~~2.1-344~~ 2.2-XXX. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of subdivisions (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and

any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic which is a subject of the meeting.

G. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by ~~§ 2-1-343~~ 2.2-XXX.

H. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-346~~ 2.2-XXX. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the general district court or the court of record of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied. Failure by any person to request and receive notice of the time and place of meetings as provided in ~~§ 2-1-343~~ 2.2-XXX shall not preclude any person from enforcing his or her rights and privileges conferred by this chapter.

B. Any petition alleging denial of rights and privileges conferred by this chapter by a board, bureau, commission, authority, district or agency of the state government or by a standing or other committee of the General Assembly, shall be addressed to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. The petition for mandamus or injunction shall be heard within seven days of the date when the same is made. However, any petition made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorney's fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-346.1~~ 2.2-XXX. Violations and penalties.

In a proceeding commenced against members of public bodies under ~~§ 2-1-346 2.2-XXX~~ for a violation of ~~§§ 2-1-342 2.2-XXX, 2-1-342.01 2.2-XXX, 2-1-342.2 2.2-XXX, 2-1-343 2.2-XXX, 2-1-343.1 2.2-XXX, 2-1-343.2 2.2-XXX, 2-1-344 2.2-XXX~~ or ~~§ 2-1-344.1 2.2-XXX~~, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$100 nor more than \$1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$500 nor more than \$2,500.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Privacy Protection Act of 1976.

§ 2-1-377 2.2-XXX. Short title: findings; principles of information practice.

A. This chapter may be cited as the "Privacy Protection Act of 1976."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;

2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. An individual's opportunities to secure employment, insurance, credit and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Record-keeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.

2. Information shall not be collected unless the need for it has been clearly established in advance.

3. Information shall be appropriate and relevant to the purpose for which it has been collected.

4. Information shall not be obtained by fraudulent or unfair means.

5. Information shall not be used unless it is accurate and current.

6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.

9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-377 and subsections B and C are § 2.1-378.

~~§ 2.1-378. Findings; principles of information practice.~~

~~A. The General Assembly finds:~~

~~1. That an individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;~~

~~2. That the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;~~

~~3. That an individual's opportunities to secure employment, insurance, credit and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and~~

~~4. That in order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.~~

~~B. Record-keeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:~~

~~1. There shall be no personal information system whose existence is secret.~~

~~2. Information shall not be collected unless the need for it has been clearly established in advance.~~

~~3. Information shall be appropriate and relevant to the purpose for which it has been collected.~~

~~4. Information shall not be obtained by fraudulent or unfair means.~~

~~5. Information shall not be used unless it is accurate and current.~~

~~6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.~~

~~7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.~~

~~8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.~~

~~9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.~~

~~10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B and C in proposed § 2.2-XXX (existing § 2.1-377) supra.

~~§ 2.1-379 2.2-XXX. Definitions.~~

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

1. ~~The term "information"~~ "Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer networks and the global information system known as the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

2. ~~The term "personal"~~ "Personal information" means all information that describes, locates or indexes anything about an individual including his real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. ~~The term does "Personal information"~~ shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

3. ~~The term "data"~~ "Data" subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

4. ~~The term "disseminate"~~ "Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

5. ~~The term "purge"~~ "Purge" means to obliterate information completely from the transient, permanent, or archival records of an organization.

6. ~~The term "agency"~~ "Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns and regional governments and the departments and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-384 2.2-XXX.~~ Systems to which chapter inapplicable.

The provisions of this chapter shall ~~not be applicable~~ apply to personal information systems:

1. Maintained by any court of ~~this the~~ the Commonwealth;
2. Which may exist in publications of general circulation;
3. Contained in the Criminal Justice Information System as defined in §§ ~~9-184 9.1-XXX~~ 9.1-XXX through ~~9-196 9.1-XXX~~;
4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;
5. Maintained by agencies concerning persons required by law to be licensed ~~by law~~ in this the Commonwealth to engage in the practice of any ~~professional occupation~~ profession, in which case the names and addresses of persons applying for or possessing ~~any such the~~ license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the

sole purpose of providing ~~such the~~ licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided ~~such the~~ disseminating agency is reasonably assured that the use of ~~such the~~ information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission and the Department of Alcoholic Beverage Control;

7. Maintained by the Department of State Police; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and which deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4;

9. Maintained by the Virginia Economic Development Partnership in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Economic Development Partnership is reasonably assured that the use of ~~such the~~ information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Division of Forensic Science of the Department of Criminal Justice Services, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that ~~§-9-196.14 9.1-XXX~~ may be applicable apply;

11. Maintained by the Department of Corrections which deal with investigations and intelligence gathering by persons acting under the provisions of § 53.1-16; and

12. Maintained by the Department of the State Internal Auditor or internal audit departments of state agencies or institutions which deal with communications and investigations relating to the State Employee Fraud, Waste and Abuse Hotline.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-384.1. Exception for state retirement systems.~~

~~Notwithstanding the provisions of § 2.1-380, the Virginia Retirement System may disseminate information as to the retirement status or benefit eligibility of any employee covered by the Virginia Retirement System, the Judicial Retirement System or the State Police Officers Retirement System, to the chief executive officer or personnel officers of the state or local agency by which he is employed.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-380) infra.

~~§ 2.1-380 2.2-XXX. Administration of systems including personal information; exception for state retirement systems.~~

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ~~assure~~ensure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed, ~~provided this~~. This subdivision shall not apply, however, to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection H of § 63.1-248.6-H;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security;

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects which is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate information as to the retirement status or benefit eligibility of any employee covered by the Virginia Retirement System, the Judicial Retirement System or the State Police Officers Retirement System, to the chief executive officer or personnel officers of the state or local agency by which he is employed.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-380 and subsection B is § 2.1-384.1.

~~§ 2.1-380.1 2.2-XXX. Same; military~~ Military recruiters to have access to student information, school buildings, etc.

If a public school board or public institution of higher education provides access to its buildings and grounds and the student information directory to persons or groups which make students aware of occupational or educational options, the board or institution shall provide access on the same basis to official recruiting representatives of the ~~military~~armed forces of the Commonwealth and the United States for the purpose of informing students of educational and career opportunities available in the military armed forces.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-381 2.2-XXX. Same; dissemination-Dissemination of reports.~~

Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and
2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-382 2.2-XXX. Rights of data subjects.~~

A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences which are known to the agency of providing or not providing ~~such the~~ information.

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing ~~such the~~ information, ~~however. However~~ documented permission for dissemination in the hands of ~~such the~~ other agency or organization ~~will shall~~ satisfy ~~this the~~ requirement of this subdivision. ~~Such the~~ notice may be given on applications or other data collection forms prepared by data subjects.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant ~~such the~~ data subject or agent the right to inspect, in a form comprehensible to ~~such individual or agent~~ him:

~~(a) a.~~ All personal information about that data subject except as provided in subdivision 3 of subsection B of § 2.1-342 B-3 2.2-XXX.

~~(b) b.~~ The nature of the sources of the information.

~~(c) c.~~ The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

4. Comply with the following minimum conditions of disclosure to data subjects:

~~(a) a.~~ An agency shall make disclosures to data subjects required under this chapter, during normal business hours.

~~(b) b.~~ The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

~~(c) c.~~ The data subject shall be permitted to be accompanied by a person ~~or persons~~ of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting the agency permission to ~~the organization to~~ discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

(a) ~~a.~~ The agency maintaining the information system shall investigate, and record the current status of that personal information.

(b) ~~b.~~ If, after such investigation, ~~such the~~ information is found to be incomplete, inaccurate, not pertinent not timely, or not necessary to be retained, it shall be promptly corrected or purged.

(c) ~~c.~~ If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

(d) ~~d.~~ Whenever a statement of dispute is filed, the ~~organization~~ agency maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

(e) ~~e.~~ The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

(f) ~~f.~~ Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in ~~this section or found elsewhere in this chapter~~ shall be construed ~~so as~~ to require an agency to disseminate any recommendation or letter of reference from or to a third party which is a part of the personnel file of any data subject nor to disseminate any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection, "test or examination" ~~shall include~~ includes (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of ~~such the~~ test or examination. Nothing contained in this subsection shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as ~~is provided by law; however,~~ However, the subject of ~~such the~~ employment tests shall be entitled to review and inspect all documents relative to his performance on ~~such those~~ employment tests.

When, in the reasonable opinion of ~~such the~~ public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, ~~such the~~ test or examination shall be made available to the public. Minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

C. Neither any provision of this chapter nor any provision of ~~Chapter 21~~ the Freedom of Information Act (§ ~~2.1-340~~ 2.2-XXX et seq.) ~~of this title shall be construed as denying to deny~~ public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in ~~this the~~ the Commonwealth ~~whatsoever~~. The provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. Nothing in this ~~section or in this~~ chapter shall be construed to require an agency to disseminate information derived from tax returns in violation of §§ ~~2.1-342~~ 2.2-XXX and 58.1-3.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-383 2.2-XXX.~~ Agencies to report concerning systems operated or developed; publication of information.

Every agency shall make report of the existence of any information system which it operates or develops which ~~will~~ shall include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of ~~such the~~ such information shall be made available for inspection by the general public in the office of the head of each agency. Copies of ~~such the~~ such information shall be provided upon request and a fee shall be charged for ~~the same them~~ them sufficient to cover the reasonable costs of reproduction.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-385 2.2-XXX.~~ Disclosure of social security number.

~~On or after July 1, 1977, it~~ It shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because ~~such the~~ such individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-386 2.2-XXX.~~ Injunctive relief; attorney's fees.

Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency which has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the circuit court of any county or city wherein the person or agency made defendant resides or has a place of business.

In the case of any successful proceeding by an aggrieved party, the person or agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorney's fees as determined by the court.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Human Rights Act.

~~§ 2.1-714 2.2-XXX.~~ Short title; declaration of policy.

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; preserve the public safety, health and general welfare; and further the interests, rights and privileges of individuals within the Commonwealth; and

2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-714 and subsection B is § 2.1-715.

~~§ 2.1-715.~~ Declaration of policy.

It is the policy of the Commonwealth of Virginia:

~~1. To safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; to preserve the public safety, health and general welfare; and to further the interests, rights and privileges of individuals within the Commonwealth; and~~

~~2. To protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-714) supra.

~~§ 2.1-714~~ 2.2-XXX. Unlawful discriminatory practice defined.

Conduct which violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-747~~ 2.2-XXX. Construction of chapter; other programs to aid persons with disabilities, minors and the elderly.

The provisions of this chapter shall be construed liberally for the accomplishment of its policies. Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege which is afforded, oriented or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the age of eighteen years (i) where ~~such the~~ differentiation is reasonably necessary to normal operation or ~~such the~~ activity is based upon reasonable factors other than age or (ii) where ~~such the~~ program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the Human Rights Council (the "Council") alleging unlawful discriminatory practice under a Virginia statute which is enforced by a Virginia agency shall be referred to ~~such that~~ agency. The Council may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve ~~same it~~ through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Council shall have no further jurisdiction over the complaint. The Council shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to ~~§ 15.1-37.3:8~~ 15.2-965.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Administrative Process Act.

CHAPTER DRAFTING NOTE: The Administrative Process Act has been incorporated into proposed Title 2.2 because it concerns the administration of state government. A significant change appears in the exemption section (existing § 9-6.14:41) of the Administrative Process Act. This section has been extensively reorganized

and rewritten. Each subsection of this section has become a separate section and moved to the beginning of the article to which that group of exemptions apply as follows: exemptions from the entire Administrative Process Act have been placed in Article 1, General Provisions as proposed § 2.2-XXX (existing § 9-6.14:4.1, subsections A and B); exemptions from Article 2, Regulations, (existing subsections C and G) now appear at the beginning of Article 2 as proposed § 2.2-XXX. Exemptions from Article 3, Case Decisions, (existing subsection D) now appear at the beginning of Article 3 as proposed § 2.2-XXX. Subsection E, an exemption from existing Article 4, Court Review, now appears at the beginning of proposed Article 5 still entitled Court Review.

Article 1.

General Provisions.

§ 9-6.14:1 2.2-XXX. Short title; purpose.

A. This chapter may be cited as the "Administrative Process Act."

B. The purpose of this chapter is to supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof. This chapter shall not supersede or repeal additional procedural requirements in such basic laws.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-6.14:1 and subsection B is § 9-6.14:3.

~~§ 9-6.14:2. Effect of repeal of the General Administrative Agencies Act and enactment of this chapter.~~

~~A. The repeal of Chapter 1.1 (§ 9-6.1 et seq.) of this title, which is entitled the General Administrative Agencies Act but which will be hereinafter referred to as Chapter 1.1, shall in no way affect the validity of any regulation that has been adopted and promulgated under Chapter 1.1 prior to the effective date of this chapter.~~

~~B. Whenever any reference is made in this Code to the General Administrative Agencies Act, the applicable provisions of this chapter are substituted therefor.~~

DRAFTING NOTE: This section has been deleted as obsolete. The Administrative Process Act was enacted in 1975 (Chapter 503 of the 1975 Acts of Assembly).

~~§ 9-6.14:3. Policy.~~

~~The purpose of this chapter is to supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof save as laws hereafter enacted may otherwise expressly provide. This chapter does not supersede or repeal additional procedural requirements in such basic laws.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 9-6.14:1) supra.

§ 9-6.14:4 2.2-XXX. Definitions.

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

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in ~~§§ 9-6.14:7-1 2.2-XXX and 9-6.14:11 2.2-XXX of this chapter~~ and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in ~~§ 9-6.14:8 of this chapter 2.2-XXX~~ in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in ~~§ 9-6.14:12 hereof 2.2-XXX~~ in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with ~~§ 2.2-XXX (§ 9-6.14:14.1)~~.

"Public assistance programs" means those programs specified in ~~§ 63.1-87~~.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, ~~promulgated-adopted~~ by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

DRAFTING NOTE: Technical corrections. The definition of public assistance programs was derived from subsection J of existing § 9-6.14:7:1. A definition of "hearing officer" has been added to eliminate repetitive language.

~~§ 9-6.14:4.1 2.2-XXX~~. Exemptions and exclusions from chapter generally.

A. Although required to comply with ~~§ 9-6.18 2.2-XXX~~ of the Virginia Register Act (~~§ 9-6.15- 2.2-XXX~~ et seq.), the following agencies are shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to ~~§§ 9-6.14:14.1, 9-6.14:21 2.2-XXX, 2.2-XXX and 9-6.14:22 2.2-XXX~~:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to ~~§ 9-6-14:22 2.2-XXX~~, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

~~11. (Repealed.)~~

~~12~~11. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to ~~§ 2-1-526-14 2.2-XXX~~.

~~13., 14. (Repealed.)~~

~~15~~12. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

~~16~~13. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

~~17~~14. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

~~18~~15. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

~~19~~16. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician Assistant Formulary established pursuant to § 54.1-2952.1.

~~20~~17. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

~~21~~18. The Virginia War Memorial Foundation.

~~22~~19. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

~~23~~20. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

2421. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

2522. The Virginia Small Business Financing Authority.

2623. The Virginia Economic Development Partnership Authority.

2724. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

2825. The Insurance Continuing Education Board pursuant to § 38.2-1867.

2926. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35.

B. Agency action relating to the following subjects ~~is shall be~~ exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of a pool or pools authorized by ~~Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1~~ Chapter X (§ 2.2-XXX et seq.) of this title.
15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review pursuant to § 32.1-283.1.

18. The regulations for the implementation of the Health Practitioners' Intervention Program and the rules of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Trauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Chapter X (§ 2.2-XXX et seq.) of this title, made by the Virginia Code Commission pursuant to § 30-XXX (9-1) shall be exempt from the provisions of this chapter.

~~C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:~~

~~1. Agency orders or regulations fixing rates or prices.~~

~~2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.~~

~~3. Regulations which consist only of changes in style or form or corrections of technical errors. Each delegating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.~~

~~4. Regulations which:~~

~~(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;~~

~~(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or~~

~~(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not materially differ from those required by federal law or regulation, and the Registrar has so determined in writing; and the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.~~

~~5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires an emergency regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C-4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon~~

~~approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.~~

~~6. (Repealed.)~~

~~7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.~~

~~8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.~~

~~9. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.~~

~~10. The development and issuance of procedural policy relating to risk based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.~~

~~11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.~~

~~12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.~~

~~13. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.~~

~~14. Regulations of the Board of the Virginia Higher Education Tuition Trust Fund promulgated pursuant to § 23-38.77.~~

~~15. The development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307 if the Commission: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from~~

~~publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.~~

~~Whenever regulations are adopted under this subsection, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 9-6.14:9.~~

~~D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:~~

~~1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.~~

~~2. The award or denial of claims for workers' compensation.~~

~~3. The grant or denial of public assistance.~~

~~4. Temporary injunctive or summary orders authorized by law.~~

~~5. The determination of claims for unemployment compensation or special unemployment.~~

~~6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.~~

~~E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.~~

~~F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subdivision C-5 of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter.~~

~~G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.~~

~~H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.~~

~~I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.~~

DRAFTING NOTE: Technical corrections. Existing § 9-6.14:41 has been rewritten and divided into individual sections as follows: Exemptions from the entire Administrative Process Act have been placed in Article 1, General Provisions as proposed § 2.2-XXX (existing § 9-6.14:4.1, subsections A and B); exemptions from Article 2, Regulations, (existing subsections C and G) now appear at the beginning of Article 2 as proposed § 2.2-XXX. Exemptions from Article 3, Case Decisions, (existing subsection D) now appear at the beginning of Article 3

as proposed § 2.2-XXX. Subsection E, an exemption from existing Article 4, Court Review, now appears at the beginning of proposed Article 5 still entitled Court Review. Subsection H now appears as proposed § 2.2-XXX at the end of Article 1, General Provisions. Subsection I now appears as subsection C in the Exemptions from the APA generally.

§ 9-6-14:5 2.2-XXX. Venue.

Unless the parties otherwise agree, in all proceedings under §§ ~~9-6-14:14~~ 2.2-XXX, ~~9-6-14:12~~ 2.2-XXX or ~~§ 9-6-14:16~~ 2.2-XXX the venue for agency or court proceedings shall be as specified in subdivision 1 of § 8.01-261.

DRAFTING NOTE: Technical corrections only.

§ 9-6-14:5-1 2.2-XXX. Severability.

The provisions of regulations ~~promulgated~~ adopted under this chapter or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other regulations, provisions or applications which can be given effect without the invalid provisions or applications. The provisions of all regulations are severable unless (i) the regulation specifically provides that its provisions are not severable; or (ii) it is apparent that two or more regulations or provisions must operate in accord with one another.

DRAFTING NOTE: Technical corrections only.

§ 2.2-XXX. Review of exemptions by Joint Legislative Audit and Review Commission.

The Joint Legislative Audit and Review Commission shall conduct a review periodically of the exemptions authorized by this chapter. The purpose of this review shall be to assess whether there are any exemptions which should be discontinued or modified.

DRAFTING NOTE: Technical corrections. This proposed section is subsection H from existing § 9-6.14:4.1.

Article 2.

Regulations.

§ 2.2-XXX Exemptions from requirements of this article.

The following agency actions otherwise subject to this chapter and § 2.2-XXX (9-6.18) of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
4. Regulations which are:
 - a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than thirty days prior to the effective date of the regulation.

5. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

6. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

7. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

8. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

9. General permits issued by the (i) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (ii) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 and (iii) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 2.2-XXX (9-6.14:7.1), (b) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (c) provides notice and receives oral and written comment as provided in subsection F of § 2.2-XXX (9-6.14:7.1), and (d) conducts at least one public hearing on the proposed general permit.

10. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

11. Regulations of the Board of the Virginia Higher Education Tuition Trust Fund adopted pursuant to § 23-38.77.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-XXX (9-6.14:9.3), except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-XXX (9-6.14:9).

C. A regulation for which an exemption is claimed under this section or §§ 2.2-XXX, 2.2-XXX or 2.2-XXX (Exemption §§) and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of subsections C, F and G of existing § 9-6.14.4:1 with the following exceptions. The language relating to the adoption of emergency regulations has been made a separate section (proposed § 2.2-XXX) which follows this exemption section.

And the exemptions for the State Air Pollution Control Board, the State Water Pollution Control Board, and the Marine Resources Commission (existing subdivisions 11, 12 and 15) of subsection C of § 9-6.14:4.1 have been consolidated into a single exemption.

~~§ 9-6.14:7.1 2.2-XXX. Public Notice of intended regulatory action; public participation; informational proceedings; effect of noncompliance.~~

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The agency receiving the petition shall consider and respond to the petition within 180 days. Agency decisions to initiate or not initiate rulemaking in response to petitions ~~are shall not be~~ subject to judicial review.

B. In the case of all regulations, except those regulations exempted by ~~§ 9-6.14:4.1 2.2-XXX, 2.2-XXX, 2.2-XXX or 2.2-XXX (Exemption §§)~~, an agency shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action which describes the subject matter and intent of the planned regulation. At least thirty days shall be provided for public comment after publication of the Notice of Intended Regulatory Action. An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

C. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action: (i) the Governor directs ~~that the agency shall to~~ hold a public hearing or (ii) the agency receives requests for a public hearing from at least twenty-five persons or more.

D. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups which the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers ~~such the~~ panels or consultation appropriate and intends to make use of ~~such the~~ panels or consultation.

E. In formulating any regulation, including but not limited to those in public assistance programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate. However, the agency may, ~~at its discretion,~~ begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit ~~input~~ comments.

F. In the case of all regulations, except those regulations exempted by ~~§ 9-6.14:4.1 2.2-XXX, 2.2-XXX, 2.2-XXX or 2.2-XXX~~, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be published in the Virginia Register of Regulations in accordance with the provisions of subsection B of ~~§ 9-6.14:22 2.2-XXX~~. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least sixty days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts, summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

G. Before delivering any proposed regulation under consideration to the Registrar as required in subsection H ~~below~~, the agency shall deliver a copy of that regulation to the Department of Planning and Budget.

In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency, shall, within forty-five days, prepare an economic impact analysis of the proposed regulation. The economic impact analysis shall include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property; and the projected costs to affected businesses, localities or entities to implement or comply with ~~such the~~ regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in subsection H, and a copy to the Registrar for publication with the proposed regulation. No regulation shall be promulgated for consideration pursuant to subsection H until ~~such the~~ impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity which bears any identified disproportionate material impact which would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 4 (~~§ 9-6-14:15-2.2-XXX~~ et seq.) of this chapter or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

H. Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to subsection G. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations, together with the notice of opportunity for oral or written submittals on the proposed regulation.

I. When an agency formulating regulations in public assistance programs cannot comply with the public comment requirements of subsection F ~~of this section~~ due to time limitations imposed by state or federal laws or regulations for the adoption of such regulation, the Secretary of Health and Human Resources may shorten the time requirements of subsection F. If, in the Secretary's sole discretion, such time limitations reasonably preclude any advance published notice, he may waive the requirements of subsection F. However, the agency shall, as soon as practicable after the adoption of the regulation in a manner consistent with the requirements of subsection F, publish notice of the promulgation of the regulation and afford an opportunity for public comment. The precise factual basis for the Secretary's determination shall be stated in the published notice.

~~J. For the purpose of this article, public assistance programs shall consist of those specified in § 63-1-87.~~

~~K.~~ J. If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within thirty days from the publication of the final regulation to request an opportunity for oral and written

submittals on the changes to the regulation. If the agency receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for thirty days to solicit additional public comment and (ii) file notice of the additional thirty-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

~~LK~~. In no event shall the failure to comply with the requirements of subsection F of this section be deemed mere harmless error for the purposes of ~~§ 9-6.14:17 2.2-XXX~~.

~~ML~~. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

DRAFTING NOTE: Technical corrections. Existing subsection J has been moved to proposed § 2.2-XXX (existing § 9-6.14:4), the definitional section.

~~§ 9-6.14:7.2 2.2-XXX~~. Availability of guidance documents.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. ~~Such~~ The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make ~~such the~~ list available for public inspection, (ii) make available for public inspection the full texts of all ~~such~~ guidance documents to the extent ~~such~~ inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6.14:8 2.2-XXX~~. ~~Evidential-Evidentiary~~ hearings.

Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public ~~evidential~~ evidentiary proceeding; and the agency shall always do so where the basic law requires a hearing. ~~Such evidential~~ Evidentiary hearings may be limited to the trial of factual issues directly ~~relevant-related~~ to the legal validity of the proposed regulation in any of the relevant respects outlined in ~~§ 9-6.14:17 2.2-XXX~~ of this chapter.

General notice of ~~such the~~ proceedings shall be published as prescribed in ~~§ 9-6.14:7.1 2.2-XXX~~. In addition, where the proposed regulation is to be addressed to named persons, the latter shall also be given the same notice individually by mail or otherwise if acknowledged in writing. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to ~~§ 9-6.14:7.1 2.2-XXX~~ or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may ~~in its discretion~~ deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person. ~~There shall preside at the taking of such evidence the~~

The agency or one or more of its subordinates specially designated for the purpose, shall preside at the taking of evidence and who may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the ~~reception-taking~~ of the evidence, they shall ~~make a report with their~~ recommendations and proposed findings and conclusions which shall be made available upon request to the

participants in the taking of evidence as well as other interested persons and serve as a basis for exceptions, briefs, or oral argument to the agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled ~~in its discretion~~, the agency may settle the terms of the regulation and shall promulgate it only upon (i) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (ii) statements of basis and purpose as well as comment upon data received in any informational proceedings held under ~~§ 9-6-14:7-4.2.2-XXX~~ and (iii) ~~the conclusion or~~ conclusions required by the terms of the basic law under which the agency is operating.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:8-4.2.2-XXX~~. Pilot programs for regulations imposing local government mandates.

Where an agency proposes to consider the exercise of authority to promulgate a regulation which will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.

DRAFTING NOTE: Technical corrections only.

§ 2.2-XXX. Emergency regulations; publication; exceptions.

A. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means a situation (i) involving an imminent threat to public health or safety or (ii) in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision 4 of subsection A of § 2.2-XXX. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-XXX (9-6.14:9), such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. The regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

B. Emergency regulations shall be published as soon as practicable in the Register.

C. This section shall not apply to the Marine Resources Commission.

DRAFTING NOTE: Technical corrections. This proposed section is from subdivision C 5 of existing § 9-6.14.4:1 and has been moved here for more appropriate placement, since it deals with the process of adopting emergency regulations. Subsection C of this proposed subsection is subsection C of existing § 9-6.14.4:1. Subsection B of this proposed section is from the second paragraph in subsection B of existing § 9-6.14:9.

~~§ 9-6-14:9.2.2-XXX~~. Purpose; adoption; effective date; filing; emergency regulations; duties of Registrar of Regulations.

A. The purpose of the regulatory procedures ~~is shall be~~ to provide a regulatory plan which is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution.

B. Subject to the provisions of §§ ~~9-6-14:9.12.2-XXX~~ and ~~9-6-14:9.2 2.2-XXX~~, all regulations, including those ~~as to which agencies,~~ pursuant to § ~~9-6-14:4.1 2.2-XXX~~ may elect to dispense with the public procedures provided by §§ ~~9-6-14:7.12.2-XXX~~ and ~~9-6-14:8 2.2-XXX~~, may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation shall be effective until the expiration of the applicable period as provided in § ~~9-6-14:9.3 2.2-XXX~~. In the case of an emergency regulation filed in accordance with ~~subdivision C 5 of § 9-6-14:4.1 2.2-XXX~~, the regulation shall become ~~operative~~ effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available ~~by the agency~~ for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as ~~may be required~~ by other laws.

~~Emergency regulations shall be published as soon as practicable in the Register.~~

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § ~~9-6-14:7.1 2.2-XXX~~ shall be transmitted to the Registrar of Regulations, who shall retain these documents.

D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires ~~such the~~ regulations and, where ~~such the~~ regulations ~~must are required to~~ conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

DRAFTING NOTE: Technical corrections. The second paragraph of subsection B now appears as subsection B in proposed § 2.2-XXX (Emergency regulations) supra.

§ ~~9-6-14:9.1 2.2-XXX~~. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare; and (iii) ~~examination by the Governor to determine if the proposed regulations are~~ (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § ~~9-6-14:7.1 2.2-XXX~~. The Governor may recommend amendments or modifications to any regulation which would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § ~~9-6-14:7.1 2.2-XXX~~, the agency may (i) ~~may~~ adopt the proposed regulation if the Governor has no objection to the

regulation; (ii) ~~may~~ modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) ~~may~~ adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the thirty-day adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A thirty-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this thirty-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of ~~§ 9-6-14-9.2 2.2-XXX~~, or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the thirty-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of ~~§ 9-6-14-9.2 2.2-XXX~~ during the thirty-day final adoption period. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

A regulation shall become effective as provided in ~~§ 9-6-14-9.3 2.2-XXX~~.

E. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14-9.2 2.2-XXX~~. Legislative review of proposed and final regulations; suspension with Governor's concurrence.

A. After the legislative members have received copies of the Register pursuant to ~~§ 9-6-14-24 2.2-XXX~~, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within twenty-one days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee and the Governor. If a legislative objection is filed within the final adoption period, subdivision 1 of ~~§ 9-6-14-9.32.2-XXX~~ shall govern.

B. In addition, or as an alternative to, the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and the applicable standing committee of each house may direct, through a statement signed by a majority of the members of the standing committee of each house and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the thirty-day adoption period, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision C-4 of ~~§ 9-6-14:4-1 2.2-XXX~~, if it makes no changes to the regulation other than those required by statutory law, or (ii) shall follow the provisions of ~~§ 9-6-14:7-1 2.2-XXX~~, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation ~~will~~ shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in ~~§ 9-6-14:9-3 2.2-XXX~~.

D. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:9-3 2.2-XXX~~. Effective date of regulation; exception.

~~A.~~ A regulation adopted in accordance with the Administrative Process Act (~~§ 9-6-14:1 et seq.~~) this chapter and the Virginia Register Act (~~§ 9-6-15 2.2-XXX et seq.~~), shall become effective at the conclusion of the thirty-day final adoption period provided for in subsection D of ~~§ 9-6-14:9-1 2.2-XXX~~, or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with ~~§ 9-6-14:9-2 2.2-XXX~~, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency which shall be after the expiration of the applicable twenty-one-day extension period provided in ~~§ 9-6-14:9-2 2.2-XXX~~;

2. The Governor has exercised his authority in accordance with ~~§ 9-6-14:9-1 2.2-XXX~~ to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency which shall be after the period for which the Governor has provided for additional public comment;

3. The Governor and the General Assembly have exercised their authority in accordance with subsection B of ~~§ 9-6-14:9-2 2.2-XXX~~ to suspend the effective date of a regulation until the end of the next regular legislative session; or

4. The agency has suspended the regulatory process in accordance with subsection K of ~~§ 9-6-14:7-1 2.2-XXX~~, in which event the regulation, unless withdrawn by the agency, shall become effective on the date specified by the agency which shall be after the thirty-day public comment period required by subsection K of ~~§ 9-6-14:7-1 2.2-XXX~~.

~~B.~~ This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:9-4 2.2-XXX~~. Withdrawal of regulation.

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the adoption of regulations.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:25 2.2-XXX~~. Periodic review of regulations.

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include: (i) a review by the Attorney General to ensure statutory authority for regulations; and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare; and (iii) ~~a determination by the Governor whether the regulations are~~ (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

DRAFTING NOTE: Technical corrections only.

Article 3.

Case Decisions.

§ 2.2-XXX. Exemptions from operation of Article 3.

The following agency actions otherwise subject to this chapter shall be exempted from the operation of this article.

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

DRAFTING NOTE: Technical corrections. This proposed section is derived from subsection D of existing § 9-6.14.4:1.

~~§ 9-6.14.4:1~~ 2.2-XXX. Informal fact finding.

A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) ~~to~~ have reasonable notice thereof, (ii) ~~to~~ appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer ~~as provided by subsection A of § 9-6.14.4:1~~, for the informal presentation of factual data, argument, or proof in connection with any case, (iii) ~~to~~ have notice of any contrary fact basis or information in the possession of the agency which can be relied upon in making an adverse decision, (iv) ~~to~~ receive a prompt decision of any application for a license, benefit, or renewal thereof, and (v) ~~to~~ be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.

B. Agencies may, in their case decisions, rely upon public data, documents or information only when the agencies have provided all parties with advance notice of an intent to consider such public data, documents or information. This requirement shall not apply to an agency's reliance on case law and administrative precedent.

~~C. In cases where a board or commission meets to render an informal fact-finding decision and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.~~

~~D. In any informal fact-finding proceeding in which a hearing officer, as described in § 9-6-14:14.1, is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within ninety days from the date of the informal fact-finding proceeding or from a later date agreed to by the named party and the agency. If the agency does not render a decision within ninety days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act or (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act. An agency shall provide notification to the named party of its decision within five days of the decision.~~

~~E. In any informal fact-finding proceeding in which a hearing officer, as described in § 9-6-14:14.1, is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within thirty days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within thirty days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act or (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act. An agency shall provide notification to the named party of its decision within five days of the decision.~~

~~F. The provisions of subsection D notwithstanding, if the board members or agency personnel who conducted the informal proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection D shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notification within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.~~

DRAFTING NOTE: Technical corrections. Subsections C through F, shown here as stricken now appear as proposed § 2.2-XXX, Timetable for decisions infra.

§ 9-6-14:12 2.2-XXX. Litigated issues.

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § 9-6-14:14 2.2-XXX have not been had or have failed to dispose of a case by consent.

B. Parties to such formal proceedings shall be given reasonable notice of the (i) the time, place, and nature thereof, (ii) the basic law or laws under which the agency contemplates its possible exercise of authority, and (iii) the matters of fact and law asserted or questioned by the agency. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall

be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § 9-6-14-14.2.2-XXX.

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at ~~such the~~ proceedings ~~are empowered to~~ may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee ~~an accurate a~~ verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § 9-6-14-14.1 2.2-XXX, he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by ~~such the~~ presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument (i) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or (ii) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations or decisions, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

~~F. In cases where a board or commission meets to render a decision on a litigated issue and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.~~

~~G. In any formal proceeding in which a hearing officer, as described in § 9-6-14-14.1, is not used or is not empowered by the agency to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within ninety days from the date of the formal proceeding or from a later date agreed to by the named party and the agency. If the agency does not render a decision within ninety days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, then the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act or (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act. An agency shall provide notification to the named party of its decision within five days of the decision.~~

~~H. In any formal proceeding in which a hearing officer, as described in § 9-6-14-14.1, is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within thirty days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within thirty days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence~~

~~shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act or (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act. An agency shall provide notification to the named party of its decision within five days of the decision.~~

~~I. The provisions of subsection G notwithstanding, if the board members or agency personnel who conducted the formal proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection G shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notification within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.~~

DRAFTING NOTE: Technical corrections. Subsections F through I, shown as stricken here, now appear in proposed § 2.2-XXX, Timetable for decisions infra.

§ 2.2-XXX. Timetable for decision; exemptions.

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding or formal proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within ninety days from the date of the informal fact-finding or formal proceeding or from a later date agreed to by the named party and the agency. If the agency does not render a decision within ninety days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party.

C. In any informal fact-finding or formal proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within thirty days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within thirty days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within thirty days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act or (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding or formal proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.

DRAFTING NOTE: Technical corrections. This proposed section represents a consolidation of the same provisions found in subsections C through F in existing §§ 9-6.14:1 and subsection F through I of § 9-6.14:12 relating to the timetable for case decisions. This proposed consolidation will eliminate repetitive language.

~~§ 9-6.14:13~~ 2.2-XXX. Subpoenas, depositions and requests for admissions.

~~The agency or its designated subordinates shall have power to~~ may, and on request of any party to a case shall, issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the agency does not quash or modify the subpoena at his timely request as illegally or improvidently granted, immediately ~~thereupon~~ procure by petition a decision on the validity thereof in the circuit court as provided in ~~§ 9-6-14:5 2.2-XXX~~; and otherwise in any case of refusal or neglect to comply with an agency subpoena, unless the basic law under which the agency is operating provides some other recourse, enforcement, or penalty, the agency may procure an order of enforcement from such court. Depositions de bene esse and requests for admissions may be directed, issued, and taken on order of the agency for good cause shown; and orders or authorizations therefor may be challenged or enforced in the same manner as subpoenas. Nothing in this section shall be taken to authorize discovery proceedings.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:14 2.2-XXX~~. Final orders.

The terms of any final agency case decision, as signed by it, shall be served upon the ~~private-named~~ parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available ~~by the agency~~ for public inspection or copying except (i) so far as the agency may, ~~in the exercise of sound discretion~~, withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence.

DRAFTING NOTE: Technical corrections. The term "private parties" has been changed to "named parties" to be consistent with the use of the latter term in this chapter.

Article 4.

Hearing Officers.

~~§ 9-6-14:14.1 2.2-XXX~~. Hearing officers.

A. In all formal hearings conducted in accordance with ~~§ 9-6-14:12 2.2-XXX~~, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to ~~§ 9-6-14:14 2.2-XXX~~ may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary ~~shall have the power to~~ may promulgate rules necessary for the administration of the hearing officer system.

All ~~Prior to being included on the list, all~~ hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;

2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer ~~will~~ shall be assigned to a proceeding before that agency.

~~These requirements must be met prior to being included on the list of hearing officers. All attorneys on the list as of July 1, 1986, shall satisfy these requirements by January 1, 1987, to remain on the list.~~

B. On request from the head of an agency, the Executive Secretary ~~will~~ shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice in writing and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with ~~the Administrative Process Act (§ 9-6.14:1 et seq.)~~ this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Virginia Student Assistance Authorities, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 ~~(formerly §§ 65.1-11 and 65.1-42)~~ by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A ~~of this section~~. Agency employees who are not licensed to practice law in ~~this~~ the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) above, shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § ~~9-6.14:4.1 2.2-XXX~~, this article shall apply to hearing officers conducting hearings of the kind described in § ~~9-6.14:12 2.2-XXX~~ for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia Resources Authority pursuant to their basic laws.

DRAFTING NOTE: Technical corrections only.

Article 5.
Court Review.

§ 9-6.14:15 2.2-XXX. Exclusion Exemptions operation of this article; limitations.

A. This article ~~does~~ shall not apply to any agency action which (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a trial de novo in any court.

B. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter shall be exempted from the operation of this article.

C. The provisions of this article, however, shall apply to case decisions regarding the grant or denial of aid to dependent children, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance programs. Notwithstanding the provisions of § 2.2-XXX (9-6.14:17), the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-XXX (9-6.14:18).

DRAFTING NOTE: This proposed section is comprised of the following existing sections: subsection A is § 9-6.14:15 and subsection B is subsection E of § 9-6.14.4.1 and subsection C is § subsection B of 9-6.14:16.

§-9-6.14:16 2.2-XXX. Right, forms, venue.

~~A. Any person affected by and claiming the unlawfulness of any regulation, or party aggrieved by and claiming unlawfulness of a case decision, as the same are defined in § 9-6.14:4 of this chapter and whether or not excluded-exempted from the procedural requirements of Article 2 (§ 9-6.14:7.1- 2.2-XXX et seq.) or 3 (§ 9-6.14:14-2.2-XXX et seq.) hereeof this chapter, shall have a right to the direct review thereof by an appropriate and timely court action against the agency as such or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia. Such actions-Actions may be instituted in any court of competent jurisdiction as provided in § 9-6.14:5 2.2-XXX, and the judgments of such-the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any such-regulation or case decision is the subject of an enforcement action in court, the same-it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.~~

~~B. The provisions of this article shall apply to case decisions regarding the grant or denial of aid to dependent children, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal pursuant to this article may be brought regarding the adequacy of standards of need and payment levels for public assistance programs. Notwithstanding the provisions of § 9-6.14:17, such review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 9-6.14:18.~~

DRAFTING NOTE: Technical corrections. Subsection B now appears as subsection B in proposed § 2.2-XXX (existing § 9-6.14:15) supra.

§-9-6.14:17 2.2-XXX. Issues on review.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing

respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentialevidentiary support for findings of fact. The determination of such fact issue ~~is to~~ shall be made upon the whole evidentialevidentiary record provided by the agency if its proceeding was required to be conducted as provided in ~~§ 9-6-14:8 2.2-XXX~~ or ~~§ 9-6-14:12 2.2-XXX~~ of this chapter or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein.

When the decision on review is ~~to~~ be made on ~~such~~ the agency record, the duty of the court with respect to issues of fact ~~is shall be~~ limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did.

Where there is no ~~such~~ agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under ~~§ 9-6-14:7.1 2.2-XXX~~ or ~~§ 9-6-14:11 2.2-XXX~~ as augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency.

Whether ~~such~~ the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:18 2.2-XXX~~. Intermediate relief.

When judicial review is instituted or is about to be, the agency concerned may, on request of any party or its own motion, postpone the effective date of the regulation or decision involved where it deems that justice so requires. Otherwise the court may, on proper application and with or without bond, deposits in court, or other safeguards or assurances as may be suitable, issue all necessary and appropriate process to postpone ~~such~~ the effective dates or preserve existing status or rights pending conclusion of the review proceedings if the court finds the same to be required to prevent immediate, unavoidable, and irreparable injury and that the issues of law or fact presented are not only substantial but that there is probable cause for it to anticipate a likelihood of reversible error in accordance with ~~§ 9-6-14:17 2.2-XXX~~. ~~Such action~~ Actions by the court may include (i) the stay of operation of agency decisions of an injunctive nature or those requiring the payment of money or suspending or revoking a license or other benefit and (ii) continuation of previous licenses in effect until timely applications for renewal are duly determined by the agency.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:19 2.2-XXX~~. Court judgments.

Unless an error of law as defined in ~~§ 9-6-14:17 2.2-XXX~~ appears, the court shall dismiss the review action or affirm the agency regulation or decision. Otherwise, it may compel agency action unlawfully and arbitrarily withheld or unreasonably delayed except that the court shall not itself undertake to supply agency action committed by the basic law to the agency. Where a regulation or case decision is found by the court not to be ~~not~~ in accordance with law under ~~§ 9-6-14:17 2.2-XXX~~, the court shall suspend or set it aside and remand the matter to the agency for ~~such~~ further proceedings, if any, as the court may permit or direct in accordance with law.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:21 2.2-XXX~~. Recovery of costs and attorneys' fees from agency.

A. In any civil case brought under Article 4-5 (~~§ 9-6-14:15 2.2-XXX~~ et seq.) of this chapter ~~and § 9-6-14:4.1 or 2.2-XXX, 2.2-XXX, or 2.2-XXX~~, in which any person contests any agency action, ~~as defined in § 9-~~

~~6-14-4~~, such person shall be entitled to recover from that agency, as ~~defined in the section referred to above and~~ including the Department of Game and Inland Fisheries, reasonable costs and attorney fees if such person substantially prevails on the merits of the case and the agency's position is not substantially justified, unless special circumstances would make an award unjust. The award of attorney fees shall not exceed \$25,000.

B. Nothing in this section shall be deemed to grant permission to bring an action against an agency if ~~such~~ the agency would otherwise be immune from suit, or to grant a right to bring an action by a person who would otherwise lack standing to bring the action.

C. Any costs and attorney fees assessed against an agency under this section shall be charged against the operating expenses of the agency for the fiscal year in which the assessment is made, and shall not be reimbursed from any other source.

DRAFTING NOTE: Technical corrections only.

Article 6.

Virginia Register of Regulations.

~~§ 9-6-14:22~~ 2.2-XXX. Publication of Virginia Register of Regulations; exceptions; notice of meetings of executive branch agencies.

A. The Registrar shall publish every two weeks a Virginia Register of Regulations which shall include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all public meetings and public hearings of state agencies, legislative committees and study subcommittees; and (v) tax bulletins. The entire proposed regulation shall be published in the Register; however, ~~if an administrative code has been published pursuant to § 9-77.7, only those sections of regulations amended need be published in the Register. an existing regulation has been previously published pursuant to , then only those sections of regulations to be amended need to be published in the Register.~~ If the length of the regulation falls within the guidelines established by the Registrar for the publication of a summary in lieu of the full text of the regulation, then, after consultation with the promulgating agency, the Registrar may print only the summary of the regulation. In this event, the full text of the regulation shall be available for public inspection at the office of the Registrar and the promulgating agency.

If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of Regulations, the only changes that have been made are those that can be clearly and concisely explained, the adopted regulation need not be published at length. Instead, the Register shall contain a notation that the proposed regulation has been adopted as published as a proposed regulation without change or stating the changes made. The proposed regulation ~~must~~ shall be clearly identified with a citation to the issue and page numbers where published.

A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be used in administering the regulation shall be printed with the proposed and final regulation in the Register.

B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior to their publication in the Register. The notice required by ~~§ 9-6-14:7-1~~ 2.2-XXX shall include (i) a statement of the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the name, address and telephone number of an individual to contact for further information about that regulation. Agencies shall present their proposed regulations in a standardized format developed by the Virginia Code Commission in accordance with subdivision 1 of § 9-6-20 (b) 2.2-XXX of the Virginia Register Act (~~§ 9-6-15~~ 2.2-XXX et seq.). Notwithstanding the exemptions ~~of~~ allowed under ~~§ 9-6-14:4-1~~ 2.2-XXX, 2.2-XXX or 2.2-XXX, the proposed and final regulations of all agencies shall be published in the Register; ~~however,~~ However, proposed regulations of the Marine Resources Commission and regulations exempted by subject from the provisions of this chapter by subsection B of ~~§ 9-6-14:4-1~~ 2.2-XXX shall ~~continue to be~~ exempt from this section.

C. Notwithstanding the definition of "agency" as provided in ~~§ 9-6-14:4 of this chapter,~~ notices for all meetings of state agencies required to be ~~public open~~ pursuant to the Virginia Freedom of Information Act (~~§ 2-1-340 2.2-XXX et seq.~~), except for legislative meetings held during regular and special sessions, shall be published in the Register. Each notice shall include (i) the date, time and place of the meeting; (ii) a brief general description of the nature of the meeting and the business to be conducted; and (iii) the name, address and telephone number of an individual who may be contacted for additional information about the meeting. Failure to publish in the Register the notice for such a meeting or any inadequacies in the information contained in ~~such the~~ notice shall not affect the legality of actions taken at that meeting.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-6.22 and subsection B is § 9-6.15.

~~§ 9-6-14:23~~ 2.2-XXX. Subscriber fees.

The Virginia Register of Regulations shall be sold to subscribers at a subscription fee to be determined by the Virginia Code Commission.

It is the intent of this section that the subscription fees maximize the recovery to the Commonwealth for printing and distribution costs of the Virginia Register.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-14:24~~ 2.2-XXX. Distribution to library systems, Governor, Lieutenant Governor, Attorney General and legislative members.

The Register shall be distributed without charge ~~for public access to (i) each public library system in the Commonwealth or to the local governing body of any county without a public library system. The for public access and (ii) the Governor and the Lieutenant Governor shall also receive a gratuitous copy of the Register.~~

Upon request, the Register shall be distributed without charge to (i) be distributed without charge to members of the Virginia Code Commission, (ii) ~~be distributed without charge to~~ each division of the Office of the Attorney General and (iii) ~~be distributed to~~ members currently serving in the General Assembly.

Moneys from the contingent fund of the appropriate house of the General Assembly shall be used to acquire and distribute the Register to each legislative member who requests the Register.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Register Act.

~~§ 9-6-15~~ 2.2-XXX. ~~Purpose~~ Short title; purpose of chapter; declaration of policy.

A. This chapter shall be known and may be cited as the "Virginia Register Act."

B. It is the purpose of this chapter to satisfy the need for public availability of information respecting the regulations of state agencies. Nothing in this chapter contemplates or is designed to limit or impede the present or future making, amendment, or repeal of regulations by administrative agencies; ~~and it~~ It is hereby declared to be the policy of the Commonwealth to encourage, facilitate, and assist agencies in developing regulations which will inform the public of the requirements, policies, and procedures of the administrative authorities of the State.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-16~~ 2.2-XXX. Definitions.

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

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of ~~§ 9-77.10:1 30-XXX~~, and educational institutions operated by the Commonwealth with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter ~~8-1 X~~ (~~§ 9-77.4 30-XXX~~ et seq.) of Title ~~9 30~~.

"Commission" means the Virginia Code Commission.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Registrar" means the Registrar of Regulations appointed as provided in ~~§ 9-6.17 2.2-XXX~~.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (~~§ 2.2-XXX et seq.~~) of the Administrative Process Act in Article ~~7~~ (~~§ 9-6.14:22- 2.2-XXX~~ et seq.) of Chapter ~~1.1:1 of Title 9~~ this title.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6.17 2.2-XXX~~. Registrar of Regulations; personnel, facilities and services; publications.

The Commission shall engage or appoint on a contract, part-time, or annual basis a professionally experienced or trained Registrar of Regulations. Under the direction of the Commission, the Registrar shall, at a suitable place to be designated by the Commission, perform the duties required by this chapter or assigned by the Commission in accordance with this chapter or Chapter ~~8-1 X~~ of this title Title 30. The Commission shall as necessary also (i) appoint clerical or other personnel if any, (ii) arrange by contract or otherwise for the necessary facilities and services, and (iii) provide for the compilation and publication of the Virginia Register of Regulations and the Virginia Administrative Code pursuant to ~~§§ 9-6.14:22 2.2-XXX and 9-77.7 30-XXX~~, respectively.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6.18 2.2-XXX~~. Agencies to file regulations with Registrar; other duties; failure to file.

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information ~~as may be requested~~ by the Commission or the Registrar for the purpose of publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. ~~Such~~ The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any

special effective or terminal dates, and (iv) be accompanied by a signed statement or certification that they are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of ~~Chapter 1.1:1 the Administrative Process Act (§ 9-6-14:1- 2.2-XXX et seq.)~~ of this title as provided in subsection B of ~~§ 9-6-14:4.1 2.2-XXX~~ shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

In addition, each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations which have been superseded on and after June 1, 1975.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. ~~Such~~ The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make such list available for public inspection, (ii) make available for public inspection the full texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of ~~such referred the referenced~~ publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-20 2.2-XXX.~~ Duties of Commission in compiling Virginia Administrative Code and Register.

The Commission, through the Registrar and otherwise as it ~~shall direct~~ directs, may in the course of the work of compiling and maintaining the Virginia Administrative Code and the Register:

~~(a)-1.~~ In writing at any time call upon all agencies to submit to the Registrar one or more copies of all existing regulations as well as all subsequent amendments, repeals, additions, or new regulations; ~~but this does.~~ However, this subdivision shall not ~~derogate from~~ affect the duty of agencies to comply with ~~§ 9-6-18 2.2-XXX~~ without calls or reminders;

~~(b)-2.~~ Advise agencies as to the form and style of their regulations as well as the codification thereof; and

~~(c)-3.~~ Formulate and issue, without reference to or limitation by the requirements of the Administrative Process Act (~~§ 9-6-14:1- 2.2-XXX~~ et seq.), general or special regulations respecting the nature and content of the

Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies hereunder, and otherwise carrying out the purposes of this chapter.

~~(d) [Repealed.]~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-6-22. Short title.~~

~~This chapter shall be known and may be cited as the "Virginia Register Act."~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 2.2-XXX (existing § 9-6.15) supra.

Chapter X.

Fair Employment Contracting Act.

~~§ 2.1-374 2.2-XXX. Declaration of policy; discrimination prohibited in awarding contracts; definitions.~~

A. It is hereby declared to be the policy of the Commonwealth of Virginia to eliminate all discrimination on account of race, color, religion, sex, or national origin from the employment practices of the Commonwealth, its agencies, and government contractors.

B. In the awarding of contracts, no contracting agencies shall discriminate because of race, religion, color, sex, or national origin.

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

"Agency" means any agency or instrumentality, corporate or otherwise, of the government of the Commonwealth.

"Contractor" means any individual, partnership, corporation or association which performs services for or supplies goods, materials, or equipment to the Commonwealth or any agency thereof.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-374, subsection B is § 2.1-376.1 and subsection C is § 2.1-375. The definition of "person" has been deleted because it is defined in § 1-13.19 of Title 1.

~~§ 2.1-375. Definitions.~~

~~Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:~~

~~A. "Person" shall mean an individual, partnership, association or corporation.~~

~~B. "Agency" shall mean any agency or instrumentality, corporate or otherwise, of the government of this Commonwealth.~~

~~C. "Contractor" shall mean any individual, partnership, corporation or association which performs services for or supplies goods, materials, or equipment to the Commonwealth or any agency thereof.~~

DRAFTING NOTE: Technical corrections only. The definition of "person" has been deleted here because it is defined in § 1-13.19 of Title 1. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-374) supra.

~~§ 2.1-376.1. Discrimination prohibited in awarding contracts.~~

~~In the awarding of contracts, no contracting agencies shall discriminate because of race, religion, color, sex, or national origin.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-374) supra.

~~§ 2.1-376~~ 2.2-XXX. Required contract provisions.

All contracting agencies shall include in every government contract of over \$10,000 hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer; ~~provided, however, that~~ However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor ~~will~~ shall include the provisions of the ~~foregoing~~ subdivisions 1 and 2 in every subcontract or purchase order of over \$10,000, so that such provisions ~~will~~ shall be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

DRAFTING NOTE: Technical corrections only.

CHAPTER DRAFTING NOTE: The Virginia Public Procurement Act (VPPA) has been moved from Title 11 (§ 11-35 et seq.) and incorporated within Part A --Transaction of Public Business of Subtitle II --Administration of Government. Because of the prominence of the Virginia Public Procurement Act and its substantial relationship to the transaction of public business, the Virginia Code Commission felt that its inclusion in Title 2.2 was desirable. As part of the revisions to the VPPA, the numerous exemptions and exclusions from the applicability of the VPPA found in existing §§ 11-35 and 11-45 have been consolidated to form the basis of proposed Article 2--Exclusions and Exemptions. As a result, these exclusions have been group according to the following section headings: Exclusions from operation of chapter, 'Exemptions from competitive procurement generally, Exemptions from competitive procurement by certain instrumentalities of the Commonwealth, Exemptions from competitive procurement by certain nonstate authorities and other collegial bodies, and Exemptions for local governing bodies and school boards. The drafting notes following each of these sections indicate where provisions contained therein are derived.

Chapter X.

Virginia Public Procurement Act.

Article 1.

General Provisions.

~~§ 11-36 2.2-XXX. Title Short title; purpose; applicability declaration of intent.~~

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement which may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

~~C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a population of less than 3,500 as determined by the last official United States census.~~

~~D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.~~

~~Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.~~

~~E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1, 11-46 B, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.~~

~~The method for procurement of professional services set forth in subdivision 3 a of § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 11-51 and 11-72 through 11-80; however, a school board that makes purchases through its public school foundation established pursuant § 22.1-212.2:2 shall not be exempt from the provisions of this chapter.~~

~~F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.~~

GC. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no

offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

~~H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia Retirement System related to the management, purchase or sale of authorized investments, including but not limited to actuarial services, shall be governed by the standard set forth in § 51.1-124.30 and shall not be subject to the provisions of this chapter.~~

~~I. The provisions of this chapter shall apply to procurement of any construction or planning and design services for construction by a Virginia not for profit corporation or organization not otherwise specifically exempted when the planning, design or construction is funded by state appropriations greater than \$10,000 unless the Virginia not for profit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not these federal procedures are in conformance with the provisions of this chapter.~~

~~J. The provisions of this chapter shall not apply to items purchased by public institutions of higher education for resale at retail bookstores and similar retail outlets operated by such institution. However, such purchase procedures shall provide for competition where practicable.~~

~~K. The provisions of this chapter shall not apply to the Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.~~

~~L. Notwithstanding the foregoing provisions of this section, the selection of services by the Board of the Virginia Higher Education Tuition Trust Fund related to the operation and administration of the Fund, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services, shall be governed by the standard set forth in § 23-38.80 and shall not be subject to the provisions of this chapter.~~

~~M. Notwithstanding the provisions of this section, the selection of services by the University of Virginia related to the management and investment of its endowment funds shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1 and shall not be subject to the provisions of this chapter.~~

~~N. Notwithstanding the provisions of this section, the selection of investment management services by the State Treasurer related to the external management of funds shall be governed by the standard set forth in § 2.1-328.14, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services; and not be subject to the provisions of this chapter.~~

DRAFTING NOTE: Technical corrections. This proposed section covers only the short title, purpose of the Virginia Public Procurement Act and the declaration of intent. The exemptions contained in existing subsections C, D, E, H through N (shown here as stricken) now appear in proposed Article 2 "Exemptions and Exclusions", as follows: subsections C, D, and E are subsections A, B, and C, respectively in proposed § 2.2-XXX, Exemptions for Local Governing Bodies; and subsections H, K, L, M, and N are subdivisions B 3, 1, 5, 2, and 4, respectively, in proposed § 2.2-XXX, Exemptions for State Agencies. Subsection F has been deleted as obsolete. Subsections I and J are subdivisions B 1 and 2, respectively, in proposed § 2.2-XXX, Exemptions Generally. The last phrase in the second paragraph of subsection E, relating to purchases by school boards has been deleted as it contradicts the remainder of the second paragraph on subsection E.

~~§ 11-37.2.2-XXX.~~ Definitions.

~~The words defined in this section shall have the meanings set forth below throughout. As used in this chapter, unless the context requires a different meaning.~~

"Competitive negotiation" is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.

~~6. Competitive sealed bidding shall not be required for procurement of professional services.~~

~~"Competitive negotiation" is a method of contractor selection which includes the following elements:~~

~~1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.~~

~~2. Public notice of the Request for Proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.~~

~~3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror~~

~~ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.~~

~~Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.~~

~~b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.~~

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ ~~41-66 2.2-XXX~~ and ~~41-70 2.2-XXX~~ means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under ~~such the~~ contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry,

medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

DRAFTING NOTE: Technical corrections only. Definitions have been alphabetized.

~~§ 11-36~~ 2.2-XXX. Implementation.

This chapter may be implemented by ordinances, resolutions or regulations consistent with this ~~act~~ chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

DRAFTING NOTE: Technical corrections only.

~~§ 11-38~~

~~Reserved.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete.

~~§ 11-39~~ 2.2-XXX. Compliance with conditions on federal grants or contracts.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with ~~such the~~ federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

DRAFTING NOTE: Technical corrections only.

~~§ 11-40~~ 2.2-XXX. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to ~~subsections C § 11-35-G-2.2-XXX or D of § 11-35-D-2.2-XXX of this chapter~~ shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of ~~§§ 2-1-440 2.2-XXX, 2-1-442-2.2-XXX and 2-1-447 2.2-XXX~~, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement with private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. In such instances, deviation from the procurement procedures set forth in ~~the Virginia Public Procurement Act (§ 11-35 et seq.) this chapter~~ and the administrative policies and procedures established to implement ~~the Act will this chapter~~ shall be permitted, if approved by the Director of the Division of Purchases and Supply; ~~however~~. ~~However~~, such acquisitions shall be procured competitively. Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. A public body which is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators which are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subsection may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

DRAFTING NOTE: Technical corrections only.

~~§ 11-40.2. Exemptions for certain legislative activities.~~

~~The provisions of this chapter and the contract review provisions of § 2-1-563.17 shall not apply to the purchase of goods and services by agencies of the legislative branch which may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. The exemption shall be in writing and kept on file with the agency's disbursement records.~~

DRAFTING NOTE: Technical corrections. This section now appears as subdivision B 4 in proposed § 2.2-XXX, Exemptions from Competitive Procurement Generally, of proposed Article 2, Exemptions and Exclusions.

~~§ 11-40.3. Exemptions for certain election materials and services.~~

~~Contracts for certain essential election materials and services are exempted from the requirements of Articles 1, 2, and 3 of this chapter pursuant to § 24.2-602.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX, Exemptions from Competitive Procurement Generally, of proposed Article 2, Exemptions and Exclusions.

~~§ 11-40.4. Exception for acquisition of certain motor vehicles by State Department of Social Services or local departments of social services.~~

~~The provisions of this chapter shall not apply to the acquisition of motor vehicles by the State Department of Social Services or local departments of social services for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.~~

DRAFTING NOTE: Technical corrections. This section now appears as subdivision B 3 in proposed § 2.2-XXX, Exemptions from Competitive Procurement Generally, of proposed Article 2, Exemptions and Exclusions.

Article 2.

Exclusions and Exemptions.

§ 2.2-XXX. Exclusions from operation of chapter.

The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, including but not limited to actuarial services. However, selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-XXX (2.1-328.14), and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The Virginia Baseball Stadium Authority, for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

6. With the consent of the Governor, the Jamestown-Yorktown Foundation, for the promotion of tourism through marketing, provided that a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

7. The University of Virginia in the selection of services related to the management and investment of its endowment funds. However, selection of these services shall be governed by the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) as required by § 23-76.1.

8. The Board of the Virginia Higher Education Tuition Trust Fund for the selection of services related to the operation and administration of the Fund, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record-keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

9. Public institutions of higher education for the purchase of Items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

10. The purchase of goods and services by agencies of the legislative branch which may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. The exemption shall be in writing and kept on file with the agency's disbursement records.

11. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of this chapter.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivision 1 is § 11-35 K, subdivision 2 is § 11-35 H, subdivision 3 is § 11-35 N, subdivision 4 is § 11-40.4, subdivision 5 is § 11-45 N, subdivision 6 is § 11-45 P, subdivision 7 is § 11-35 M, subdivision 8 is § 11-35 L, subdivision 9 is § 11-35 J, subdivision 10 is § 11-40.2, and subdivision 11 is § 11-35 I.

§ 2.2-XXX. Exemptions from competitive procurement generally.

A. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for:

1. The purchase of goods or services which are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or

b. Nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

2. The purchase of legal services, provided that the pertinent provisions of Chapter X (§ 2.2-XXX et seq.) [chapter 11 (§ 2.1-117 et seq.)] of this title remain applicable, and expert witnesses or other services associated with litigation or regulatory proceedings.

3. For the purchase of insurance, if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided (i) the association has procured the insurance by use of competitive principles and (ii) the public body has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

4. Sole source procurements, upon written determination that there is only one source practicably available for that which is to be procured. The writing shall document the basis for this determination, and the public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

5. Emergency procurements, upon a written determination of the bases for the emergency procurement and for the selection of the particular contractor. The written determination shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Procurements made under this subdivision shall be made with such competition as is practicable under the circumstances.

6. Small purchase procurements for single or term contracts if the aggregate or the sum of all phases is not expected to exceed \$30,000 and the public body adopts in writing a small purchase procedure. However, such small purchase procedures shall provide for competition wherever practicable.

B. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1, 5, and 6 of this chapter pursuant to § 24.2-602.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivision A 1 is § 11-45 A, subdivision A 2 is § 11-45 B, subdivision A 3 is § 11-45 G, subdivision A 4 is § 11-41 D, subdivision A 5 is § 11-41 E and subdivision A 6 is § 11-41 F, subsection B is § 11-40.3, and subsection C is § 11-45 C.

§ 2.2-XXX. Exemptions from competitive procurement by certain instrumentalities of the Commonwealth.

The following instrumentalities of the Commonwealth may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection E of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. (Effective until July 1, 2003) The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 2.2-XXX (9-77.7) and 2.2-XXX (9-77.9), to publish the Code of Virginia or the Virginia Administrative Code.

4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

5. The Department for the Aging, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (i) child restraint devices, pursuant to § 46.2-1097; (ii) health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (a) as federally qualified health centers designated by the Health Care Financing Administration or (b) at a reduced or sliding fee scale or without charge; or (iii) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. The Virginia Racing Commission in designating an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

8. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures which ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

9. Public bodies administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-XXX (11-41).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivision 1 is § 11-45 I, subdivision 2 is § 11-45 K, subdivision 3 is § 11-45 J, subdivision 4 is § 11-45 E, subdivision 5 is § 11-45 U, subdivision 6 is § 11-45 O, T, and H, respectively, subdivision 7 is § 11-45 Q, subdivision 8 is § 11-45 M, and subdivision 9 is § 11-45 F.

§ 2.2-XXX. Exemptions from competitive procurement by certain nonstate authorities and other collegial bodies.

The following nonstate authorities and other collegial bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Chesapeake Hospital Authority, in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

2. The Hospital Authority of Norfolk, in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2.

3. An industrial development authority with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

4. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivision 1 is § 11-45 R, subdivision 2 is § 11-45 S, subdivision 3 is § 11-45 D, and subdivision 4 is § 11-45 L..

§ 2.2-XXX. Exemptions for local governing bodies and school boards; limitations.

A. This provisions of this chapter shall not apply to any town with a population of 3,500 or less, except as expressly provided in §§ 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX through 2.2-XXX, and 2.2-XXX through 2.2-XXX (11-41.1-49, 51, 54, 56-61, 72-80).

B. Except to the extent adopted by such governing body, the provisions of this chapter shall not apply, except as stipulated in subsection D, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures remain in effect in such county, city or town. Such policies and procedures may provide for incentive contracting which offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

C. Except to the extent adopted by a school board, the provisions of this chapter shall not apply, except as stipulated in subsection D, to any school division whose school board adopts by policy or regulation alternative

policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

D. Notwithstanding the exemptions set forth in subsection B, the provisions of §§ 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX, 2.2-XXX through 2.2-XXX and 2.2-XXX through 2.2-XXX (41C, 41.1, 46B, 49, 51, 54,56-61, 72-80) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

E. The method for procurement of professional services set forth in subdivision 3 a of § 2.2-XXX (11-37) shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project.

F. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-XXX (11-51) and 2.2-XXX (11-72) through 2.2-XXX (11-80).

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 11-35 C, subsections B and C are § 11-35 D, and subsections D, E and F are § 11-35 E.

Article 3.

Contract Formation and Administration.

~~§ 11-41~~ 2.2-XXX. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C.4. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in ~~§ 11-37~~ 2.2-XXX. The basis for this determination shall be documented in writing.

~~2D~~. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

~~a1~~. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under ~~§ 11-41.2~~ 2.2-XXX;

~~b2.~~ By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

~~e3.~~ By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

~~d4.~~ As otherwise provided in ~~§-11-41.2-1~~ 2.2-XXX.

~~D.~~ Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

~~E.~~ In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

~~F.~~ A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts if the aggregate or the sum of all phases is not expected to exceed \$30,000; however, such small purchase procedures shall provide for competition wherever practicable.

GE. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

HF. Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

~~I.~~ G. Procurement of goods, services, or construction to address computers, software programs, databases, networks, information systems, firmware, or any other devices which are not compliant with the "Year 2000" date change shall be deemed emergency procurements under subdivision 5 of subsection ~~E A~~ of § 2.2-XXX (exemptions generally).

DRAFTING NOTE: Technical corrections. Existing subsections D, E and F now appear as subdivisions A, 4, 5 and 6, respectively, in proposed § 2.2-XXX, Exemptions from Competitive Procurement Generally.

§-11-44 2.2-XXX. Discrimination prohibited; participation of small and minority owned business.

A. In the solicitation or awarding of contracts, no public body shall discriminate because of the race, religion, color, sex, or national origin of the bidder or offeror. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. State agencies shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 11-44 and subsection B is § 11-48.

~~§ 11-51.2.2-XXX.~~ Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of over \$10,000 the following provisions in 1 and 2 herein:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

DRAFTING NOTE: Technical corrections only. This language tracks the Fair Employment Contracting Act.

~~§ 11-41.4. (Effective until January 1, 2001) Year 2000 Remediation.~~

~~That, to obtain responses to Requests for Proposals or Invitations to Bid for goods or nonprofessional services to remediate computers, software programs, databases, networks, or information systems which are not compliant with the "Year 2000" date change and such goods or services are to be procured through competitive negotiation or competitive sealed bidding pursuant to the Virginia Public Procurement Act (§ 11-35 et seq.), public bodies shall strive to solicit responsible bidders or offerors who provide such remediation in Virginia and may solicit other responsible bidders or offerors to provide such remediation.~~

DRAFTING NOTE: This section has been deleted as precatory and duplicative of subsection I of proposed § 2.2-XXX (existing § 11-41) supra.

~~§ 11-41.01.2.2-XXX.~~ Petition for recycled goods and products; periodic review of procurement standards.

A. Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Department of General Services or an other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation which establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or the other agency of the Commonwealth which receives the petition request determines that the documentation demonstrates that the

goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate ~~such~~ the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

DRAFTING NOTE: Technical corrections only.

~~§ 11-41.02 2.2-XXX.~~ Petition for procurement of less toxic goods and products; periodic review of procurement standards.

A. As used in this section:

"Goods and products" means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to: (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

"Less toxic goods and products" means goods and products which (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances which pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

"Toxic or hazardous substance" means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation which establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth which receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and ~~other~~ all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products; ~~however.~~ However, nothing in this section shall require the Department or ~~such~~ other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

DRAFTING NOTE: Technical corrections only.

~~§ 11-41.2:3. Design-Build/Construction Management Review Board created; membership; terms; staffing; seal.~~

~~A. There is hereby created the Design-Build/Construction Management Review Board, hereinafter referred to as the Review Board, which shall be composed of nine members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his~~

~~designee; two Class A general contractors selected from a list recommended by the Associated General Contractors; one architect and one engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; and four representatives of public bodies other than the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties. Each such list, other than those recommended as representatives of public bodies, shall include the names of at least four persons who are experienced and actively engaged in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The list for representatives of public bodies shall include at least four persons who are experienced in competitive sealed bidding or competitive negotiation and in design-build or construction management procedures. The Director of the Division of Engineering and Buildings or his designee shall be a nonvoting member of the Review Board, except in the event of a tie vote of the Review Board.~~

~~B. The initial terms of the Review Board shall be as follows: three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and three members shall be appointed for four-year terms. Thereafter, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms, except the Director of the Division of Engineering and Buildings, who shall serve until a successor qualifies.~~

~~C. The Review Board shall elect its chairman and vice chairman from among its members. Members shall receive no compensation for their services as members of the Review Board, but shall receive reasonable expenses.~~

~~D. The Review Board shall meet monthly to conduct its business as required by § 11-41.2:4. However, monthly meetings may be canceled by the chairman if there is no business before the Review Board. Five members shall constitute a quorum.~~

~~E. Such staff support as is necessary for the conduct of the Review Board's business shall be furnished by the Division of Engineering and Buildings of the Department of General Services pursuant to § 2.1-483.1:2.~~

~~F. The Review Board shall adopt a seal by which it shall authenticate its proceedings.~~

DRAFTING NOTE: Technical corrections. This section now appears as § 2.2-XXX in Part D of subtitle 1 under the heading of "Boards".

~~§ 11-41.2:4. Duties of the Design-Build/Construction Management Review Board; transitional provisions relating to regulations.~~

~~A. The Review Board shall have the following duties:~~

~~1. Review submissions by public bodies other than the Commonwealth of draft or adopted ordinances or resolutions to determine if the process for the selection, evaluation and award of a design-build or construction management contract is in compliance with the provisions of subdivision A.1 of § 11-41.2:2;~~

~~2. Determine if the public body has complied with the provisions of § 11-41.2:2 relating to the retention of a licensed architect or engineer;~~

~~3. Review the findings and the basis of such findings submitted by the public body to determine if the public body has complied with the requirements of § 11-41.2:2 and that the findings made by the public body pursuant to § 11-41.2:2 are not unreasonable;~~

~~4. Develop guidelines relating to the documents and information to be reviewed by the Review Board;~~

~~5. Make post-project evaluations of construction projects procured by design-build or construction management contracts entered into by public bodies other than the Commonwealth, including cost and time~~

savings, effectiveness of the selection, evaluation and award of such contracts, and the benefit to the public body; and

~~6. Report to the General Assembly and the Governor on or before December 1, 1999, concerning the Review Board's evaluation of and findings regarding all design-build and construction management construction undertaken by public bodies other than the Commonwealth since July 1, 1996, and any recommendations relating to future use of design-build or construction management contracts by such public bodies.~~

~~B. On or before July 1, 1997, the Review Board shall adopt regulations, as it deems appropriate, based on the substantive requirements of Chapter IX of the Capital Outlay Manual of the Commonwealth, for a two-step competitive negotiation process which shall be applied to design-build and construction management projects undertaken by public bodies other than the Commonwealth. For construction management projects, such regulations shall also include applicable provisions of the Required Construction Management Contract Terms of the Capital Outlay Manual. Such regulations shall also allow the Review Board to approve deviations from provisions of the Capital Outlay Manual that it deems appropriate. Such regulations, upon final adoption, shall supersede the provisions of subdivisions A 1 a and A 1 b of § 11-41.2:2. Regulations of the Review Board shall be adopted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), except that regulations adopted pursuant to this subsection during the Review Board's first year of operation shall not be subject to the Administrative Process Act. Thereafter, all regulations shall be adopted in accordance with the Administrative Process Act.~~

DRAFTING NOTE: Technical corrections. This section now appears as § 2.2-XXX in Part D of subtitle 1 under the heading of "Boards". The penultimate sentence of this section have been deleted as obsolete.

~~§ 11-41.2:5. Review by the Review Board for design-build or construction management approval; effect of disapproval; review of Review Board decision.~~

~~The Review Board shall conduct such inquiry it deems appropriate and may require the submission of additional documents or information by the public body, in a form prescribed by the Review Board, to determine if the public body has complied with the provisions of § 11-41.2:2.~~

~~Within sixty days of the receipt of the request for review, the Review Board shall render a decision, unless a different timetable is agreed to by the public body. If the Review Board determines that the public body has complied with the provisions of § 11-41.2:2 and the findings made by the public body pursuant to subdivision A 2 of § 11-41.2:2 are not unreasonable, the Review Board shall approve such use. If the Review Board determines that (i) the public body has not complied with the provisions of § 11-41.2:2 or (ii) the findings made by the public body pursuant to subdivision A 2 of § 11-41.2:2 are unreasonable, it shall disapprove such use, and the public body shall not use a design-build or construction management contract to procure construction for the proposed project. If no decision is made by the Review Board within the sixty-day period or as otherwise agreed to by the public body, the proposed use of a design-build or construction management contract shall be deemed approved.~~

~~Any public body other than the Commonwealth which has been aggrieved by any action of the Review Board shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).~~

DRAFTING NOTE: Technical corrections. This section now appears as § 2.2-XXX in Part D of subtitle 1 under the heading of "Boards".

~~§ 11-45. (For expiration date—See note) Exceptions to requirement for competitive procurement.~~

~~A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.~~

~~B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.~~

~~C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.~~

~~D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.~~

~~E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.~~

~~F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At Risk Youth and Families (§ 2.1-745 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.~~

~~G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.~~

~~H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.~~

~~I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325-E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.~~

~~J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.~~

~~K. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.~~

~~L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.~~

~~M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.~~

~~N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.~~

~~O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.~~

~~P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities without competitive sealed bidding or competitive negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.~~

~~Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.~~

~~R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.~~

~~S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.~~

~~T. The Department of Health may enter into contracts without competitive sealed bidding or competitive negotiation for health care services with Virginia corporations granted tax exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge.~~

~~U. The Department for the Aging may enter into contracts with not for profit Virginia corporations granted tax exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long term care ombudsman program or designated area agencies on aging without competitive sealed bidding or competitive negotiation for the administration of elder rights programs.~~

DRAFTING NOTE: Technical corrections. This section now appears in proposed Article 2, Exemptions and Exclusions, as follows:

Subsection A is subdivision A 1 in proposed § 2.2-XXX (Exemptions generally)

Subsection B is subdivision A 2 in proposed § 2.2-XXX (Exemptions generally)

Subsection C is subsection D in proposed § 2.2-XXX (Exemptions generally)

Subsection D is subdivision 4 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection E is subdivision A 4 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection F is subdivision A 9 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection G is subdivision A 3 in proposed § 2.2-XXX (Exemptions generally)

Subsection H is subdivision A 6 (iii) in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection I is subdivision A 1 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection J is subdivision A 3 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection K is subdivision A 2 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection L is subdivision 5 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection M is subdivision A 8 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection N is subdivision 3 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection O is subdivision A 6 (i) in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection P is subdivision 6 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection Q is subdivision A 7 in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection R is subdivision 1 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection S is subdivision 2 in proposed § 2.2-XXX (Exemptions for authorities, etc.)

Subsection T is subdivision A 6 (ii) in proposed § 2.2-XXX (Exemptions for state agencies)

Subsection U is subdivision A 5 in proposed § 2.2-XXX (Exemptions for state agencies)

~~§ 41-41.2~~ 2.2-XXX. Design-build or construction management contracts for Commonwealth authorized.

A. Notwithstanding any other provisions of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section and ~~§ 2.1-51.34~~ 2.2-XXX. Procedures to implement this section and any changes to such procedures shall be adopted by the Secretary of Administration after a public hearing and ~~approval-reviewed~~ approved by the House Committee on Appropriations and the Senate Committee on Finance.

B. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

C. Design-build contracts may be used by the Commonwealth only for those types of construction projects designated in the procedures adopted by the Secretary of Administration to implement this section.

DRAFTING NOTE: Technical corrections. In subsection A, the term "approved" has been replaced with "reviewed" to reflect current practice.

~~§-11-41.2:02~~ 2.2-XXX. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized.

Notwithstanding the provisions of ~~§-11-41.2~~ 2.2-XXX, but subject to the procedures adopted by the Secretary of Administration to implement the provisions of that section, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements.

DRAFTING NOTE: Technical corrections only.

~~§-11-41.2:2~~ 2.2-XXX. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to ~~§-11-41.2:5~~ 2.2-XXX.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:

a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the applicable provisions of the Design-Build Selection Procedures of paragraph D of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth developed by the Department of General Services through ~~the~~ its Division of Engineering and Buildings. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for design-build construction projects.

b. Construction management projects shall include (i) selection procedures consistent with the applicable provisions of the Selection Procedures of paragraphs D and E of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual of the Commonwealth and (ii) required construction management contract terms consistent with applicable provisions of the Required Construction Management Contract Terms of paragraph F of Chapter IX (Special Construction Procedures) of the Capital Outlay Manual. The provisions of the Capital Outlay Manual shall apply, mutatis mutandis, to such procedures for construction management projects.

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. Once approved by the Review Board in accordance with ~~§ 11-41.2:5~~ 2.2-XXX, the public body may award a design-build or construction management contract. Unless otherwise specified in the Request for Proposal, ~~such the~~ contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposal. The provisions of this subsection shall supersede any related provision in the Capital Outlay Manual.

C. The public body shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

DRAFTING NOTE: Technical corrections only.

~~§ 11-49~~ 2.2-XXX. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer ~~does shall~~ not restrict bidders to the specific brand, make or manufacturer ~~named; it conveys and shall be deemed to convey~~ the general style, type, character, and quality of the article desired, ~~and any~~. Any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

DRAFTING NOTE: Technical corrections only.

~~§ 11-50~~ 2.2-XXX. Comments concerning specifications.

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

DRAFTING NOTE: Technical corrections only.

~~§ 11-46~~ 2.2-XXX. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body ~~subsequent to July 1, 1995,~~ shall be pursuant to a prequalification process for construction projects adopted by the public body. ~~Such~~ The process shall be consistent with the provisions of this subsection section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. ~~Such The~~ form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of ~~§ 11-52~~ 2.2-XXX.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The

deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor which submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to ~~such the~~ contractor shall state the reasons for ~~such the~~ denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in ~~§ 44-63.2.2-XXX~~.

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of ~~such the~~ contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 4-6 (~~§ 44-72.2.2-XXX~~ et seq.), (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance which provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria; ~~provided, however, that~~ However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. The provisions of this subsection ~~do shall~~ not apply to prequalification for contracts let by the Commonwealth Transportation Board under § 33.1-12.

DRAFTING NOTE: Technical corrections only.

~~§ 11-53~~ 2.2-XXX. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds; ~~however, such~~. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

DRAFTING NOTE: Technical corrections only.

~~§ 11-42~~ 2.2-XXX. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

DRAFTING NOTE: Technical corrections only.

~~§ 11-44.1~~ 2.2-XXX. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in ~~this the~~ Commonwealth or approved to issue surplus lines insurance in ~~this the~~ Commonwealth ~~may shall~~ be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective ~~contracter~~ insurer pursuant to ~~§ 11-46.1~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 11-46.1~~ 2.2-XXX. Debarment.

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency ~~or agencies designated by~~ the Governor ~~may designate~~, and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

DRAFTING NOTE: Technical corrections only.

~~§ 11-45.1~~ 2.2-XXX. Acceptance of bids submitted to the Department of Transportation.

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be

made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.01 2.2-XXX.~~ Purchase programs for recycled goods; agency responsibilities.

A. ~~State~~ All state agencies which are members of the Virginia Recycling Markets Development Council and all other state agencies shall implement a purchase program for recycled goods. State agencies and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C of this section as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, ~~11-41.012.2-XXX, 11-472.2-XXX, and 11-47.2 2.2-XXX.~~

B. The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council, shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.

2. Promote the Commonwealth's interest in the use of recycled products to vendors.

3. Make agencies aware of the availability of recycled goods, including those which use post-consumer and other recovered materials processed by Virginia-based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47 2.2-XXX.~~ Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.1 2.2-XXX.~~ ~~Priority~~ Preference for Virginia coal used in state facilities.

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.2 2.2-XXX.~~ Preference for recycled paper and paper products used by state agencies.

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B of this section.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 250.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.3 2.2-XXX. (Effective until July 1, 2003)~~ Preference for community reinvestment activities in contracts for investment of funds.

A. Notwithstanding any other provision of law, any county or city which is authorized to and has established affordable housing programs pursuant to (i) § 15.2-2304 or § 15.2-2305 or (ii) a local ordinance adopted prior to December 31, 1988, may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions which enhance the supply of, or accessibility to, affordable housing within the jurisdiction. No more than fifty percent of the funds of the county or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (~~§ 2-1-359 2.2-XXX~~ et seq.) and all local terms and conditions for security, liquidity and rate of return.

B. Notwithstanding any other provision of law, any high-growth locality as described in subsection A of § 15.2-2298 may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions which enhance and preserve agricultural uses and agribusiness activities within the jurisdiction. No more than fifty percent of the funds of the county or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (~~§ 2-1-359 2.2-XXX~~ et seq.) and all local terms and conditions for security, liquidity and rate of return.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.3 2.2-XXX. (Effective July 1, 2003)~~ Preference for community reinvestment activities in contracts for investment of funds.

Notwithstanding any other provision of law, any county or city which is authorized to and has established affordable housing programs pursuant to (i) ~~§ 15.1-491.8~~ 15.2-2304 or ~~§ 15.1-491.9~~ 15.2-2305 or (ii) a local ordinance adopted prior to December 31, 1988, may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions which enhance the supply of, or accessibility to, affordable housing within the jurisdiction. No more than fifty percent of the funds of the county or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (~~§ 2-1-359 2.2-XXX~~ et seq.) and all local terms and conditions for security, liquidity and rate of return.

DRAFTING NOTE: Technical corrections only.

~~§ 11-47.4 2.2-XXX.~~ Preference for local products and firms; applicability.

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in ~~such the locality~~, if such a choice is available; otherwise the tie shall be decided by lot, unless § 11-47 ~~shall apply 2.2-XXX applies~~.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

DRAFTING NOTE: Technical corrections only.

~~§ 11-48.~~ Participation of small businesses and businesses owned by women and minorities.

~~All public bodies shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. State agencies shall submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 11-44) supra.

~~§ 11-54 2.2-XXX.~~ Withdrawal of bid due to error.

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake ~~therein in the bid~~, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, ~~such the~~ work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection ~~D-F~~ of ~~§ 11-52 2.2-XXX~~. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. ~~Such The~~ mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

B. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

C. No bid ~~may shall~~ be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

D. If a bid is withdrawn ~~under the authority of~~ in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the public body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

DRAFTING NOTE: Technical corrections only.

~~§ 41-43~~ 2.2-XXX. Contract pricing arrangements.

A. Except as prohibited ~~herein in this section~~, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

DRAFTING NOTE: Technical corrections only.

~~§ 41-41.4~~ 2.2-XXX. Competitive ~~bidding~~ procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any ~~local government or subdivision of local government~~ governing body or subdivision thereof for which state funds of not more than \$30,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under ~~subdivision 2~~ of subsection C-D of § 41-41 2.2-XXX. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 41-55~~ 2.2-XXX. Modification of the contract.

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$10,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

DRAFTING NOTE: Technical corrections only.

~~§ 11-46.3 2.2-XXX.~~ Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any political subdivision thereof unless he (i) has obtained, and continues to maintain for the duration of ~~such the work, such workers' compensation coverage as may be required~~ pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, or institutions, and political subdivisions. Failure of a department, agency ~~or,~~ institution or political subdivision to provide ~~such the~~ form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, ~~such workers' compensation coverage as may be required~~ pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

~~D. The provisions of this section shall apply to localities on and after January 1, 1994, and the Department of General Services shall furnish the forms to localities.~~

DRAFTING NOTE: Technical corrections only.

~~§ 11-56 2.2-XXX.~~ Retainage on construction contracts.

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with ~~not no~~ more than five percent being retained to ~~assure~~ ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations provisions of this section.

DRAFTING NOTE: Technical corrections only.

~~§ 11-56.1 2.2-XXX.~~ Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the "~~Escrow Agreement~~" escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the "~~Escrow Agreement~~" escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "~~Escrow Agreement~~" escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The "~~Escrow Agreement~~" escrow agreement and all regulations ~~promulgated~~ adopted by the political subdivision entering into the contract shall be substantially the same as that used by the ~~Commonwealth of Virginia~~ Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

DRAFTING NOTE: Technical corrections only.

~~§ 11-56.2~~ 2.2-XXX. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract ~~entered into on or after July 1, 1991, that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control is against public policy and is shall be void and unenforceable as against public policy.~~

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

DRAFTING NOTE: Technical corrections only.

~~§ 11-57~~ 2.2-XXX. Bid bonds.

A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder which is ~~legally~~ authorized to do business in Virginia, as a guarantee that if the contract is awarded to ~~such the~~ bidder, ~~that bidder he~~ will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.

DRAFTING NOTE: Technical corrections only.

~~§ 41-58.2.2-XXX.~~ Performance and payment bonds.

A. Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor, ~~such the~~ contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. ~~Such The~~ bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in ~~the prosecution furtherance~~ of the work provided for in ~~such the~~ contract, and shall be conditioned upon the prompt payment for all ~~such material materials~~ furnished or labor supplied or performed in the ~~prosecution furtherance~~ of the work.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of ~~such the~~ bonds shall be executed by one or more surety companies selected by the contractor which are ~~legally~~ authorized to do business in Virginia.

C. If the public body is the Commonwealth of Virginia, or any agency or institution thereof, ~~such the~~ bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body which awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$100,000.

F. Nothing in this section shall preclude ~~such the~~ contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

DRAFTING NOTE: Technical corrections only.

~~§ 41-61.2.2-XXX.~~ Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of subsections A and B shall not apply to the Department of Transportation.

DRAFTING NOTE: Technical corrections only.

~~§ 41-62~~ 2.2-XXX. Bonds on other than construction contracts.

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

DRAFTING NOTE: Technical corrections only.

~~§ 41-59~~ 2.2-XXX. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, ~~if the action be for such, in all other cases~~ which gave rise to the action.

DRAFTING NOTE: Technical corrections only.

~~§ 41-60~~ 2.2-XXX. Actions on payment bonds.

A. Subject to the provisions of subsection B ~~hereof~~, any claimant who has performed labor or furnished material in accordance with the contract documents in ~~the prosecution-furtherance~~ of the work provided in any contract for which a payment bond has been given, and who has not been paid in full ~~therefor~~ before the expiration of ninety days after the day on which ~~such the~~ claimant performed the last of ~~such the~~ labor or furnished the last of ~~such the~~ materials for which he claims payment, may bring an action on ~~such the~~ payment bond to recover any amount due him for ~~such the~~ labor or material, ~~and may prosecute such action to final judgment and have execution on the judgment~~. The obligee named in the bond need not be named a party to ~~such the~~ action.

B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under subsection F of § 41-58-F-2.2-XXX but who has no contractual relationship, express or implied, with ~~such the~~ contractor, may bring an action on the contractor's payment bond only if he has given written notice to ~~such the~~ contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under subsection F of § 41-58-F-2.2-XXX but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond ~~must shall~~ be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

DRAFTING NOTE: Technical corrections only.

~~§ 41-62.2-2.2-XXX.~~ Public inspection of certain records.

A. Except as provided ~~herein in this section~~, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (~~§ 2.1-340-2.2-XXX~~ et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

~~§ 4D.~~ Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

~~§ 2E.~~ Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

~~§ F.~~ Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of ~~§ 41-46-2.2-XXX~~ shall not be subject to ~~public disclosure under the Virginia Freedom of Information Act; however.~~ However, the bidder, offeror or contractor ~~must shall~~ (i) invoke the protections of this section prior to or upon submission of the data or other materials, and ~~must~~ (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

DRAFTING NOTE: Technical corrections only.

Article 4.

Prompt Payment.

~~§ 41-62.4-2.2-XXX.~~ Definitions.

As used in this article, unless the context ~~clearly shows otherwise,~~ the term or phrase requires a different meaning:

"Contractor" means the entity that has a direct contract with any "state agency" as defined herein, or any agency of local government as discussed in ~~§ 41-62.10-2.2-XXX.~~

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency which obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty forty-five days after receipt of the goods or services, whichever is later.

"State agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

DRAFTING NOTE: Technical corrections. In the definition of prompt payment, thirty days has been increased to forty-five days to eliminate an inconsistency between this section and proposed § 2.2-XXX (existing § 11-62.10). This change was made with the concurrence of the Virginia Municipal League.

~~§ 11-62.9 2.2-XXX.~~ Exemptions.

The provisions of this article shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 11-62.8 2.2-XXX.~~ Retainage to remain valid.

Notwithstanding the provisions of this article, the provisions of § 44-56 ~~2.2-XXX~~ relating to retainage shall remain valid.

DRAFTING NOTE: Technical corrections only.

~~§ 11-62.2 2.2-XXX.~~ Prompt payment of bills by state agencies.

A. Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date.

Payment ~~is~~ shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (~~§ 2.1-726-2.2-XXX~~ et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 11-62.2 and subsection B is § 11-62.3.

~~§ 11-62.3. Separate payment dates.~~

~~Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 11-62.2) supra.

~~§ 11-62.4 2.2-XXX.~~ Defect or impropriety in the invoice or goods and/or services received.

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if ~~such~~ the defect or impropriety would prevent

payment by the payment ~~date~~. The notice shall be ~~within fifteen days after receipt of such the invoice or such the goods or services.~~

DRAFTING NOTE: Technical corrections only.

~~§ 11-62-10~~ 2.2-XXX. Prompt payment of bills by localities.

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of ~~such the~~ goods or services; or (ii) if ~~such a~~ date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the ~~business concern~~ supplier of any defect or impropriety which would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the ~~business concern~~ supplier which ~~do~~ shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

DRAFTING NOTE: Technical corrections only.

~~§ 11-62-6~~ 2.2-XXX. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 11-62-11~~ 2.2-XXX. Payment clauses to be included in contracts.

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with ~~§ 11-62-10~~ 2.2-XXX, shall include:

1. A payment clause which obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1-b of this section.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section ~~may shall~~ not be construed to be an obligation of the state agency or agency of local government. A contract modification ~~may shall~~ not be made for the purpose of providing reimbursement for ~~such the~~ interest charge. A cost reimbursement claim ~~may shall~~ not include any amount for reimbursement for ~~such the~~ interest charge.

DRAFTING NOTE: Technical corrections only.

~~§ 41-62.5~~ 2.2-XXX. Interest penalty; exceptions.

A. Interest shall accrue, at the rate determined pursuant to subsection B ~~of this section~~, on all amounts owed by a state agency to a vendor which remain unpaid after seven days following the payment date, ~~provided, that. However,~~ nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A ~~of this section~~ shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates ~~is to shall~~ be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A ~~of this section~~, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for ~~such the~~ goods or services. The exception from the interest penalty provided by this ~~paragraph subsection~~ shall apply only to that portion of a delayed payment which is actually the subject of ~~such a the~~ disagreement and shall apply only for the duration of ~~such the~~ disagreement.

D. This section shall not apply to ~~§ 41-56~~ 2.2-XXX pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A ~~of this section~~, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (~~§ 2-1-726-~~ 2.2-XXX et seq.), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B ~~of this section~~ on amounts withheld which remain unpaid after seven days following the payment date.

DRAFTING NOTE: Technical corrections only.

~~§ 41-62.7~~ 2.2-XXX. Comptroller to file annual report.

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance Committee, the House Committees on Finance Committee and the House Appropriations Committee on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

DRAFTING NOTE: Technical corrections only.

Article 5.
Remedies.

~~§-11-63~~ 2.2-XXX. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. ~~Such~~ The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of ~~§-11-71~~ 2.2-XXX, if available, or in the alternative by instituting legal action as provided in ~~§-11-70~~ 2.2-XXX.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes-applicable state law or regulations, the sole relief shall be restoration of eligibility.

DRAFTING NOTE: Technical corrections only.

~~§-11-64~~ 2.2-XXX. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of ~~§-11-64~~ 2.2-XXX shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of ~~§-11-71~~ 2.2-XXX, if available, or in the alternative by instituting legal action as provided in ~~§-11-70~~ 2.2-XXX.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of ~~§-11-64~~ 2.2-XXX, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or ~~not~~ (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

DRAFTING NOTE: Technical corrections. The enumeration of the basis for relief in subsection C was done for clarification and consistency within this article.

~~§ 41-65~~ 2.2-XXX. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in ~~§ 41-37 2.2-XXX~~. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in ~~§ 41-37 2.2-XXX~~. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents which relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received ~~such~~ the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of ~~§ 41-74 2.2-XXX~~, if available, or in the alternative by instituting legal action as provided in ~~§ 41-70 2.2-XXX~~.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to ~~§ 41-70 2.2-XXX~~ or ~~§ 41-74 2.2-XXX~~, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or ~~not~~ (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 41-70-A 2.2-XXX or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of ~~§ 41-66 2.2-XXX~~.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 41-66 2.2-XXX.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

DRAFTING NOTE: Technical corrections. The enumeration of the basis for relief in subsection B was done for clarification and consistency within this article.

~~§ 41-66~~ 2.2-XXX. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit ~~such the~~ protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit ~~such the~~ protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in ~~§ 41-44~~ 2.2-XXX (General Exemptions). However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under ~~§ 41-52~~ 2.2-XXX, then the time within which the protest ~~must shall~~ be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under ~~§ 41-52~~ 2.2-XXX, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking administrative procedures meeting the standards of ~~§ 41-74~~ 2.2-XXX, if available, or in the alternative by instituting legal action as provided in ~~§ 41-70~~ 2.2-XXX. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 4-6 (~~§ 41-72~~ 2.2-XXX et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

DRAFTING NOTE: Technical corrections only.

~~§ 41-67~~ 2.2-XXX. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

DRAFTING NOTE: Technical corrections only.

~~§ 41-68~~ 2.2-XXX. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in ~~§ 41-66~~ 2.2-XXX, or the filing of a timely legal action as provided in ~~§ 41-70~~ 2.2-XXX, no further action to award the contract ~~will shall~~ be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

DRAFTING NOTE: Technical corrections only.

§ ~~44-69~~ 2.2-XXX. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; ~~however.~~ However, written notice of the contractor's intention to file ~~such a~~ a claim shall ~~have been be~~ given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the public body.

C. A contractor may not invoke administrative procedures meeting the standards of § ~~44-71~~ 2.2-XXX, if available, or institute legal action as provided in § ~~44-70~~ 2.2-XXX, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract.

D. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § ~~44-71~~ 2.2-XXX, if available, or in the alternative by instituting legal action as provided in § ~~44-70~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

§ ~~44-70~~ 2.2-XXX. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious ~~or not~~; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; ~~or~~; (iii) in the case of denial of prequalification, ~~that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in subsection B of § 44-46 2.2-XXX.~~ In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § ~~44-37~~ 2.2-XXX, is found by the court to be a responsible bidder, the court may direct the public body to award the contract, ~~forthwith~~, to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § ~~44-64~~ 2.2-XXX may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or ~~not~~ (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § ~~44-41~~ 2.2-XXX (General Exemption), whose protest of an award or decision to award under § ~~44-66~~ 2.2-XXX is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or ~~not~~ (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or pursuant to § 33.1-387, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § ~~44-74.2.2-XXX~~, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

DRAFTING NOTE: Technical corrections. The enumeration of the basis for legal actions authorized in this section was done for clarification and consistency within this article.

~~§ 44-74.2.2-XXX~~. Administrative appeals procedure.

A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (i) fraudulent, arbitrary or capricious; (ii) so grossly erroneous as to imply bad faith; or (iii) in the case of denial of prequalification, ~~such the~~ findings were not based upon the criteria for denial of prequalification set forth in subsection B of § ~~44-46.2.2-XXX~~. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

DRAFTING NOTE: Technical corrections only.

~~§ 44-74.4.2.2-XXX~~. Alternative dispute resolution.

Public bodies are ~~authorized to~~ may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and ~~to~~ utilize mediation and other alternative dispute resolution procedures; ~~however.~~ However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § ~~2-1-427.2.2-XXX~~, as applicable, ~~and such.~~ Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

DRAFTING NOTE: Technical corrections only.

Article 6.

Ethics in Public Contracting.

~~§ 44-72.2.2-XXX~~. Purpose.

The provisions of this article supplement, but ~~do~~ shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ ~~2-1-639.1.2.2-XXX~~ et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

DRAFTING NOTE: Technical corrections only.

§ 11-73 2.2-XXX. Definitions.

~~The words defined in this section shall have the meanings set forth below throughout~~ As used in this article, unless the context requires a different meaning.

"Immediate family" ~~shall mean~~ means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" ~~shall mean~~ means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" ~~shall mean~~ means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (~~§ 2-1-639.1~~ 2.2-XXX et seq.).

"Procurement transaction" ~~shall mean~~ means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" ~~shall mean~~ means any person employed by a public body, including elected officials or appointed members of governing bodies.

DRAFTING NOTE: Technical corrections only.

§ 11-74 2.2-XXX. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions A-2 and A-3 of subsection A of ~~§ 2-1-639.11~~ 2.2-XXX, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; ~~or~~

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; ~~or~~

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

DRAFTING NOTE: Technical corrections only.

§ 11-76 2.2-XXX. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt

in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

DRAFTING NOTE: Technical corrections only.

~~§ 11-75 2.2-XXX. Solicitation-Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.~~

~~A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this ~~section~~ subsection.~~

~~B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 11-75 and subsection B is § 11-77.

~~§ 11-77. Gifts by bidders, offerors, contractors or subcontractors.~~

~~No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 11-75) supra.

~~§ 11-78 2.2-XXX. Kickbacks.~~

~~A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.~~

~~B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.~~

~~C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.~~

~~D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.~~

DRAFTING NOTE: Technical corrections only.

~~§ 11-78.4 2.2-XXX. Participation in bid preparation; limitation on submitting bid for same procurement.~~

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of ~~such the~~ person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

DRAFTING NOTE: Technical corrections only.

~~§ 44-79.2.2-XXX.~~ Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in ~~§ 2-1-639.2~~ 2.2-XXX.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in ~~such the~~ building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in ~~§ 2-1-639.2~~ 2.2-XXX.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation ~~and or~~ the Virginia Port Authority.

DRAFTING NOTE: Technical corrections only.

~~§ 44-79.4~~ 2.2-XXX. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A ~~of this section who~~ knowingly makes a false statement in ~~such the~~ certification shall be punished as provided in ~~§ 44-80~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 44-79.2~~ 2.2-XXX. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing ~~the same it~~ to contain any false, fictitious or fraudulent statement or entry.

DRAFTING NOTE: Technical corrections only.

~~§ 44-80~~ 2.2-XXX. Penalty for violation.

~~Willful~~ Any person convicted of a willful violation of any provision of this article shall ~~constitute be guilty of~~ a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Security for Public Deposits Act.

~~§ 2.1-359 2.2-XXX. Declaration of legislative intent, short title, declaration of intent, applicability.~~

A. This chapter may be cited as the Virginia Security for Public Deposits Act.

B. The General Assembly intends by this chapter to establish a single body of law applicable to the pledge of security as collateral for public funds on deposit in financial institutions so that the procedure for securing public deposits may be uniform throughout the Commonwealth.

~~This chapter may be cited as the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.).~~

C. All public deposits in qualified public depositories which are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 2.1-359 and subsection C is § 2.1-361.

~~§ 2.1-360 2.2-XXX. Definitions.~~

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

~~(a) The term "public"~~ "Public deposit" shall ~~mean~~ means moneys of the Commonwealth or of any county, city, town or other political subdivision thereof, including moneys of any commission, institution, committee, board or officer of the foregoing and any state, circuit, county or municipal court, which moneys are deposited in any qualified public depository in any of the following types of accounts: nonnegotiable or registered time deposits, demand deposits, savings deposits, and any other transaction accounts, and security for such deposit is required by other provisions of law, or is required due to an election of the public depositor.

~~(b) The term "qualified"~~ "Qualified public depository" shall ~~mean~~ means any national banking association, federal savings and loan association or federal savings bank located in Virginia and any bank, trust company or savings institution organized under Virginia law that receives or holds public deposits which are secured pursuant to this chapter.

~~(c) The term "default"~~ "Default or insolvency" shall ~~include~~ includes, but shall not be limited to, the failure or refusal of any qualified public depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

~~(d) "Treasury Board"~~ shall ~~mean~~ means the Treasury Board of the Commonwealth created by ~~§ 2.1-478 2.2-XXX.~~

~~(e) The term "eligible"~~ "Eligible collateral" shall mean securities of the character authorized as legal investments under the laws of ~~this the~~ Commonwealth for public sinking funds or other public funds and securities acceptable under United States Treasury Department regulations as collateral for the security of treasury tax and loan accounts.

~~(f) In the case of a bank, the term "required"~~ "Required collateral" of a qualified public depository shall ~~mean~~ means, (i) in the case of a bank, a sum equal to fifty percent of the actual public deposits held at the close of business on the last banking day in the month immediately preceding the date of any computation of such balance, or the average balance of all public deposits for such preceding month, whichever is greater. ~~In and~~ (ii) in the case of a savings and loan association or savings bank, the term ~~"required collateral"~~ of a qualified public depository shall mean a sum equal to 100 percent of the average daily balance for the month immediately preceding the date of any computation of such balance of all public deposits held by such depository but shall not

be less than 100 percent of the public deposits held by such depository at the close of business on the last banking day in such preceding month.

~~(g) The terms "treasurer" "Treasurer" and "public depositor" shall mean means~~ the State Treasurer, a county, city, or town treasurer or director of finance or similar officer and the custodian of any other public deposits secured pursuant to this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-361. Public deposits to be secured as provided in this chapter.~~

~~Upon and after January 1, 1974, all public deposits in qualified public depositories which are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-359) supra.

~~§ 2.1-362~~ 2.2-XXX. Collateral for public deposits.

Every qualified public depository shall deposit with the State Treasurer, or, with the approval of the Treasury Board, with the Federal Reserve Bank of Richmond or any other bank or trust company located within or without ~~this the~~ Commonwealth, eligible collateral equal to or in excess of the required collateral of such depository to be held subject to the order of the Treasury Board. Eligible collateral shall be valued as determined by the Treasury Board. Substitutions and withdrawals of eligible collateral may be made from time to time under regulations issued by the Treasury Board.

Each qualified public depository shall, at the time of the deposit of eligible collateral, deliver to the State Treasurer a power of attorney authorizing him to transfer any registered securities deposited, or any part thereof, for the purpose of paying any of the liabilities provided for in this chapter.

Notwithstanding any other provisions of law, no depository shall be required to give bond or pledge securities in the manner herein provided for the purpose of securing deposits received or held in the trust department of the depository and which are secured as required by § 6.1-21 or which are secured pursuant to Title 12, § 92a of the United States Code by securities of the classes prescribed by § 6.1-21.

No qualified public depository shall accept or retain any public deposit which is required to be secured unless it has deposited eligible collateral equal to its required collateral with some proper depository pursuant to this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-363~~ 2.2-XXX. Procedure for payment of losses where depository is bank.

A. When the Treasury Board is advised by any treasurer or otherwise determines that a default or insolvency has occurred with regard to a qualified public depository which is a bank, it shall as promptly as practicable make payment to the proper treasurer of all funds subject to such default or insolvency, pursuant to the following procedures:

~~(a)~~ 1. The Treasury Board and the treasurer shall ascertain the amount of public funds on deposit with the qualified public depository in default or insolvent which are secured pursuant to this chapter, either with the cooperation of the Commissioner of Financial Institutions or receiver appointed for such depository or by any other means available, and the amount of deposit insurance applicable to such deposits.

~~(b)~~ 2. The amount of such public deposits ascertained as provided in ~~(a)~~ subdivision 1, net of applicable deposit insurance, shall be assessed by the Treasury Board first against the depository in default or insolvent to

the extent of the full realizable current market value of the collateral deposited by it to secure its public deposits, and second, to the extent that such collateral is insufficient to satisfy the liability of the depository upon its deposits secured pursuant to this chapter against each of the other qualified public depositories according to the ratio which the average daily balance for each month of the secured public deposits held by the depository during the twelve calendar months immediately preceding the date of the default or insolvency with respect to which the assessment is made bears to the total average daily balance for each month of all secured public deposits held by all qualified public depositories which are banks, other than the defaulting depository, during those twelve calendar months.

~~(e) 3.~~ Assessments made by the Treasury Board shall be payable on the second business day following demand, and in case of the failure of any qualified public depository to pay such assessment when due, the State Treasurer shall ~~forthwith promptly~~ take possession of the eligible collateral deposited with him or with the Federal Reserve Bank of Richmond or other bank or trust company pursuant to this chapter and liquidate the same to the extent necessary to pay such assessment and turn over such amounts received to the Treasury Board.

~~(d) 4.~~ Upon receipt of such assessment, payments or the proceeds of the eligible collateral liquidated to pay such assessments from the State Treasurer, the Treasury Board shall reimburse the public depositors to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-363.1~~ 2.2-XXX. Procedure for payment of losses where depository is savings bank or savings and loan association.

When the Treasury Board is advised by any treasurer or otherwise determines that a default or insolvency has occurred with regard to a qualified public depository which is a savings bank or a savings and loan association, it shall as promptly as practicable make payment to the proper treasurer of all funds subject to such default or insolvency, pursuant to the following procedures:

1. The Treasury Board and the treasurer shall ascertain the amount of public funds on deposit with the qualified public depository in default or insolvent which are secured pursuant to this chapter, either with the cooperation of the Commissioner of Financial Institutions or receiver appointed for such depository or by any other means available, and the amount of deposit insurance applicable to such deposits.

2. The amount of such public deposits ascertained as provided in subdivision 1 ~~of this section,~~ net of applicable deposit insurance, shall be assessed by the Treasury Board against the depository in default or insolvent. The State Treasurer shall ~~forthwith promptly~~ take possession of such of the eligible collateral deposited by such depository with him, or with any other depository pursuant to this chapter, as is necessary to satisfy the assessment of the Treasury Board and shall liquidate the same and turn over the proceeds thereof to the Treasury Board.

3. Upon receipt from the State Treasurer of the payments or proceeds of the eligible collateral liquidated to pay such assessments from the State Treasurer, the Treasury Board shall reimburse the public depositors to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-364~~ 2.2-XXX. ~~General powers~~ Powers of Treasury Board relating to the administration of chapter.

The Treasury Board shall have power to:

~~(a) To make~~ 1. Make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter;

~~(b) To prescribe~~ 2. Prescribe regulations fixing terms and conditions consistent with this chapter under which public deposits may be received and held;

~~(c) To require 3. Require~~ such additional collateral, in excess of the required collateral of any qualified public depository, of any and all such depositories as it may determine prudent under the circumstances;

~~(d) To determine 4. Determine within the requirements of § 2-1-360 (e)~~ what securities shall be acceptable as eligible collateral, and to fix the percentage of face value or market value of such securities that can be used to secure public deposits;

~~(e) To require 5. Require~~ any qualified public depository to furnish such information concerning its public deposits as it shall request; and

~~(f) To determine 6. Determine~~ when a default or insolvency has occurred and to take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim arising in case of default or insolvency.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-365 2.2-XXX.~~ Subrogation of Treasury Board to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any public depositor, the Treasury Board shall be subrogated to all of such depositor's rights, title and interest against the depository in default or insolvent and shall share in any distribution of its assets ratably with other depositors. Any sums received from any such distribution shall be paid to the other qualified public depositories against which assessments were made, in proportion to such assessments, net of any proper expense of the Treasury Board in enforcing any such claim.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-366 2.2-XXX.~~ Deposit of public funds in qualified public depository mandatory.

No public deposit which is required to be secured pursuant to this chapter shall be made except in a qualified public depository.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-367 2.2-XXX.~~ Authority to deposit public funds.

All treasurers and public depositors ~~are hereby authorized to~~ may deposit funds under their control in qualified public depositories securing public deposits pursuant to this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-368 2.2-XXX.~~ Authority to secure public deposits; acceptance of liabilities and duties by public depositories.

All institutions located in ~~this the~~ Commonwealth which are permitted to hold and receive public deposits ~~are hereby authorized to~~ may secure such deposits in accordance with this chapter.

Any institution accepting a public deposit which is required to be secured pursuant to this chapter shall be deemed to have accepted the liabilities and duties imposed upon it pursuant to this chapter with respect to ~~such~~ the deposit.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-370 2.2-XXX.~~ Liability of treasurers or public depositors.

When deposits are made in accordance with this chapter no treasurer or public depositor shall be liable for any loss thereof resulting from the failure or default of any depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-369~~ 2.2-XXX. Reports of public depositories.

Within ten days after the end of each calendar month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board a written report, under oath, indicating (i) the total amount of public deposits held by it at the close of business on the last banking day in the month, ~~and (ii)~~ the average daily balance for the month of all secured public deposits held by it during the month, ~~and (iii)~~ a detailed schedule of pledged collateral at its current asset value for purposes of collateral at the close of business on the last banking day in the month ~~as well as, and (iv)~~ any other information with respect to its secured public deposits that may be required by the Treasury Board.

Each qualified public depository shall also furnish at the same time to each public depositor for which it holds deposits and which makes a written request therefor a schedule of the secured public deposits to the credit of such depositor as of the close of business on the last banking day in the month and the total amount of all secured public deposits held by it upon such date.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Investment of Public Funds.

~~§ 2-1-327~~ 2.2-XXX. Legal investments for public sinking funds.

The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

1. ~~Obligations of the Commonwealth.~~ Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. ~~Obligations of the United States, etc.~~ Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. ~~Obligations of Virginia counties, cities, etc.~~ Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.

4. ~~Obligations of International Bank for Reconstruction and Development, Asian Development Bank and African Development Bank.~~ Bonds and other obligations issued, guaranteed or assumed by the International Bank

for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.

~~5. Saving accounts or time deposits. Savings accounts or time deposits in any bank or savings institution within this the Commonwealth provided such the bank or savings institution is approved for the deposit of other funds of the Commonwealth or other political subdivision thereof of the Commonwealth.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2-1 328 2.2-XXX. (Effective January 1, 2000) Legal investments for other public funds.~~

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

~~1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth of Virginia, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.~~

~~2. Obligations of the United States, etc. Stocks, bonds, treasury notes and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; bonds of the District of Columbia; bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks; bonds, debentures or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress; and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this paragraph may be held directly or in the form of repurchase agreements collateralized by such debt securities or in the form of securities of any open end or closed end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness or repurchase agreements collateralized by such securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.~~

~~3. Obligations of other states. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that within the twenty fiscal years next preceding the making of such investment, such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.~~

~~4. Obligations of Virginia counties, cities, etc. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth of Virginia upon which there is no default; provided, that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in Article 2 (§ 26-45.3 et seq.) of Chapter 3 of Title 26, without reference to this section, shall apply.~~

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

~~5. Obligations of cities, counties, etc., of other states.~~ Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than ninety days; provided, that (i) within the twenty fiscal years next preceding the making of such investment, such city, county, town or district has not been in default for more than ninety days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town or district shall have been in continuous existence for at least twenty years; (iii) such city, county, town or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town or district issuing the same; (v) the city, county, town or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed ten percent of the value of the taxable property in such city, county, town or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

~~6. Obligations of International Bank, Asian Development Bank and African Development Bank.~~ Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

B. This section shall not apply to retirement funds and deferred compensation plans to be invested pursuant to §§ 51.1-124.30 through 51.1-124.35 or § 51.1-601.

~~BC.~~ Investments made prior to July 1, 1991, pursuant to § 51.1-601 are hereby ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 of Title 51.1.

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of the Treasury, subsection A 2 was replaced with language from existing § 2.1-327 (A 2) which provides the same coverage of securities but in more general and manageable terms. The basis for this decision is that existing subsection A 2 of § 2.1-328 attempts to be all inclusive, but then proceeds to provide a list of agency securities which quickly becomes out dated.

~~§ 2.1-328.1~~ 2.2-XXX. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper.

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in "prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by at least two of the following: Moody's Investors Service, Inc., within its NCO/Moody's rating of prime 1, by Standard & Poor's, Inc., within its rating of A-1, by Fitch Investor's Services, Inc., within its rating of F-1, by Duff and Phelps, Inc., within its rating of D-1, or by their corporate successors, provided that at the time of any such investment:

1. The issuing corporation, or its guarantor, has a net worth of at least fifty million dollars; and
2. The net income of the issuing corporation, or its guarantor, has averaged three million dollars per year for the previous five years; and

3. All existing senior bonded indebtedness of the issuer, or its guarantor, is rated "A" or better or the equivalent rating by at least two of the following: Moody's Investors Service, Inc., Standard & Poor's, Inc., Fitch Investor's Services, Inc., or Duff and Phelps, Inc.

Not more than thirty-five percent of the total funds available for investment may be invested in commercial paper, and not more than five percent of the total funds available for investment may be invested in commercial paper of any one issuing corporation.

B. Notwithstanding subsection A of this section, the Commonwealth, municipal corporations, other political subdivisions and public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, except for sinking funds, in commercial paper other than "prime quality" commercial paper as defined in this section provided that:

1. Prior written approval is obtained from the governing board, committee or other entity that determines investment policy. The Treasury Board shall be the governing body for the Commonwealth; and

2. A written internal credit review justifying the creditworthiness of the issuing corporation is prepared in advance and made part of the purchase file.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.2~~ 2.2-XXX. Investments by Fairfax County finance director.

Notwithstanding any provisions of law to the contrary or any limitation or restriction contained in any such law, the director of finance of Fairfax County may invest, redeem, sell, exchange, and reinvest unexpended or surplus moneys, in any fund or account of which he has custody or control, in bankers' acceptances.

DRAFTING NOTE: Technical corrections. This section is not set out in the Code, but is set out here for the purposes of this title revision. The Code Commission directed that this section continue to be not set out in the Code.

~~§ 2.1-328.3~~ 2.2-XXX. ~~Investments by local governments~~ Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances.

Notwithstanding any provisions of law to the contrary, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in bankers' acceptances.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.5~~ 2.2-XXX. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, in certificates representing ownership of either treasury bond principal at maturity or its coupons for accrued periods. The underlying United States Treasury bonds or coupons shall be held by a third-party independent of the seller of such certificates.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.6~~ 2.2-XXX. Securities lending.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, political subdivisions and all public bodies of the Commonwealth may engage in securities lending

from the portfolio of investments of which they have custody and control, other than sinking funds. The Treasury Board shall develop guidelines with which such securities lending shall fully comply. Such guidelines shall ensure that the state treasury is at all times fully collateralized by the borrowing institution.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.8~~ 2.2-XXX. Investment of funds in overnight, term and open repurchase agreements.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth, may invest any and all moneys belonging to them or within their control in overnight, term and open repurchase agreements which are collateralized with securities that are approved for direct investment.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.9~~ 2.2-XXX. Investment of certain public moneys in certain mutual funds.

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds which are governed by the provisions of ~~§ 2.1-327~~ 2.2-XXX, in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ 13.1-501 et seq.) of the Commonwealth of Virginia or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.15~~ 2.2-XXX. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes.

Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, and other political subdivisions and all other public bodies of the Commonwealth may invest any or all of the moneys belonging to them or within their control, other than sinking funds, in negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by Standard & Poor's and P-1 by Moody's Investor Service, Inc., for maturities of one year or less, and a rating of at least AA by Standard & Poor's and Aa by Moody's Investor Service, Inc., for maturities over one year and not exceeding five years.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.10~~ 2.2-XXX. Investment of funds in corporate notes.

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least Aa by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poors, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth, ~~as defined in this section,~~ may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a duration of no more than five years and a rating of at least A by two rating agencies, one of which ~~must~~ shall be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" ~~is defined as means~~ any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.13~~ 2.2-XXX. Investment of funds in asset-backed securities.

Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth, ~~as defined in this section,~~ may invest any and all moneys belonging to it or within its control, other than sinking funds, in asset-backed securities with a duration of no more than five years and a rating of no less than AAA by two rating agencies, one of which must be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" ~~is defined as means~~ any state agency, institution of the Commonwealth or statewide authority created under the laws of the Commonwealth having an internal or external public funds manager with professional investment management capabilities.

DRAFTING NOTE:

~~§ 2.1-328.7. Investment of funds by State Treasurer in first lien deeds of trust on residential property.~~

~~Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys, in any funds or account of which he has custody and control, other than sinking funds, in first lien deeds of trust on residential property.~~

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of the Treasury, this section has been deleted because these types of investments instrument are no longer used in practice.

~~§ 2.1-328.4. Investment of funds by State Treasurer in bankers' acceptances; guidelines.~~

~~Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account of which he has custody and control, other than sinking funds, in bankers' acceptances.~~

~~The Treasury Board shall develop guidelines under which such investments shall be made.~~

DRAFTING NOTE: Technical corrections. On the recommendation of the State Treasurer, this section has been deleted as duplicative of existing § 2.1-328.3 (proposed § 2.2-XXX).

~~§ 2.1-328.11~~ 2.2-XXX. Investment of funds by State Treasurer in obligations of foreign sovereign governments.

Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account over which he has custody and control, other than sinking funds, in fully hedged debt obligations of sovereign governments and companies that are fully guaranteed by such sovereign governments, with a rating of at least AAA by Moody's Investors Service, Inc., and a rating of at least AAA by Standard and Poors, Inc., and a maturity of no more than five years.

Not more than ten percent of the total funds of the Commonwealth available for investment may be invested in the manner described in this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.12~~ 2.2-XXX. Investments by transportation commissions.

Transportation commissions which provide rail service may invest in, if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies which insure railroad operations.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-328.14~~ 2.2-XXX. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds.

Public funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth ~~are~~ shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of ~~such~~ the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-329.04~~ 2.2-XXX. Collateral and safekeeping arrangements.

~~Effective October 1, 1988, securities~~ Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement which shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction. ~~The provisions of this section do not apply to investments with a maturity of less than thirty-one calendar days.~~

As used in this section, "counterparty" ~~is defined as~~ means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than thirty-one calendar days or (ii) the ~~State Treasurer of Virginia~~, who shall comply with safekeeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform Investment of Institutional Funds Act, Article 1.1 (§ 55-268.1 et seq.) of Chapter 15 of Title 55.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-329.4~~ 2.2-XXX. Liability of treasurers or public depositors.

When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Local Government Investment Pools.

~~§ 2.1-234.4~~ 2.2-XXX. Short title; definitions.

A. This article chapter may be cited as the "Investment of Public Funds and Local Government Investment Pool Act."

B. The General Assembly finds that the public interest is served by maximum and prudent investment of public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments. In selecting among avenues of investment, the highest rate of return, consistent with safety and liquidity, shall be the objective.

B. The purpose of this chapter is to secure the maximum public benefit from the deposit and investment of public funds, and, in furtherance of such purposes to:

1. Establish and maintain a continuing statewide policy for the deposit and investment of public funds;

2. Establish a state-administered pool for the investment of local government funds; and

3. Authorize treasurers or any other person collecting, disbursing, or otherwise handling public funds to invest such public funds either under the state policy or through the local government investment pool created by the chapter.

C. The General Assembly finds that the objectives of this chapter will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds.

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

"Local official handling public funds" or "official" means any person or entity described in the opening paragraph of § 2.2-XXX (2.1-327).

"Depository institution" means any commercial bank, trust company, or savings institution insured by an agency or instrumentality of the United States government.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-234.1, subsections B and C are § 2.1-234.2, and subsection D is § 2.1-234.3.

~~§ 2.1-234.2. Findings and purpose.~~

~~A. The General Assembly finds that the public interest is served by maximum and prudent investment of public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments. In selecting among avenues of investment, the highest rate of return, consistent with safety and liquidity, shall be the objective.~~

~~B. The purpose of this article is to secure the maximum public benefit from the deposit and investment of public funds, and, in furtherance of such purposes:~~

~~1. To establish and maintain a continuing statewide policy for the deposit and investment of public funds;~~

~~2. To establish a state-administered pool for the investment of local government funds; and~~

~~3. To authorize treasurers or any other person collecting, disbursing, or otherwise handling public funds to invest such public funds either under the state policy or through the local government investment pool created by the article.~~

~~C. The General Assembly finds that the objectives of this article will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B and C in proposed § 2.2-XXX (existing § 2.1-234.1) supra.

~~§ 2.1-234.3. Definitions.~~

~~As used in this article:~~

~~1. "Local official handling public funds" or "official" means any person or entity described in the opening paragraph of § 2.1-327.~~

~~2. "Depository institution" means any commercial bank or trust company, savings institution, (or building and loan association) insured by an agency or instrumentality of the United States government.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-234.1) supra.

~~§ 2.1-234.8-2.2-XXX. Local government investment pool created.~~

A. A local government investment pool is ~~hereby~~ created, consisting of the aggregate of all funds from local officials handling public funds that are placed in the custody of the State Treasurer for investment and reinvestment as provided herein in this chapter.

B. The Treasury Board or its delegate designee shall administer the local government investment pool on behalf of the participating local officials subject to regulations and guidelines ~~promulgated~~ adopted by the Treasury Board.

C. The Treasury Board or its delegate designee shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Specifically, the types of authorized investments for pool assets shall be limited to those set forth for local officials in Chapter ~~48X~~ (§ 2.1-327-2.2-XXX et seq.) of this title.

D. A separate account for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the investment pool. Details of any investment transaction shall be furnished to any participant upon request.

E. The Treasury Board or its delegate designee shall administer and handle ~~such~~ the accounts in the same manner as bond and sinking fund trust accounts.

F. The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the local government investment pool shall be subject to payment at any time from the pool upon request, subject to applicable regulations and guidelines. Accumulated income shall be remitted or credited to each participant at least quarterly.

G. Except as provided in this section, all instruments of title of all investments of the investment pool shall remain in the custody of the State Treasurer. The State Treasurer may deposit with one or more fiscal agents or banks, those instruments of title he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale. The State Treasurer shall collect the principal and interest or other income from investments of the investment pool, the instruments of title to which are in his custody, when due and payable.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.4~~ 2.2-XXX. Investment authority; collateral conditions.

A. Subject to the procedures set forth in this ~~article~~ chapter, any local official handling public funds may invest and reinvest any money subject to his control and jurisdiction in the local government investment pool established by § 2.1-234.8 2.2-XXX.

B. Local officials handling public funds in the Commonwealth may not require from a depository institution any pledge of collateral for their deposits in such institution which is in excess of the requirements of the Virginia Security for Public Deposits Act (§ 2.2-XXX (2.1-359) et seq.)

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-234.4 and subsection B is § 2.1-234.5.

~~§ 2.1-234.5~~. ~~Collateral conditions~~.

~~Local officials handling public funds in this Commonwealth may not require from a depository institution any pledge of collateral for such official's deposits in such institution which is in excess of the requirements of the Virginia Security for Public Deposits Act (§ 2.1-359 et seq.)~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-234.4) supra.

~~§ 2.1-234.6~~ 2.2-XXX. Interfund pooling for investment purposes.

~~Local officials handling public funds are hereby authorized and encouraged to~~ may effect temporary transfers among separate funds for the purpose of pooling amounts available for investment; ~~this~~. This pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting provided that: ~~1. Moneys~~ (i) moneys are available for the investment period required; ~~2. The~~ (ii) the investment fund can repay the advance by the time needed; ~~3. The~~ (iii) the transactions are fully and promptly recorded; and ~~4. The~~ (iv) the interest earned is credited to the loaning or advancing jurisdiction.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.7~~ 2.2-XXX. Powers of Treasury Board relating to the administration of local investment pools.

A. The Treasury Board shall have power to:

1. ~~To make~~ Make and ~~promulgate~~ adopt regulations necessary and proper for the efficient administration of the local government investment pool hereinafter created, including but not limited to:

a. Specification of minimum amounts which may be deposited in the pool and minimum periods of time for which deposits shall be retained in the pool;

b. Creation of a reserve for losses;

c. Payment of administrative expenses from the earnings of the pool;

d. Distribution of the earnings in excess of such expenses, or allocation of losses, to the several participants in a manner which equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

e. Procedures for the deposit and withdrawal of funds.

2. ~~To develop~~ Develop guidelines for the protection of the pool in the event of default in the payment of principal or interest or other income of any investment of the investment pool, such guidelines to include the following procedures:

a. Instituting the proper proceedings to collect the matured principal or interest or other income;

b. Accepting for exchange purposes refunding bonds or other evidences of indebtedness at appropriate interest rates;

c. Making compromises, adjustments, or disposition of matured principal or interest or other income as considered advisable for the purpose of protecting the moneys invested;

d. Making compromises or adjustments as to future payments of principal or interest or other income considered advisable for the purpose of protecting the moneys invested.

3. ~~To formulate~~ Formulate policies for the investment and reinvestment of funds in the investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

B. The Treasury Board may delegate the administrative aspects of operating under this ~~article~~ chapter to the State Treasurer, subject to the regulations and guidelines ~~promulgated~~ adopted by the Treasury Board.

C. Such regulations and guidelines may be promulgated without complying with the Administrative Process Act (§ ~~9-6-14-1~~ 2-2-XXX et seq.) provided that input is solicited from local officials handling public funds. Such input requires only that notice and an opportunity to submit written comments be given.

~~D. The Treasury Board may determine when the first deposits into the investment pool will be accepted, considering the physical capability of the office of the State Treasurer to administer such pool.~~

DRAFTING NOTE: Technical corrections. Subsection D has been deleted on the recommendation of the Department of the Treasury because the pool has been established for 18 years and the language is now obsolete.

~~§ 2-1-234.9~~ 2.2-XXX. Article-Chapter controlling over inconsistent laws; powers supplemental.

Insofar as the provisions of this ~~article~~ chapter are inconsistent with the provisions of any other law, the provisions of this ~~article~~ chapter shall be controlling and the powers conferred by this ~~article~~ chapter shall be in addition and supplemental to the powers conferred by any other law.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Government Non-Arbitrage Investment Act.

~~§ 2-1-234.9-1~~ 2.2-XXX. Authorization to Treasury Board to provide certain assistance.

A. This ~~article~~ chapter shall be known, and may be cited, as the "Government Non-Arbitrage Investment Act."

B. ~~Certain provisions of the federal Tax Reform Act of 1986 have imposed on the Commonwealth, on counties, cities and towns of the Commonwealth, and on their agencies, institutions, and authorities that borrow money the onus of computing an artificial yield on certain investments associated with such borrowing and of rebating to the federal government investment earnings in excess of such yield. The administrative and legal requirements of compliance with such provisions are extensive, complicated and expensive. The General Assembly, therefore, authorizes the Treasury Board to make available to the Commonwealth, to counties, cities~~

and towns in the Commonwealth, and to their agencies, institutions, and authorities or any combination of the foregoing assistance as provided in this ~~article chapter~~ in making and accounting for such investments.

DRAFTING NOTE: Technical corrections. Language in subsection B, shown here as stricken, has been deleted because it is precatory and of limited historical significance.

~~§ 2.1-234.9:2~~ 2.2-XXX. Definitions.

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

"Bonds" means bonds or other obligations issued by the Commonwealth, by counties, cities and towns and by their agencies, institutions, and authorities or by any combination of the foregoing under the provisions of the Public Finance Act (~~§ 15.1-227.1~~ 15.2-2600 et seq.), or otherwise, the interest on which is intended to be excludable from the gross income of the recipients thereof for federal income tax purposes.

"Depository institution" means any commercial bank ~~or~~, trust company, or savings institution ~~or (building and loan association)~~ insured by an agency or instrumentality of the United States government.

"Issuers" means the Commonwealth, counties, cities and towns in the Commonwealth, and their agencies, institutions, and authorities.

"Official handling public funds" or "official" means the treasurer of the issuer or, if there is no officer known as treasurer of the issuer, the chief financial officer of the issuer, and any person or entity described in § 58.1-3123.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.9:3~~ 2.2-XXX. Powers of the Treasury Board under this chapter.

The Treasury Board shall have power to:

1. ~~To provide~~ Provide assistance to issuers in the management of and accounting for their funds, including, without limitation, bond proceeds, reserves and sinking funds, and the investment thereof, any portion of the investment earnings on which is or may be subject to rebate to the federal government.

2. ~~For and on behalf of issuers or a pool or pools, and not for its own account, to manage~~ Manage, acquire, hold, trade and sell investment obligations, for and on behalf of issuers or a pool or pools, and not for its own account, that are authorized investments for issuer bond proceeds, reserves, sinking funds or other funds, as the case may be.

3. ~~To establish~~ Establish one or more pools of the issuer bond proceeds, reserves, sinking funds or other funds that are placed in the custody of the State Treasurer for investment and reinvestment in authorized investments.

4. ~~To promulgate~~ Adopt regulations necessary and proper for the efficient administration of the ~~pool or~~ pools authorized by this ~~article chapter~~ without complying with the Administrative Process Act (~~§ 9-6.14:1~~ 2.2-XXX et seq.), provided that notice and an opportunity to submit written comments on such regulations be given to officials handling public funds.

5. ~~To formulate~~ Formulate policies for the investment and reinvestment of funds under management, including funds in the pool or pools, and the acquisition, retention, management and disposition of investments.

6. ~~To delegate~~ Delegate the administrative aspects ~~administration of operating under this article chapter~~ to the State Treasurer, subject to the regulations and guidelines ~~promulgated~~ adopted by the Treasury Board.

7. ~~To retain~~ Retain employees and engage and enter into contracts with independent investment managers, accountants, counsel, depository institutions and other advisors and agents, as may be necessary or convenient.

8. ~~To enter~~ Enter into contracts with issuers with respect to the performance of investment services.

9. ~~To charge~~ Charge issuers for the costs of its investment services and for its expenses.

10. ~~To do~~ Do any and all other acts and things necessary, appropriate or incidental in carrying out the purposes of this ~~article~~ chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.9:4~~ 2.2-XXX. Powers of issuers.

Any provision of any general or special law or of any charter to the contrary notwithstanding, issuers ~~shall have the power and authority to utilize~~ may use the investment services of the Treasury Board and for that purpose ~~to~~ may enter into contracts with the Treasury Board and its agents.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.9:5~~ 2.2-XXX. Alternative method.

This ~~article~~ chapter shall be deemed to provide an additional, alternative method for the performance of actions authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-234.9:6~~ 2.2-XXX. Liberal construction; inconsistent laws inapplicable.

A. This ~~article~~ chapter, being necessary for the welfare of the people of the Commonwealth, shall be liberally construed to effect the purposes thereof.

B. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special laws or charters, or parts thereof, the provisions of this chapter shall control.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-234.9:6 and subsection B is § 2.1-234.9:7.

~~§ 2.1-234.9:7. Inconsistent laws inapplicable.~~

~~Insofar as the provisions of this article are inconsistent with the provisions of any general or special laws or charters, or parts thereof, the provisions of this article shall be controlling.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-234.9:6) supra.

Chapter X.

Fair Debt Collection Act.

~~§ 2.1-727~~ 2.2-XXX. Collection Policy of the Commonwealth; collection of accounts receivable.

This chapter ~~hereby~~ establishes the policy of the Commonwealth as it relates to the accounting for, management and collection of all accounts receivable due to the Commonwealth. It shall be the policy of the

Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable which are in accordance with regulations ~~promulgated~~adopted by the Department of Accounts and the ~~office~~Office of the Attorney General.

DRAFTING NOTE: Technical corrections only.

§ 2-1-726 2.2-XXX. Definitions.

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

"Accounts receivable" refers to the classification of debts due the Commonwealth, including judgments, fines, costs, and penalties imposed upon conviction for criminal and traffic offenses, and as defined in the guidelines ~~promulgated~~adopted by the State Comptroller.

"Discharge" means the compromise and settlement of disputes, claims, and controversies of the Commonwealth by the ~~office~~Office of the Attorney General as authorized by § 2-1-127 2.2-XXX.

"Past-due" means any account receivable for which payment has not been received by the payment due date.

"State agency and institution" means any authority, board, department, instrumentality, agency or other unit in any branch of state government. The term shall not include any county, city or town, or any local or regional governmental authority or any "nonstate agency" as defined in the ~~Appropriations Act~~ appropriation act.

"Write-off" means a transaction to remove from an agency's financial accounting records an account receivable that management has determined to be uncollectible.

DRAFTING NOTE: Technical corrections only.

§ 2-1-728 2.2-XXX. Responsibility for accounts receivable policy; reports.

The Department of Accounts shall be the primary state agency responsible for the oversight, reporting and monitoring of the Commonwealth's accounts receivable program.

The Department of Accounts shall ~~promulgate~~adopt necessary policies and procedures for reporting, accounting for, and collecting the Commonwealth's accounts receivable. The Department of Accounts is also charged with ~~promulgating~~adopting regulations concerning guidelines and procedures for writing off accounts receivable.

DRAFTING NOTE: Technical corrections only.

§ 2-1-729 2.2-XXX. Legal counsel.

The Office of the Attorney General shall be the primary agency responsible for the provision of all legal services and advice related to the collection of accounts receivable, pursuant to § 2-1-124 2.2-XXX.

The Attorney General shall ~~promulgate~~adopt necessary policies and procedures pertaining to all accounts receivable legal matters and the litigation of past-due accounts receivable which shall be published together with the policies and procedures ~~promulgated~~adopted by the Department of Accounts.

DRAFTING NOTE: Technical corrections only.

§ 2-1-730 2.2-XXX. Annual reports.

The Department of Accounts and the Attorney General shall annually report to the Governor, the Secretary of Finance and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations Committees those agencies and institutions which are not making satisfactory progress toward implementing the provisions of this chapter and establishing effective accounts receivable programs.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-731. Adherence to accounts receivable policies.~~

~~Each state agency and institution shall follow the accounts receivable policies and procedures promulgated by the Department of Accounts and the Attorney General.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as duplicative of proposed § 2.2-XXX (2.1-727) supra.

~~§ 2.1-732 2.2-XXX. Interest, administrative charges and penalty fees.~~

Each state agency and institution may charge interest on all past due accounts receivable in accordance with guidelines ~~promulgated~~ adopted by the Department of Accounts and at the underpayment rate prescribed in § 58.1-15. Each past due accounts receivable may also be charged an additional amount which shall approximate the administrative costs, excluding attorney fees not authorized by contract, arising under ~~§ 2.1-733 2.2-XXX.~~ Agencies and institutions may also assess late penalty fees, not in excess of ten percent of the past-due account on past-due accounts receivable. The Department of Accounts shall ~~promulgate~~ adopt regulations concerning the imposition of ~~such~~ administrative charges and late penalty fees.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-733 2.2-XXX. Utilization of certain collection techniques.~~

Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution shall utilize, but not be limited to, the following collection techniques, according to the policies and procedures ~~promulgated~~ adopted by the Department of Accounts and the Attorney General: (i) credit reporting bureaus, (ii) collection agencies, (iii) garnishments, liens and judgments, and (iv) administrative offset.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-734 2.2-XXX. Debtor information and skip-tracing.~~

Each agency and institution shall collect minimum prescribed information from clients, debtors, and payees. Debtor information available from state agencies, credit reporting bureaus and other appropriate sources shall be used for the purpose of skip-tracing debtors, as specified in the guidelines of the Department of Accounts and the Attorney General. The minimum prescribed information to be collected shall include the federal employer identification number of partnerships, proprietorships, and corporate clients, debtors, and payees. This minimum prescribed information shall be included in the contract payment clause required by ~~§ 41-62.14 2.2-XXX.~~ The Department of Accounts may require that the minimum prescribed information be supplied on any request for payment, including invoices.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-735 2.2-XXX. Provision of state services to delinquent debtors.~~

Each state agency and institution shall develop internal policies and procedures, in accordance with accounts receivable policies of the Department of Accounts and the Attorney General, for delaying or withholding certain state services to those persons who refuse to pay their debts.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Public Debt; Issuance of Bonds and Certificates of Indebtedness.

~~§ 2-1-303~~ 2.2-XXX. Authority of Governor to contract debts.

The Governor ~~shall have the authority to~~ may contract debts, and ~~to issue obligations in evidence thereof upon such the terms and conditions as determined by the Governor shall determine,~~ to meet casual deficits in the revenue or in anticipation of the collection of revenues of the Commonwealth for the then current fiscal year within the amount of authorized appropriations, subject to the limitations and conditions of Article X, Section 9 (a) (2) of the Constitution of Virginia. The Governor may sell such obligations in ~~such a manner,~~ either at public or private sale, and for ~~such a price as he may determine~~ determines to be ~~for in~~ the best interests of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-304~~ 2.2-XXX. Acts concerning issuance of bonds and certificates of indebtedness continued in effect.

The following sections of the Code of 1919 and the following subsequent acts, all relating to the issue and terms of, and provisions with respect to certain bonds or certificates of indebtedness of the Commonwealth, are continued in effect.

- (1) Sections 2584 to 2602, inclusive, of the Code of 1919;
- (2) Chapter 93 of the Acts of 1927, approved April 18, 1927;
- (3) Chapter 91 of the Acts of 1932, approved March 3, 1932, codified as §§ 2641 (1)-2641 (11) of Michigan Code 1942; and
- (4) Chapter 203 of the Acts of 1936, approved March 14, 1936.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-304.1-1~~ 2.2-XXX. Ratings of bonds issued by governmental instrumentalities.

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

"Bond" means any bond, note, or other obligation evidencing debt.

"Governmental instrumentality" means each department, institution, commission, public corporate instrumentality, or agency of the Commonwealth, including the Commonwealth itself, and each political subdivision thereof, including but without limitation each public authority and district and each county, city or town and each instrumentality thereof which under law has the power to issue bonds.

B. Notwithstanding any provision contained in any general or special law or in any charter of any county, city or town of ~~this the~~ Commonwealth, any rating of bonds issued by a governmental instrumentality shall be provided by a bond rating agency approved by the State Treasurer.

C. In addition to all of his other powers and duties, the State Treasurer ~~is hereby authorized and directed to shall~~ prepare a list of approved bond rating agencies and upon request ~~to provide~~ a copy thereof to all governmental instrumentalities.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1 304.2. Debt Capacity Advisory Committee created; membership.~~

~~The Debt Capacity Advisory Committee is hereby created. The membership shall consist of the Secretary of Finance; the State Treasurer; the Director of the Department of Planning and Budget; the Auditor of Public Accounts; the Director of the Joint Legislative Audit and Review Commission; and two citizen members who have expertise in financial matters to be appointed by the Governor.~~

~~The Secretary of Finance shall be the chairperson of the Committee. The Department of Treasury shall serve as staff to the Committee.~~

~~Of the citizen members appointed for terms beginning July 1, 1994, one shall be appointed for an initial term of three years and the other for an initial term of five years. Successors shall be appointed to serve for terms of four years each. Vacancies occurring other than by expiration of term shall be filled by appointment of the Governor for the remainder of the unexpired term. All appointments shall be subject to confirmation by the General Assembly. Members shall continue to hold office until their successors have been appointed and qualified.~~

~~All members of the Debt Capacity Advisory Committee shall serve without compensation. Citizen members shall receive necessary and reasonable expenses incurred in performing their duties as members of the Debt Capacity Advisory Committee.~~

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle 1 under the heading of "Foundations and Other Collegial Bodies."

~~§ 2-1 304.3. Powers and duties.~~

~~The Committee shall have the power and duty to:~~

~~1. Annually review the size and condition of the Commonwealth's tax-supported debt and submit to the Governor and to the General Assembly an estimate of the maximum amount of new tax supported debt that prudently may be authorized for the next biennium. The estimate shall be advisory and in no way bind the Governor or the General Assembly;~~

~~2. Annually review the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities, for which the (i) Commonwealth has a contingent or limited liability or (ii) General Assembly is permitted to replenish reserve funds if deficiencies occur, and submit to the Governor and the General Assembly an annual report with the Committee's recommendation to ensure the prudent use of such obligations. Such review shall be submitted on or before January 1 of each year; and~~

~~3. Conduct ongoing reviews of the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities not secured by the full faith and credit of the Commonwealth or for which the General Assembly is not permitted to replenish reserve funds, and when appropriate, shall recommend limits on such additional obligations to the Governor and to the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle 1 under the heading of "Foundations and Other Collegial Bodies."

~~§ 2-1 304.4. Estimated amount of prudent tax supported debt; affordability considerations.~~

~~Before January 1 of each year, the Committee shall submit to the Governor and to the General Assembly the Committee's estimate of tax supported debt which prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate. In developing its annual estimate and in preparing its annual report, the Committee shall, at a minimum, consider:~~

~~1. The amount of tax supported debt that, during the next fiscal year and annually for the following nine fiscal years (i) will be outstanding and (ii) has been authorized but not yet issued;~~

~~2. A projected schedule of affordable, state tax-supported debt authorizations for the next biennium. The assessment of the affordability of the projected authorizations shall include but not be limited to the considerations specified in this section;~~

~~3. Projected debt service requirements during the next fiscal year and annually for the following nine fiscal years based upon (i) existing outstanding debt, (ii) previously authorized but unissued debt, and (iii) projected bond authorizations;~~

~~4. The criteria that recognized bond-rating agencies use to judge the quality of issues of Commonwealth bonds;~~

~~5. Any other factor that is relevant to (i) the ability of the Commonwealth to meet its projected debt service requirements for the next two fiscal years; (ii) the ability of the Commonwealth to support additional debt service in the upcoming biennium; (iii) the requirements of the statewide capital plan; and (iv) the interest rate to be borne by the credit rating on, or any other factor affecting the marketability of such bonds; and~~

~~6. The effect of authorizations of new tax-supported debt on each of the considerations of this section.~~

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle 1 under the heading of "Foundations and Other Collegial Bodies."

~~§ 2-1-304.5 2.2-XXX.~~ Governor's consideration of tax-supported debt.

Prior to the Governor recommending any new tax-supported debt, which is defined as debt for which the debt service payments are expected to be made, in whole or in part, from appropriations of the Commonwealth, the Governor shall consider the maximum amount of debt recommended as prudent for the subject biennium by the Debt Capacity Advisory Committee created pursuant to § 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-304.6 2.2-XXX.~~ Cooperation of the Commonwealth's instrumentalities.

All Commonwealth debt-issuing agencies, institutions, boards, and authorities shall quarterly provide the State Treasurer with all information necessary to carry out the requirements of this ~~article chapter~~. The Departments of Accounts, Planning and Budget, and Taxation and other state agencies shall also provide the State Treasurer with the information and assistance the Debt Capacity Advisory Committee deems necessary.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-304.7 2.2-XXX.~~ Limitation of ~~article chapter~~.

This ~~article chapter~~ shall not limit or alter the rights of the Commonwealth or any of its instrumentalities to fulfill the terms of any agreements made with the holders of any bonds, notes, or other obligations of the Commonwealth or such instrumentality issued and outstanding prior to July 1, 1994, or to in any way impair the rights and remedies of such holders.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-313 2.2-XXX.~~ How lost bond or certificate renewed.

When any bond or certificate ~~shall be~~ is lost or destroyed, the owner thereof may:

1. File in the office of the State Treasurer an affidavit, setting forth the time, place and circumstance of the loss or destruction; and

2. Execute a bond to the Commonwealth, with one or more sureties, approved by the State Treasurer, with condition to indemnify the Commonwealth and all persons against any loss in consequence of issuing a new bond or certificate in place of the one so lost or destroyed.

If the owner performs these acts, the State Treasurer may issue, at any time before ~~such~~ the bond or certificate becomes due and payable, or at any time as to any such bond or certificate which has become due and payable on or after July 1, 1932, a new bond or certificate and register the same.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Interest on Bonds issued by Government Instrumentalities.

~~§-2-1-326-1~~ 2.2-XXX. Governmental instrumentalities authorized to issue bonds, etc., at rates of interest in excess of legal limits; sale of such bonds.

A. ~~Notwithstanding any limitation contained in any general or special law or in any charter of any city or town of this the Commonwealth, each department, institution, commission, public corporate instrumentality, agency of the Commonwealth of Virginia, including the Commonwealth itself, and each political subdivision thereof, including but without limitation each public authority and district and each county, city or town and each instrumentality thereof (herein each called a "governmental instrumentality")~~ a governmental instrumentality, which under law has the power to issue bonds, notes or other obligations (herein collectively called "bonds") to provide funds to carry out its public purposes, is hereby authorized to may issue such bonds at such rate or rates of interest in excess of the rate or rates now permitted by law as may be determined by the governing body empowered under law to authorize the issuance of bonds of such governmental instrumentality and to sell such the bonds for such a price as it may determine determines to be for the best interests of the Commonwealth of Virginia and of such governmental instrumentality.

B. For the purposes of this chapter, "governmental instrumentality" means each department, institution, commissions, public corporate instrumentality or agency of the Commonwealth and every political subdivision of the Commonwealth including, but not limited to, each public authority and district and each county, city or town or instrumentality thereof.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-326-2~~ 2.2-XXX. Manner of exercising authority.

The authority vested in governmental instrumentalities under the provisions of ~~§ 2-1-326-1~~ 2.2-XXX may be exercised by the body authorized to issue such bonds without securing the further approval of any other body, board or agency which may have approved the issuance of such bonds and, in the case of bonds approved by election, without a further election, unless a lower maximum rate of interest was stated in the approval of such other body, board or agency or was stated on the ballot of such election.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-326-2:4~~ 2.2-XXX. Power to issue obligations not to be denied because interest is subject to federal income taxation.

The power of any governmental instrumentality, ~~as defined in §-2-1-326-1,~~ to issue or have issued on its behalf for authorized purposes, bonds, notes, certificates or other evidences of indebtedness, shall not be construed to be restricted or limited solely because the interest thereon is subject, in whole or in part, directly or indirectly, to federal income taxes.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-326-3~~ 2.2-XXX. Chapter controlling over inconsistent laws; powers supplemental.

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

DRAFTING NOTE: Technical corrections only.

CHAPTER X.

Virginia Investment Partnership Act.

~~§ 2-1-548-43-1~~ 2.2-XXX. Short title; definitions.

A. ~~This article chapter~~ shall be known and may be cited as the "Virginia Investment Partnership Act."

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

"Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing facility within the Commonwealth that is capitalized by the manufacturer and that increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible manufacturer" means an existing Virginia manufacturer that makes a capital investment of at least \$25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least five years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Investment Partnership Grant Fund, comprised of (i) the Major Eligible Manufacturer Grant subfund and (ii) the Investment Performance Grant subfund, created pursuant to § 2.2-XXX.

"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed twenty years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible manufacturer's manufacturing facility created as the direct result of the eligible manufacturer's capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) thirty-five hours of an employee's time a

week for the entire normal year of the firm's operations, which "normal year" must consist of at least forty-eight weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth to the eligible manufacturer's manufacturing facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.

"Partnership" means the Virginia Economic Development Partnership.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Secretary" means the Secretary of Commerce and Trade.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-548.43:1 and subsection B is § 2.1-548.43:2.

~~§ 2.1-548.43:2. Definitions.~~

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

~~"Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.~~

~~"Capital investment" means an investment in real property, personal property, or both, at a manufacturing facility within the Commonwealth that is capitalized by the manufacturer and that increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.~~

~~"Eligible manufacturer" means an existing Virginia manufacturer that makes a capital investment of at least \$25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer.~~

~~"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least five years prior to making the announcement of the capital investment that makes it an eligible manufacturer.~~

~~"Flawed product" means an irregular unit of goods that cannot be sold to an end user.~~

~~"Fund" means the Virginia Investment Partnership Grant Fund, comprised of (i) the Major Eligible Manufacturer Grant subfund and (ii) the Investment Performance Grant subfund, created pursuant to § 2.1-548.43:5.~~

~~"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.~~

~~"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed twenty years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.~~

~~"New job" means employment of an indefinite duration at the eligible manufacturer's manufacturing facility created as the direct result of the eligible manufacturer's capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) thirty five hours of an employee's time per week for the entire normal year of the firm's operations, which "normal year" must consist of at least forty eight weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth to the eligible manufacturer's manufacturing facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.~~

~~"Partnership" means the Virginia Economic Development Partnership.~~

~~"Productivity" means the number of hours of labor required to produce a unit of goods.~~

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

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-548.43:1) supra.

§ 2-1-548.43:3 2.2-XXX. Virginia Investment Performance Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer that is not eligible for a major eligible manufacturer grant under § 2-1-548.43:4 2.2-XXX shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer shall be eligible to receive under this section shall be determined by the Secretary, based on the recommendation of the Partnership and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines which shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance Committees. The preparation of the guidelines shall be exempt from the requirements of Article 23 (§ 9-6-14:7-1 2.2-XXX et seq.) of the Administrative Process Act. The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;
3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity or both, and/or (ii) measurable decreases in the production of flawed product;
4. The amount of the capital investment;
5. The net present value of benefits to Virginia;
6. The amount of other incentives offered by the Commonwealth and the locality; and

7. The importance of the manufacturing facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed \$3 million or ten percent of the amount appropriated by the General Assembly to the Investment Performance Grant subfund in the year that the terms of a grant are determined. Under no circumstances shall an eligible manufacturer be eligible for a grant under this section of more than \$25 million.

F. The aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed \$30 million. The annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000.

G. Any eligible manufacturer shall be eligible to receive a grant from the Fund in five equal installments beginning in the sixth year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.43:4~~ 2.2-XXX. Performance grant for major eligible manufacturers.

A. As used in this section, "major eligible manufacturer" means any eligible manufacturer that makes a capital investment of at least \$100 million that results in the creation of at least 1,000 new jobs.

B. Subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Manufacturer Grant subfund, any major eligible manufacturer shall be eligible for a grant under this section of \$25 million, to be payable from such subfund over a period of not less than five years and not more than seven years, commencing in the sixth year following the approval by the Secretary of the manufacturer's grant application.

C. The Partnership shall establish an application process by which major eligible manufacturers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

D. The Comptroller shall not draw any warrants to issue checks for grants under this ~~article-chapter~~ without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the ~~appropriations-appropriation~~ act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible manufacturer and the Commonwealth. These terms and conditions shall supplement the provisions of this ~~article-chapter~~ and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible manufacturer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the ~~House Committee on Appropriations Committee~~ and the ~~Senate Committee on Finance Committee~~ prior to entering into any memorandum of understanding. The ~~House Committee on Appropriations Committee~~ and the ~~Senate Committee on Finance Committee~~ shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.43:5~~ 2.2-XXX. Requirements for grants generally.

A. Any eligible manufacturer eligible to apply for a grant under this ~~article-chapter~~ shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this article have been satisfied. An eligible

manufacturer whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made from the subfund by check issued by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

C. As a condition of receipt of a grant, a major eligible manufacturer shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this ~~article~~ chapter have been satisfied. All such documents appropriately identified by the major eligible manufacturer shall be considered confidential and proprietary.

D. Within thirty days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance ~~Committees~~ which shall include, but is not limited to, the following information: the name of the eligible manufacturer determined to be eligible for a grant; the product it manufactures; the locality of the manufacturing facility; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the manufacturer's capital investment; and the timetable for the completion of the capital investment and new jobs created.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-548.43-6~~ 2.2-XXX. Virginia Investment Partnership Grant Fund.

A. There is ~~hereby~~ established a special fund in the state treasury to be known as the Virginia Investment Partnership Grant Fund. The Fund shall consist of the Major Eligible Manufacturer Grant subfund and the Investment Performance Grant subfund. Each subfund shall include such moneys as may be appropriated by the General Assembly ~~from time to time~~ and designated for the respective subfund. The Fund shall be used solely for the payment of investment incentive grants to existing Virginia manufacturers pursuant to this ~~article~~ chapter. The Partnership shall administer the Virginia Investment Partnership Grant Fund.

B. The Partnership shall allocate, from the appropriate subfund, moneys in the following order of priority (i) first to unpaid grant amounts carried forward from prior years because eligible manufacturers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the appropriate subfund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the subfund available for allocation to such class.

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

D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an eligible manufacturer shall receive. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller.

E. All excess funds remaining in any given year shall be carried forward on the books of the Fund for use in subsequent years.

F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B-4 of subsection B of §-9-6.14:4-1 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Technology Infrastructure Fund.

~~§-9-145.52~~ 2.2-XXX. Purpose.

In order for the Commonwealth to fully take advantage of technological applications in providing services and solving problems of Virginia's citizens, there is a need to reinvest savings that accrue from increased usage of technology into new and emerging technologies that will provide for both greater efficiencies and better responsiveness. The purpose of this chapter is to create the Virginia Technology Infrastructure Fund. The Fund shall make moneys available to state agencies and institutions of higher education for information technology demonstration and pilot projects.

DRAFTING NOTE: Technical corrections only.

~~§-9-145.53~~ 2.2-XXX. Definitions.

As used in this chapter, unless the context ~~clearly provides otherwise~~ requires a different meaning:

"Costs" means the reasonable and customary charges for goods and services incurred or to be incurred in the establishment of information technology demonstration and pilot projects.

"Fund" means the Virginia Technology Infrastructure Fund.

"Technology infrastructure" means telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

DRAFTING NOTE: Technical corrections only.

~~§-9-145.54~~ 2.2-XXX. Virginia Technology Infrastructure Fund created; purposes.

The Virginia Technology Infrastructure Fund is ~~hereby~~ created in the state treasury. The Fund is to be used exclusively for telecommunications and information technology projects which benefit state government as a whole and which serve more than one state agency or institution of higher education.

DRAFTING NOTE: Technical corrections only.

~~§-9-145.55~~ 2.2-XXX. Contributions to the Fund.

The Virginia Technology Infrastructure Fund shall consist of savings which accrue to the Commonwealth's agencies and instrumentalities from reductions in (i) local or long-distance telecommunications service charges and (ii) computer services rates charged by the Department of Information Technology, not to exceed \$200,000 in each fiscal year. However, for institutions of higher education, the savings shall consist only of savings in general fund dollars which accrue to such institutions from the reduction in such charges or rates.

Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.

When charges for local or long-distance telecommunications services or rates for computer services are reduced by the Department of Information Technology, vendors, or state agencies or instrumentalities, the calculated savings data by fund source for each affected state agency or instrumentality shall be provided to the Department of Planning and Budget. In accordance with its authority to do so in the general ~~appropriations~~ appropriation act, the Department of Planning and Budget shall then administratively reduce each affected agency's or instrumentality's appropriation and transfer the agreed-upon savings to the Fund.

DRAFTING NOTE: Technical corrections only.

~~§ 9-145.56~~ 2.2-XXX. Annual plan; allowable uses of Fund.

The Secretary of Technology, with advice from the Council on Technology Services and the Department of Technology Planning, shall prepare a plan which identifies the projects in which the Virginia Technology Infrastructure Fund will participate. ~~Such~~ The plan shall be consistent with the statewide plan developed by the Secretary and shall consider the use of existing resources and long-term operation and maintenance costs. Projects having the greatest benefit to state government as a whole shall have the highest priority in the plan.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Early Intervention Services System.

~~§ 2-1-760~~ 2.2-XXX. Definitions.

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

"Council" means the Virginia Interagency Coordinating Council created pursuant to § 2.2-XXX.

"Early intervention services" means services provided through Part ~~H~~ C of the Individuals with Disabilities Education Act (20 U.S.C. § ~~1474~~ 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a twenty-five percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a handicapping condition. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § 32.1-162.7.

"Participating agencies" means the Departments of Health, of Education, of Medical Assistance Services, of Mental Health, Mental Retardation and Substance Abuse Services, and of Social Services; the Departments for the Deaf and Hard-of-Hearing, for the Visually Handicapped, and for Rights of Virginians with Disabilities; and the Bureau of Insurance within the State Corporation Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-761~~ 2.2-XXX. Secretaries of Health and Human Resources and Education to work together.

The Secretaries of Health and Human Resources and Education shall work together in:

1. Promoting interagency consensus and facilitating ~~complementary~~ complementary agency positions on issues relating to early intervention services;
2. Examining and evaluating the effectiveness of state agency programs, services, and plans for early intervention services and identifying duplications, inefficiencies, and unmet needs;
3. Analyzing state agency budget requests and any other budget items affecting early intervention services;

4. Proposing ways of realigning funding to promote interagency initiatives and programs for early intervention services;
5. Formulating recommendations on planning, priorities, and expenditures for early intervention services and communicating the recommendations to the Governor and state agency heads;
6. Formulating joint policy positions and statements on legislative issues regarding early intervention services and communicating those positions and statements to the General Assembly; and
7. Resolving interagency disputes and assigning financial responsibility in accordance with Part HC of the Individuals with Disabilities Education Act (20 U.S.C. § 14741431 et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-762~~ 2.2-XXX. Early intervention agencies committee.

An early intervention agencies committee shall be established to ensure the implementation of a comprehensive system for early intervention services. The committee shall be composed of the Commissioner of the Department of Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Services, the Commissioner of the Department for the Visually Handicapped, the Director of the Department for Rights of Virginians with Disabilities, and the Commissioner of the Bureau of Insurance within the State Corporation Commission. The committee shall meet at least twice each fiscal year and shall make annual recommendations to the Secretary of Health and Human Resources and the Secretary of Education on issues that require interagency planning, financing, and resolution. Each member of the committee shall appoint a representative from his agency to serve on the Virginia Interagency Coordinating Council.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-763~~ 2.2-XXX. Duties of participating agencies.

The duties of the participating agencies shall include:

1. Establishing a statewide system of early intervention services in accordance with state and federal statutes and regulations;
2. Identifying and maximizing coordination of all available public and private resources for early intervention services;
3. Developing and implementing formal state interagency agreements that define the financial responsibility and service obligations of each participating agency for early intervention services, establish procedures for resolving disputes, and address any additional matters necessary to ensure collaboration;
4. Consulting with the lead agency in the promulgation of regulations to implement the early intervention services system, including developing definitions of eligibility and services;
5. Carrying out decisions resulting from the dispute resolution process;
6. Providing assistance to localities in the implementation of a comprehensive early intervention services system in accordance with state and federal statutes and regulations; and
7. Requesting and reviewing data and reports on the implementation of early intervention services from counterpart local agencies.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-764 2.2-XXX.~~ Lead agency's duties.

To facilitate the implementation of an early intervention services system and to ensure compliance with federal requirements, the Governor shall appoint a lead agency. The duties of the lead agency shall include:

1. Promulgating regulations to implement an early intervention services system, in consultation with other participating agencies; the regulations shall be ~~promulgated~~ adopted in accordance with the provisions of the Administrative Process Act (~~§ 9-6-14:1- 2.2-XXX~~ et seq.);
2. Providing technical assistance to localities in the establishment and operation of local interagency coordinating councils; and
3. Establishing an interagency system of monitoring and supervising the early intervention services system.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-765.~~ Virginia Interagency Coordinating Council; composition and duties.

~~A. The Virginia Interagency Coordinating Council is hereby continued to promote and coordinate early intervention services in the Commonwealth. The membership and operation of the Council shall be as required by Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). The agency representatives shall be appointed by the member of their agency who serves on the early intervention agencies committee. Agency representatives shall regularly inform their agency head of the Council's activities and the status of the implementation of an early intervention services system in the Commonwealth.~~

~~B. The Council's duties shall include advising and assisting the lead agency in the following:~~

1. ~~Performing its responsibilities for the early intervention services system;~~
2. ~~Identifying sources of fiscal and other support for early intervention services, recommending financial responsibility arrangements among agencies, and promoting interagency agreements;~~
3. ~~Developing strategies to encourage full participation, coordination, and cooperation of all appropriate agencies;~~
4. ~~Resolving interagency disputes;~~
5. ~~Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;~~
6. ~~Preparing federal grant applications; and~~
7. ~~Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.~~

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle 1 under the heading of "Councils."

~~§ 2-1-766 2.2-XXX.~~ Local interagency coordinating councils.

A. The lead agency, in consultation with the Virginia Interagency Coordinating Council, shall establish local interagency councils on a statewide basis to enable early intervention service providers to establish working

relationships that will increase the efficiency and effectiveness of early intervention services. The membership of local interagency councils shall include designees from the following agencies who are authorized to make funding and policy decisions: community services board, department of health, department of social services, and local school division. These designees shall designate additional council members as follows: at least one parent representative who is not an employee of any public or private program which serves infants and toddlers with disabilities; representatives from community providers of early intervention services; and representatives from other service providers as deemed appropriate. Every county and city may appoint a representative to the respective local interagency coordinating council.

B. The duties of local interagency coordinating councils shall include:

1. Identifying existing early intervention services and resources;
2. Identifying gaps in the service delivery system and developing strategies to address these gaps;
3. Identifying alternative funding sources;
4. Facilitating the development of interagency agreements and supporting the development of service coalitions;
5. Assisting in the implementation of policies and procedures that will promote interagency collaboration;
6. Developing local procedures and determining mechanisms for implementing policies and procedures in accordance with state and federal statutes and regulations.

C. Localities shall not be mandated to fund any costs under this chapter either directly or through participating local public agencies.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-767~~ 2.2-XXX. Duties of local public agencies.

Local public agencies represented on local interagency coordinating councils are responsible for:

1. Providing services as appropriate and agreed upon by members of the local interagency coordinating council;
2. Maintaining data and providing information as requested to their respective state agencies;
3. Developing and implementing interagency agreements;
4. Complying with applicable state and federal regulations and local policies and procedures; and
5. Following procedural safeguards and dispute resolution procedures as ~~promulgated~~adopted by the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-768~~ 2.2-XXX. Existing funding levels.

Any federal funds made available through Part ~~H~~C of the Individuals with Disabilities Education Act (20 U.S.C. § ~~4471-1431~~et seq.) and any state funds appropriated specifically for Part H services shall supplement overall funding for services currently provided under Part ~~H~~C of the Individuals with Disabilities Education Act (20 U.S.C. § ~~4471-1431~~et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-768.1~~ 2.2-XXX. Licensure as home care organization not required.

Notwithstanding the provisions of § 32.1-162.9, no person who provides early intervention services in accordance with this chapter shall be required to be licensed as a home care organization in order to provide these services in a child's home.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Comprehensive Services Act For At-Risk Youth and Families.

~~§ 2.1-745~~ 2.2-XXX. Intent and purpose; definitions.

A. It is the intention of this law to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. Ensure that services and funding are consistent with the Commonwealth's policies of preserving families and providing appropriate services in the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;

2. Identify and intervene early with young children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;

3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;

4. Increase interagency collaboration and family involvement in service delivery and management;

5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youths and their families; and

6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes.

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

"CSA" means the Comprehensive Services Act.

"Council" means the State Executive Council for Comprehensive Services for At-Risk Youth and Families created pursuant to § 2.2-XXX.

DRAFTING NOTE: Technical corrections. Subsection A is not set out in the Code, but is set out here as part of the title revision. Definitions of "CSA" and "Council" were added to this proposed section as subsection B to reduce the need for repetitive language.

~~§ 2.1-746. State Executive Council for Comprehensive Services for At-Risk Youth and Families; members and duties.~~

~~The members of the state executive council shall be the Commissioners of Health, of Mental Health, of Mental Retardation and Substance Abuse Services and of Social Services; the Superintendent of Public~~

~~Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Juvenile Justice; an elected or appointed local official, to be appointed by the Governor; a private provider representative as a nonvoting, ex officio member, to be appointed by the Governor, who may appoint from nominees recommended by the Virginia Coalition of Private Provider Associations; and a parent representative. The parent representative shall be appointed by the Governor for a term not to exceed three years and shall not be an employee of any public or private program which serves children and families. The council shall annually elect a chairman who shall be responsible for convening the council. The council shall meet, at a minimum, semiannually, to oversee the administration of this chapter and make such decisions as may be necessary to carry out its purposes.~~

~~The state executive council shall:~~

- ~~1. Appoint the members of the state management team in accordance with the requirements of § 2.1-747;~~
- ~~2. Provide for the establishment of interagency programmatic and fiscal policies developed by the state management team, which support the purposes of this chapter, through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;~~
- ~~3. Provide for a public participation process for programmatic and fiscal guidelines developed for administrative actions which support the purposes of this chapter. Such public participation process shall include, at a minimum, sixty days of public comment, and the distribution of these guidelines;~~
- ~~4. Oversee the administration of state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;~~
- ~~5. Provide for the administration of necessary interagency functions which support the work of the state management team;~~
- ~~6. Review and take appropriate action on issues brought before it by the state management team;~~
- ~~7. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and operational changes which facilitate interagency service development and implementation, communication and cooperation;~~
- ~~8. Provide administrative support and fiscal incentives for the establishment and operation of local comprehensive service systems;~~
- ~~9. Oversee coordination of early intervention programs to promote comprehensive, coordinated service delivery, local interagency program management, and co-location of programs and services in communities. Early intervention programs include state programs under the administrative control of the state executive council member agencies;~~
- ~~10. Oversee the development and implementation of a mandatory uniform assessment instrument and process to be used by all localities to identify levels of risk of Comprehensive Services Act (CSA) youth;~~
- ~~11. Oversee the development and implementation of uniform guidelines to include initial intake and screening assessment, development and implementation of a plan of care, service monitoring and periodic follow-up, and the formal review of the status of the youth and the family;~~
- ~~12. Oversee the development and implementation of uniform guidelines for documentation for CSA funded services;~~
- ~~13. Oversee the development and implementation of mandatory uniform guidelines for utilization management; each locality receiving funds for activities under the Comprehensive Services Act shall have a locally determined utilization management plan following the guidelines or use of a process approved by the State Executive Council for utilization management, covering all CSA funded services;~~

~~14. Oversee the development, implementation, and collection of uniform data collection standards, and the development of outcome measures, including, but not limited to, expenditures, number of youth served in specific GSA activities, length of stay for residents in core licensed residential facilities, and placement of youth placed in treatment settings suggested by a uniform assessment instrument for GSA-funded services;~~

~~15. Oversee the establishment of a dispute-resolution procedure, which includes a notice and an appeal process, should the State Executive Council find, upon a formal finding, that a Community Policy and Management Team (CPMT) failed to comply with any provision of this Act, and the procedure shall also include provisions for remediation by the CPMT;~~

~~16. Have the authority to deny state funding to a CPMT that fails to comply with the provisions of this Act in accordance with subdivision 15; and~~

~~17. Biennially publish and disseminate to members of the General Assembly and community policy and management teams a state progress report on comprehensive services to children, youth and families and a plan for such services for the next succeeding biennium. The state plan shall:~~

~~a. Provide a fiscal profile of current and previous years' federal and state expenditures for comprehensive service system for children, youth and families;~~

~~b. Incorporate information and recommendations from local comprehensive service systems with responsibility for planning and delivering services to children, youth and families;~~

~~c. Identify and establish goals for comprehensive services and the estimated costs of implementing these goals, report progress toward previously identified goals and establish priorities for the coming biennium; and~~

~~d. Include such other information or recommendations as may be necessary and appropriate for the improvement and coordinated development of the state's comprehensive services system.~~

DRAFTING NOTE: Technical corrections. This section now appears in Part D of Subtitle 1, under the heading of "Councils."

~~§ 2-1-747 2.2-XXX. (For effective date—See note)—State management team; appointment; membership.~~

The state management team is hereby established to better serve the needs of troubled and at-risk youths and their families by managing cooperative efforts at the state level and providing support to community efforts. The team shall be appointed by and be responsible to the ~~state executive council~~ § 2-1-746 Council. The team shall include one representative from each of the following state agencies: the Department of Health, Department of Juvenile Justice, Department of Social Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Education. The team shall also include a parent representative who is not an employee of any public or private program which serves children and families; a representative of a private organization or association of providers for children's or family services; a juvenile and domestic relations district court judge; and one member from each of five different geographical areas of the Commonwealth and who is representative of the different participants of community policy and management teams. The nonstate agency members shall serve staggered terms of not more than three years, such terms to be determined by the ~~state executive council~~ Council.

The team shall annually elect a chairman who shall be responsible for convening the team. The team shall develop and adopt bylaws to govern its operations which shall be subject to approval by the ~~state executive council~~ Council. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in ~~§ 2-1-639.15~~ 2.2-XXX of the State and Local Government Conflict of Interests Act (~~§ 2-1-639.1-2.2-XXX~~ et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

DRAFTING NOTE: Technical corrections only.

§ 2-1-748 2.2-XXX. State management team; powers and duties.

The state management team ~~is authorized to~~ may:

1. Develop and recommend to the ~~state executive council~~ Council interagency program and fiscal policies which promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;
2. Develop and recommend to the ~~state executive council~~ Council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;
3. Provide for training and technical assistance at the state level and to localities in the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families; and
4. Serve as liaison to the participating state agencies which administratively support the team and which provide other necessary services by serving as fiscal agent, designing and administering the interagency tracking and evaluation system, and providing training and technical assistance.

DRAFTING NOTE: Technical corrections only.

§ 2-1-749 2.2-XXX. Duties of agencies represented on state management team.

The state agencies represented on the state management team shall provide administrative support for the team in the development and implementation of the collaborative system of services and funding authorized by this chapter. This support shall also include, but not be limited to, the provision of timely fiscal information, data for client- and service-tracking, and assistance in training local agency personnel on the system of services and funding established by this chapter.

DRAFTING NOTE: Technical corrections only.

§ 2-1-750 2.2-XXX. Community policy and management team; appointment; fiscal agent.

Every county, city, or combination of counties, cities, or counties and cities shall establish a community policy and management team in order to receive funds pursuant to this chapter. Each such team shall be appointed by the governing body of the participating local political subdivision establishing the team. In making such appointments, the governing body shall ensure that the membership is appropriately balanced among the representatives required to serve on the team in accordance with § 2-1-751 2.2-XXX. When any combination of counties, cities or counties and cities establishes a community policy and management team, the board of supervisors of each participating county or the council in the case of each participating city shall jointly establish the size of the team and the type of representatives to be selected from each locality in accordance with § 2-1-754 2.2-XXX. The governing bodies of each participating county and city served by the team shall appoint the designated representatives from their localities. The participating governing bodies shall jointly designate an official of one member city or county to act as fiscal agent for the team.

The county or city which comprises a single team and the county or city whose designated official serves as the fiscal agent for the team in the case of joint teams shall annually audit the total revenues of the team and its programs. The county or city which comprises a single team and any combination of counties or cities establishing a team shall arrange for the provision of legal services to the team.

DRAFTING NOTE: Technical corrections only.

§ 2-1-754 2.2-XXX. Community policy and management teams; membership; immunity from liability.

The community policy and management team to be appointed by the local governing body shall include, a minimum, at least one elected official or appointed official or his designee from the governing body of a locality which is a member of the team, and the local agency heads or their designees of the following community agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services and the local school division. The team shall also include a representative of a private organization or association of providers for children's or family services if such organizations or associations are located within the locality, and a parent representative. Parent representatives who are employed by a public or private program which receives funds pursuant to this chapter or agencies represented on a community policy and management team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a daily basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. Those persons appointed to represent community agencies shall be authorized to make policy and funding decisions for their agencies.

The local governing body may appoint other members to the team including, but not limited to, a local government official, a local law-enforcement official and representatives of other public agencies.

When any combination of counties, cities or counties, and cities establishes a community policy and management team, the membership requirements previously set out shall be adhered to by the team as a whole.

Persons who serve on the team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in ~~§ 2.1-639.15~~ 2.2-XXX of the State and Local Government Conflict of Interests Act (~~§ 2.1-639.1~~ 2.2-XXX et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in ~~§ 2.1-639.2~~ 2.2-XXX of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-752~~ 2.2-XXX. Community policy and management teams; powers and duties.

The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;
2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;
3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the cost of services to be provided and, when not specifically prohibited by federal or state law or regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard sliding fee scale based upon ability to pay;
4. Coordinate long-range, community-wide planning which ensures the development of resources and services needed by children and families in its community including consultation on the development of a community-based system of services established under § 16.1-309.3;

5. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams and a process to review the teams' recommendations and requests for funding;
6. Establish quality assurance and accountability procedures for program utilization and funds management;
7. Establish procedures for obtaining bids on the development of new services;
8. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;
9. Authorize and monitor the expenditure of funds by each family assessment and planning team;
10. ~~Have authority to submit~~ Submit grant proposals which benefit its community to the state trust fund and to enter into contracts for the provision or operation of services upon approval of the participating governing bodies;
11. Serve as its community's liaison to the state management team, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services;
12. Collect and provide uniform data to the ~~State Executive Council~~ on, but not limited to, expenditures, number of youth served in specific CSA activities, length of stay for residents in core licensed residential facilities, and proportion of youth placed in treatment settings suggested by a uniform assessment instrument for CSA-funded services; and
13. ~~Have the power to administer~~ Administer funds pursuant to § 16.1-309.3.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-753~~ 2.2-XXX. Family assessment and planning team; membership; immunity from liability.

Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § 37.1-195, juvenile court services unit, department of health, department of social services, local school division and a parent representative. Parent representatives who are employed by a public or private program which receives funds pursuant to this chapter or agencies represented on a family assessment and planning team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a regular basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. The family assessment and planning team may include a representative of a private organization or association of providers for children's or family services and of other public agencies.

Persons who serve on a family assessment and planning team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in ~~§ 2-1-639.15~~ 2.2-XXX of the State and Local Government Conflict of Interests Act (~~§ 2-1-639.1~~ 2.2-XXX et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual

cases or agencies in which they have either a personal interest, as defined in ~~§ 2-1-639.2~~ 2.2-XXX of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-754~~ 2.2-XXX. Family assessment and planning team; powers and duties.

The family assessment and planning team, in accordance with ~~§ 2-1-746~~ 2.2-XXX, shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.

Every such team, in accordance with policies developed by the community policy and management team shall:

1. Review referrals of youths and families to the team;
2. Provide for family participation in all aspects of assessment, planning and implementation of services;
3. Develop an individual family services plan for youths and families reviewed by the team which provide for appropriate and cost-effective services;
4. Where parental or legal guardian financial contribution is not specifically prohibited by federal or state law or regulation, or has not been ordered by the court or by the Division of Child Support Enforcement, assess the ability of parents or legal guardians, utilizing a standard sliding fee scale, based upon ability to pay, to contribute financially to the cost of services to be provided and provide for appropriate financial contribution from parents or legal guardians in the individual family services plan;
5. Refer the youth and family to community agencies and resources in accordance with the individual family services plan;
6. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and
7. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-755~~ 2.2-XXX. Referrals to family assessment and planning teams.

The community policy and management team shall establish policies governing the referral of troubled youths and families to the family assessment and planning team. These policies shall include that all youth and families for which CSA-funded treatment services are requested are to be assessed by the family assessment and planning team or a collaborative, multidisciplinary team process approved by the ~~State Executive Council~~ and shall consider the criteria set out in ~~§ 2-1-758-A-1 and 2~~ subdivisions 1 and 2 of subsection A of 2.2-XXX. Except for cases involving only the payment of foster care maintenance which shall be at the discretion of the local community policy and management team, cases for which service plans are developed outside of this family assessment and planning team process shall not be eligible for state pool funds.

Nothing in this section shall prohibit the use of state pool funds for emergency placements, provided the youth are subsequently assessed by the family assessment and planning team or an approved collaborative multidisciplinary team process within fourteen days of admission and the emergency placement is approved at the time of placement. In cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through

the family assessment and planning team process or the approved, collaborative, multidisciplinary team process, an appeal for good cause may be made to the Council.

DRAFTING NOTE: Technical corrections only.

§ 2-1-756 2.2-XXX. Information sharing; confidentiality.

All public agencies which have served a family or treated a child referred to a family assessment and planning team shall cooperate with this team. The agency which refers a youth and family to the team shall be responsible for obtaining the consent required to share agency client information with the team. After obtaining the proper consent, all agencies shall promptly deliver, upon request and without charge, such records of services, treatment or education of the family or child as are necessary for a full and informed assessment by the team.

Proceedings held to consider the appropriate provision of services and funding for a particular child or family or both who have been referred to the family assessment and planning team and whose case is being assessed by this team or reviewed by the community management and planning team shall be confidential and not open to the public, unless the child and family who are the subjects of the proceeding request, in writing, that it be open. All information about specific children and families obtained by the team members in the discharge of their responsibilities to the team shall be confidential.

Demographic, service and cost information on youths and families receiving services and funding through this chapter which is of a nonidentifying nature may be gathered for reporting and evaluation purposes.

DRAFTING NOTE: Technical corrections only.

§ 2-1-757 2.2-XXX. State pool of funds for community policy and management teams.

A. ~~Effective July 1, 1993, there~~ There is established a state pool of funds to be allocated to community policy and management teams in accordance with the ~~appropriations~~ appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. ~~To place~~ Place authority for making program and funding decisions at the community level;
2. ~~To consolidate~~ Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. ~~To provide~~ Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. ~~To reduce~~ Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 ~~below of this subsection~~ in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) to provide special education services and foster care services for children identified in subdivisions B-1, B-2 and B-3 of ~~this section~~ subsection B and (ii) to meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding as appropriated under this section.

DRAFTING NOTE: Technical corrections. In subsection A, the effective date has been deleted as surplusage as this fund has been created.

~~§ 2.1-758~~ 2.2-XXX. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 ~~below~~ and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems which:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth has been placed in foster care through a parental agreement between a local social services agency or public agency designated by the community policy and management team and his parents or guardians, entrusted to a local social services agency by his parents or guardian or has been committed to the agency by a court of competent jurisdiction for the purposes of placement as authorized by § 63.1-56.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person less than eighteen years of age and (ii) any individual through twenty-one years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-759~~ 2.2-XXX. State trust fund.

A. ~~Effective January 1, 1993, there~~ ~~There~~ is established a state trust fund with funds appropriated by the General Assembly. The purposes of this fund are to develop:

1. Early intervention services for young children and their families, which are defined to include: prevention efforts for individuals who are at-risk for developing problems based on biological, psychological or social/environmental factors.

2. Community services for troubled youths who have emotional or behavior problems, or both, and who can appropriately and effectively be served in the home or community, or both, and their families.

The fund shall consist of moneys from the state general fund, federal grants, and private foundations.

B. Proposals for requesting these funds shall be made by community policy and management teams to the state management team. The state management team shall make recommendations on the proposals it receives to the ~~state executive council~~ Council, which shall award the grants to the community teams in accordance with the policies developed under the authority of ~~§ 2.1-748 of this chapter~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections. In subsection A, the effective date has been deleted as surplusage as this fund has been created.

~~§ 2.1-759.1~~ 2.2-XXX. Rates for purchase of services; service fee directory.

The rates paid for services purchased pursuant to this chapter shall be determined by competition of the market place and by a process sufficiently flexible to ensure that family assessment and planning teams and

providers can meet the needs of individual children and families referred to them. To ensure that family assessment and planning teams are informed about the availability of programs and the rates charged for such programs, the ~~state executive council~~ Council shall oversee the development of and approve a service fee directory which shall list the services offered and the rates charged by any entity, public or private, which offer specialized services for at-risk youth or families. The ~~state executive council~~ Council shall designate one state agency to coordinate the establishment, maintenance and other activities regarding the service fee directory.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Community Action Act.

~~§ 2.1-587~~ 2.2-XXX. Title Short title; definitions.

A. This chapter shall be known as the Community Action Act.

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

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private nonprofit agency which has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and which is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action program budget" means state funds, federal block grants and federal categorical grants that are received by the Commonwealth for community action activities.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Designated agency" means the agency designated by the Secretary of Health and Human Resources pursuant to § 2.2-XXX (2.1-589).

"Local share" means cash or in-kind goods and services donated to community action agencies to carry out their responsibilities.

"Low-income person" means a person who is a member of a household with a gross annual income equal to or less than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.

"Service area" means the geographical area within the jurisdiction of a community action agency or a community action statewide organization.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-587 and subsection B is § 2.1-588. A definition of "designated agency" has been added to reduce the need for repetitive language. As of the date of this title revision, the "designated agency" is the Department of Social Services.

~~§ 2.1-588.~~ Definitions.

As used in this chapter:

~~"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private nonprofit agency which has the authority under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed~~

~~to identify and deal with the causes of poverty in the Commonwealth, and which is designated as a community action agency by federal law, federal regulations or the Governor.~~

~~"Community action program budget" means state funds, federal block grants and federal categorical grants that are received by the Commonwealth for community action activities.~~

~~"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.~~

~~"Local share" means cash or in-kind goods and services donated to community action agencies to carry out their responsibilities.~~

~~"Low income person" means a person who is a member of a household with a gross annual income equal to or less than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.~~

~~"Service area" means the geographical area within the jurisdiction of a community action agency or a community action statewide organization.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 2.2-XXX (existing § 2.1-587) supra.

~~§ 2.1-589 2.2-XXX. Designation by Secretary of Health and Human Resources of agency to administer act.~~

The Secretary of Health and Human Resources shall designate an agency to administer the Community Action Act and to work with community action agencies and community action statewide organizations to develop social and economic opportunities for low-income persons.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-590 2.2-XXX. Powers and duties of designated agency.~~

The designated agency designated pursuant to § 2.1-589 shall have the following powers and duties to:

1. ~~To coordinate~~ Coordinate state activities designed to reduce poverty.
2. ~~To cooperate~~ Cooperate with agencies of the Commonwealth and the federal government in reducing poverty and implementing community, social and economic programs.
3. ~~To receive~~ Receive and expend funds for any purpose authorized by this chapter.
4. ~~To enter~~ Enter into contracts with and to award grants to public and private nonprofit agencies and organizations.
5. ~~To develop~~ Develop a state plan based on needs identified by community action agencies and community action statewide organizations.
6. ~~To fund~~ Fund community action agencies and community action statewide organizations and to promulgate rules and adopt regulations.
7. ~~To provide~~ Provide assistance to local governments or private organizations for the purpose of establishing and operating a community action agency.

8. ~~To provide~~ Provide technical assistance to community action agencies to improve program planning, program development, administration and the mobilization of public and private resources.

9. ~~To require~~ Require community action agencies and community action statewide organizations to generate local contributions of cash or in-kind services as the agency may establish by regulation.

10. ~~To convene~~ Convene public meetings which provide citizens the opportunity to comment on public policies and programs to reduce poverty.

11. ~~To advise~~ Advise the Governor and the General Assembly of the nature and extent of poverty in the Commonwealth and to make recommendations concerning changes in state and federal policies and programs.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-594~~ 2.2-XXX. Community action ~~board~~ boards.

A. Each community action agency shall administer its community action program through a community action board consisting of no less than fifteen members who shall be selected as follows:

1. One-third of the members of the board shall be elected public officials or their designees, who shall be selected by the local governing body ~~or bodies~~ of the service area, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointed public officials may be counted in meeting ~~such~~ the one-third requirement.

2. At least one-third of the members shall be persons chosen democratically to represent the poor of the area served.

3. The other members shall be members of business, industry, labor, religious, social service, educational or other major community groups.

B. Each member of the board selected to represent a specific geographic area within a community ~~must~~ shall reside in the area represented.

C. No person selected to serve on the board pursuant to subdivisions A-2 and 3 of ~~this section~~ subsection A shall serve for more than five consecutive years or more than a total of ten years.

D. Except as otherwise provided in subsection E ~~of this section~~, the board shall be responsible for the following:

1. Appointing and dismissing an executive director of the community action agency.

2. Approving grants and contracts, annual program budget requests and operational policies of the community action agency.

3. Having an annual audit performed by an independent auditor.

4. Convening public meetings to provide low-income and other persons the opportunity to comment upon public policies and programs to reduce poverty.

5. Annually evaluating the policies and programs of the community action agency. The board shall submit the evaluation and recommendations to improve the administration of the community action agency to the designated agency ~~designated pursuant to § 2-1-589~~ and to the local governing body or bodies within the service area.

6. Carrying out such other duties as may be delegated by the local governing body or bodies within the service area or by the designated agency-designated pursuant to § 2.1-589.

7. Delegating responsibilities pursuant to the provisions of ~~§ 2.1-592~~ 2.2-XXX.

E. Where a local subdivision of the Commonwealth acts as or has designated a community action agency, the local governing body shall determine the responsibilities and authority of the community action board.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-592~~ 2.2-XXX. Delegation of responsibilities by community action agency.

If a community action agency places responsibility for major policy determination with respect to the character, funding, extent and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council or similar agency, the board, council or agency shall be broadly representative of the area.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-593~~ 2.2-XXX. Local participation.

Each community action agency shall consult neighborhood-based organizations composed of residents of the area it serves or members of the groups to be served to assist the agency in planning, conducting and evaluating components of the community action agency.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-594. Community action statewide organizations; duties generally.~~

~~Community action statewide organizations shall receive and administer state, federal and private funds, render technical assistance and carry out activities that will enable community action agencies to solve local problems.~~

~~Community action statewide organizations shall work with community action agencies in areas served by those agencies and with community based organizations, local governments, industry and other organizations in areas unserved by a community action agency to assist in carrying out the purposes of this chapter.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections D and E of proposed § 2.2-XXX (existing § 2.1-595).

~~§ 2.1-595~~ 2.2-XXX. Community action statewide organizations; structure; responsibilities.

A. A community action statewide organization shall be a nonprofit corporation whose charter, articles of incorporation and bylaws permit the corporation to operate in all jurisdictions ~~in~~ of the Commonwealth.

B. A community action statewide organization shall be governed by a board. The board shall conform to requirements for the community action agency board.

C. Community action statewide organizations shall carry out all the planning, reporting, evaluation, fiscal and programmatic responsibilities required by the designated agency and other appropriate agencies of state government.

D. Community action statewide organizations shall receive and administer state, federal and private funds, render technical assistance and carry out activities that will enable community action agencies to solve local problems.

E. Community action statewide organizations shall work with community action agencies in areas served by those agencies and with community-based organizations, local governments, industry and other organizations in areas unserved by a community action agency to assist in carrying out the purposes of this chapter.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 2.1-595, subsection C is § 2.1-596, and subsections D and E are § 2.1-594.

~~§ 2.1-596. Same; responsibilities required by agency designated under § 2.1-589.~~

~~Community action statewide organizations shall carry out all the planning, reporting, evaluation, fiscal and programmatic responsibilities required by the agency designated pursuant to § 2.1-589 and other appropriate agencies of state government.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 2.2-XXX (existing § 2.1-595) supra.

~~§ 2.1-597 2.2-XXX. Designation of community action agencies; rescission of designation.~~

A. Recommendations for designation of a community action agency may be forwarded to the designated agency designated pursuant to § 2.1-589 by resolution of one or more units of local government. The local governing body or bodies shall:

1. Determine the need and target population within the service area.
2. Conduct a public hearing in each jurisdiction in the service area to provide citizens with the opportunity to comment on the need for the proposed community action agency.

B. Upon receipt of the recommendation for designation of a community action agency, the designated agency designated pursuant to § 2.1-589, in consultation with the local governing body or bodies in the service area and with representatives of the low-income population of the area, shall develop a plan for organizing and funding the community action agency.

C. The designated agency designated pursuant to § 2.1-589 shall present to the Secretary of Health and Human Resources the recommendation for community action status and a recommendation for funding the community action agency. Upon completion of a satisfactory review of the request and upon a determination of the availability of funds, the Secretary shall forward the recommendation to the Governor or his representative for designation.

D. Each community action agency which has been designated by a unit of local government and funded pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) and which is in operation on July 1, 1982, shall be deemed a community action agency for the purposes of this chapter.

E. No new community action agency shall be designated in any area of the Commonwealth which is served by an existing community action agency.

F. The Secretary of Human Resources may recommend that the Governor or his representative rescind the designation of a community action agency for cause. The Secretary shall:

1. Receive from the chief elected official of the local governing body ~~or bodies~~ in the service area a request for ~~such~~ rescission indicating the causes therefor.
2. Publish in a newspaper of general circulation in each jurisdiction of the service area a statement of the intent to rescind with a request for response.
3. Conduct at least one public hearing in the area served by the community action agency.

DRAFTING NOTE: Technical corrections only.

§ 2.1-598 2.2-XXX. Administration of community action budget.

~~As soon as practical after July 1, 1982, the~~ The designated agency designated pursuant to § 2.1-589 shall promulgate rules and adopt regulations detailing the formula for the distribution of community action program budget funds. The rules and regulations shall take into consideration the distribution of low-income persons residing in the service areas of the community action agencies, the relative cost of living of the areas, as well as other factors considered appropriate.

Each community action agency and community action statewide organization annually shall develop and submit a program budget request for funds appropriated from the community action program budget. The ~~designated agency designated pursuant to § 2.1-589~~ shall publish annually guidelines detailing the nature and extent of information required in the program budget request for the succeeding fiscal year.

In order to carry out its overall responsibility for planning, coordinating, evaluating and administering a community action program, a community action agency ~~shall have authority~~ may under its charter or applicable laws ~~to receive and administer funds pursuant to this chapter. The community action agency shall be authorized to~~ may receive and administer funds and contributions from private or public sources which may be used in support of a community action agency or program and funds under any federal or state assistance program pursuant to which a public or private nonprofit agency organized in accordance with this chapter could act as grantee, contractor or sponsor of projects appropriate for inclusion in a community action program. A community action agency or community action statewide organization ~~shall be empowered to~~ may transfer funds so received between components and to delegate funds to other agencies subject to the powers of its governing board and its overall program responsibilities.

In accordance with the requirements of the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the agency designated pursuant to § 2.1-589 2.2-XXX in cooperation with community action agencies and community action statewide organizations, shall develop a state plan for submission annually by the Governor to the Secretary of Health and Human Services.

Community action agencies and community action statewide organizations shall provide the designated agency designated pursuant to § 2.1-589 with quarterly financial and program reports.

Funds received in the Community Services Block Grant pursuant to the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) shall be expended in support of the purposes of this chapter as follows:

1. Ninety percent of the funds received in the Community Services Block Grant shall be used for the development and implementation of programs and projects designed by community action agencies to serve poor or low-income areas of the Commonwealth in accordance with a formula approved by the Governor for the first year of the Community Services Block Grant and thereafter biennially by the General Assembly.
2. No more than five percent of the funds received in the Community Services Block Grant shall be used for administration of the duties required by this ~~act~~ chapter of the designated agency designated pursuant to § 2.1-589.
3. At least five percent of the funds received in the Community Services Block Grant shall be used to support community action activities conducted by community action statewide organizations.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Biotechnology Research Act.

§ ~~2.1-769~~ 2.2-XXX. Purpose.

The purposes of this chapter are to establish a state regulatory scheme to ensure state participation in the federal Coordinated Framework for the Regulation of Biotechnology to protect human health and the environment and to stimulate the growth of the biotechnology industry within the Commonwealth. To do this, the Secretary of Commerce and Trade shall cooperate with federal authorities pursuant to the federal Coordinated Framework to assess the potential risks and effects of proposed regulated introductions of genetically engineered organisms into the environment without undue governmental interference with the progress and commercial development of biotechnology within the Commonwealth. The General Assembly does not intend to create a regulatory scheme that duplicates federal regulatory efforts regarding biotechnology, or one that overly burdens biotechnology efforts within the Commonwealth. This chapter is intended to institute a process in which the Commonwealth can monitor the federal regulatory process and protect its interests in agriculture, public health, and the natural environment, as needed, by participation in the federal regulatory process.

DRAFTING NOTE: Technical corrections. This section is not set out in the Code but has been set out for the purposes of this title revision. The Code Commission directed that this section continue to be not set out in the Code.

§ ~~2.1-770~~ 2.2-XXX. Definitions.

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

"Affected localities" means the locality in which a regulated introduction is proposed to be made and any locality within a three-mile radius of the location where the regulated introduction is proposed to be made.

"Confidential business information" means information entitled to confidential treatment under ~~subdivisions A-1 or A-2~~ subdivisions 1 or 2 of subsection A of § ~~2.1-775~~ 2.2-XXX.

"Coordinated Framework" means the federal Coordinated Framework for the Regulation of Biotechnology set forth in 51 Fed. Reg. 23,302 through 23,350 (June 26, 1986), as amended.

"Department" means the department designated by the Secretary of Commerce and Trade to implement the requirements of this chapter for certain types or classes of regulated introductions. Where possible, the Secretary shall designate the department whose purpose most closely resembles the purpose of the federal regulator that will be responsible under the Coordinated Framework for reviewing and authorizing the regulated introduction.

"Federal regulator" means a federal department, agency, or other instrumentality of the federal government, or a designee of such federal instrumentality, which is responsible for regulating an introduction of a genetically engineered organism into the environment under the Coordinated Framework.

"Genetically engineered organism" means an organism (any organism such as animal, plant, bacterium, cyanobacterium, fungus, protist, or virus), altered or produced through genetic modification from a donor, vector, or recipient organism using modern molecular techniques such as recombinant deoxyribonucleic acid (DNA) methodology, and any living organisms derived therefrom.

"Locality" means any county ~~or municipality~~, city or town located within the Commonwealth.

"Planned introduction into the environment" means the intentional introduction or use in the Commonwealth beyond the de minimis level of a genetically engineered organism anywhere except within an indoor facility which is designed to physically contain the genetically engineered organism, including a laboratory, greenhouse, building, structure, growth chamber, or fermenter.

"Regulated introduction" means a planned introduction into the environment for which the Coordinated Framework requires that the person proposing to commence the introduction into the environment do one or more of the following:

1. Notify a federal regulator of the proposed introduction into the environment;
2. Secure the approval of or a permit or license from a federal regulator before commencing the introduction into the environment; or
3. Secure a determination by a federal regulator of the need for notification, approval, licensing or issuance of a permit by the federal regulator if the determination is part of a procedure specified in the Coordinated Framework.

DRAFTING NOTE: Technical corrections only. As of the date of this title revision, the designated Department is the Department of Agriculture.

§ 2-1-774 2.2-XXX. Exemptions from chapter to be determined by Department.

A. The Department may waive part or all of the requirements under this chapter for a specified regulated introduction if the Department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

B. The Department may exempt a class of regulated introductions from part or all of any requirement under this chapter if the Department determines that the satisfaction of those requirements or part thereof is not necessary to protect the public health or the environment.

C. Planned regulated introductions approved by a federal regulator pursuant to the federal Coordinated Framework prior to enactment of this chapter shall be exempt from the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

§ 2-1-772 2.2-XXX. Notification Requirements for regulated introduction.

Except as provided under § 2-1-774 2.2-XXX, no person may commence a regulated introduction unless the person:

1. Provides to the Department all of the following information within seven days after the person submits or should have submitted the information specified in subdivisions 1 a and 1 b of this section to a federal regulator, whichever is sooner:

a. A copy of all information which the person is required to submit to the federal regulator and which is not confidential information; and

b. A summary of any confidential information which the person submits or is required to submit to a federal regulator. The summary shall provide sufficient information to enable the Department to exercise its notice and comment functions under §§ 2-1-773 2.2-XXX and 2-1-774 2.2-XXX, to provide public notice pursuant to § 2-1-773 2.2-XXX, and to prepare comments pursuant to § 2-1-774 2.2-XXX, and shall have minimal extraneous and irrelevant information. Likewise, the summary shall also provide sufficient information to enable the locality in which the introduction is proposed to be made to exercise its comment function under § 2-1-774 2.2-XXX.

2. Provides such additional information, if any, as is necessary to enable the Department to fulfill any functions it undertakes, on a case-by-case basis, under § 2-1-774 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

§ 2-1-773 2.2-XXX. Public notice of proposed regulated introduction.

Within fifteen days after receiving the information required under § 2-1-772 2.2-XXX, the Department shall publish notice and a brief description of the proposed regulated introduction. Notice shall also be provided to any affected locality and to any person who has filed a written request to be notified of such regulated introductions. Notice shall be given by publication one time in a newspaper having general circulation in each locality where the regulated introduction is proposed to be made. In addition, subject to the provisions of this article chapter regarding confidential business information, any documents submitted to the Department as required under § 2-1-772 2.2-XXX shall be available for public inspection or copying at or near the site of the proposed regulated introduction and at the offices of the Department.

DRAFTING NOTE: Technical corrections only.

§ 2-1-774 2.2-XXX. Comment on proposed regulated introduction.

A. The Department and any affected locality may prepare formal comments on the regulated introduction for submission to the federal regulator for that regulated introduction. ~~Such~~ The comments shall be submitted within the time established by the federal regulator for that regulated introduction, as determined by the applicable federal requirements or the Coordinated Framework. The comments shall address issues raised by application of the criteria for the granting of approval of a permit or a license under the applicable requirement in the Coordinated Framework and for the protection of the public health and the environment.

B. To assist in the preparation of comments, the Department may do any or all of the following:

1. Hold an informational meeting on the proposed regulated introduction;
2. Provide an opportunity for the public to comment on the proposed regulated introduction;
3. Request any additional information necessary on the proposed regulated introduction from the person providing information under § 2-1-772 2.2-XXX;
4. Conduct a technical review of the proposed regulated introduction; and
5. Seek the assistance of the faculty and academic staff of any Virginia public college or university institution of higher education, the Department of Health, the Department of Agriculture and Consumer Services, the Department of Environmental Quality, or any other appropriate state agency or organization, including but not limited to an institutional biosafety committee, in reviewing the proposed regulated introduction.

C. To assist in the preparation of comments, affected localities may do either or both of the following:

1. Hold an informational meeting on the proposed regulated introduction. When possible, that meeting shall be held in conjunction with an informational meeting held by the Department; and
2. Provide an opportunity for the public to comment on the proposed regulated introduction.

DRAFTING NOTE: Technical corrections only.

§ 2-1-775 2.2-XXX. Confidential business information; Department to establish procedures.

A. Except as provided in subsections B and C, the Department and any affected locality shall keep confidential any information received under this chapter if the person submitting the information notifies them that:

1. The federal regulator to whom the information has been submitted has determined that the information is entitled to confidential treatment and is not subject to public disclosure under the federal Freedom of Information Act, 5 U.S.C. § 552, as ~~new or hereafter~~ amended, or under the Coordinated Framework; or

2. The person submitting the information to the Department and any locality has submitted a claim to the federal regulator that the information is entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework, and the federal regulator has not made a determination on that claim.

B. Subsection A shall not prevent the Department from using the information for the purposes of ~~subdivision B 4 or B 5~~ subdivisions 4 or 5 of subsection B of § ~~2.1-774 2.2-XXX~~, subject to the requirements of subsection D of this section.

C. The Department shall allow public access to any information which has been granted confidentiality under subsection A if either of the following occurs:

1. The person providing the information expressly agrees in writing to the public access of the information;
or

2. After information has been granted confidentiality under subdivision A-2 of subsection A, the federal regulator makes a determination that the information is not entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework.

D. ~~4-~~The Department shall establish procedures to protect information required to be kept confidential under subsection A of this section. Under the procedures, the Department ~~may~~ shall not submit any information under ~~subdivision B 4 or B 5~~ subdivisions 4 or 5 of subsection B of § ~~2.1-774 2.2-XXX~~ to any person who is not an employee of the Department unless that person has signed an agreement which satisfies the requirements of ~~subdivision 2 of this subsection E~~.

~~2E~~ E. Any agreement under ~~subdivision 1 of this subsection D~~ shall (i) provide that information which is the subject of the agreement ~~is shall be~~ subject to confidential treatment; ~~shall~~ (ii) prohibit the release or sharing of the information with any other person except at the direction of the Department and in compliance with this chapter; ~~shall~~ (iii) acknowledge the penalties in § 59.1-338 of the Virginia Uniform Trade Secrets Act (§ 59.1-336, et seq.), ~~as now and hereafter amended~~, and any other applicable law of the Commonwealth identified by the Department for the unauthorized disclosure of the information; and ~~shall~~ (iv) contain a statement that the person receiving the information, any member of his or her immediate family or any organization with which he or she is associated has no substantial financial interest in the regulated introduction which is the subject of the information.

F. Any person submitting the information under § ~~2.1-772 2.2-XXX~~ may waive any of the requirements under this section.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-776 2.2-XXX~~. Enforcement.

The Department shall enforce the provisions of §§ ~~2.1-772 2.2-XXX~~ and ~~2.1-775 2.2-XXX~~. Actions to enforce this chapter by injunctive and any other relief appropriate for enforcement may be filed in the Circuit Court of the City of Richmond or in any county or municipality where a violation occurred in whole or in part. In an enforcement action under this chapter, if it is determined that a person commenced a regulated introduction and did not comply with § ~~2.1-772 2.2-XXX~~, the court may enter an injunction directing the person to cease the regulated introduction and may order any additional action necessary to protect human health and the environment.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-777 2.2-XXX~~. Penalties.

A civil penalty of not more than \$500 may be assessed by the Department against any person who violates any provision of this chapter. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the

person has been given the opportunity for a hearing pursuant to the Virginia Administrative Process Act, (~~§ 9-6.14:1~~ ~~2.2-XXX~~ et seq.). Any continuing failure to notify under ~~§ 2-1-772~~ ~~2.2-XXX~~ shall constitute the same offense for purposes of imposing the ~~above~~ penalty authorized by this section.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-778~~ ~~2.2-XXX~~. ~~Local~~ Limitation on local regulation.

No locality shall enact any regulation or ordinance regulating or prohibiting (i) the planned introduction of genetically engineered organisms into the environment. ~~No locality shall enact any regulation or ordinance regulating or prohibiting or (ii) biotechnology research activities, provided, however, that~~ ~~However~~, the siting of biotechnology research activities shall be subject to the zoning and land-use laws and regulations of the ~~political subdivisions~~ localities in which such activities are conducted ~~and~~, the Uniform Statewide Building Code (§ 36-97 et seq.), the Statewide Fire Prevention Code (§ 27-94 et seq.), local public utility and public works ordinances and regulations of general application, and local tax ordinances of general application.

DRAFTING NOTE: Technical corrections only.

PART C.

INTERSTATE COMPACTS AND AGREEMENTS.

Chapter X.

Southside Energy Compact.

~~§ 2-1-336~~ ~~2.2-XXX~~. Form of compact.

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Southern States Energy Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

SOUTHERN STATES ENERGY COMPACT

Article I.

Policy and Purpose

The party states recognize that the proper employment and conservation of energy and employment of energy-related facilities, materials, and products, within the context of a responsible regard for the environment can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from the acquisition of energy resources and facilities require systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the region's people.

Article II.

The Board

~~(a) A.~~ There is hereby created an agency of the party states to be known as the "Southern States Energy Board" (hereinafter called the Board). The Board shall be composed of three members from each party state, one of whom shall be appointed or designated in each state to represent the Governor, the State Senate and the State House of Representatives, respectively. Each member shall be designated or appointed in accordance with the

law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

~~(b)~~ B. Each party state shall be entitled to one vote on the Board, to be determined by majority vote of each member or member's representative from the party state present and voting on any question. No action of the Board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes on the Board are cast in favor thereof.

~~(c)~~ C. The Board shall have a seal.

~~(d)~~ D. The Board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Board shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Board may require.

~~(e)~~ E. The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

~~(f)~~ F. The Board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

~~(g)~~ G. The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

~~(h)~~ H. The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

~~(i)~~ I. The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

~~(j)~~ J. The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

~~(k)~~ K. The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

III. Finances

~~(a)~~ A. The Board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

~~(b)~~ B. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds to each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

~~(c)~~ C. The Board may meet any of its obligations in whole or in part with funds available to it under Article II (h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II ~~(h)~~ hereof H, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

~~(d)~~ D. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

~~(e)~~ E. The accounts of the Board shall be open at any reasonable time for inspection.

IV. Advisory Committees

The Board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and their organizations which they represent in furthering any of its activities under this compact.

V. Powers

The Board shall have power to:

~~(a)~~ A. Ascertain and analyze on a continuing basis the position of the South with respect to energy-related industries and environmental concerns.

~~(b)~~ B. Encourage the development, conservation, and responsible use of energy and energy-related facilities, installation, and products as part of a balanced economy and healthy environment.

~~(c)~~ C. Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

~~(d)~~ D. Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of

~~(1)~~ 1. Energy, environment, and application of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

~~(2)~~ 2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of energy and energy-related materials, products, installations, or wastes.

~~(e)~~ E. Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

~~(f)~~ F. Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

~~(g)~~ G. Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

~~(h)~~ H. Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstance which may justify variations to meet local conditions.

~~(i)~~ I. Prepare, publish and distribute, (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

~~(j)~~ J. Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interests.

~~(k)~~ K. Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

~~(l)~~ L. Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, to coordinate the nuclear, environmental and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents.

The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

VI. Supplementary Agreements

~~(a)~~ A. To the extent that the Board has not undertaken any activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

~~(b)~~ B. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

~~(e)~~ C. No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that time and proper performance of such obligation or duty by means of the supplementary agreement may be offered in performance pursuant to the compact.

VII. Other Laws and Relationships

Nothing in this compact shall be construed to:

~~(a)~~ A. Permit or require any person or other entity to avoid or refuse compliance with any law, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

~~(b)~~ B. Limit, diminish, or otherwise impair jurisdiction exercised by the United States Department of Energy, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

~~(c)~~ C. Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

~~(d)~~ D. Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the Board own or operate any facility or installation for industrial or commercial purposes.

VIII. Eligible Parties, Entry Into Force or Withdrawal

~~(a)~~ A. Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become parties to this compact.

~~(b)~~ B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven states.

~~(c)~~ C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

IX. Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

DRAFTING NOTE: Technical corrections only.

§ ~~2-1-337~~ 2.2-XXX. Appointment and term of members of Southern States Energy Board.

The Governor, the Senate Committee on Privileges and Elections Committee of the Senate, and the Speaker of the House of Delegates shall each appoint one member of the Southern States Energy Board as established by Article II of the compact, to serve at the pleasure of their appointive authority for a term of four years. If any ~~such~~ member ~~appointed~~ ~~be is~~ the head of a department or agency of ~~this the~~ Commonwealth, he may designate a subordinate officer or employee of his department or agency to serve in his stead as permitted by Article II ~~(a)A.~~ of the compact and in conformity with any applicable bylaws of the Board.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-338~~ 2.2-XXX. Supplementary agreements.

No supplementary agreement entered into pursuant to Article VI of the compact and requiring the expenditure of funds or the assumption of an obligation to expend funds in addition to those already appropriated shall become effective as to ~~this the~~ Commonwealth unless funds therefor are or have been appropriated therefor as provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-339~~ 2.2-XXX. Cooperation of departments, agencies and officers of Commonwealth.

All departments, agencies and officers of ~~this the~~ Commonwealth and its political subdivisions are hereby ~~authorized to may~~ cooperate with the Southern States Energy Board in the furtherance of any of its activities pursuant to the compact.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Southern Growth Policies Agreement.

~~§ 2.1-339.1~~ 2.2-XXX. Form of agreement.

The Southern Growth Policies Agreement is hereby enacted into law and entered into by ~~this the~~ Commonwealth with all other states legally joining therein in the form substantially as follows:

SOUTHERN GROWTH POLICIES AGREEMENT

Article I.

Findings and Purposes.

~~(a)A.~~ The party states find that the South has a sense of community based on common social, cultural and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

~~(b)B.~~ The purposes of this agreement are to provide:

1. Improved facilities and procedures for study, analysis and planning of governmental policies, programs and activities of regional significance.

2. Assistance in the prevention of interstate conflicts and the promotion of regional cooperation.

3. Mechanisms for the coordination of state and local interests on a regional basis.
4. An agency to assist the states in accomplishing the foregoing.

Article II.

The Board.

~~(a)~~ A. There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

~~(b)~~ B. The Board shall consist of five members from each party state, as follows:

1. The governor.

2. Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide.

3. Two residents of the state who shall be appointed by the governor to serve at his pleasure.

~~(c)~~ C. In making appointments pursuant to paragraph ~~(b)~~ B 3, a governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph ~~(b)~~ B, will make the state's representation on the Board broadly representative of the several socioeconomic elements within his state.

~~(d)~~ D. 1. A governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide.

2. A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.

3. A member of the Board serving pursuant to paragraph ~~(b)~~ B 3 of this article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote; provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its bylaws may provide.

Article III.

Powers.

~~(a)~~ A. The Board shall prepare and keep current a Statement of Regional Objectives, including recommended approaches to regional problems. The Statement may also identify projects deemed by the Board to be of regional significance. The Statement shall be available in its initial form two years from the effective date of this agreement and shall be amended or revised no less frequently than once every six years. The Statement shall be in such detail as the Board may prescribe. Amendments, revisions, supplements or evaluations may be transmitted at any time. An annual commentary on the Statement shall be submitted at a regular time to be determined by the Board.

~~(b)~~ B. In addition to powers conferred on the Board elsewhere in this agreement, the Board shall have the power to make or commission studies, investigations and recommendations with respect to:

1. The planning and programming of projects of interstate or regional significance.

2. Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.

3. Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact.
4. Measures for influencing population distribution, land use, development of new communities and redevelopment of existing ones.
5. Transportation patterns and systems of interstate and regional significance.
6. Improved utilization of human and natural resources for the advancement of the region as a whole.
7. Any other matters of a planning, data collection or informational character that the Board may determine to be of value to the party states.

Article IV.

Avoidance of Duplication.

~~(a)~~ A. To avoid duplication of effort and in the interest of economy, the Board shall make use of existing studies, surveys, plans and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the Board and to otherwise assist it in the performance of its functions. At the request of the Board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the Board may have available to it current information with respect thereto.

~~(b)~~ B. The Board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own investigations and conduct its own research. The Board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

~~(c)~~ C. In general, the policy of paragraph ~~(b)~~ B of this article shall apply to the activities of the Board relating to its Statement of Regional Objectives, but nothing herein shall be construed to require the Board to rely on the services of other persons or agencies in developing the Statement of Regional Objectives or any amendment, supplement or revision thereof.

Article V.

Advisory Committees.

The Board shall establish a Local Governments Advisory Committee. In addition, the Board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment.

Article VI.

Internal Management of the Board.

~~(a)~~ A. The members of the Board shall be entitled to one vote each. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor thereof. Action of the Board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Board may delegate the exercise of any of its powers relating to internal

administration and management to an Executive Committee or the Executive Director. In no event shall any such delegation include final approval of:

1. A budget or appropriation request.
2. The Statement of Regional Objectives or any amendment, supplement or revision thereof.
3. Official comments on or recommendations with respect to projects of interstate or regional significance.
4. The annual report.

~~(b)~~ B. To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed seventeen members, including at least one member from each party state. The Executive Committee, subject to the provisions of this agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One-half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: one less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

~~(c)~~ C. The Board shall have a seal.

~~(d)~~ D. The Board shall elect, from among its members, a Chairman, a Chairman-Elect, a Vice-Chairman and a Treasurer. Elections shall be annual. The Chairman-Elect shall succeed to the office of Chairman for the year following his service as Chairman-Elect. For purposes of the election and service of officers of the Board, the year shall be deemed to commence at the conclusion of the annual meeting of the Board and terminate at the conclusion of the next annual meeting thereof. The Board shall provide for the appointment of an Executive Director. Such Executive Director shall serve at the pleasure of the Board, and together with the Treasurer and such other personnel as the Board may deem appropriate shall be bonded in such amounts as the Board shall determine. The Executive Director shall be Secretary.

~~(e)~~ E. The Executive Director, subject to the policy set forth in this agreement and any applicable directions given by the Board, may make contracts on behalf of the Board.

~~(f)~~ F. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director, subject to the approval of the Board, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Board, and shall fix the duties and compensation of such personnel. The Board in its bylaws shall provide for the personnel policies and programs of the Board.

~~(g)~~ G. The Board may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

~~(h)~~ H. The Board may accept for any of its purposes and functions under this agreement any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Board pursuant to this paragraph or services borrowed pursuant to paragraph ~~(g)~~ G of this article shall be reported in the

annual report of the Board. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

~~(i)~~ I. The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

~~(j)~~ J. The Board shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Board shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

~~(k)~~ K. The Board annually shall make to the governor and legislature of each party state a report covering the activities of the Board for the preceding year. The Board at any time may make such additional reports and transmit such studies as it may deem desirable.

~~(l)~~ L. The Board may do any other or additional things appropriate to implement powers conferred upon it by this agreement.

Article VII.

Finance.

~~(a)~~ A. The Board shall advise the governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

~~(b)~~ B. The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

1. One third in equal shares,
2. One third in the proportion that the population of a party state bears to the population of all party states, and
3. One third in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the Board shall employ the most recent authoritative sources of information and shall specify the sources used.

~~(c)~~ C. The Board shall not pledge the credit of any party state. The Board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI (h) of this agreement, provided that the Board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Board makes use of funds available to it pursuant to Article VI ~~(h)~~ H, or borrows pursuant to this paragraph, the Board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The Board may borrow against anticipated revenues for terms not to exceed two years, but in any such event the credit pledged shall be that of the Board and not a party state.

~~(d)~~ D. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Board.

~~(e)~~ E. The accounts of the Board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Board.

~~(F)~~ F. Nothing contained herein shall be construed to prevent Board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Board.

Article VIII.

Cooperation with the Federal Government and Other Governmental Entities.

Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the federal government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the governor or in such manner as state law may provide or authorize. The Board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this article, and each such state shall keep the Board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance.

Article IX.

Subregional Activities.

The Board may undertake studies or investigations centering on the problems of one or more selected subareas within the region; provided that in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the Board finds that it is not justified in undertaking the work for its regional value as a demonstration, the Board may undertake the study or investigation as a special project. In any such event, it shall be a condition precedent that satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the Board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this article as a special project, the Board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV-~~(b)~~ B.

Article X.

Comprehensive Land Use Planning.

If any two or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the governors of the states involved may designate the Board as their joint agency for the purpose. The Board shall accept such designation and carry out such responsibility; provided that the states involved make arrangements satisfactory to the Board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the Board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this agreement.

Article XI.

Compacts and Agencies Unaffected.

Nothing in this agreement shall be construed to:

1. Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof.
2. Affect the rights or obligations of any governmental units, agencies or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties.
3. Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development.

Article XII.

Eligible Parties; Entry Into and Withdrawal.

~~(a)~~ A. This agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, hereinafter referred to as party states.

~~(b)~~ B. Any eligible state may enter into this agreement and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least five states shall be required.

~~(c)~~ C. Adoption of the agreement may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this agreement through gubernatorial action, the governor may provide to the Board an equitable share of the financial support of the Board from any source available to him. Nothing in this paragraph shall be construed to require a governor to take action contrary to the constitution or laws of his state.

~~(d)~~ D. Except for a withdrawal effective on December 31, 1973, in accordance with paragraph ~~(c)~~ C of this article, any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XIII.

Construction and Severability.

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-339.2~~ 2.2-XXX. Bylaws and amendments to be filed with Secretary of Commonwealth.

Copies of bylaws and amendments to be filed pursuant to Article VI ~~(j)~~ J of the agreement shall be filed with the Secretary of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-339.3~~ 2.2-XXX. Participation with other states not terminated.

Nothing contained in the Southern Growth Policies Agreement as enacted by this chapter shall in any event be construed to terminate the participation of ~~this the~~ Commonwealth with any state which adopted the Southern Growth Policies Agreement prior to June 1, 1973, except that the provisions of Article XII ~~(c)~~ C shall govern with respect to the continuance of states as parties thereto after December 31, 1973.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Delmarva Peninsula Compact.

§ 2.1-339.4 2.2-XXX. Formation of Delmarva Advisory Council Peninsula Compact.

The Governor of ~~this~~ the Commonwealth is ~~empowered to~~ may execute a compact or agreement on behalf of the Commonwealth and the states of Delaware and Maryland, joining with them to form the Delmarva Advisory Council. The Council's rights, duties and functions shall be substantially as follows within this chapter.

DRAFTING NOTE: Technical corrections only.

§ 2.1-339.5 2.2-XXX. Jurisdiction and Delmarva Advisory Council; jurisdiction meetings; compensation membership.

A. Upon enactment of similar legislation by the states of Maryland and Delaware, the Delmarva Advisory Council shall be established as a regional advisory council for the Delmarva Peninsula. The Council shall be concerned with all of the Delmarva Peninsula south of the Chesapeake and Delaware Canal. Such jurisdiction shall include all of Kent and Sussex Counties and a portion of New Castle County in Delaware; all of the Counties of Kent, Queen Anne's, Caroline, Talbot, Dorchester, Wicomico, Worcester, and Somerset and a portion of Cecil County in Maryland; and all of Accomack and Northampton Counties in Virginia.

B. The membership of the Council shall consist of:

1. Five members appointed by the Governor of Delaware, five members appointed by the Governor of Maryland, and five members appointed by the Governor of Virginia; and

2. Such other members from county and municipal governments, and from the private sector as may be established from time to time in the bylaws of the Council.

C. Council members shall annually elect a chairman and such other officers as may be deemed necessary.

D. The Council shall hold quarterly meetings at a time and place designated by the Council, and shall hold additional meetings as are deemed necessary.

E. The Council shall hold not less than one meeting each year at which the public is given an opportunity to express views concerning regional issues.

F. The Council may adopt bylaws, rules and regulations for its governing and operation not inconsistent with this chapter or laws of the states of Delaware, Maryland and Virginia.

DG. Members of the council shall serve without pay except that each shall be reimbursed for actual expenses incurred in the performance of their duties.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A, B, C and G are § 2.1-339.5 and subsection D, E, and F are § 2.1-339.6.

§ 2.1-339.6. Rules and regulations; meetings.

~~A. The Council shall hold quarterly meetings at a time and place designated by the Council, and shall hold additional meetings as are deemed necessary.~~

~~B. The Council shall hold not less than one meeting each year at which the public is given an opportunity to express views concerning regional issues.~~

~~C. The Council may adopt bylaws, rules and regulations for its governing and operation not inconsistent with this legislation or laws of the states of Delaware, Maryland and Virginia.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D, E and F of proposed § 2.2-XXX (existing § 2.1-339.5).

~~§ 2.1-339.7~~ 2.2-XXX. Duties and responsibilities of the Council.

The duties and responsibilities of the Council shall include but are not limited to:

~~(i)~~ 1. Assist in the identification of perceived regional problems and issues;

~~(ii)~~ 2. Assist in effective solutions for such problems and issues;

~~(iii)~~ 3. Assist in the resolution of such problems and issues in order to promote a balanced development to improve the economic conditions, quality of life, and environmental concerns of the people of the Delmarva Peninsula;

~~(iv)~~ 4. Advise the Governors, Secretaries, Legislatures and other local and state agencies on options to solve regional and interstate problems and issues as pertaining to the Delmarva Peninsula;

~~(v)~~ 5. Prepare and submit quarterly reports and furnish such reports as well as any requested studies by the Governors; and

~~(vi)~~ 6. Serve in an advisory capacity only.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-339.8~~ 2.2-XXX. Funding of the Council; staff.

A. The Council may accept gifts and grants from any individual, group, association, or corporation, or from the United States Government, subject to such limitations or conditions as may be provided by law.

B. The Council shall employ ~~such professional and clerical~~ the necessary personnel and consultants as necessary to perform ~~such the lawful~~ duties as may be lawful in accordance with required by this chapter.

C. The Delmarva Advisory Council shall receive such funding as is appropriated by law by the states of Delaware, Maryland and Virginia.

DRAFTING NOTE: Technical corrections only.

II. TITLE 9.1

TITLE 9.1--COMMONWEALTH'S PUBLIC SAFETY

Chapter 1	Department of Criminal Justice Services
Chapter 2	Department of Fire Programs
Chapter 3	Line of Duty Act
Chapter 4	Law-Enforcement Officers' Procedural Guarantees etc. (from Titles 2.1 and 9)
Chapter 5	Civilian Protection in Cases of Police Misconduct.

PROPOSED TITLE 9.1.
COMMONWEALTH PUBLIC SAFETY.
Chapter X.
Department of Criminal Justice Services.
Article 1.
General Provisions.

~~§ 9-167. Department created.~~

~~On and after July 1, 1982, the Criminal Justice Services Commission, the Division of Justice and Crime Prevention and the Council on Criminal Justice are abolished and there is hereby created a Department of Criminal Justice Services in the executive department.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as duplicative of proposed § 9.1-XXX (existing § 9-174) infra. This section was enacted in 1981, chapter 632.

~~§ 9-174 9.1-XXX. Department of Criminal Justice Services.~~

~~A. There shall be is created a Department of Criminal Justice Services (the "Department") in the executive department. The Department which shall be under the supervision and management of headed by a Director appointed by the Governor, subject to confirmation by the General Assembly. The Director shall serve at the pleasure of the Governor.~~

~~B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties required by the Governor or the Criminal Justice Services Board.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-174 and subsection B is § 9-175 and subsection E of § 9-176.

~~§ 9-175. Appointment of Director.~~

~~The Governor shall appoint the Director of the Department, subject to confirmation by the General Assembly, and he shall hold his office at the pleasure of the Governor.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 9.1-XXX supra.

~~§ 9-169 9.1-XXX. Definitions.~~

~~The following words, whenever As used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires a different meaning:~~

~~1. "Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.~~

~~2. "Board" means the Criminal Justice Services Board.~~

3--"Criminal justice agency" means (i) a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so and (ii) for the purposes of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, any private corporation or agency which, within the context of its criminal justice activities employs officers appointed under ~~§ 15.1-144~~ 15.2-1737, or special conservators of the peace or special policemen appointed under Chapter 2 (§ 19.2-12 et seq.) of Title 19.2, provided that (a) such private corporation or agency requires its officers, special conservators or special policemen to meet compulsory training standards established by the Criminal Justice Services Board and submits reports of compliance with the training standards and (b) the private corporation or agency complies with the provisions of Article 3 (~~§ 9-184~~ 9.1-XXX, et seq.) of ~~Chapter 27 of Title 9~~ this chapter but only to the extent that the private corporation or agency is designated as a "criminal justice agency" performs criminal justice activities.

4--"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictment informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5--"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6--"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7--"Department" means the Department of Criminal Justice Services.

8--"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term ~~does~~ shall not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9--"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of ~~this the~~ Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage Control; ~~any;~~ (ii) police agent appointed under the provisions of § 56-353; ~~any;~~ (iii) officer of the Virginia Marine Patrol; ~~any;~~ (iv) game warden who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; ~~any;~~ (v) agent, investigator, or inspector appointed under § 56-334; or ~~any~~ (vi) investigator who is a full-time sworn member of the security division of the State Lottery Department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office. Full-time sworn members of the enforcement division of the Department of Motor Vehicles meeting the Department of Criminal Justice Services qualifications shall be deemed to be "law-enforcement officers" when fulfilling their duties pursuant to § 46.2-217.

10--"Conviction data" means information in the custody of any criminal justice agency relating to the judgment of conviction, and the consequences arising therefrom, in any court.

DRAFTING NOTE: Technical corrections only.

~~§ 9-170~~ 9.1-XXX. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. ~~Promulgate-Adopt~~ regulations, pursuant to the Administrative Process Act (~~§ 9-6-14:1- 2.2-XXX~~ et seq.), or the administration of (i) this chapter including the authority to require the submission of reports and information by law-enforcement officers within ~~this-the~~ Commonwealth or (ii) §§ 18.2-268.6, 18.2-268.9, 19.2-188.1, 19.2-110.5 and for any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;
2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) ~~in~~-permanent positions, and (ii) ~~in~~-temporary or probationary status, and establish the time required for completion of such training;
3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;
4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;
5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;
6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2 ~~above~~, prior to assignment of any such officers to undercover investigation work. Failure to complete ~~such-the~~ training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;
7. Establish compulsory minimum entry level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;
8. Establish compulsory minimum entry level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;
9. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as ~~jailers or custodial-deputy sheriffs and jail~~ officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;
10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;
11. Consult and cooperate with counties, municipalities, agencies of ~~this-the~~ Commonwealth, other state and federal governmental agencies, and with universities, colleges, ~~junior-community~~ colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

12. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

13. Establish and maintain police training programs through such agencies and institutions as the Board may deem deems appropriate;

14. Establish compulsory minimum qualifications of certification and recertification for instructors of criminal justice training schools approved by the Department;

15. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

16. Make recommendations concerning any matter within its purview pursuant to this chapter;

17. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

18. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, ~~shall have the authority to~~ may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

19. Conduct audits as required by ~~§ 9-486~~ 9.1-XXX;

20. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

21. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

22. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

23. ~~Issue~~ Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

24. ~~The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Record Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange;~~

~~25~~ 24. Operate a statewide criminal justice ~~statistical analysis~~ research center, which shall maintain ~~unified~~ an integrated criminal justice ~~data~~ information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

2625. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

2726. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

2827. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

2928. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

3029. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

3130. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

3231. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

3332. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

3433. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

3534. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

3635. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

~~3736.~~ Provide forensic laboratory services as detailed in Article 4-2 (~~§ 9-196.1- 9.1-XXX~~ et seq.) of chapter;

~~3837.~~ Establish training standards and publish a model policy for law-enforcement personnel in handling of family abuse cases;

~~3938.~~ Establish training standards and publish a model policy for law-enforcement personnel communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

~~4039.~~ Establish compulsory training standards for law-enforcement officers to ensure sensitivity to awareness of cultural diversity;

~~4440.~~ Review and evaluate community policing programs in the Commonwealth, and recommend what necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs; and

~~4241.~~ Perform such other acts as may be necessary or convenient for the effective performance of duties.

DRAFTING NOTE: Technical corrections. Existing subdivision 25, shown here as stricken, now appears as subsection C in proposed § 9.1-XXX (existing § 9-185) in proposed Article 3 of this Chapter -- Criminal Justice Information System. Additionally, on the recommendation of the Department of Criminal Justice Services, the term "jailers or custodial officers" was replaced with "deputy sheriffs and jail officers in subdivision 9 to make consistent with § 53.1-1; the phrase "operate a statewide criminal justice statistical analysis center" was replaced with "operate a statewide criminal justice research center" in subdivision 25 to clarify that the activities listed in subdivision are performed by the Department of Criminal Justice Services criminal justice research center and the statistical analysis center; also in proposed subdivision 24, the phrase "maintain a unified criminal justice data system" was replaced with "maintain an integrated criminal justice information system" since a unified criminal justice data system does not exist.

~~§ 9-183 9.1-XXX.~~ Direct operational responsibilities in law enforcement not authorized.

Nothing in this chapter shall be construed as authorizing the Department of ~~Criminal Justice Services~~ undertake direct operational responsibilities in law enforcement or the administration of criminal justice.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173.3 9.1-XXX.~~ Establishment of victim and witness assistance programs; purpose; ~~rules--regulations guidelines.~~

A. The Department of ~~Criminal Justice Services~~ shall ~~rules and regulations~~ adopt guidelines, the purpose of which shall be to make funds available to local governments for establishing, operating and maintaining victim and witness assistance programs which provide services to the victims of crime and witnesses in the criminal justice system.

B. The Department of ~~Criminal Justice Services~~ shall establish a grant procedure to govern funds awarded for this purpose.

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of Criminal Justice Services, the term "rules and regulations" has been replaced with "guidelines" to conform with § 19.2-11.1 that requires local governments which establish victim/witness programs funded by the Department of Criminal Justice Services to operate in accordance with guidelines established by the Department of Criminal Justice Services.

~~§ 9-178.4 9.1-XXX.~~ (Effective October 1, 1998) Intensified Drug Enforcement Jurisdictions Fund.

There is hereby created a special nonreverting fund to be administered by the Department of Criminal Justice Services, known as the Intensified Drug Enforcement Jurisdictions Fund. This Fund shall be established in the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

DRAFTING NOTE: Technical corrections only.

§ 9-178.2 9.1-XXX. Law enforcement expenditures Regional Criminal Justice Academy Training Fund.

There is hereby created a special nonreverting fund to be administered by the Department of Criminal Justice Services, known as the Regional Criminal Justice Academy Training Fund. This Fund shall be established in the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Fund shall consist of moneys forwarded to the State Treasurer for deposit in the Fund as provided in §§ 16.1-9.48:1 and 17.1-275, which sums shall be deposited in the state treasury to the credit of this the Fund. Money in the Fund shall be used to provide financial support for regional criminal justice training academies, and shall be distributed as directed by the Department of Criminal Justice Services.

Existing funds for the regional criminal justice training academies shall not be reduced by either state or local entities as a result of the enactment of Chapter 215 of the Acts of Assembly of 1997.

DRAFTING NOTE: Technical corrections only.

§ 9-176 9.1-XXX. Powers and duties of Director.

A. The Director shall be charged with executive and administrative responsibility to (i) carry out the specific duties imposed on the Department under § 9.1-XXX (9-170) and (ii) maintain appropriate liaison with federal, state and local agencies and units of government, or combinations thereof, in order that all programs, projects and activities for strengthening and improving law enforcement and the administration of criminal justice may function effectively at all levels of government.

The B. In addition, the Director of the Department shall have the following powers power and duty to:

A. To accept 1. Accept grants from the United States government and agencies and instrumentalities hereof, 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.

B. To do 2. In accordance with the standards of classification of the Personnel Act (§ 2.2-XXX 2.1-110 et seq.) of Title 2.1, employ and fix the salaries of Department personnel and enter into contracts for services necessary in the performance of the Department's functions.

3. Do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities under § 9-170 9.1-XXX.

C. The Director shall be charged with executive and administrative responsibility to (i) carry out the specific duties imposed on the Department under § 9-170 and (ii) maintain appropriate liaison with federal, state and local agencies and units of government, or combinations thereof, in order that all programs, projects and activities for strengthening and improving law enforcement and the administration of criminal justice may function effectively from national to local levels.

D. The Director shall employ and fix the salaries of such personnel and enter into contracts for services as may be necessary in the performance of the Department's functions. The salaries of such personnel shall be fixed in accordance with the standards of classification of Chapter 10 (§ 2.1 110 et seq.) of Title 2.1.

~~E. The Director under the direction and control of the Governor shall exercise such powers and perform such duties as are conferred by law upon him, and he shall perform such other duties as may be required of him by the Governor and the Board.~~

C. The Director shall be the Executive Director of the Board, but shall not be a member of the Board.

DRAFTING NOTE: Technical corrections. Existing subsection E now appears as subsection E in proposed § 9.1-XXX (existing § 9-174). Proposed subsection C is existing § 9-177.

~~§ 9-177. Executive Director of the Board.~~

~~The Director shall be the Executive Director of the Board, but shall not be a member thereof.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 9.1-XXX (existing § 9-176) supra.

~~§ 9-178. Vested with authority of Board.~~

~~The Director shall be vested with all the authority of the Board when it is not in session, subject to its rules and regulations as may be prescribed by the Board.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as duplicative of subsection A in proposed § 9.1-XXX supra.

~~§ 9-168 9.1-XXX. Criminal Justice Services Board, Committee on Training, and Advisory Committee on Juvenile Justice established; appointment membership; terms; vacancies; members not disqualified from holding other offices; designation of chairmen; expenses; meetings; compensation.~~

~~A. There is hereby created the The Criminal Justice Services Board is established as a policy board with the meaning of § 2.2-XXX, in the executive branch of state government. The Board shall be composed consist of twenty-seven members as set out below. Eight members of the Board shall be as follows: the Chief Justice of the Supreme Court of Virginia, or his designee; the Attorney General of Virginia, or his designee; the Superintendent of the Department of State Police; the Director of the Department of Corrections; the Director of the Department of Juvenile Justice; the Superintendent of the Department of Correctional Education; the Chairman of the Parole Board; and the Executive Secretary of the Supreme Court of Virginia. In those instances in which the Executive Secretary of the Supreme Court of Virginia, the Superintendent of the Department of State Police, the Director of the Department of Corrections, the Director of the Department of Juvenile Justice, the Superintendent of the Department of Correctional Education, or the Chairman of the Parole Board will be unavoidably absent from a Board meeting, he may appoint a member of his staff to represent him at the meeting.~~

Fifteen members shall be appointed by the Governor from among residents of this the Commonwealth. At least one shall be a representative of a crime victims' organization or a victim of crime as defined in subsection A of § 19.2-11.01. The remainder shall be representative of the broad categories of state and local government criminal justice systems, and law-enforcement agencies, including but not limited to, police officials, sheriffs, attorneys for the Commonwealth, defense counsel, the judiciary, correctional and rehabilitative activities, and other locally elected and appointed administrative and legislative officials. Among these members there shall be two sheriffs representing the Virginia State Sheriffs Association selected from among names submitted by the Association; two representatives of the Chiefs of Police Association selected from among names submitted by the Association; one attorney for the Commonwealth selected from among names submitted by the Association; one member of the Commonwealth's Attorneys; one person who is a mayor, city or town manager, or member of a city or town council representing the Virginia Municipal League selected from among names submitted by the League; one person who is a county executive, manager, or member of a county board of supervisors representing the Virginia Association of Counties selected from among names submitted by the Association; one member representing the Virginia Crime Prevention Association selected from among names submitted by the Association; one member

the Private Security Services Advisory Board; and one representative of the Virginia Association of Regional Jail Superintendents selected from among names submitted by the Association.

Four members of the Board shall be members of the General Assembly appointed by the chairmen of legislative committees as follows: one member of the House Committee on Appropriations Committee of the House of Delegates; one member of the Senate Committee on Finance of the Senate; one member of the House Committee for Courts of Justice of the House of Delegates; and one member of the Senate Committee for Courts of Justice of the Senate. The legislative members shall serve for the terms for which they were elected coincident with their terms of office and shall serve as ex officio, non voting members without a vote.

~~B. There is further created a permanent Committee on Training under the Board which shall be the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 14 of § 9-170. The Committee on Training shall be composed of thirteen members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; the member of the Private Security Services Advisory Board; the Executive Secretary of the Supreme Court of Virginia; the two sheriffs representing the Virginia State Sheriffs Association; the two representatives of the Chiefs of Police Association; the attorney for the Commonwealth representing the Association for Attorneys for the Commonwealth; the representative of the Virginia Municipal League; the representative of the Virginia Association of Counties; the regional jail superintendent representing the Virginia Association of Regional Jails; and one member designated by the Chairman of the Board from among the other appointments made by the Governor. The Committee on Training shall annually elect its chairman from among its members.~~

~~C. There is further created a permanent Advisory Committee on Juvenile Justice which shall have the responsibility for advising and assisting the Board, the Department, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, on matters related to the prevention and treatment of juvenile delinquency and the administration of juvenile justice in the Commonwealth. The Advisory Committee shall consist of no less than fifteen and no more than twenty five members. The membership of the Advisory Committee shall include persons who have training, experience or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice as set out below. Four ex-officio members with voting powers of the Advisory Committee shall be as follows: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of the Department of Social Services; the Director of the Department of Juvenile Justice; and the Superintendent of Public Instruction. Two members shall be members from the General Assembly, appointed by the chairmen of the following legislative committees: one member of the Senate Committee for Courts of Justice and one member of the House Committee on Health, Welfare and Institutions. The legislative members shall serve as ex-officio members for the terms for which they were elected. All other members shall be residents of the Commonwealth and be appointed by the Governor for a term of four years, except that appointments to terms commencing on July 1, 1991, shall be as outlined below. Five members, appointed for four-year terms, shall include: two members from the Criminal Justice Services Board; one member with expertise in juvenile services; one member representing community-based delinquency prevention or treatment programs; and one member who is under the age of twenty four at the time of appointment. Six members shall be appointed for three-year terms and shall include one juvenile and domestic relations district court judge; one member who is a representative of local law enforcement; one member who is a local city or county administrator; one member who is a member of the Virginia State Bar; and two members who are under the age of twenty four at the time of appointment. Six members, appointed for two-year terms, shall include one member who is employed in a private organization with a special focus on maintaining and strengthening the family unit; one member who works as a volunteer with delinquents or potential delinquents; one member who is now or formerly has been under the jurisdiction of the Virginia juvenile justice system; one member who is an employee of a local juvenile and domestic relations district court service unit; one member who is a representative of business groups or businesses employing youth; and one member who represents organizations concerned with the quality of juvenile justice, education or social services for children. The majority of the Advisory Committee shall be private citizens and at least three members of the Advisory Committee, including two private citizens shall also be members of the Board. The Advisory Committee shall elect its chairman from among its members. The Advisory Committee shall have the following specific duties and responsibilities:~~

~~1. To review the operation of the juvenile justice system in the Commonwealth, including facilities and programs, and prepare appropriate reports;~~

~~2. To review statewide plans, conduct studies, and make recommendations on needs and priorities for the development and improvement of the juvenile justice system in the Commonwealth; and~~

~~3. To advise on all matters related to the federal Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93-415, as amended), and recommend such actions on behalf of the Commonwealth as may seem desirable to secure benefits of that or other federal programs for delinquency prevention or the administration of juvenile justice.~~

~~Each administrative entity or collegial body within the executive branch of the state government as may be requested to do so shall cooperate with the Advisory Committee as it carries out its responsibilities.~~

~~DB. The members of the Board and Advisory Committee appointed by the Governor shall serve for terms of four years, provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Appointed members of the Board and Advisory Committee shall not be eligible to serve as such for more than two consecutive full terms. Three or more years within a four-year period shall be deemed a full term. Any vacancy on the Board and Advisory Committee shall be filled in the same manner as the original appointment, but for the unexpired term.~~

~~EC. The Governor shall appoint a Chairman chairman of the Board, and the Board shall designate one or more vice-chairmen from among its members, who shall serve at the pleasure of the Board.~~

~~FD. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Board shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.~~

~~G. Members of the Board and Advisory Committee shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service and to receive such compensation as is provided in § 2.1-20.3.~~

~~HE. The Board and Advisory Committee shall each hold no less than four regular meetings a year. Subject to the requirements of this subsection, the respective Chairman chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Board or Advisory Committee.~~

~~IF. The Board and Advisory Committee may adopt bylaws for their its operation.~~

~~G. Members of the Board shall receive compensation and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.3).~~

DRAFTING NOTE: Technical corrections. Existing subsections B and C, shown here as stricken, now appear as proposed §§ 9.1-XXX and 9.1-XXX, respectively.

~~§ 9-171 9.1-XXX. Administration of federal programs.~~

The Criminal Justice Services Board is hereby designated as the supervisory board and the Department is designated as the planning and coordinating agency responsible for the implementation and administration of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, as well as any other federal programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control throughout the Commonwealth. The Board shall continue the activities of and succeed the Council on Criminal Justice and the Department shall continue the activities of and succeed the Division of Justice and Crime Prevention.

DRAFTING NOTE: Technical corrections. The reference in this section to the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), has been deleted as obsolete since the federal grant program operated under that Act ceased to exist in 1980. The last sentence of this section has been deleted as obsolete.

~~§ 9-172. Plans and data from planning districts.~~

~~Each planning district commission shall prepare and submit to the Department plans and data for strengthening and improving law enforcement and the administration of criminal justice within the planning district which shall be subject to the approval of the Department for purposes of determining the eligibility of such planning district commission and local units of government therein to participate in funds and grants available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197) as amended, or such state or other federal funds as may be made available for like purposes. Such plans and data shall be prepared in accordance with rules and regulations adopted and administered by the Department and shall be updated periodically, as the Department may require.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete on the recommendation of the Department of Criminal Justice Services. This section was enacted to facilitate compliance with a federal grant program which ceased to exist in 1980.

~~§ 9-171.4 9.1-XXX. School Resource Officer Grants Program and Fund.~~

~~A. From such the funds as may be appropriated for such purpose and from such the gifts, donations, grants, bequests, and other funds as may be received on its behalf, there is hereby established (i) the School Resource Officer Grants Program, to be administered by the Criminal Justice Services Board, in consultation with the Board of Education, and (ii) a special nonreverting fund within the state treasury known as the School Resource Officer Incentive Grants Fund, hereinafter known as the "Fund." The Fund shall be established on the books of the Comptroller, and any moneys remaining in such the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it.~~

~~Subject to the authority of the Criminal Justice Services Board to provide for its disbursement, the Fund shall be disbursed to award matching grants to local law-enforcement agencies and local school boards that have established a collaborative agreement to employ uniformed school resource officers in middle and high schools within the relevant school division. Such school School resource officers shall be certified law-enforcement officers and shall be employed to help ensure safety and to prevent truancy and violence in schools.~~

~~B. The Criminal Justice Services Board shall establish criteria for making grants from the Fund, including procedures for determining the amount of a grant and the required local match. Any grant of general funds shall be matched by the locality on the basis of the composite index of local ability to pay. The Criminal Justice Services Board may ~~issue~~adopt guidelines governing the Program and the employment and duties of the school resource officers as it deems necessary and appropriate.~~

DRAFTING NOTE: Technical corrections only.

§ 9.1-XXX. Advisory Committee on Juvenile Justice; membership; terms; compensation; duties.

A. There is created a permanent Advisory Committee on Juvenile Justice (the "Advisory Committee") which shall have the responsibility for advising and assisting the Board, the Department, all agencies, departments, boards and institutions of the Commonwealth, and units of local government, or combinations thereof, on matters related to the prevention and treatment of juvenile delinquency and the administration of juvenile justice in the Commonwealth.

The Advisory Committee shall consist of no less than fifteen and no more than twenty-five members. The membership of the Advisory Committee shall include persons who have training, experience or special knowledge

concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice as follows: the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of the Department of Social Services; the Director of the Department of Juvenile Justice; and the Superintendent of Public Instruction; two members of the General Assembly, appointed by the chairmen of the following legislative committees: one member of the Senate Committee for Courts of Justice and one member of the House Committee on Health, Welfare and Institutions.

Legislative members shall serve terms coincident with their terms of office. All other members shall be residents of the Commonwealth and be appointed by the Governor for a term of four years. However, no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. The majority of the Advisory Committee shall be private citizens and at least three members of the Advisory Committee, including two private citizens shall also be members of the Board.

The Advisory Committee shall elect its chairman from among its members.

B. Appointed members of the Advisory Committee shall not be eligible to serve for more than two consecutive full terms. Three or more years within a four-year period shall be deemed a full term. Any vacancy on the Advisory Committee shall be filled in the same manner as the original appointment, but for the unexpired term.

C. The Advisory Committee shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Advisory Committee.

D. Advisory Committee may adopt bylaws for their operation.

E. Members of the Advisory Committee shall not receive compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties.

F. The Advisory Committee shall have the following duties and responsibilities to:

1. Review the operation of the juvenile justice system in the Commonwealth, including facilities and programs, and prepare appropriate reports;

2. Review statewide plans, conduct studies, and make recommendations on needs and priorities for the development and improvement of the juvenile justice system in the Commonwealth; and

3. Advise on all matters related to the federal Juvenile Justice and Delinquency Prevention Act of 1974 (P. L. 93-415, as amended), and recommend such actions on behalf of the Commonwealth as may seem desirable to secure benefits of that or other federal programs for delinquency prevention of the administration of juvenile justice.

G. Upon request, each administrative entity or collegial body within the executive branch of the state government shall cooperate with the Advisory Committee as it carries out its responsibilities.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of subsections C, D, G, H, and I of existing § 9-168. Reference to the terms of initial appointees has been deleted as obsolete.

§ 9.1-XXX. Committee on Training; membership.

There is created a permanent Committee on Training under the Board which shall be the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 16 of § 9.1-XXX (§ 9-170). The Committee on Training shall be composed of thirteen members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; the member of the Private Security Services Advisory Board; the Executive Secretary of the Supreme Court of Virginia; the two sheriffs representing the Virginia State Sheriffs Association; the two representatives of the Chiefs of Police Association; the attorney for

the Commonwealth representing the Association for Attorneys for the Commonwealth; the representative of the Virginia Municipal League; the representative of the Virginia Association of Counties; the regional jail superintendent representing the Virginia Association of Regional Jails; and one member designated by the chairman of the Board from among the other appointments made by the Governor.

The Committee on Training shall annually elect its chairman from among its members.

DRAFTING NOTE: Technical corrections. This proposed section is subsection B of existing § 9-168.

~~§ 9-179 9.1-XXX. Law enforcement Compliance with minimum training standards by officers serving on July 1, 1971; officers appointed under § 56-353 prior to July 1, 1982.~~

The provisions of this chapter shall not be construed to require (i) law-enforcement officers serving under permanent appointment on July 1, 1971, ~~nor require or~~ (ii) officers serving under permanent appointment under the provisions of § 56-353 appointed prior to July 1, 1982, to meet the compulsory minimum training standards provided for in subdivision 2 of ~~§ 9-179 9.1-XXX~~. Nor shall failure of any such officer to meet such standards make an ineligible for any promotional examination for which he is otherwise eligible, ~~except that~~. However, any law-enforcement officer designated under the provisions of § 53.1-120 to provide courthouse and courtroom security shall be required to meet the standards provided under subdivision 7 of ~~§ 9-179 9.1-XXX~~. Any full-time deputy sheriff who is a law-enforcement officer and who is exempted from the compulsory minimum training standards under this section shall be eligible for the minimum salary established pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 of Title 15.2.

DRAFTING NOTE: Technical corrections only.

~~§ 9-180 9.1-XXX. Compliance with minimum training standards by officers employed after July 1, 1971, by officers appointed under § 56-353 after July 1, 1982, and by part-time officers.~~

Every full-time law-enforcement officer employed after July 1, 1971, officers appointed under the provisions of § 56-353 after July 1, 1982, and every part-time law-enforcement officer employed after July 1, 1989, shall comply with the compulsory minimum training standards established by the Board within a period of time fixed by the Board ~~pursuant to Chapter 1.1:4- in accordance with the Administrative Process Act (§ 9-6-14:1- 2.2-XXX et seq.) of Title 9, except that 2.2. However,~~ any part-time law-enforcement officer employed for eighty, or fewer, compensated hours in a calendar year, or any noncompensated auxiliary deputy sheriff, or uncompensated auxiliary police officer who carries a firearm in the course of ~~such his~~ employment shall be required to have completed basic firearms training and received ongoing in-service firearms training, as defined by the Board. The Board ~~shall have the power to may~~ require law-enforcement agencies of the Commonwealth and political subdivisions to submit rosters of their personnel and pertinent data with regard to the training status of each personnel.

DRAFTING NOTE: Technical corrections only.

~~§ 9-181 9.1-XXX. Forfeiture of office for failing to meet training standards; termination of salary and benefits; extension of term.~~

A. Every person required to comply with the training standards ~~promulgated~~ adopted by the Board, including private security services business personnel, who fails to comply with the standards within the time limits established by the ~~rules and regulations promulgated~~ adopted by the Board shall ~~forthwith~~ forfeit his office, on receipt of notice, as provided in subsection B hereof. Such forfeiture shall create a vacancy in the office and pay and allowances shall cease.

B. Notice shall be by certified mail, in a form approved by the Board, to the officer failing to comply and the chief administrative officer of the agency employing ~~such the~~ officer. Notice shall be mailed to the State Compensation Board, if approval of that Board of the necessity of his office or compensation is required by law.

C. If the necessity for the officer or compensation of ~~such the~~ officer is required by law to be approved by the State Compensation Board, that Board, upon receipt of notice as provided in subsection B hereof, shall notify the Comptroller, who shall cause payment of his compensation to cease ~~forthwith~~ as of the date of receipt of the notice by the State Compensation Board of the notice.

D. It shall be the duty of the chief administrative officer of any agency employing a person who fails to meet ~~such the~~ training standards to enforce the provisions of ~~§ 9-180 9.1-XXX~~ and this section. Willful failure to do so shall constitute misfeasance ~~of in~~ office, and, in addition, upon conviction, shall constitute a Class misdemeanor.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173 9.1-XXX.~~ Exemptions of certain persons from certain training requirements.

The Director of the Department, with the approval of the Board, may exempt a chief of police or any law enforcement officer or any courthouse and courtroom security officer, ~~jailer jail officer~~, dispatcher, process server or custodial officer or corrections officer of the Commonwealth or any political subdivision who has had previous experience and training as a law-enforcement officer, courthouse and courtroom security officer, ~~jailer jail officer~~, dispatcher, process server or custodial officer or corrections officer with any law-enforcement or custodial agency from the mandatory attendance of any or all courses which are required for the successful completion of the compulsory minimum training standards established by the Board.

The exemption authorized by this section shall be available to all law-enforcement officers, courthouse and courtroom security officers, ~~jaillers jail officer~~, dispatchers, process servers and custodial officers, and corrections officers, regardless of any officer's date of initial employment, and shall entitle ~~such the~~ officer who is exempted from mandatory attendance to be deemed in compliance with ~~such the~~ compulsory minimum training standards and eligible for the minimum salary established pursuant to ~~Article 9 (§ 14.1-68 et seq.) of Chapter 14~~ Title 14 Article 3 (§ 15.2-1609 et seq.) of Chapter 16 of Title 15.2, provided that ~~such the~~ officer is otherwise qualified.

DRAFTING NOTE: Technical corrections. On the recommendation of Department of Criminal Justice Services, the term "jailer" has been replaced with "jail officer".

Article 2.

Division of Forensic Science.

~~§ 9-196.4 9.1-XXX.~~ Division of Forensic Science; duties.

A. ~~There is hereby established within the Department of Criminal Justice Services, a Division of Forensic Science, which heretofore existed as a division within the Department of General Services. The Division (the "Division") which shall be headed by a Director. It shall be the responsibility of the~~ The Division to shall provide forensic laboratory services upon request of the Superintendent of State Police; the Chief Medical Examiner, the Assistant Chief Medical Examiners, and local medical examiners; any attorney for the Commonwealth; any chief of police, sheriff, or sergeant responsible for law enforcement in the jurisdiction served by him; any local fire department; or any state agency in any criminal matter. The Division may provide such services to any federal or state investigatory agency within available resources.

B. The Division shall provide:

1. Provide forensic laboratory services to all law-enforcement agencies throughout the Commonwealth and provide laboratory services, research, and scientific investigations for agencies of the Commonwealth as needed. In addition, the Division shall establish; and

2. Establish a DNA testing program in accordance with Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 to determine identification characteristics specific to an individual.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.5~~ 9.1-XXX. Division of Forensic Science to be isolated; security and protection of evidence.

~~A. The Division of Forensic Science shall be isolated located within the Department of Criminal Justice services as much as necessary so as to ensure the protection of evidence and to ensure that its services are performed by skilled professionals who are qualified to testify in court regarding such services.~~

~~B. The Division shall provide for security and protection of evidence, official samples, and all other samples submitted to the Division for analysis or examination.~~

~~C. The Division shall ensure that its services are performed by skilled professionals who are qualified to testify in court regarding such services.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and C are § 9-196.5 and subsection B is § 9-196.6.

~~§ 9-196.6. Security and protection of evidence, etc.~~

~~The Division shall provide for security and protection of evidence, official samples, and all other samples submitted to the Division for analysis or examination.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 9.1-XX (existing § 9-196.5) supra.

~~§ 9-196.4~~ 9.1-XXX. Forensic Science Academy.

~~The Forensic Science Academy, which previously operated as a function of the Department of General Services, is hereby transferred to within the Division of Forensic Science within the Department of Criminal Justice services. It, shall be the function of the Academy to provide advanced training to law-enforcement agencies in the collection, collection, and preservation of evidence.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.7~~ 9.1-XXX. Special conservators of the peace.

~~Upon application of the Director of the Division of Forensic Science, the Circuit Court of the City of Richmond may appoint security personnel employed by the Division as special conservators of the peace, who shall exercise the powers and functions of conservators of the peace throughout the Commonwealth for the time specified in the order of appointment, while in the performance of their official duties as security personnel. Such appointments Appointments as special conservators of the peace shall terminate upon the order of the Division or upon the termination of employment as security personnel of the Division. The circuit court shall be notified with promptly by the Division whenever an appointment is terminated.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.11~~ 9.1-XXX. Rights of accused person or his attorney to results of investigation or to investigation.

~~Upon the request of any person accused of a crime or upon the request of an accused person's attorney, the Division of Forensic Science or the Division of Consolidated Laboratory Services shall furnish to the accused or his attorney the results of any investigation which has been conducted by it and which is related in any way to a crime for which such the person is accused. In any case in which an attorney of record for a person accused of violation of any criminal law of the Commonwealth, or the accused, may desire a scientific investigation, he shall, by motion filed before the court in which the charge is pending, certify that in good faith he believes that a scientific investigation may be relevant to the criminal charge. The motion shall be heard ex parte as soon as practicable,~~

and the court shall, after a hearing upon the motion and being satisfied as to the correctness of the certification order that the same be performed by the Division of Forensic Science or the Division of Consolidated Laboratory Services and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for scientific investigation. Upon the request of the attorney for the Commonwealth of the jurisdiction in which the charge is pending, he shall be furnished the results of the scientific investigation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.12~~ 9.1-XXX. Reexamination by independent experts.

Independent experts employed by (i) an attorney of record for a person accused of violation of any criminal law of the Commonwealth; or (ii) the accused, for the purpose of reexamination of materials previously examined in any laboratory of the Division of Forensic Science or the former Bureau of Forensic Science, shall conduct their analyses or examinations independently of the facilities, equipment, or supplies of the Division.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.8~~ 9.1-XXX. Disposal of certain hazardous materials.

Any material which is seized in any criminal investigation and which is deemed to be hazardous to health and safety, may be disposed of upon written application of the Division of Forensic Science to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which ~~such~~ the material is proposed to be evidence is pending. Upon receipt thereof, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Division of Forensic Science shall accompany the application for disposal and shall clearly identify and designate the material to be disposed of. The application shall state the nature of the hazardous materials, the quantity thereof, the location where seized, the person ~~or persons~~ from whom the materials were seized, and the manner whereby ~~such~~ the materials shall be destroyed.

When the ownership of the hazardous material is known, notice shall be given to the owner thereof at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of ~~such~~ the seizure, ~~such~~ the notice shall be given to the accused if other than the owner.

Upon receipt of the analysis report and the application, the court may order the destruction of all, or a part of, ~~such~~ the material; ~~however,~~ However, a sufficient and representative quantity of ~~such~~ the material shall be retained to permit an independent analysis when a criminal prosecution may result from ~~such~~ the seizure. A return under oath, reporting the time, place, and manner of destruction, shall be made to the courts. Copies of the analysis report, application, order, and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.9~~ 9.1-XXX. Disposal of certain other property after analysis.

Personal property, including drugs, not ~~subject to be~~ disposed of under ~~§ 9-196.8~~ 9.1-XXX, which has been submitted to the Division of Forensic Science or the former Bureau of Forensic Science for analysis or examination and which has not been reclaimed by the agency submitting ~~such~~ the property for analysis or examination, may be disposed of by the Division in accordance with this section if, after the expiration of 120 days after the receipt by the Division of the property, the Director notifies the circuit court of the county or city from which the property was taken, in writing, that the analysis or examination has been completed, and a report submitted to the agency that the property has not been reclaimed by the agency submitting it and that the Division proposes to dispose of ~~such~~ the property. The notice shall state the nature of the property, the quantity thereof, the location where seized, the name of the accused, if known; and the proposed method of disposing of the property.

When the ownership of the property is known, a copy of ~~such the~~ notice shall be sent simultaneously with notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the notice shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within ten days after receipt of the notice, may direct that the property be disposed of by the Division, by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Division. If the court does not so direct within ~~such the~~ thirty-day period, then the Division may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. The report, if sworn to, shall be admissible as evidence to the same extent as the disposed-of property would have been admissible.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196.10~~ 9.1-XXX. Disposal of property held by Division for more than fifteen years.

Notwithstanding the provisions of ~~§§ 9-196.8~~ 9.1-XXX and ~~9-196.9~~ 9.1-XXX, the Division of Forensic Science may file an application in the Circuit Court of the City of Richmond seeking an order authorizing the disposal of all personal property, including drugs, received by the Division more than fifteen years prior to the filing of the application. The application, under oath, shall list each item of property, the date of submission to the Division, the agency or individual submitting the property, and the proposed method of disposal. The application shall also state that written notice by first-class mail was given to each agency or individual submitting property at least thirty days prior to the application, and that no agency or individual objected to the disposal. A return, under oath, reporting the time, place, and manner of disposal, shall be made to the court.

DRAFTING NOTE: Technical corrections only.

Article 3.

Criminal Justice Information System.

~~§ 9-184~~ 9.1-XXX. Application and construction of article.

A. This article ~~applies shall apply~~ to original or copied criminal history record information, maintained by a criminal justice agency of (i) the Commonwealth of Virginia or its political subdivisions, and (ii) the United States or another state or its political subdivisions which exchange such information with an agency covered in clause (i), only to the extent of that exchange.

B. The provisions of this article ~~do shall~~ not apply to original or copied (i) records of entry, such as police reports, maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name, (ii) court records of public criminal proceedings, including opinions and published compilations thereof, (iii) records of traffic offenses disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses, (iv) statistical or analytical records or reports in which individuals are not identified and from which their identities cannot be ascertained, (v) announcements of executive clemency, pardons, or removals of political disabilities, (vi) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons, (vii) criminal justice intelligence information, or (viii) criminal justice investigative information.

C. Nothing contained in this article shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

DRAFTING NOTE: Technical corrections only.

~~§ 9-185~~ 9.1-XXX. Establishment of statewide criminal justice information system; duties of Board of Criminal Justice; assistance of other agencies; relationship to Department of State Police.

A. The Board shall provide for the coordination of the operation of a statewide comprehensive criminal justice information system for the exchange of criminal history record information among the criminal justice agencies of the State-Commonwealth and its political subdivisions. The Board shall develop standards and goals for such system, define the requirements of such system, define system objectives, recommend development priorities and plans, review development efforts, coordinate the needs and interests of the criminal justice community, outline agency responsibilities, appoint ad hoc advisory committees, and provide for the participation of the statewide comprehensive criminal justice information system in interstate criminal justice systems.

B. The Board may request technical assistance of any state agency, board, or other body and such state entities shall render such assistance as is reasonably required.

C. The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the regulations of the National Crime Information Center. Notwithstanding any other provision to the contrary in this chapter, the Central Criminal Record Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth, and the Department shall continue to be responsible for the management and operation of such exchange.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 9-185 and subsection C is subdivision 24 of § 9-170.

~~§ 9-187. Information to be disseminated only in accordance with § 19.2-389.~~

~~Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 9.1-XXX (existing § 9-188) infra.

~~§ 9-188 9.1-XXX. Regulations—Dissemination of criminal history record information; Board to adopt regulations and procedures.~~

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389.

AB. The Board shall ~~issue~~ adopt regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall ~~insure~~ ensure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipient and will remain operative in the event of further dissemination.

BC. The Board shall ~~issue~~ adopt regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections; subsection A is § 9-187 and subsections B and C are § 9-189.

~~§ 9-189 9.1-XXX. Participation of state and local agencies in interstate system; access to such system limited.~~

A. The Board shall regulate participation of state and local agencies in any interstate system for the exchange of criminal history record information and shall be responsible for ~~assuring~~ ensuring the consistency of such participation with the terms and purposes of this article. The Board shall have no authority to compel an agency to participate in any such interstate system.

B. Direct access to any such system shall be limited to ~~such the~~ criminal justice agencies as are expressly designated for that purpose by the Board.

DRAFTING NOTE: Technical corrections only.

~~§ 9-194~~ 9.1-XXX. Procedures to be adopted by agencies maintaining criminal justice information systems.

Each criminal justice agency maintaining and operating a criminal justice information system shall adopt procedures reasonably designed to ~~insure~~ ensure:

~~A~~ 1. The physical security of the system and the prevention of unauthorized disclosure of the information in system;

~~B~~ 2. The timeliness and accuracy of information in the system ~~collected after November 1, 1976~~;

~~C~~ 3. That all criminal justice agencies to which criminal offender record information is disseminated or from which it is collected are currently and accurately informed of any correction, deletion, or revision of such information;

~~D~~ 4. Prompt purging or sealing of criminal offender record information when required by state or federal statute, regulation, or court order;

~~E~~ 5. Use or dissemination of criminal offender record information by criminal justice agency personnel only when it has been determined to be the most accurate and complete information available to the criminal justice agency.

DRAFTING NOTE: Technical corrections only.

~~§ 9-186~~ 9.1-XXX. Annual audits.

The Board shall ensure that annual audits are conducted of a representative sample of state and local criminal justice agencies to ensure compliance with this article and ~~the Board regulations of the Board~~. The Board shall ~~issue~~ adopt such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken.

DRAFTING NOTE: Technical corrections only.

~~§ 9-192~~ 9.1-XXX. Individual's right of access to and review and correction of information.

A. Any individual who believes that criminal history record information is being maintained about him by the Central Criminal Records Exchange (the "Exchange"), or by the arresting law-enforcement agency in the case of offenses not required to be reported to ~~such the~~ Exchange, shall have the right to inspect a copy of ~~such his~~ criminal history record information at the Exchange or the arresting law-enforcement agency, respectively, for the purpose of ascertaining the completeness and accuracy of ~~such the~~ information. The individual's right to access and review shall not extend to any information or data other than that defined in subdivision 4 of ~~§ 9-169~~ 9.1-XXX.

B. The Board shall ~~issue~~ adopt regulations with respect to an individual's right to access and review criminal history record information about himself reported to the ~~Central Criminal Records Exchange~~ or, if not reported to the Exchange, maintained by the arresting law-enforcement agency. ~~Such The~~ regulations shall provide for (i) public notice of the right of access; (ii) access to criminal history record information by an individual or an attorney-at-law acting for an individual; (iii) ~~the submission of identification required~~; (iv) ~~the~~ places and times for review; (v) review of Virginia records by individuals located in other states; (vi) assistance in understanding the record; (vii) obtaining a copy for purposes of initiating a challenge to the record; (viii) procedures for investigation

of alleged incompleteness or inaccuracy; (ix) completion or correction of records if indicated; and (x) notification of the individuals and agencies to whom an inaccurate or incomplete record has been disseminated.

C. If an individual believes information maintained about him ~~to be~~ is inaccurate or incomplete, he may request the agency having custody or control of the records to purge, modify, or supplement them. Should the agency decline to so act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may make written request, in writing, for review by the Board. The Board or its designee shall, in each case in which it finds prima facie basis for a complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. ~~Written~~ The Board shall issue written findings and conclusions shall be issued. Should the record in question be found to be inaccurate or incomplete, the criminal justice agency or agencies maintaining ~~such the~~ information shall purge, modify, or supplement it in accordance with the findings and conclusions of the Board. Notification of purging, modification, or supplementation of criminal history record information shall be promptly made by the criminal justice agency maintaining ~~such the~~ previously inaccurate information to any individuals or agencies to which the information in question was communicated, as well as to the individual ~~whose records have been ordered so altered~~ who is the subject of the records.

D. Criminal justice agencies shall maintain records of all agencies to whom criminal history record information ~~was has been~~ disseminated ~~and~~ , the date upon which ~~such the~~ information was disseminated, and such other record matter for the number of years required by ~~rules and~~ regulations of the Board.

E. Any individual or agency aggrieved by any order or decision of the Board may appeal ~~such the~~ order or decision in accordance with the ~~provisions of the~~ Administrative Process Act (~~§ 9-6-14:1-2.2-XXX~~ et seq.).

DRAFTING NOTE: Technical corrections only.

~~§ 9-193~~ 9.1-XXX. ~~Information~~ Certain information not subject to review ~~and or~~ correction of information.

A. ~~Investigative~~ Background checks for security clearances and investigative information not connected with a criminal prosecution or litigation including investigations of rule infractions in correctional institutions, ~~and~~ background checks for security clearances shall not be subject to review ~~and or~~ correction of information by data subjects.

B. Correctional information about an offender including counselor reports, diagnostic summaries and other sensitive information not explicitly classified as criminal history record information shall not be subject to review ~~and or~~ correction of information by data subjects.

DRAFTING NOTE: Technical corrections only.

~~§ 9-190~~ 9.1-XXX. Sealing of criminal history record information.

A. The Board shall adopt procedures reasonably designed to (i) to insure ensure prompt sealing or purging of criminal history record information when required by state or federal ~~statute law~~ , regulation or court order, and (ii) ~~to~~ permit opening of sealed information under conditions authorized by law.

DRAFTING NOTE: Technical corrections only.

~~§ 9-194~~ 9.1-XXX. Civil remedies for violation of this chapter or Chapter 23 of Title 19.2.

A. Any person may institute a civil action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, ~~for~~

1. For actual damages resulting from violation of this article or to restrain any such violation ~~thereof,~~ or both.

~~B. Any person may bring an action in the circuit court of the jurisdiction in which the Board has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred,~~

2. To obtain appropriate equitable relief against any person who has engaged, is engaged, or is about to engage in any acts or practices in violation of Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, this chapter or rules or regulations of the Board to obtain appropriate, equitable relief.

~~CB.~~ This section shall not be construed as constituting a waiver of the defense of sovereign immunity.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196 9.1-XXX.~~ Criminal penalty for violation.

Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information to any agency or person in violation of this article or Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall be guilty of a Class 2 misdemeanor.

DRAFTING NOTE: Technical corrections only.

~~§ 9-196 9.1-XXX.~~ Article to control over other laws; exceptions; application of Chapter 1.1:1 of this title.

A. In the event any provisions of this article shall conflict with other provisions of law, the provision of this article shall control, except as provided in subsection B of this section.

B. Notwithstanding the provisions of subsection A of this section, this article shall not alter, amend, or supersede any provisions of the Code of Virginia relating to the collection, storage, dissemination, or use of juvenile records of juveniles.

~~C. Insofar as it is consistent with this article, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of this title shall control.~~

DRAFTING NOTE: Technical corrections. Subsection C has been deleted because it is in conflict with section A.

Article 4.

Private Security Services Businesses.

~~§ 9-183.1 9.1-XXX.~~ Definitions.

~~As~~ In addition to the definitions set forth in § 9.1-XXX, as used in this chapter article, unless the context requires a different meaning:

"Alarm respondent" means ~~a natural person~~ an individual who responds to the signal of an alarm for the purpose of detecting an intrusion of the home, business or property of the end user.

"Armed" means a private security registrant who carries or has immediate access to a firearm in the performance of his duties.

"Armed security officer" means a security officer, ~~as defined below~~, who carries or has immediate access to a firearm in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

~~"Board" means the Criminal Justice Services Board or any successor board or agency.~~

"Business advertising material" means display advertisements in telephone directories, letterhead, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means ~~a natural person~~ an individual who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used (i) to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; ~~used (ii)~~ to prevent or detect intrusion; or ~~used (iii)~~ primarily to summon aid for other emergencies.

"Certification" means the method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools, private security services instructors, compliance agents, unarmed security officers, electronic security employees, or electronic security technician's assistants.

"Compliance agent" means ~~a natural person~~ an individual who owns or is employed by a licensed private security services business to ensure the compliance of the private security services business with ~~this title chapter.~~

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious services.

~~"Department" means the Department of Criminal Justice Services or any successor agency.~~

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; (ii) respond to or cause a response to electronic security equipment for an end user; or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security employee" means ~~a natural person~~ an individual who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices including burglar alarms or holdup alarms or cameras used to detect intrusions, concealment or theft. However, "Electronic security equipment" shall not include tags, labels, and other devices which are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.

~~"Electronic security equipment" shall not include tags, labels, and other devices which are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.~~

"Electronic security sales representative" means ~~a natural person~~ an individual who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means ~~a natural person~~ an individual who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means ~~a natural person~~ an individual who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Firearms training verification" means the verification of successful completion of either initial or retraining requirements for handgun or shotgun training, or both.

"License number" means the official number issued to a private security services business licensed by the Department.

~~"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.~~

"Personal protection specialist" means any ~~natural person~~ individual who engages in the duties of providing close protection from bodily harm to any person.

"Private investigator" means any ~~natural person~~ individual who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security canine handlers, security canine teams, alarm respondents, central station watchmen, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services instructor" means any ~~natural person~~ individual certified by the Department to provide mandated instruction in private security subjects for a certified private security services training school.

"Private security services registrant" means any qualified ~~natural person~~ individual who has met the requirements under this article to perform the duties of alarm respondent, armored car personnel, central station watchman, courier, electronic security sales representative, electronic security technician, personal protection specialist, private investigator, security canine handler, or armed security officer.

"Private security services training school" means any person certified by the Department to provide instruction in private security subjects for the training of private security services business personnel in accordance with this article.

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to ~~obtain a registration from~~ register with the Department pursuant to this article.

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved Department procedures and certification guidelines. "Security canines" shall not ~~mean include~~ detector dogs.

"Security canine handler" means any ~~natural person~~ individual who utilizes his security canine in the performance of private security duties.

"Security canine team" means the security canine handler and his security canine performing private security duties.

"Security officer" means any ~~natural person~~ individual employed by a private security services business to safeguard and protect persons and property or (ii) prevent theft, loss, or concealment of any tangible or intangible personal property on the premises contracted to protect.

"Supervisor" means any ~~natural person~~ individual who directly or indirectly supervises registered or certified private security services business personnel.

"Unarmed security officer" means a security officer who does not carry or have immediate access to a firearm in the performance of his duties.

DRAFTING NOTE: Technical corrections. The term "natural person" has been replaced with "an individual" for clarification. Also the definition of "person" has been deleted here because that term is defined in § 1-13.19 of Title 1; and the definitions of "Board" and "Department" have been deleted as duplicative of § 9.1-XXX, the definition section for this chapter.

§ 9-183.3 9.1-XXX. Licensing, certification, and registration required; qualifications; temporary licenses.

A. No person shall engage in the private security services business or solicit private security business in the Commonwealth without having obtained a license from the Department. No person shall be issued a private security services business license until a compliance agent is designated in writing on forms provided by the Department. The compliance agent shall ~~assure~~ ensure the compliance of the private security services business with this article and shall meet the qualifications and perform the duties required by the regulations ~~promulgated~~ adopted by the Board. A compliance agent shall have either a minimum of (i) three years of managerial or supervisory experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field or (ii) five years of experience in a private security services business; with a federal, state or local law-enforcement agency; or in a related field.

B. No person shall act as private security services training school or solicit students for private security training in the Commonwealth without being certified by the Department. No person shall be issued a private security services training school certification until a school director is designated in writing on forms provided by the Department. The school director shall ensure the compliance of ~~such~~ the school with the provisions of this article and shall meet the qualifications and perform the duties required by the regulations ~~promulgated~~ adopted by the Board.

C. No person shall be employed by a licensed private security services business in the Commonwealth as armored car personnel, courier, armed security officer, security canine handler, private investigator, personal protection specialist, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician without possessing a valid registration issued by the Department, except as provided in this article.

D. A temporary license may be issued in accordance with Board regulations for the purpose of awaiting the results of the state and national fingerprint search. However, no person shall be issued a temporary license until (i) he has designated a compliance agent who has complied with the compulsory minimum training standards established by the Board pursuant to subsection A of ~~§ 9-182.9.1-XXX~~ for compliance agents, (ii) each principal of the business has submitted his fingerprints for a National Criminal Records search and a Virginia Criminal History Records search, and (iii) he has met all other requirements of this article and ~~the Board regulations of the Board.~~

E. A temporary registration may be issued in accordance with Board regulations for the purpose of awaiting the results of the state and national fingerprint search. However, no person shall be issued a temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards established by the Board, pursuant to subsection A of ~~§ 9-182.9.1-XXX~~, for armored car personnel, couriers, armed security officers, security canine handlers, private investigators, personal protection specialist, alarm respondents, central station dispatchers, electronic security sales representatives or electronic security technicians, (ii) submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search, and (iii) met all other requirements of this article and ~~the Board regulations of the Board.~~

F. A temporary certification as a private security instructor or private security training school may be issued in accordance with Board regulations for the purpose of awaiting the results of the state and national

erprint search. However, no person shall be issued a temporary certification as a private security services instructor until he has (i) met the education, training and experience requirements established by the Board and (ii) submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search. No person shall be issued a temporary certification as a private security services training school until (a) he has designated a training director, (b) each principal of the training school has submitted his fingerprints to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search, and (c) he has met all other requirements of this article and ~~the Board~~ regulations of the Board.

G. A licensed private security services business in the Commonwealth shall not employ as an unarmed security officer, electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, or electronic security technician, any person who has not complied with, or been exempted from, the compulsory minimum training standards established by the Board, pursuant to section A of ~~§ 9-182~~ 9.1-XXX, except that such person may be so employed for not more than ninety days before completing compulsory minimum training standards.

H. No person shall be employed as an electronic security employee, electronic security technician's assistant, unarmed alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician or supervisor until he has submitted his fingerprints to the Department to be used for the conduct of a National Criminal Records search and a Virginia Criminal History Records search.

I. The compliance agent of each licensed private security services business in the Commonwealth shall maintain documentary evidence that each private security registrant and certified employee employed by his private security services business has complied with, or been exempted from, the compulsory minimum training standards required by the Board and that an investigation to determine suitability of each unarmed security officer employee has been conducted, except that any such unarmed security officer, upon initiating a request for such investigation under the provisions of subdivision 11 of subsection A of § 19.2-389, may be employed for up to 30 days pending completion of such investigation.

J. No person with a criminal record of a misdemeanor involving moral turpitude or any felony shall be (i) employed as a registered or certified employee by a private security services business or training school, or (ii) hold a private security services registration, certification as an unarmed security officer, electronic security employee or technician's assistant, a private security services training school or instructor certification, compliance agent certification, or a private security services business license, except that, upon written request, the Director of ~~Department of Criminal Justice Services~~ may waive such prohibition.

K. The Department may grant a temporary exemption from the requirement ~~of a license for licensure, certification, or registration~~ for a period of not more than thirty days in a situation deemed an emergency by the Department.

L. All private security services businesses and private security services training schools in the Commonwealth shall include their license or certification number on all business advertising materials.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.2~~ 9.1-XXX. Exceptions from article; training requirements for out-of-state central station dispatchers.

A. The provisions of this article shall not apply to the following:

1. An officer or employee of the United States ~~of America~~, or of this ~~the~~ Commonwealth, or a political subdivision of either, while the officer or employee ~~or officer~~ is performing his official duties.

2. A person engaged exclusively in the business of obtaining and furnishing information regarding an individual's financial rating or a person engaged in the business of a consumer reporting agency as defined by the General Fair Credit Reporting Act.

3. An attorney or certified public accountant licensed to practice in Virginia or his employees.
4. The legal owner of personal property which has been sold under any security agreement while performing acts relating to the repossession of such property.
5. A person receiving compensation for private employment as a security officer who is also a law-enforcement officer as defined by ~~§ 9-169~~ 9.1-XXX and employed by the Commonwealth or any of its political subdivision thereof subdivisions.
6. Any person appointed under § 46.2-2003 or § 56-353 while engaged in the employment contemplated thereunder, unless they have successfully completed training mandated by the Department.
7. Persons who are regularly employed to investigate accidents or to adjust claims and who do not carry weapons in the performance of their duties.
8. Regular employees of persons engaged in other than the private security services business, where the regular duties of such employees primarily consist of protecting the property of their employers. Any such employee who carries a firearm and is in direct contact with the general public in the performance of his duties shall possess a valid registration with ~~this the~~ Department as provided in subsection B of ~~§ 9-183.3~~ 9.1-XXX. General For the purposes of this section "general public" means individuals who have access to areas open to all and not restricted to any particular class of the community.
9. Persons, sometimes known as "shoppers," employed to purchase goods or services solely for the purpose of determining or assessing the efficiency, loyalty, courtesy, or honesty of the employees of a business establishment.
10. Licensed or registered private investigators from other states entering Virginia during an investigation originating in their state of licensure or registration when the other state offers similar reciprocity to private investigators licensed and registered by the Commonwealth ~~of Virginia~~.
11. Unarmed regular employees of telephone public service companies where the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers' affiliates, and other communications common carriers.
12. An end user.
13. A material supplier who renders advice concerning the use of products sold by an electronics security business and who does not provide installation, monitoring, repair or maintenance services for electronic security equipment.
14. Members of the security forces who are directly employed by electric public service companies.
15. Any professional engineer or architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to practice in the Commonwealth, or his employees.
16. Any person who only performs telemarketing or schedules appointments without access to information concerning the electronic security equipment purchased by an end user.
17. Any certified forensic scientist employed as an expert witness for the purpose of possibly testifying as an expert witness.
18. Members of the security forces who are directly employed by shipyards engaged in the construction, design, overhaul or repair of nuclear vessels for the United States Navy.

B. An out-of-state central station dispatcher employed by a private security services business licensed by the Department may meet the training requirements by completing a course in his geographic area that (i) meets or exceeds the Virginia curriculum and (ii) has been approved by the Department.

DRAFTING NOTE: Technical corrections only.

~~§ 9-182 9.1-XXX. Compulsory training standards for private security services business personnel Powers Board relating to private security services business.~~

A. ~~The Board shall have the power to~~ may issue ~~adopt regulations pursuant to Chapter 1.1:1 in accordance with the Administrative Process Act (§ 9-6.14:1- 2.2-XXX et seq.) of this title Title 2.2,~~ establishing compulsory minimum, entry-level, in-service, and advanced training standards for persons employed by private security services businesses in classifications defined in ~~§ 9-183.1 9.1-XXX~~. The regulations may include provisions regarding to the Board's staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and ~~its Board~~ regulations. In establishing ~~by regulation~~ compulsory training standards for each of the classifications defined in ~~§ 9-183.1 9.1-XXX~~, the Board shall be guided by the policy of this section ~~which is to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and Article 2-1 4 (§ 9-183.1- 9.1-XXX et seq.) of Chapter 27 of this title chapter.~~ The regulations may provide for exemption from such training for persons having previous employment as law-enforcement officers for a state or the federal government; ~~however,~~ However, no such exemption shall be granted to persons having less than five continuous years of such employment, nor shall an exemption be provided for any person whose employment as a law-enforcement officer was terminated because of his misconduct or incompetence. The regulations may include provisions for partial exemption from ~~such compulsory training~~ for persons having previous training which meets or exceeds the minimum training standards and has been approved by the Department, or for persons employed in classifications defined in ~~§ 9-183.1; however~~ 9.1-K. However, no ~~such~~ exemption shall be granted to persons having less than five continuous years of such employment, nor shall an exemption be provided for any person whose employment as a private security services business employee was terminated because of his misconduct or incompetence.

B. ~~The Board shall have the power to~~ may enter into an agreement with other states for reciprocity or recognition of private security services businesses and their employees, duly licensed by such states. The agreements shall allow those businesses and their employees to provide and perform private security services in the Commonwealth to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses.

C. ~~The Board shall have the power to promulgate~~ may adopt regulations pursuant to ~~in accordance with the Administrative Process Act (§ 9-6.14:1- 2.2-XXX et seq.) to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities of private security services businesses as follows which:~~

1. ~~To establish~~ Establish the qualifications of applicants for registration, certification, or licensure under ~~Article 2-1 4 (§ 9-183.1 9.1-XXX) of Chapter 27 of this title chapter;~~

2. ~~To examine~~ Examine, or cause to be examined, the qualifications of each applicant for registration, certification, or licensure, including when necessary the preparation, administration and grading of examinations;

3. ~~To certify~~ Certify qualified applicants for private security training schools and instructors or license qualified applicants as practitioners of private security services businesses;

4. ~~To levy~~ Levy and collect fees for registration, certification, or licensure and renewal that are sufficient to cover all expenses for administration and operation of a program of registration, certification, and licensure for private security services businesses and training schools;

~~5. To promulgate regulations~~ Are necessary to ensure continued competency, and to prevent deceptive or misleading practices by practitioners and ~~to effectively administer the regulatory system promulgated-adopted by~~ the Board;

~~6. To receive~~ Receive complaints concerning the conduct of any person whose activities are regulated by the Board, to conduct investigations, and to take appropriate disciplinary action if warranted; and

~~7. To revoke~~ Revoke, suspend or fail to renew a registration, certification, or license for just cause as enumerated in Board regulations of the Board.

D. In ~~promulgating-adopting~~ its regulations under subsections A and C ~~of this section~~, the Board shall seek the advice of the Private Security Services Advisory Board established pursuant to ~~§ 9-183.5 9.1-XXX~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.4 9.1-XXX~~ Powers of Department relating to private security services businesses.

A. In addition to the powers otherwise conferred upon it by law, the Department ~~shall have the power to~~ may:

1. Charge each applicant for licensure, certification or registration a nonrefundable fee as established by the Board to cover the costs of the Department for processing an application for a registration, certification or license, and enforcement of these regulations, and other costs associated with the maintenance of this program of regulation.

2. Charge nonrefundable fees for private security services training as established by the Board for processing school certifications and enforcement of training standards.

3. Conduct investigations to determine the suitability of applicants for registration, licensure, or certification of compliance agents, training schools, and instructors. For purposes of this investigation, the Department shall have access to criminal history record information maintained by the Central Criminal Records Exchange of the Department of State Police and shall conduct a background investigation, to include a National Criminal Records search and a Virginia Criminal History Records search.

~~4. The Director, or agents appointed by him, are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this article, or any regulation promulgated pursuant to authority given by this article. Information concerning alleged criminal violations shall be turned over to law enforcement officers in appropriate jurisdictions. Agents shall be vested with authority to serve such paper or process issued by the Department or the Board under regulations approved by the Board.~~

~~5. In addition to the authority granted in § 9-6.14:13 to issue~~ 4. Issue subpoenas, the The Director or a designated subordinate shall have the right to may make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business, for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or the Board to request production of any relevant records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the Department pursuant to this article. The court shall be authorized to may issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

~~65.~~ 65. Recover costs of the investigation and adjudication of violations of this article or ~~the Board~~ regulations of the Board. Such costs may be recovered from the respondent when a sanction is imposed to fine or place on probation, suspend, revoke, or deny the issuance of any license, certification, or registration. Such costs shall be

addition to any monetary penalty which may be imposed. All costs recovered shall be deposited into the state treasury to the credit of the Private Security Services Regulatory Fund.

6. May institute proceedings to enjoin any person from engaging in any lawful act enumerated in § 9.1-XXX (§ 9-183.11). Such proceedings shall be brought in the name of the Commonwealth by the Department in circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.

B. The Director, or agents appointed by him, are shall be vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this article, or any Board regulation promulgated pursuant to authority given by this article. Information concerning alleged criminal violations shall be turned over to law-enforcement officers in appropriate jurisdictions. Agents shall be vested with authority to serve such paper or process issued by the Department or the Board under regulations approved by the Board.

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of Criminal Justice Services, subdivision 6 was added to this section from subsection B of existing § 9-183.11.

§-9-183.5 9.1-XXX. Private Security Services Advisory Board; membership.

There shall be a The Private Security Services Advisory Board is established as an advisory board within the meaning of § 2.2-XXX, in the executive branch of state government which shall be composed The Private Security Services Advisory Board shall consist of eleven members. Two of the as follows: two members shall be private investigators; two shall be representatives of electronic security businesses; three shall be representatives of private security services businesses providing security officers, armed couriers or guard dog handlers; one shall be a representative of a private security services business providing armored car personnel; one shall be a representative of a private security services business involving personal protection specialists; one shall be a certified private security services instructor; and one shall be a representative of law enforcement. The Private Security Services Advisory Board shall be appointed by the Criminal Justice Services Board and shall advise the Criminal Justice Services Board on all issues relating to regulation of private security services businesses.

DRAFTING NOTE: Technical corrections only.

§-9-183.6 9.1-XXX. Bond or insurance required; actions against bond.

A. Every person licensed as a private security services business under subsection A of §-9-183.3 9.1-XXX or certified as a private security services training school under subsection B of §-9-183.3 9.1-XXX shall, at the time of receiving the license or certification and before the license or certification shall be operative, file with the Department (i) a cash bond or evidence that the licensee or certificate holder is covered by a surety bond, executed by a surety company authorized to do business in this the Commonwealth, in a reasonable amount to be fixed by the Department, conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a policy of liability insurance in an amount and with coverage as fixed by the Department. The bond or liability insurance shall be maintained for so long as the licensee or certificate holder is licensed or certified by the Department.

B. If any person aggrieved by the misconduct of any person licensed or certified under subsection A or B of §-9-183.3 9.1-XXX recovers judgment against the licensee or certificate holder, which judgment is unsatisfied in whole or in part, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain bring an action in his own name upon on the bond of the licensee or certificate holder.

DRAFTING NOTE: Technical corrections only.

§-9-183.7 9.1-XXX. Fingerprints required.

Each applicant for registration, licensure or certification as a compliance agent, or private security services training school or instructor under the provisions of this article and every person employed as an electronic security employee or electronic security technician's assistant shall submit his fingerprints to the Department on a form provided by the Department.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.8 9.1-XXX. Powers-Limitation on powers of registered armed security officers;-limitations.~~

Compliance with the provisions of this article shall not itself authorize any person to carry a concealed weapon or exercise any powers of a conservator of the peace. A registered armed security officer of a private security services business while at a location which the business is contracted to protect shall have the power to effect an arrest for an offense occurring (i) in his presence on such premises or (ii) in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if the merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods as contemplated by § 18.2-106. For the purposes of § 19.2-74, a registered armed security officer of a private security services business shall be considered an arresting officer.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.11 9.1-XXX. Unlawful conduct;-powers of Department generally; penalty.~~

~~A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:~~

- ~~1. Practicing-Practice any trade or profession licensed, certified or registered under this article without obtaining the necessary license, certification or registration required by statute or regulation;~~
- ~~2. Materially misrepresenting-misrepresent facts in an application for licensure, certification or registration;~~
- ~~3. Willfully refusing-refuse to furnish the Department information or records required or requested pursuant to statute or regulation; and~~
- ~~4. Violating-Violate any statute or regulation governing the practice of the private security services businesses or training schools regulated by this article.~~

~~B. Any person who willfully engages in any unlawful act enumerated in this section is convicted of willful violation of subsection A shall be guilty of a Class 1 misdemeanor. Any person convicted of a third or subsequent offense under this section during a thirty-six-month period shall be guilty of a Class 6 felony.~~

~~B. In addition to the provisions of subsection A of this section, the Department may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth by the Department in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides~~

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of Criminal Justice Services, existing subsection B, shown here as stricken, now appears as subdivision 7. in proposed § 9.1-XXX (§ 9-183.4), Powers of the Department, supra.

~~§ 9-183.10 9.1-XXX. Unlawful procurement of a license; penalty.~~

~~A. It shall be unlawful for any person to:~~

~~1. For any person to procure Procure, or assist another to procure, through theft, fraud or other illegal means, a registration or license, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required registration or license;~~

~~2. For any person, other than a designee of the Department, to procure or have in his possession prior to the beginning of an examination, without written authority of the Department, any question intended to be used by the Department, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;~~

~~3. For any person to attempt 2. Attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the Department conducting the examination, or the answers to the questions;~~

~~4. To promise 3. Promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.~~

~~B. No person, other than a designee of the Department, shall procure or have in his possession prior to the beginning of an examination, without written authority of the Department, any question intended to be used by the Department, or receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;~~

~~C. If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.~~

~~BD. Any person violating convicted of a violation the provisions of subsections A or B shall be guilty of a class 2 misdemeanor.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.9 9.1-XXX. Penalties Unlicensed activity prohibited; penalty.~~

~~A. It shall be a Class 1 misdemeanor for any No person; required~~

~~1. Required to possess a registration under subsection C of § 9-183.3 to 9.1-XXX shall be employed by a private security services business, except as provided in this article, as armored car personnel, courier, armed security officer, security canine handler, personal protection specialist, private investigator, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician without possessing a valid registration.~~

~~B. It shall be a Class 1 misdemeanor for any person licensed 2. Licensed or required to be licensed under subsection A of § 9-183.3 to 9.1-XXX shall employ or otherwise utilize, except as provided in this article, as armored car personnel, courier, armed security officer, security canine handler, personal protection specialist, private investigator, alarm respondent, central station dispatcher, electronic security sales representative or electronic security technician, any person not possessing a valid registration.~~

~~C. It shall be a Class 1 misdemeanor for any compliance agent employed or otherwise utilized by a person licensed or required to be licensed under subsection A of § 9-183.3, to employ or otherwise utilize as an unarmed security officer, except as provided in this article, any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for unarmed security officers and documentary evidence that an investigation to determine suitability has been conducted.~~

~~D. Except as provided by this article, it shall be a Class 1 misdemeanor for any compliance agent employed or otherwise utilized by a person licensed or required to be licensed under subsection A of § 9-183.3 to employ or otherwise utilize as an electronic security technician's assistant any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for electronic security technician's assistants.~~

~~E. It shall be a Class 1 misdemeanor for any person required 3. Required to possess an instructor certification under subsection D of § ~~9-183.3 to~~ 9.1-XXX shall provide mandated instruction, except as provided in § ~~9-182~~ 9.1-XXX and Board regulations of the Board, without possessing a valid private security instructor certification.~~

~~F. It shall be a Class 1 misdemeanor for any person certified 4. Certified or required to be certified as a private security services training school under subsection B of § ~~9-183.3 to~~ 9.1-XXX shall employ or otherwise utilize, except as provided in § ~~9-182~~ 9.1-XXX and the Board regulations of the Board, as a private security instructor, any person not possessing a valid instructor certification.~~

B. No compliance agent employed or otherwise utilized by a person licensed or required to be licensed under subsection A of § 9.1-XXX (§ 9-183.3) shall:

1. Employ or otherwise utilize as an unarmed security officer, except as provided in this article, any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for unarmed security officers and documentary evidence that an investigation to determine suitability has been conducted.

2. Employ or otherwise utilize as an electronic security technician's assistant, except as provided in this article, any individual for whom the compliance agent does not possess documentary evidence of compliance with, or exemption from, the compulsory minimum training standards established by the Board for electronic security technician's assistants.

C. Any person convicted of a violation of subsections A or B shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: Technical corrections. This section has been rewritten to eliminate repetitive language.

~~§ 9-183.42 9.1-XXX. Same; monetary Monetary penalty.~~

Any person licensed, certified or registered by the Board pursuant to this article who violates any statute or Board regulation pertaining to the Board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If the Board determines that a respondent is guilty of the violation complained of, the Board shall determine the amount of the monetary penalty for the violation, which shall not exceed \$2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. ~~Such~~ The monetary penalty shall be paid into the state treasury to the credit of the Literary Fund in accordance with § 19.2-353.

DRAFTING NOTE: Technical corrections only.

Article 5.

Court-Appointed Special Advocate Program.

~~§ 9-173.6 9.1-XXX. Established; powers of Director Court-Appointed Special Advocate Program; appointment of advisory committee.~~

A. There is hereby established a Court-Appointed Special Advocate Program (the "Program"), hereinafter referred to as the Program. The Program which shall be administered by the Department of Criminal Justice Services. The Program shall provide services in accordance with this article to children who are subjects of judicial

proceedings involving allegations that the child is abused, neglected, in need of services or in need of supervision, and for whom the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall promulgate and adopt regulations necessary and appropriate for the administration of the Program.

B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of fifteen members, knowledgeable of court matters, child welfare and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

DRAFTING NOTE: Technical corrections. On the recommendation of Department of Criminal Justice Services, juvenile court has been inserted before judge in subsection A to clarify that the Court-Appointed Special Advocate program is available to these judges.

~~§ 9-173.7~~ 9.1-XXX. Local court-appointed special advocate programs; powers and duties.

A. The Department shall provide a portion of ~~such any~~ funding as shall be appropriated for this purpose to applicants seeking to establish and operate a local court-appointed special advocate program in their respective judicial districts. Only local programs operated in accordance with this article shall be eligible to receive ~~such~~ state funds.

B. Local programs may be established and operated by local boards created for this purpose. Local boards shall ensure conformance to regulations ~~promulgated~~ adopted by the Board and ~~shall have the power to~~ may:

1. Solicit and accept financial support from public and private sources.
2. Oversee the financial and program management of the local court-appointed special advocate program.
3. Employ and supervise a director who shall serve as a professional liaison to personnel of the court and agencies serving children.
4. Employ such staff as is necessary to the operation of the program.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173.8~~ 9.1-XXX. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. ~~Investigation of~~ Investigating the case to which he is assigned to provide independent factual information to the court.
2. ~~Submission~~ Submitting to the court of a written report of ~~such his~~ investigation in compliance with the provisions of § 16.1-274. ~~Such~~ The report may, upon request of the court, include recommendations as to the child's welfare.
3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
4. Assisting ~~a any~~ appointed guardian ad litem appointed, if one has been appointed, to represent the child in providing effective representation of the child's needs and best interests.

5. Reporting a suspected abused or neglected child pursuant to § 63.1-248.3.

B. The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. The advocate may testify if called as a witness.

BC. The program director shall assign an advocate to a child when requested to do so by the judge of the juvenile and domestic relations district court having jurisdiction over the proceedings. The advocate shall continue his association with each case to which he is assigned until relieved of his duties by the court or by the program director.

CD. The Department shall ~~promulgate~~ adopt regulations governing the qualifications of advocates who for purposes of administering this subsection shall be deemed to be criminal justice employees. ~~Such~~ The regulations shall require that an advocate be at least twenty-one years of age and that the program director shall obtain with the approval of the court (i) a copy of his criminal history record or certification that no conviction data are maintained on him and (ii) a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him or certification that no such record is maintained on him. Advocates selected prior to the ~~promulgation~~ adoption of regulations governing qualifications shall meet the minimum requirements ~~as set forth in this article and in regulation.~~

D. An advocate shall have no associations which create a conflict of interests or the appearance of such a conflict with his duties as an advocate. No advocate shall be assigned to a case of a child whose family has a professional or personal relationship with the advocate. Questions concerning conflicts of interests shall be determined in accordance with regulations ~~promulgated~~ adopted by the Department.

E. No applicant shall be assigned as an advocate until successful completion of a program of training required by regulations. The Department shall set standards for both basic and ongoing training.

DRAFTING NOTE: Technical corrections only. Language shown as stricken at the end of subsection C relating to Board regulation has been deleted because it is in conflict with the last sentence of subsection C.

~~§ 9-173.10~~ 9.1-XXX. Immunity.

~~Staff~~ No staff of or volunteers participating in a program, whether or not compensated ~~or not~~, shall be subject to personal liability while acting within the scope of their duties only, except for gross negligence or intentional misconduct.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173.9~~ 9.1-XXX. Notice of hearings and proceedings.

~~Provisions~~ The provision of § 16.1-264 regarding notice to parties shall apply to ensure that ~~the~~ an advocate is notified of hearings and other proceedings concerning the case to which he is assigned.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173.12~~ 9.1-XXX. Inspection and copying of records by advocate; confidentiality of records; copies.

A. Upon presentation by the advocate of the order of his appointment and upon specific court order, any state or local agency, department, authority, or institution, and any hospital, school, physician, or other health or mental health care provider shall permit the advocate to inspect and copy, without the consent of the child or his parents, any records relating to the child involved in the case. Upon the advocate presenting to the mental health provider the order of the advocate's appointment and, upon specific court order, in lieu of the advocate inspecting and copying any related records of the child involved, the mental health care provider shall be available within

seventy-two hours to conduct for the advocate a review and an interpretation of the child's treatment records which are specifically related to the investigation.

B. An advocate shall not disclose the contents of any document or record to which he becomes privy, which is otherwise confidential pursuant to the provisions of this Code, except upon order of a court of competent jurisdiction.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-173.12 and subsection B is § 9-173.11.

~~§ 9-173.11. Confidentiality of records and information.~~

~~An advocate shall not disclose the contents of any document or record to which he might become privy, which is otherwise confidential pursuant to the provisions of this Code, except upon order of a court of competent jurisdiction.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 9.1-XXX (existing § 9-173.12).

~~§ 9-173.13 9.1-XXX. Cooperation of state and local entities.~~

All state and local departments, agencies, authorities, and institutions shall cooperate with the Department and with each local court-appointed special advocate program to facilitate its implementation of the Program.

DRAFTING NOTE: Technical corrections only.

Article 6.

Crime Prevention Programs.

~~§ 9-173.16. Creation of Crime Prevention Center; purpose.~~

~~The Department of Criminal Justice Services shall establish a Crime Prevention Center for the purpose of providing crime prevention assistance and training, resource material, and research into methods and procedures to reduce the opportunity for crime. Any state funding for such Center shall be subject to the approval of the General Assembly.~~

DRAFTING NOTE: Technical corrections. The last sentence in this section has been deleted as unnecessary.

~~§ 9-173.17 9.1-XXX. Creation of McGruff House Program; duties of Department.~~

The symbol of "McGruff" with the phrase "McGruff House" shall be the symbol used to designate a house in the Commonwealth where a child who is abused, neglected or otherwise emotionally or physically in danger may seek refuge and assistance.

The Department of Criminal Justice Services shall adopt a standard symbol to be used throughout the Commonwealth which is the same as or substantially similar to the McGruff House symbol in use in other states. The Department shall establish by regulation appropriate procedures governing (i) qualifications and criteria for designation as a McGruff House and participants' duties and responsibilities, ~~such regulations to include but not be limited to including duties regarding the~~ reporting of incidents to the local law-enforcement agency and department of social services' child-protective services program, (ii) programs to publicize the McGruff House Program, (iii) dissemination of the McGruff House symbol to day-care centers, schools, and law-enforcement agencies, (iv) designation and registration of McGruff Houses with, and monitoring and periodic review of such houses by, local law-enforcement agencies, and (v) coordination of the program with the child-protective services component of the local department of social services.

Nothing ~~herein in this section~~ shall prohibit the use of a symbol other than "McGruff" by a locality which currently has some other safe house program in existence and operation.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173-18~~ 9.1-XXX. Designation of McGruff House; application; penalty.

All persons displaying the McGruff House symbol so that it is visible from the outside of their house shall first apply for designation as a McGruff House with ~~the a~~ local law-enforcement agency. Upon receipt of an application for designation, the local law-enforcement agency shall conduct a background check of the applicant in accordance with Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and ~~the Department~~ regulations promulgated by the Department at no charge to the applicant. Any background checks of applicants for this program conducted by the Department of Social Services through the Child Abuse Registry shall be done at no charge. Upon finding that the applicant meets the criteria established by the Department for maintaining a McGruff House and receipt of a signed statement by the applicant agreeing to the terms and conditions of the McGruff House Program, the law-enforcement agency shall provide the applicant with the McGruff House symbol.

The McGruff House symbol ~~remains shall remain~~ the property of the local law-enforcement agency. Upon a determination by the issuing law-enforcement agency that a house no longer meets the established criteria for a McGruff House, the symbol shall promptly be returned to the issuing law-enforcement agency.

Failure to return the symbol promptly after receipt of a written request to do so, which shall state the reason for the request, shall be subject to a civil penalty of up to \$100. ~~Subsequent to July 1, 1994, display of a McGruff House symbol by persons~~ Persons not designated pursuant to this section ~~to participate in the program to display the McGruff House symbol~~ shall be subject to a civil penalty of up to \$100.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173-19~~ 9.1-XXX. Establishment of crime Crime prevention specialists; duties.

The Board of ~~Criminal Justice Services~~ shall ~~promulgate~~ adopt regulations establishing minimum standards for certification of crime prevention specialists. ~~The duties of a A~~ crime prevention specialist shall include, but not be limited to, the following have the duty to:

1. ~~To provide~~ Provide citizens living within his jurisdiction information concerning personal safety and the security of property, and other matters relating to the reduction of criminal opportunity;
2. ~~To provide~~ Provide business establishments within his jurisdiction information concerning business and employee security, and other matters relating to reduction of criminal activity;
3. ~~To provide~~ Provide citizens and businesses within his jurisdiction assistance in forming and maintaining neighborhood and business watch groups and other community-based crime prevention programs;
4. ~~To provide~~ Provide assistance to other units of government within his jurisdiction in developing plans and procedures related to the reduction of criminal activity within government and the community; and
5. ~~To promote~~ Promote the reduction and prevention of crime within his jurisdiction and the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 9-173-20~~ 9.1-XXX. Eligibility; ~~requirements~~ for crime prevention specialists.

~~A~~ Any employee of a local or state law-enforcement agency ~~is~~ shall be eligible to be trained and certified as a crime prevention specialist.

~~B.~~The chief executive of any local or state law-enforcement agency may designate one or more employees in his department or office to be trained and certified as a crime prevention specialist.

DRAFTING NOTE: Technical corrections only.

Article 7.

Detoxification Programs.

~~§ 9-173.2~~ 9.1-XXX. Definitions.

~~The following terms, whenever As used in this article, shall have the following meanings unless the context requires a different meaning:~~

~~"Detoxification center program" means any facility program or procedure whereby a local governing body, or any combination of local governing bodies, establishes, operates or maintains or otherwise arranges or contracts for the establishment, operation or maintenance of a facility, whether operated by the locality or by a private agency, for the placement of public inebriates as an alternative to arresting and jailing such persons, for the purpose of monitoring the withdrawal from excessive use of alcohol. A judge of the district court in the jurisdiction in which the facility will be located shall approve specific methods and means of transportation available to law enforcement officers for transporting public inebriates to such programs.~~

~~"Public inebriate" means any person who is drunk in a public place and would be subject to arrest for drunkenness under § 18.2-388 or local ordinance established for the same offense.~~

DRAFTING NOTE: Technical corrections. On the recommendation of Department of Criminal Justice Services, this section has been amended to eliminate archaic and repetitive language, and to make it consistent with the Pretrial Services and Comprehensive Community Corrections for Local-Responsible Offenders Acts.

~~§ 9-173.4~~ 9.1-XXX. Establishment of programs; purpose; rules and regulations; judicial approval of facilities.

~~A. The Department of Criminal Justice Services shall promulgate rules and regulations, no later than October 1, 1982, the purpose of which shall be to make funds available to local units of government for establishing, operating and maintaining or contracting for local or regional detoxification center programs to provide an alternative to arresting and jailing public inebriates. It is the purpose of this article to enable any city, county, or combination thereof, to develop, establish, operate, maintain, or to contract with any qualified public or private agency for local or regional detoxification center programs, services, or facilities.~~

~~B. The Department of Criminal Justice Services shall promulgate rules and adopt regulations for the implementation of such programs.~~

~~C. Detoxification center programs established or operated pursuant to this section shall be governed solely by the rules and regulations promulgated adopted by the Department of Criminal Justice Services therefor. The Department of Criminal Justice Services shall establish a grant procedure to govern the award of award funds as may be appropriated for such purposes to local units of government.~~

~~D. The chief judge of the general district court in the jurisdiction which will be served by the facility shall approve the facility for the diversion of public inebriates from arrest and jail pursuant to § 18.2-388.~~

DRAFTING NOTE: Technical corrections. On the recommendation of the Department of Criminal Justice Services, subsection D was added to be consistent with the Pretrial Services and Comprehensive Community Corrections for Local Responsible Offenders Acts.

Article 8.

Law-Enforcement Expenditures.

~~§ 9-183-14 9.1-XXX.~~ (Effective October 1, 1998) Definitions.

~~For the purposes of As used in this article, the following definitions shall be applicable unless the context requires a different meaning:~~

"Adjusted crime index" means the potential crime rate for a locality multiplied by the base year population of the locality as estimated by the Center for Public Service.

"Average crime rate" for a city or eligible county means the annual average number of violent and property index crimes per 100,000 persons, as reported by the Superintendent of State Police, for the base year and the fiscal year immediately preceding, and the fiscal year immediately following, the base year. If the data are not available for the fiscal year immediately following the base year, the average shall be based on the base year and the two immediately preceding fiscal years.

"Base year" means the most recent fiscal year for which comparable data are available for: (i) population estimates by the Center for Public Service or the United States Bureau of the Census, adjusted for annexation as determined by the Department, (ii) actual state expenditures for salaries and expenses of sheriffs as reported by the Compensation Board, (iii) number of persons eligible for Temporary Assistance to Needy Families as defined in § 63.1-86.1, (iv) number of persons in foster care, as defined in § 63.1-195, and (v) the number of persons receiving maintenance payments in a general relief program as defined in § 63.1-87.

"Distribution formula" means that linear equation derived biennially by the Department, using standard statistical procedures, which best predicts average crime rates in all cities and eligible counties in the Commonwealth on the basis of the following factors in their simplest form:

1. The total base year number of (i) persons enrolled in Temporary Assistance to Needy Families, (ii) persons in foster care, and (iii) persons receiving maintenance payments in a general relief program, per 100,000 base year population; and

2. The local population density, based on the base year population estimates of the Center for Public Service, adjusted for annexation as determined by the Department, and the land area in square miles of the city or eligible county as reported by the United States Census Bureau, adjusted for annexation as determined by the Department.

"Eligible county" means any county which operates a police department.

"Police department" means that organization established by ~~the ordinance by a~~ local governing body of a county, city, or town, by ordinance, which is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances. Such department shall have a chief of police, which in the case of counties may be the sheriff, and such officers, privates, and other personnel as may be provided for in the ordinance, one sworn member of which shall be a full-time employee. All law-enforcement officers serving as members of such police department, whether full-time or part-time, and whether permanently or temporarily employed, shall meet the minimum training standards established pursuant to ~~§§ 9-170 9.1-XXX and 9-180 9.1-XXX~~, unless such personnel are exempt from the minimum training standards as provided in ~~§§ 9-173 9.1-XXX and 9-179 9.1-XXX~~. Any police department established subsequent to July 1, 1981, shall also have, at a minimum, one officer on duty at all times for the purposes set forth above.

However, notwithstanding any contrary provision of this definition, ~~any~~

~~1. Any~~ locality receiving funds under this article during the 1980-82 biennium shall be considered to have a valid police department eligible for funds as long as such police department continues in operation;

~~Provided further, notwithstanding any contrary provision of this definition, any~~ ~~2. Any~~ town receiving funds under this article during the 1986-1988 biennium shall be considered to have a valid police department eligible for

funds even though police services for such town may thereafter be provided by the sheriff of the county in which the town is located by agreement made pursuant to § 15.2-1726. Eligibility for funds under this provision ~~subdivision~~ shall last as long as such agreement remains in effect. Police services for the town furnished by the sheriff shall be equal to or greater than the police services last furnished by the town's police department.

"Population served by police departments" means the total base year population of the Commonwealth less the population served by sheriffs only.

"Population served by sheriffs only" means the total base year population of those counties without a police department, less the latest available estimate from the United States Bureau of the Census of the total population of towns, or portions of towns, having police departments, located in such counties.

"Potential crime rate" means the number of crimes per 100,000 persons in the base year population for each city or eligible county, as derived from the distribution formula.

"State aid to localities with police" means that amount which bears the same relationship to the population served by police departments as state aid to sheriff-only localities bears to the population served by sheriffs only.

"State aid to sheriff-only localities" means the estimated total amount for salaries and expenses to be paid by the Commonwealth, pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 of Title 15.2, to sheriffs' offices in those counties without a police department, based on the actual percentage of total state expenditures in the base year distributed to those counties without police departments.

~~"The Department" means the Department of Criminal Justice Services.~~

DRAFTING NOTE: Technical corrections. The definition of "Department" has been deleted because this term is already defined in proposed § 9.1-XXX which provides for definitions for the entire chapter.

~~§ 9-183.13 9.1-XXX. (Effective October 1, 1998) Local governments to receive state funds for law enforcement.~~

The Department of the Treasury shall disburse funds to cities, towns and counties, to aid in the law-enforcement expenditures of those local governments, pursuant to the terms of this article.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.15 9.1-XXX. (Effective October 1, 1998) Calculation of adjusted crime index; use.~~

By January 1 of each even-numbered year, the Department, using the relevant base year data, shall calculate the adjusted crime index for each city and each eligible county. Such calculation shall be used for the succeeding fiscal biennium adjusted for annexation as determined by the Department.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.19 9.1-XXX. (Effective October 1, 1998) Eligibility for funds.~~

A. Any city, county, or town establishing a police department shall provide the Department written notice of its intent to seek state funds in accordance with the provisions of this article. Such city, county, or town shall become eligible to receive funds at the beginning of the next fiscal year which commences not sooner than twelve months after the filing of this notice.

B. No city, county, or town shall receive any funds in accordance with the terms of this article unless it notifies the Department prior to July 1 each year that its law-enforcement personnel, whether full-time or part-time and whether permanently or temporarily employed, have complied with the minimum training standards as provided in ~~§§ 9-170 9.1-XXX and 9-180 9.1-XXX~~, unless such personnel are exempt from the minimum training

standards as provided in ~~§§ 9-173, 9.1-XXX and 9-179, 9.1-XXX~~ or that an effort will be made to have its law-enforcement personnel comply with such minimum training standards during the ensuing fiscal year. Any city, county, or town failing to make an effort to comply with the minimum training standards may be declared ineligible for funding in the succeeding fiscal year by the Department.

C. A change in the form of government from city to tier-city shall not preclude the successor tier-city which continues to provide a police department from eligibility for funds.

D. Any county consolidated under the provisions of Chapter 35 (§ 15.2-3500 et seq.) of Title 15.2 shall be eligible to receive financial assistance for law-enforcement expenditures subject to the provisions of this article. The consolidated county shall be eligible to receive, on behalf of the formerly incorporated towns which became shires, boroughs or special service tax districts within the consolidated county, law-enforcement assistance under the provisions of this article, provided that the consolidation agreement approved pursuant to Chapter 35 (§ 15.2-3500 et seq.) of Title 15.2 provides for the additional law-enforcement governmental services previously provided by the police department of such incorporated towns.

DRAFTING NOTE: This proposed section is comprised of the following existing sections: subsections A through C are § 9-183.19 and subsection D is § 9-183.20.

~~§ 9-183.20. (Effective October 1, 1998) Law enforcement expenditures for certain counties.~~

~~Any county consolidated under the provisions of Chapter 35 (§ 15.2-3500 et seq.) of Title 15.2 shall be eligible to receive financial assistance for law enforcement expenditures subject to the provisions of this article. The consolidated county shall be eligible to receive, on behalf of the formerly incorporated towns which became shires, boroughs or special service tax districts within the consolidated county, law enforcement assistance under the provisions of this article, provided that the consolidation agreement approved pursuant to Chapter 35 (§ 15.2-3500 et seq.) of Title 15.2 provides for the additional law enforcement governmental services previously provided by the police department of such incorporated towns.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 9.1-XXX (existing § 9-183.19) supra.

~~§ 9-183.16, 9.1-XXX. (Effective October 1, 1998) Total amount and method of distribution of funds to counties and cities.~~

A. The total amount of funds to be distributed as determined by the Department shall be equal to the amount of state aid to localities with police, as defined in ~~§ 9-183.14, 9.1-XXX~~, minus (i) the salaries and expenses of sheriffs' offices in such cities and counties as estimated pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 of Title 15.2 and (ii) five percent of the remainder, which shall be placed in a discretionary fund to be administered as specified in ~~§ 9-183.18, 9.1-XXX~~. However, ~~beginning July 1, 1982,~~ the percentage change in the total amount of funds to be distributed for any fiscal year from the preceding fiscal year shall be equal to the anticipated percentage change in total general fund revenue collections for the same time period as stated in the appropriation act.

B. Each city and eligible county shall receive a percentage of such total amount to be distributed equal to the percentage of the total adjusted crime index attributable to such city or county. Payments to the cities and eligible counties shall be made in equal quarterly installments by the State Treasurer on warrants issued by the Comptroller. Notwithstanding the foregoing provisions, the General Assembly, through the general appropriation act, may appropriate specific dollar amounts to provide financial assistance to localities with police departments.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183.17, 9.1-XXX. (Effective October 1, 1998) Distribution of funds to towns.~~

A. Towns located in eligible counties and which have police departments shall receive a percentage of the funds distributed to the county in accordance with ~~§ 9-183-16~~ 9.1-XXX, such percentage to be equal to the ratio of the town's population as determined by the Department to the total population of the county.

B. Towns located in noneligible counties shall be assigned an adjusted crime index based on their population and the average of the three lowest predicted crime rates for cities. Such towns shall receive funds based on such adjusted crime index in the same manner as cities and eligible counties as provided in ~~§ 9-183-16~~ 9.1-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183-18~~ 9.1-XXX. (Effective October 1, 1998) Distribution of discretionary fund.

In the case of a city with a population of more than 200,000 receiving per capita aid for law enforcement in accordance with ~~§ 9-183-16~~ 9.1-XXX of less than sixty-five percent of the average per capita aid to law enforcement received by all other cities with a population of more than 200,000 under such provisions, exclusive of amounts payable by reason of this section, the discretionary fund established by ~~§ 9-183-16~~ 9.1-XXX shall first be used to pay such city an aggregate sum so as to make its per capita receipts for law enforcement under ~~§ 9-183-16~~ 9.1-XXX equal to sixty-five percent of the average per capita aid for law enforcement disbursed to all other cities with a population of more than 200,000. The remainder, if any, shall be distributed per capita among (i) cities with populations under 200,000, (ii) eligible counties, and (iii) towns having police departments.

DRAFTING NOTE: Technical corrections only.

~~§ 9-183-24~~ 9.1-XXX. (Effective October 1, 1998) Periodic determination of weights and constants.

Prior to the convening of the General Assembly in each even-numbered year, the Department shall ~~cause~~ ~~research to be conducted to~~ determine whether the variables incorporated in the equation used in the distribution formula are statistically acceptable for such computation, and to determine whether any other variables would be better predictors of crime. If, as a result of this research, the Department determines that the variables used in the equation should be changed, it shall recommend to the General Assembly appropriate legislation to accomplish ~~such~~ this change.

DRAFTING NOTE:

Article 9.

Comprehensive Community Corrections Act for Local-Responsible Offenders.

~~§ 53-1-180~~ 9.1-XXX. Purpose

It is the purpose of this article to enable any city, county or combination thereof to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for certain misdemeanants or persons convicted of nonviolent felonies, as defined in § 19.2-316.1 and sentenced pursuant to § 19.2-303.3, for whom the court may impose a jail sentence and who may require less than institutional custody.

The article shall be interpreted and construed so as to ~~effect the following purposes:~~

- ~~To allow~~ Allow individual cities, counties, or combinations thereof greater flexibility and involvement in responding to the problem of crime in their communities;
- ~~To provide~~ Provide more effective protection of society and to promote efficiency and economy in the delivery of correctional services;

3. ~~To provide~~Provide increased opportunities for offenders to make restitution to victims of crimes through financial reimbursement or community service;

4. ~~To permit~~Permit cities, counties or combinations thereof to operate and utilize programs and services specifically designed to meet the rehabilitative needs of selected offenders; and

5. ~~To provide~~Provide appropriate post-sentencing alternatives in localities for certain offenders with the goal of reducing the incidence of repeat offenders.

DRAFTING NOTE: Technical corrections. On the recommendation of Department of Criminal Justice Services, Article 2 (§ 53.1-180 et seq.) Title 53.1 has been relocated to this chapter because Department of Criminal Justice Services is now responsible for the administration of this article.

~~§ 53.1-181~~ 9.1-XXX. Board to prescribe standards; biennial plan.

~~The Board of Criminal Justice Services~~ shall approve standards as prescribed by the Department of ~~Criminal Justice Services~~ for the development, implementation, operation and evaluation of programs, services and facilities authorized by this article. Any city, county or combination thereof which establishes programs and provides services pursuant to this article shall submit a biennial plan to the Department of ~~Criminal Justice Services~~ for review and approval.

DRAFTING NOTE: Technical corrections only.

~~§ 53.1-182~~ 9.1-XXX. Mandated services; optional programs.

Any city, county or combination thereof which elects or is required to establish a community-based corrections program pursuant to this article shall provide to the judicial system the following programs and services: community service; home incarceration with or without electronic monitoring; electronic monitoring; probation supervision; and substance abuse assessment, testing and treatment. Additional programs and services, including, but not limited to, local day reporting center programs and services, local halfway house programs and services for the temporary care of adults placed on probation, and public inebriate diversion programs, may be established by the city, county or combination thereof.

DRAFTING NOTE: Technical corrections only.

~~§ 53.1-183~~ 9.1-XXX. Community criminal justice boards.

Each county or city or combination thereof developing and establishing a community corrections program pursuant to the provisions of this article shall establish a community criminal justice board. Each county and city participating in a community corrections program shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to the program as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a program if such locality appropriates funds to the program. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be limited to fifteen members, except in cases of multijurisdictional boards which shall be limited to twenty members. Each board shall include the following: a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff in a jurisdiction not served by a police department to represent law enforcement; an attorney for the Commonwealth; a public defender or an attorney who is experienced in the defense of criminal matters; a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the community-based corrections program; a local educator; and a community services board administrator.

DRAFTING NOTE: Technical corrections only.

~~§ 53.1-184~~ 9.1-XXX. Withdrawal from program.

Any participating city or county may, at the beginning of any calendar quarter, by ordinance or resolution of its governing authority body, notify the Director of the Department of Criminal Justice Services of its intention to withdraw from the community corrections program. ~~Such withdrawal~~ Withdrawal shall be effective as of the last day of the quarter in which ~~such the~~ notice is given.

DRAFTING NOTE: Technical corrections only.

~~§ 53.1-185~~ 9.1-XXX. Responsibilities of community criminal justice boards.

On behalf of the counties, cities, or combinations thereof which they represent, the community criminal justice boards shall have the responsibility to:

1. Provide for the purchase, development and operation of community programs, services, and facilities used by the courts in diverting offenders from local correctional facility placements;
2. Assist community agencies and organizations in establishing and modifying programs and services for offenders on the basis of an objective assessment of the community's needs and resources;
3. Evaluate and monitor community programs, services and facilities to determine their impact on offenders;
4. Develop and amend the community corrections plan in accordance with guidelines and standards set forth by the Department of Criminal Justice Services for approval by participating local governing bodies; and
5. Do all things necessary or convenient to carry out the responsibilities expressly given in this article.

DRAFTING NOTE: Technical corrections only.

~~§ 53.1-186~~ 9.1-XXX. Eligibility to participate.

Any community corrections program established pursuant to this article shall be available as a sentencing alternative for persons sentenced to incarceration in a local correctional facility or who otherwise would be sentenced to incarceration in a local correctional facility.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Department of Fire Programs.

~~§ 9-153~~ 9.1-XXX. ~~Virginia State Fire Services Commission redesignated~~ Department of Fire Programs.

~~A. The Virginia State Fire Services Commission, created pursuant to Chapter 606 of the Acts of Assembly 1978, is hereby continued and redesignated the~~ There is created a Department of Fire Programs which shall be headed by a Director who shall be appointed by the Governor to serve at his pleasure. The Department shall be designated state agency to receive and disburse any funds available to the Commonwealth under the Federal Fire Prevention and Control Act (P. L. 93-498).

~~B. Wherever in this Code or in any other law of the Commonwealth the term Virginia State Fire Services Commission is used, it shall be taken to mean the Department of Fire Programs, hereinafter referred to as "the department."~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of existing §§ 9-153 and 9-154. Language shown as stricken has been deleted as obsolete.

~~§ 9-154~~ 9.1-XXX. ~~Executive Powers of Executive Director;~~ powers.

~~A. The Governor shall appoint an Executive Director of the Department, subject to confirmation by the General Assembly. The Executive Director shall hold his position at the pleasure of the Governor.~~

~~B. The Executive Director shall have the following powers to:~~

- ~~1. To supervise~~ Supervise the administration of the Department;
- ~~2. To prepare~~ Prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
- ~~3. To employ~~ Employ such staff as is necessary to carry out the powers and duties of this chapter, within the limits of available appropriations;
- ~~4. To accept~~ Accept on behalf of the Department grants from the United States government and agencies and instrumentalities thereof and any other sources. To these ends, the Executive Director shall have the power to execute such agreements in accordance with the policies of the Virginia Fire Services Board;
- ~~5. To do~~ Do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities and duties;
- ~~6. To make~~ Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth;
- ~~7. To appoint~~ Appoint a director of fire services training; and
- ~~8. To receive~~ Receive funds as appropriated by the General Assembly collected pursuant to § 38.2-401 on an annual basis to be used as provided in subsection C of § 38.2-401.

DRAFTING NOTE: Technical corrections. Existing subsection A now appears in proposed § 9.1-XX (existing § 9-153) supra.

~~§ 9-153.4~~ 9.1-XXX. Virginia Fire Services Board; membership; terms; expenses; officers compensation.

~~A. The Virginia Fire Services Board within the Department of Fire Programs (the "Board") is established a policy board within the meaning of § 2.2-XXX in the executive branch of state government. The Board shall consist of fifteen members. Subject to confirmation by the General Assembly, the Governor shall appoint to the Board the following persons to be appointed by the Governor as follows: a representative of the insurance industry; two members of the general public with no connection to the fire services, one of which whom shall be representative of those industries affected by SARA Title. III and OSHA training requirements; and a on representative each from each of the following organizations: the State Fire Chiefs Association of Virginia, the Virginia Firemen's Association, the Virginia Association of Professional Firefighters, the Virginia Fire Service Council, the Virginia Fire Prevention Association, the State Chapter of the International Association of Arso Investigators, the Virginia Municipal League, and the Virginia Association of Counties, and a member of the Virginia Chapter of the International Society of Fire Service Instructors who is a faculty member who teaches fire science at a state public institution of higher learning education. Of these appointees, at least one shall be volunteer firefighter. In addition to the gubernatorial appointees, the following persons shall be members of the Board: the The State Fire Marshal, the State Forester and a member of the Board of Housing and Community Development, to be appointed by the chairman of that Board shall also serve as members of the Board.~~

Each of the organizations represented shall submit names for the Governor's consideration in making these appointments.

~~The members~~ B. Members of the Board appointed by the Governor shall serve for terms of four years. A appointment to fill a vacancy shall be for the unexpired term. No appointee shall serve more than two successive

four-year terms but neither shall any person serve beyond the time he holds the office or organizational membership by reason of which he was initially eligible for appointment. ~~The members of the Board shall be paid their necessary expenses incurred in the discharge of their duties.~~

C. The Board annually shall elect its chairman and vice-chairman from among its membership and shall adopt rules of procedure.

D. Members of the Board shall not be entitled to compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).

DRAFTING NOTE: Technical corrections only.

~~§ 9-155~~ 9.1-XXX. Powers and duties of Virginia Fire Services Board; limitation.

A. ~~The Virginia Fire Services Board~~ shall have the responsibility for promoting the coordination of the efforts of fire service organizations at the state and local levels. To these ends, it shall have the following powers and duties to:

1. ~~To establish~~ Establish a process, involving state and local agencies, public and private, for setting priorities for implementing the Virginia Fire Prevention and Control Plan and coordinating the activities of state and local agencies, public and private, in implementing the Plan;
2. ~~To develop~~ Develop a five-year statewide plan for fire education and training;
3. ~~To establish~~ Establish criteria for the disbursement of any grant funds received from the federal government and any agencies thereof and any other source and to disburse such funds in accordance therewith;
4. ~~To provide~~ Provide technical assistance and advice to local fire departments, other fire services organizations, and local governments;
5. ~~To develop~~ Develop and recommend personnel standards for fire services personnel;
6. ~~To develop~~ Develop and implement a statewide plan for the collection, analysis and reporting of data relating to fires in the Commonwealth, utilizing appropriate resources of other state agencies when deemed proper by the Board;
7. ~~To make~~ Make recommendations to the Governor and General Assembly concerning legislation affecting fire prevention and protection and fire services organizations in Virginia;
8. ~~To evaluate~~ Evaluate all state programs or functions which have a bearing on fire prevention and protection and to make to the appropriate government officials any recommendations deemed necessary to improve the level of fire prevention and protection in the Commonwealth;
9. ~~To provide~~ Provide training and information to localities relative to the Statewide Fire Prevention Code;
10. ~~To study~~ Study and develop alternative means of providing financial support for volunteer fire departments and to make appropriate recommendations regarding the implementation of such alternatives;
11. ~~To conduct~~ Conduct training schools for fire service personnel in various areas of the Commonwealth;
12. ~~To render~~ Render assistance to local fire departments and volunteer fire companies in training fire fighters.

B. Except for those policies established in § 38.2-401, compliance with the provisions of § ~~9-154~~ 9.1-XXX and this section and any policies or guidelines enacted pursuant thereto shall be optional with, and at the discretion of, any local governing body and any volunteer fire department or volunteer fire departments operating under the same corporate charters.

DRAFTING NOTE: Technical corrections only.

~~§ 9-155.1~~ 9.1-XXX. Fire service training facilities; allocation of funds therefor.

A. At the beginning of each fiscal year, the Board may allocate available funds to counties, cities, and towns within the Commonwealth for the purpose of assisting such counties, cities, towns and volunteer fire companies in the construction, improvement or expansion of fire service training facilities.

B. Available funds shall be allocated at the discretion of the Board, based upon the following:

1. The total amount of funds available for distribution;

2. Financial participation by counties, cities, towns and volunteer fire companies, any such participation being optional on the part of the locality or the particular volunteer fire company;

3. Anticipated use of such facilities by the Commonwealth, its subdivisions or volunteer fire companies.

C. Such funds shall be distributed to the counties, cities, and towns pursuant to contracts prepared by the office of Attorney General.

D. Allocations of such funds to volunteer fire companies shall not be contingent upon or conditioned in any way upon compliance with the provisions of § ~~9-154~~ 9.1-XXX or with any rules, regulations, or guidelines enacted pursuant to the provisions of § ~~9-154~~ 9.1-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 9-155.2. Commission and Office of Fire Services Training combined as Department of Fire Programs.~~

~~Excluding all appointed positions, the Office of Fire Services Training shall be combined as a unit with the Virginia State Fire Services Commission to form the Department of Fire Programs.~~

DRAFTING NOTE: Technical corrections. This section has been deleted as obsolete. It was originally enacted pursuant to Chapter 154 of the 1981 Acts of Assembly.

Chapter X.

Firefighters and Emergency Medical Technicians Procedural Guarantee Act.

~~§ 2-1-116.9.1~~ 9.1-XXX. Definitions.

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

"Emergency medical technician" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time emergency medical technician whose primary responsibility is the provision of emergency care to the sick and injured, using either basic or advanced techniques. Emergency medical technicians may also provide fire protection services and assist in the enforcement of the fire prevention code.

"Employing agency" means any municipality of the Commonwealth or any political subdivision thereof including authorities and special districts, which employs firefighters and emergency medical technicians.

"Firefighter" means any person who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires, the protection of life and property, and the enforcement of local and state fire prevention codes and laws pertaining to the prevention and control of fires.

"Interrogation" means any questioning of a formal nature as used in Chapter ~~10.1, Law Enforcement Officer's Procedural Guarantees, § 2.1-116.2 X~~ (§ 9.1-XXX et seq.) of this title, that could lead to dismissal, demotion, or suspension for punitive reasons of a firefighter or emergency medical technician.

DRAFTING NOTE: Technical corrections. This section was relocated to this title from Title 2.1.

~~§ 2.1-116.9:2~~ 9.1-XXX. Conduct of interrogation.

The ~~following~~ provisions of this section shall apply whenever a firefighter or emergency medical technician is subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons:

1. The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

2. No firefighter or emergency medical technician shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter or emergency medical technician of the nature of the investigation.

3. All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter or emergency medical technician is on duty, unless ~~the importance of the interrogation or investigation is matters being investigated are~~ of such a nature that immediate action is required.

4. The firefighter or emergency medical technician under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

5. Interrogation sessions shall be of reasonable duration and the firefighter or emergency medical technician shall be permitted reasonable periods for rest and personal necessities.

6. The firefighter or emergency medical technician being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.

7. If a recording of any interrogation is made, and if a transcript of ~~such the~~ interrogation is made, the firefighter or emergency medical technician under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

8. No firefighter or emergency medical technician shall be discharged, disciplined, demoted, denied promotion or seniority, or otherwise disciplined or discriminated against in regard to his employment, or be threatened with any such treatment as retaliation for ~~or by reason solely of~~ his exercise of any of the rights granted or protected by this chapter.

DRAFTING NOTE: Technical corrections. This section was relocated to this title from Title 2.1.

~~§ 2.1-116.9:5~~ 9.1-XXX. Breach of procedures.

Any breach of the procedures required by this chapter shall not exclude any evidence from being presented in any case against a firefighter or emergency medical technician and shall not cause any charge to be dismissed unless the firefighter or emergency medical technician demonstrates that the breach prejudiced his case.

DRAFTING NOTE: Technical corrections. This section was relocated to this title from Title 2.1.

~~§ 2-1-146.9:3~~ 9.1-XXX. Informal counseling not prohibited.

Nothing in this chapter shall be construed to prohibit the informal counseling of a firefighter or emergency medical technician by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the firefighter or emergency medical technician.

DRAFTING NOTE: Technical corrections. This section was relocated to this title from Title 2.1.

~~§ 2-1-146.9:4~~ 9.1-XXX. Rights nonexclusive.

The rights of firefighters and emergency medical technicians as set forth in this chapter shall not be construed to diminish the rights and privileges of firefighters or emergency medical technicians that are guaranteed to all citizens by the Constitution and laws of the United States and the Commonwealth of Virginia or to limit the granting of broader rights by other law, ordinance or rule.

This section shall not abridge or expand the rights of firefighters or emergency medical technicians to bring civil suits for injuries suffered in the course of their employment as recognized by the courts, nor is it designed to abrogate any common law or statutory limitation on the rights of recovery.

DRAFTING NOTE: Technical corrections. This section was relocated to this title from Title 2.1.

Chapter X.

Line of Duty Act.

~~§ 2-1-133.5~~ 9.1-XXX. Title of chapter; definitions.

A. This chapter shall be known and designated as the Line of Duty Act.

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

"Beneficiary" means the spouse of a deceased person and such persons as are entitled to take under the will of a deceased person if testate, or as his heirs at law if intestate.

"Deceased person" means any individual whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813 and 65.2-402, as a law-enforcement officer of the Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city or town of the Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any agent, investigator or inspector vested with the power to arrest pursuant to § 56-334; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 29.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any Department of Emergency Services hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.

"Disabled person " means any individual who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased person in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent.

"Line of duty" means any action the deceased or disabled person was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.

RAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-133.5 and subsection B is § 2.1-133.6. The definitions of "deceased" and "disabled" have been changed to "deceased person" and "disabled person" for clarification.

~~§ 2.1-133.6. (Effective July 1, 2000) Definitions.~~

~~For the purposes of this chapter the following words shall have the following meanings:~~

~~"Beneficiary" means the spouse of the deceased and such person or persons as are entitled to take under the will of the deceased if testate, or as his heir at law if intestate.~~

~~"Deceased" means any person whose death occurs on or after April 8, 1972, as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, as a law enforcement officer of this Commonwealth or any of its political subdivisions; a correctional officer as defined in § 53.1-1; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; a member of any fire company or department or rescue squad which has been recognized by an ordinance or a resolution of the governing body of any county, city or town of this Commonwealth as an integral part of the official safety program of such county, city or town; a member of the Virginia National Guard or the Virginia State Defense Force while such member is serving in the Virginia National Guard or the Virginia State Defense Force on official state duty or federal duty under Title 32 of the United States Code; any special agent of the Virginia Alcoholic Beverage Control Board; any agent, investigator, or inspector vested with the power to arrest pursuant to § 56-334; any regular or special game warden who receives compensation from a county, city or town or from the Commonwealth appointed pursuant to the provisions of § 9.1-200; any commissioned forest warden appointed under the provisions of § 10.1-1135; any member or employee of the Virginia Marine Resources Commission granted the power of arrest pursuant to § 28.2-900; any department of Emergency Services hazardous materials officer; any nonfirefighter regional hazardous materials emergency response team member; or any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115.~~

~~"Disabled employee" means any person who, as the direct or proximate result of the performance of his duty in any position listed in the definition of deceased in this section, has become mentally or physically incapacitated so as to prevent the further performance of duty where such incapacity is likely to be permanent.~~

~~"Line of duty" means any action the deceased or disabled employee was obligated or authorized to perform by rule, regulation, condition of employment or service, or law.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 9.1-XXX (existing § 2.1-133.5).

~~§ 2.1-133.7:1 9.1-XXX. (Effective July 1, 2000) Continued health insurance coverage for disabled employees persons, their spouses and dependents, and for the surviving spouse and dependents of certain deceased law-enforcement officers, firefighters, etc.~~

~~A. If the deceased's death: (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, his The surviving spouse and any dependents of a deceased person shall be afforded continued health insurance coverage. The, the cost of such health insurance coverage which shall be paid in full out of the general fund of the state treasury.~~

B. If the disabled ~~employee's person's~~ disability: (i) occurred while in the line of duty as the direct or proximate result of the performance of his duty or (ii) was subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813 or § 65.2-402, and arose out of and in the course of his employment, the ~~disabled-employee person~~, his surviving spouse and any dependents shall be afforded continued health insurance coverage. The cost of such health insurance coverage shall be paid in full out of the general fund of the state treasury.

C. The continued health insurance coverage provided by this section shall be the same plan of benefits which the deceased or disabled ~~employee-person~~ was entitled to on the last day of his active duty or comparable benefits established as a result of a replacement plan.

D. For any spouse, continued health insurance provided by this section shall terminate upon such spouse's death, remarriage or coverage by alternate health insurance.

E. For dependents, continued health insurance provided by this section shall terminate upon such dependent's death, marriage, coverage by alternate health insurance or twenty-first birthday. Continued health care insurance shall be provided beyond the dependent's twenty-first birthday if the dependent is a full-time college student and shall continue until such time as the dependent ceases to be a full-time student or reaches his twenty-fifth birthday, whichever occurs first. Continued health care insurance shall also be provided beyond the dependent's twenty-first birthday if the dependent is mentally or physically disabled, and such coverage shall continue until three months following the cessation of the disability.

F. For any ~~disabled-employee person~~, continued health insurance provided by this section shall automatically terminate upon the ~~disabled employee's person's~~ death, recovery or return to full duty in any position listed in the definition of deceased ~~person~~ in ~~§ 2-1-133.6 9.1-XXX~~.

DRAFTING NOTE: Technical corrections only. The language shown as stricken in subsection A has been deleted as unnecessary since it is covered in the definition of "deceased person."

~~§ 2-1-133.7 9.1-XXX~~. Payments to beneficiaries of certain deceased law-enforcement officers, firefighters, etc., and retirees.

A. ~~If the deceased's death occurred while in the line of duty as the direct or proximate result of the performance of his duty, his~~ The beneficiary of a deceased person shall be entitled to receive the sum of \$ 50,000 which shall be payable out of the general fund of the state treasury, in gratitude for and in recognition of his sacrifice on behalf of the people of ~~this the~~ Commonwealth.

B. Subject to the provisions of §§ 27-40.1, 27-40.2, 51.1-813, or § 65.2-402, if the ~~deceased's~~ deceased person's death ~~(a)(i)~~ arose out of and in the course of his employment or ~~(b)(ii)~~ was within five years from his date of retirement, his beneficiary shall be entitled to receive the sum of \$25,000, which shall be payable out of the general fund of the state treasury.

DRAFTING NOTE: Technical corrections only. The language shown as stricken in subsection A has been deleted as unnecessary since it is covered in the definition of "deceased person."

~~§ 2-1-133.8 9.1-XXX~~ (Effective July 1, 2000) Claim for payment.

Every beneficiary, ~~disabled employee-person~~ or his spouse, or dependent of a deceased ~~-or disabled employee hereunder-person~~ shall present his claim to the chief officer, or his designee, of the appropriate division or department which last employed the deceased or disabled ~~employee person~~ on forms to be provided by the State Comptroller's office. ~~Such~~ The chief officer or his designee shall submit a request to the Superintendent of the Department of the State Police, who shall investigate and report upon the circumstances surrounding the deceased or ~~disabled-employee person~~, calling upon the additional information and services of any other appropriate agents or agencies of the Commonwealth. The chief officer, or his designee, shall report his findings to the Comptroller within forty-five days of receipt of a claim.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-133.9 9.1-XXX. (Effective July 1, 2000)-Order of Comptroller.~~

A. If it appears to the Comptroller that the requirements of either subsection A or B of § ~~2-1-133.7~~ 9.1-XXX have been satisfied, he shall issue his warrant in the appropriate amount for payment out of the general fund of the state treasury to the surviving spouse or to such persons and subject to such conditions as may be proper in his administrative discretion, and in the event there is no beneficiary, the Comptroller shall issue ~~such~~ the payment to the estate of the deceased person. The Comptroller shall issue a decision, and payment, if appropriate, shall be made no later than forty-five days following receipt of the report required under § ~~2-1-133.8~~ 9.1-XXX.

B. If it appears to the Comptroller that the requirements of either subsection A or B of § ~~2-1-133.7:1~~ 9.1-XXX have been satisfied, he shall issue his warrants in the appropriate amounts for payment from the general fund of the state treasury to ensure continued health care coverage for the persons designated under § ~~2-1-133.7:1~~ 9.1-XXX. The Comptroller shall issue a decision, and payments, if appropriate, shall commence no later than forty-five days following receipt of the report required under § ~~2-1-133.8~~ 9.1-XXX. ~~Such~~ The payments shall be retroactive to the first date that ~~such~~ the disability existed.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-133.10 9.1-XXX. (Effective July 1, 2000)-Appeal from decision of Comptroller.~~

Any beneficiary, disabled ~~employee-person~~ or his spouse or dependent of a deceased or disabled ~~employee-person~~ aggrieved by the decision of the Comptroller shall present a petition to the court in which the will of the deceased person is probated or in which the personal representative of the deceased person is qualified or might qualify or in the jurisdiction in which the disabled ~~employee-person~~ resides.

The Commonwealth shall be represented in such proceeding by the Attorney General or his designee. The court shall proceed as chancellor without a jury. If it appears to the court that the requirements of this chapter have been satisfied, the judge shall enter an order to that effect. The order shall also direct the Comptroller to issue his warrant in the appropriate amount for the payment out of the general fund of the state treasury to such persons and subject to such conditions as may be proper. If, in the case of a deceased person, there is no beneficiary, the judge shall direct such payment as is due under § ~~2-1-133.7~~ 9.1-XXX to the estate of the deceased person.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-133.11 9.1-XXX. Appeals.~~

Appeals from judgments entered pursuant to this chapter shall be allowed as in chancery matters generally.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Law-Enforcement Officers Procedural Guarantee Act.

~~§ 2-1-116.1 9.1-XXX. Definitions.~~

As used in this chapter, ~~the following terms have the following meanings unless the context requires a different meaning:~~

"Agency" means the Department of State Police, the Division of Capitol Police, the Virginia Marine Resources Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles; or the political subdivision or the

campus police department of any public institution of higher education of the Commonwealth employing the law enforcement officer.

4. "Law-enforcement officer" means any person, other than a Chief of Police or the Superintendent of the Department of State Police, who, in his official capacity, is (i) authorized by law to make arrests and (ii) nonprobationary officer of one of the following agencies:

~~(a) The a. the Department of State Police, the Division of Capitol Police, the Virginia Marine Resource Commission, the Virginia Port Authority, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles; or~~

~~(b) b. The police department, bureau or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth of Virginia where such department, bureau or force has ten or more law-enforcement officers; however, this shall not include the sheriff's department of any city or county; or~~

~~This term also means any c. Any game warden as defined in § 9-169 (9) 9.1-XXX.~~

2. "Agency" means:

~~(a) The Department of State Police, the Division of Capitol Police, the Virginia Marine Resource Commission, the Virginia Port Authority, the Department of Alcoholic Beverage Control, or the Department of Motor Vehicles; or~~

~~(b) The political subdivision or the campus police department of any public institution of higher education of the Commonwealth of Virginia employing the law enforcement officer.~~

For the purposes of this chapter, "law-enforcement officer" shall not include the sheriff's department of any city or county.

DRAFTING NOTE: Technical corrections. The Department of Games and Inland Fisheries has been included for clarification based on § 29.1-205 which grants to game wardens the power to make arrests.

~~§ 2-1-146.2 9.1-XXX.~~ Conduct of investigation.

~~Whenever The provisions of this section shall apply whenever an investigation by an agency focuses on matters which could lead to the dismissal, demotion, suspension or transfer for punitive reasons of a law enforcement officer, the following conditions shall be complied with:~~

1. Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless circumstances dictate otherwise matters being investigated are of such a nature that immediate action is required.

2. Prior to the officer being questioned, he shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. When a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen at the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to require the second specimen be sent to a laboratory of his choice for independent testing in accordance generally with the procedures set forth in §§ 18.2-268.1 through 18.2-268.12. The officer shall notify the chief of his agency in writing of his request within ten days of being notified of positive specimen results. The laboratory chosen by the officer shall be on the approved list of the Division of Forensic Science.

DRAFTING NOTE: Technical corrections. Language substituted in subdivision 1 has been done to conform it to like provisions in the Firefighters and Emergency Medical Technicians Procedural Guarantee Act.

~~§-2-1-416-4.9.1-XXX~~. Notice of charges; response; election to proceed under grievance procedure of local governing body.

A. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following ~~must be complied with~~ rights shall be afforded:

1. The law-enforcement officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

2. The law-enforcement officer ~~must~~ shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;

3. In making his response, the law-enforcement officer may be assisted by counsel at his own expense; and

4. The law-enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the local governing body pursuant to §§ ~~15.1-7.4~~ 15.2-1506 and ~~15.1-7.2~~ 15.2-1507. A copy of the local governing body's grievance procedure shall be provided to the law-enforcement officer upon his request.

B. A law-enforcement officer may proceed under either the local governing body's grievance procedure or the law-enforcement officer's procedural guarantees, but not both.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-416-3.9.1-XXX~~. Personal assets of officers.

No law-enforcement officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless (i) such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless (ii) such disclosure is required by law, or unless (iii) such information is related to an investigation. Nothing in this section shall preclude an agency from requiring ~~such~~ the law-enforcement officer to disclose any place of off-duty employment and where he may be contacted.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-416-5.9.1-XXX~~. Hearing; hearing panel recommendations.

4A. Whenever a law-enforcement officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within a reasonable amount of time following such action, as set by the agency, request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the agency; ~~provided, however, that. However,~~ the hearing shall not be set ~~no~~ later than fourteen calendar days following the date of request unless a later date is agreed to by the law-enforcement officer. At the hearing, the law-enforcement officer and his agency shall be afforded the opportunity to present evidence, examine and cross-examine witnesses. ~~The panel shall have the power to, and on the request of either the law-enforcement officer or his agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing.~~ The law-enforcement officer shall also be given the opportunity to be represented by counsel at the hearing unless ~~such~~ the officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo hearing. ~~The panel conducting the hearing shall rule on the admissibility of the evidence. A record shall be made of the hearing.~~

~~2B.~~ 2B. The hearing shall be conducted by a panel, ~~such panel to consist~~ consisting of one member from within the agency selected by the grievant, one member from within the agency of equal rank of the grievant but no more than two ranks above appointed by the agency head, and a third member from within the agency to be selected by the other two members. In the event that such two members cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member. The hearing panel may, and on the request of either the law-enforcement officer or his agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The hearing panel shall rule on the admissibility of the evidence. A record shall be made of the hearing.

~~3C.~~ 3C. At the option of the agency, it may, in lieu of complying with the provisions of ~~§ 2.1-116.4~~ 9.1-XXX, give the law-enforcement officer a statement, in writing, of the charges, the basis therefor, the action which may be taken, and provide a hearing as provided for in this section prior to dismissing, demoting, suspending or transferring for punitive reasons the law-enforcement officer.

D. The recommendations of the hearing panel, and the reasons therefor, shall be in writing and transmitted promptly to the law-enforcement officer or his attorney and to the chief executive officer of the law-enforcement agency. Such recommendations shall be advisory only, but shall be accorded significant weight.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through C are § 2.1-116.5 and subsection D is § 2.1-116.7.

~~§ 2.1-116.6~~ 9.1-XXX. Immediate suspension.

Nothing in this chapter shall prevent the immediate suspension without pay of any law-enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this chapter prevent the suspension of a law-enforcement officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated rules and regulations. In such a case, the law-enforcement officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.7. Outcome of hearing.~~

~~The recommendations of the panel, and the reasons therefor, shall be in writing, shall be transmitted promptly to the law-enforcement officer or his attorney and to the chief executive officer of the law-enforcement agency. Such recommendations shall be advisory only, but shall be accorded significant weight.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 9.1-XXX (existing § 2.1-116.5) supra.

~~§ 2.1-116.8~~ 9.1-XXX. Informal counseling not prohibited.

Nothing in this chapter shall be construed to prohibit the informal counseling of a law-enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the law-enforcement officer.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-116.9~~ 9.1-XXX. Chapter accords minimum rights.

The rights accorded law-enforcement officers in this chapter are minimum rights and all agencies shall ~~promulgate~~ adopt grievance procedures not inconsistent herewith; provided that ~~that are consistent with this chapter. However, any an agency may provide for the additional rights of law-enforcement officers in addition hereto~~ in its grievance procedure.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Civilian Protection in Cases of Police Misconduct.

~~§ 2-146.9:6~~ 9.1-XXX. Civilian protection in cases of police misconduct; minimum standards.

A. ~~State, and~~ local, and public law-enforcement agencies, which have ten or more law-enforcement officers, shall have procedures as established in subsection B, allowing citizen submission of complaints regarding the conduct of the law-enforcement agency, law-enforcement officers in the agency, or employees of the agency. ~~The provisions of this chapter shall not apply to constitutional officers.~~

B. Law-enforcement agencies shall ensure, at a minimum, that in the case of all written complaints:

1. The general public has access to the required forms and information concerning the submission of complaints;

2. The law-enforcement agency assists individuals in filing complaints; and

3. Adequate records are maintained of the nature and disposition of such cases.

C. The provisions of this chapter shall not apply to constitutional officers.

DRAFTING NOTE: Technical corrections only.

III. CHAPTERS RELOCATED FROM TITLES 2.1 and 9 TO OTHER TITLES

CHAPTERS RELOCATED FROM TITLE 2.1 TO TITLE 30

Title 30—General Assembly

Chap.

- X. Auditor of Public Accounts, §§ 2.1-153 through 2.1-172.1.
- X. The General Assembly Conflict of Interests Act, §§ 2.1-639.30 through 2.1-639.61.

CHAPTERS RELOCATED FROM TITLE 9 TO TITLE 30

Title 30—General Assembly

Chap.

- X. Commission on Intergovernmental Cooperation, §§ 9-53 through 9-60.
- X. Virginia Code Commission, §§ 9-77.4 through 9-77.12.
- X. Virginia State Crime Commission, §§ 9-125 through 9-138.
- X. Virginia Coal and Energy Commission, §§ 9-145.1 through 9-145.4.
- X. State Water Commission, §§ 9-145.8 through 9-145.10.
- X. Dr. Martin Luther King, Jr. Memorial Commission §§9-145.45 -- 9-145.46
- X. Commission on Early Childhood and Child Day Care Programs, § 9-291.1.
- X. Virginia Commission on Youth, §§ 9-292 through 9-296.
- X. Commission on Equity in Public Education, § 9-310.
- X. Joint Commission on Health Care, §§ 9-311 through 9-316.
- X. Virginia Chesapeake Bay Partnership Council, §§ 9-334, 9-335.
- X. Small Business Commission, §§ 9-336 through 9-339.

CHAPTERS RELOCATED FROM TITLE 2.1 TO OTHER TITLES

Title 3.1—Agriculture

Chap.

- X. Tobacco Indemnification and Community Revitalization Commission §§ 9-380 through 9-389

Title 17.1—Supreme Court

Chap.

- X. Judicial Review and Inquiry Commission (§ 2.1-37)

Title 23—Educational Institutions

Chap.

- X. Board of Regents, Gunston Hall (§ 9-99.1)
- X. Frontier Culture Museum of Virginia (§§ 9-99.2 through 9-99.4)
- X. Jamestown-Yorktown Foundation (§§ 9-96 through 9-99.02)

Title 42.1—Libraries (State Librarian)

Chap.

- X. Annual listing; publication and distribution of catalog (§§ 2.1-467.1, 2.1- 467.7, 2.1-467.7, and 2.1-467.8)

SECTIONS RELOCATED FROM TITLES 2.1 AND 9 TO

TITLE 30—GENERAL ASSEMBLY.

Chapter X.

General Assembly Conflicts of Interests Act.

~~§ 2-1-639.30~~ 30-XXX. Declaration of legislative policy; construction.

The General Assembly of Virginia, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers, finds and declares that the citizens are entitled to be assured that the judgment of the members of the General Assembly will not be compromised or affected by inappropriate conflicts.

This chapter shall apply to the members of the General Assembly.

This chapter shall be liberally construed to accomplish its purpose.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.31~~ 30-XXX. Definitions.

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

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth of Virginia, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the legislator's own governmental agency.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the legislator, who is a dependent of the legislator or of whom the legislator is a dependent. "Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the legislator, or provides to the legislator, more than one-half of his financial support.

"Legislator" means a member of the General Assembly of Virginia.

"Personal interest" means a financial benefit or liability accruing to a legislator or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; or (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business.

"Personal interest in a contract" means a personal interest which a legislator has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of a legislator in any matter considered by the General Assembly. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business, or represents any individual or business and such property, business or represented individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. A "personal interest in a transaction" exists only if the legislator or member of his immediate family or an individual or business represented by the legislator is affected in a way that is substantially different from the general public or from persons comprising a profession, occupation, trade, business or other comparable and generally recognizable class or group of which he or the individual or business he represents is a member.

"Transaction" means any matter considered by the General Assembly, whether in a committee, subcommittee, or other entity of the General Assembly or before the General Assembly itself, on which official action is taken or contemplated.

DRAFTING NOTE: Technical corrections only.

Article 2.

Generally Prohibited and Unlawful Conduct.

~~§ 2.1-639.32~~ 30-XXX. Application.

This article applies to generally prohibited conduct which shall be unlawful.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.33~~ 30-XXX. Prohibited conduct.

No legislator shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid to him by the General Assembly. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information which he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9 (§ 24.2-900 et seq.) of Title 24.2;
6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
7. During the one year after the termination of his service as a legislator, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the General Assembly or any agency of the legislative branch of government. The prohibitions of this subdivision shall apply only to persons engaged in activities that would require registration as a lobbyist under § 30-28.2. Any person subject to the provisions of this subdivision may apply to the Attorney General, as provided in ~~§ 2-1-639.59~~ § 30-XXX, for an advisory opinion as to the application of the restriction imposed by this subdivision on any post-public employment position or opportunity;
8. Accept any honoraria for any appearance, speech, or article in which the ~~officer or employee-legislator~~ provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time;
9. Accept appointment to serve on a body or board of any corporation, company or other legal entity, interested with the management of the corporation, company or entity, and on which two other members of the General Assembly already serve, which is operated for profit and regulated by the State Corporation Commission as (i) a financial institution, (ii) a mortgage lender or broker, (iii) any business under Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, (iv) any business under Title 38.2, or (v) any business under Title 56;
10. Accept a gift from a person who has interests that may be substantially affected by the performance of the legislator's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the legislator's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or
11. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

DRAFTING NOTE: Technical corrections. In subdivision 8, "officer or employee" has been corrected to "legislator".

Article 3.

Prohibited Conduct Regarding Contracts.

~~§ 2-1-639.34~~ § 30-XXX. Application.

This article proscribes certain conduct relating to contracts.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.35~~ 30-XXX. Prohibited contracts by legislators.

A. No legislator shall have a personal interest in a contract with the legislative branch of state government

B. No legislator shall have a personal interest in a contract with any governmental agency of the executive or judicial branches of state government, other than in a contract of regular employment, unless such contract is awarded as a result of competitive sealed bidding or competitive negotiation as defined in ~~§ 41-37.2.2-XXX~~.

C. No legislator shall have a personal interest in a contract with any governmental agency of local government, other than in a contract of regular employment, unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in ~~§ 41-37.2.2-XXX~~ or is awarded as a result of a procedure embodying competitive principles as authorized by ~~subsection D- Xref of § 41-35.2.2-XXX~~, or (ii) awarded after a finding, in writing, by the administrative head of the local governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

D. The provisions of this section shall not ~~be applicable~~ apply to contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public.

E. The provisions of this section shall not ~~be applicable~~ apply to a legislator's personal interest in a contract between a ~~state-public~~ institution of higher education and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.36~~ 30-XXX. Further exceptions.

A. The provisions of ~~§ 2-1-639.35~~ 30-XXX shall not apply to:

1. The sale, lease or exchange of real property between a legislator and a governmental agency, provided the legislator does not participate in any way as a legislator in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof. The legislator shall disclose any lease with a state governmental agency in his statement of economic interests as provided in ~~§ 2-1-639.41~~ 30-XXX;

2. The publication of official notices;

3. A legislator whose sole personal interest in a contract with an agency of the legislative branch is by reason of income from the contracting firm or General Assembly in excess of \$10,000 per year, provided the legislator or member of his immediate family does not participate and has no authority to participate in the procurement or letting of ~~such the~~ contract on behalf of the contracting firm and the legislator either does not have authority to participate in the procurement or letting of the contract on behalf of the agency or he disqualifies himself as a matter of public record and does not participate on behalf of the agency in negotiating the contract or in approving the contract;

4. Contracts between a legislator's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the legislator has a personal interest, provided he disqualifies himself as a matter of public record and does not participate on behalf of the agency in negotiating the contract or in approving the contract;

5. Contracts for the purchase of goods or services when the contract does not exceed \$500; or

6. Grants or other payments under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments hereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-47 et seq.) or the Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f)(4) of § 2.1-348 of Chapter 22 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of a legislator and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household, and the annual salary of such subordinate is \$15,000 or more.

DRAFTING NOTE: Technical corrections only.

Article 4.

Conduct Regarding Transactions.

~~§ 2.1-639.37~~ 30-XXX. Application.

This article relates to conduct by legislators having a personal interest in a transaction.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.38~~ 30-XXX. Prohibited conduct concerning personal interest in a transaction.

A legislator who has a personal interest in a transaction shall disqualify himself from participating in the transaction.

Unless otherwise prohibited by the rules of his house, the disqualification requirement of this section shall not prevent any legislator from participating in discussions and debates, provided (i) he verbally discloses the fact of his personal interest in the transaction at the outset of the discussion or debate or as soon as practicable thereafter and (ii) he does not vote on the transaction in which he has a personal interest.

DRAFTING NOTE: Technical corrections only.

Article 5.

Disclosure Statements Required to be Filed.

~~§ 2.1-639.39~~ 30-XXX. Application.

This article requires disclosure of certain personal and financial interests by legislators.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.40~~ 30-XXX. Disclosure.

A. Every legislator and legislator-elect shall file, as a condition to assuming office, a disclosure statement of his personal interests and such other information as is specified on the form set forth in ~~§ 2.1-639.41~~ 30-XXX and thereafter shall file such a statement annually on or before January 8. Disclosure forms shall be provided by the clerk of the appropriate house to each legislator and legislator-elect not later than November 30 of each year. Members of the Senate of Virginia shall file their disclosure forms with the Clerk of the Senate and members of the House of Delegates shall file their disclosure forms with the Clerk of the House of Delegates. The disclosure forms

of the members of the General Assembly shall be maintained as public records for five years in the office of the clerk of the appropriate house.

B. Candidates for the General Assembly shall file a disclosure statement of their personal interests as required by §§ 24.2-500 through 24.2-503.

C. Any legislator who has a personal interest in any transaction pending before the General Assembly and who is disqualified from participating in that transaction pursuant to § ~~2.1-639.38~~ 30-XXX and the rules of his house shall disclose his interest in accordance with the applicable rule of his house.

DRAFTING NOTE: Technical corrections only.

§ ~~2.1-639.41~~ 30-XXX. Disclosure form.

A. The disclosure form to be used for filings required by subsections A and B of § ~~2.1-639.40 A and B~~ 30-XXX shall be substantially as follows:

STATEMENT OF ECONOMIC INTERESTS.

Name
Office or position held or sought
Home address
Names of members of immediate family

DEFINITIONS AND EXPLANATORY MATERIAL.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the legislator, who is a dependent of the legislator or of whom the legislator is a dependent.

"Dependent" means any person, whether or not related by blood or marriage, who receives from the legislator, or provides to the legislator, more than one-half of his financial support.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" does not mean an association based on the receipt of retirement benefits or deferred compensation from a business by which the legislator is no longer employed. "Close financial association" does not include an association based on the receipt of compensation for work performed by the legislator as an independent contractor of a business that represents an entity before any state governmental agency when the legislator has had no communications with the state governmental agency.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is

used. "Gift" shall not include honorary degrees and presents from relatives. "Relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships.

Are you or a member of your immediate family a paid officer or paid director of a business?

EITHER check NO / / OR check YES / / and complete Schedule A.

2. Personal Liabilities.

Do you or a member of your immediate family owe more than \$10,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.)

EITHER check NO / / OR check YES / / and complete Schedule B.

3. Securities.

Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of \$10,000 invested in one business? Account for mutual funds, limited partnerships and trusts.

EITHER check NO / / OR check YES / / and complete Schedule C.

4. Payments for Talks, Meetings, and Publications.

During the past 12 months did you receive lodging, transportation, money, or anything else of value with a combined value exceeding \$200 for a single talk, meeting, or published work in your capacity as a legislator?

EITHER check NO / / OR check YES / / and complete Schedule D.

5. Gifts.

During the past 12 months did a business, government, or individual other than a relative or personal friend (i) furnish you with any gift or entertainment at a single event, and the value received by you exceeded \$50 in value or (ii) furnish you with gifts or entertainment in any combination and the value

received by you exceeded \$100 in total value; and for which you neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded \$50 in value. Account for all business entertainment (except if related to your private profession or occupation) even if unrelated to your official duties.

EITHER check NO / / OR check YES / / and complete Schedule E.

6. Salary and Wages.

List each employer that pays you or a member of your immediate family salary or wages in excess of \$10,000 annually. (Exclude state or local government or advisory agencies.)

If no reportable salary or wages, check here / /.

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7. Business Interests.

Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of \$10,000 in a business?

EITHER check NO / / OR check YES / / and complete Schedule F.

8. Payments for Representation and Other Services.

8A. Did you represent any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past 12 months in excess of \$1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers?

EITHER check NO / / OR check YES / / and complete Schedule G-1.

8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent any businesses before any state governmental agency for which total compensation was received during the past 12 months in excess of \$1,000?

EITHER check NO / / OR check YES / / and complete Schedule G-2.

8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia for which total compensation in excess of \$1,000 was received during the past 12 months?

EITHER check NO / / OR check YES / / and complete Schedule G-3.

9. Real Estate.

Do you or a member of your immediate family hold an interest, including a partnership interest, valued at \$10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

EITHER check NO / / OR check YES / / and complete Schedule H.

10. Real Estate Contracts with State Governmental Agencies.

Do you or a member of your immediate family hold an interest valued at more than \$10,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past ~~twelve~~ 12 months, with a state governmental agency? If the real estate

contract provides for the leasing of the property to a state governmental agency, do you or a member of your immediate family hold an interest in the real estate, including a corporate, partnership, or trust interest, option, easement, or land contract valued at more than \$1,000? Account for all such contracts whether or not your interest is reported in Schedule F or H. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

EITHER check NO / / OR check YES / / and complete Schedule I.

Statements of Economic Interests are open for public inspection.

AFFIRMATION_

In accordance with the rules of the house in which I serve, if I receive a request that this disclosure statement be corrected, augmented, or revised in any respect, I hereby pledge that I shall respond promptly to the request. I understand that if a determination is made that the statement is insufficient, I will satisfy such request or be subjected to disciplinary action of my house.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

Signature
Commonwealth of Virginia
..... of to wit:
The foregoing disclosure form was acknowledged before me
This day of, 19. . ., by,
Notary Public
My commission expires

(Return only if needed to complete Statement.)

SCHEDULES
TO
STATEMENT OF ECONOMIC INTERESTS_

NAME

SCHEDULE A - OFFICES AND DIRECTORSHIPS.

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

Name of Business	Address of Business	Position Held
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RETURN TO ITEM 2

SCHEDULE B - PERSONAL LIABILITIES.

Report personal liability by checking each category. Report only debts in excess of \$10,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan. Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

Check appropriate categories	Check one	
	\$10,001 to \$50,000	More than \$50,000
Banks
Savings institutions
Other loan or finance companies
Insurance companies
Stock, commodity or other brokerage companies
Other businesses: (State principal business activity for each creditor.)
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.....
Individual creditors: (State principal business or occupation of each creditor.)
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2. The personal debts of the members of my immediate family are as follows:

Check appropriate categories	Check one	
	\$10,001 to \$50,000	More than \$50,000
Banks

Savings institutions
 Other loan or finance companies
 Insurance companies
 Stock, commodity or other brokerage
 companies
 Other businesses:
 (State principal business activity for
 each creditor.)

 Individual creditors:
 (State principal business or occupation
 of each creditor.)

RETURN TO ITEM 3

SCHEDULE C - SECURITIES.

"Securities" INCLUDES stocks, bonds,
 mutual funds,
 limited partnerships, and commodity
 futures contracts.

"Securities" EXCLUDES
 certificates of deposit,
 money market funds, annuity
 contracts, and insurance
 policies.

Identify each business or Virginia governmental entity in which you
 or a member of your immediate family, directly or indirectly,
 separately or together, own securities valued in excess of \$10,000.

Do not list U.S. Bonds or other government securities not issued
 by the Commonwealth of Virginia or its authorities, agencies, or
 local governments. Do not list organizations that do not do
 business in this Commonwealth, but most major businesses conduct
 business in Virginia. Account for securities held in trust.

If no reportable securities, check here / /.

Name of Issuer	Type of Entity	Type of Security (stocks, bonds, mutual funds, etc.)	Check one	
			\$10,001 to \$50,000	More than \$50,000
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RETURN TO ITEM 4

SCHEDULE D - PAYMENTS FOR TALKS, MEETINGS, AND PUBLICATIONS.

List each source from which you received during the past 12 months lodging, transportation, money, or any other thing of value (excluding meals or drinks coincident with a meeting) with combined value exceeding \$200 for your presentation of a single talk, participation in one meeting, or publication of a work in your capacity as a legislator.

List payments or reimbursements by the Commonwealth only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, check here / /.

Payer	Approximate Value	Circumstances	Type of Payment (e.g., honoraria , Travel reim- bursement, etc.)
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RETURN TO ITEM 5

SCHEDULE E - GIFTS.

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded \$50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded \$100 in total value; and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded \$50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9 (§ 24.2-900 et seq.) of Title 24.2 of the Code of Virginia.

Name of Business, Organization, or Individual	City or County and State	Gift or Event	Approximate Value
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 RETURN TO ITEM 6

SCHEDULE F - BUSINESS INTERESTS.

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of \$10,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise, give the address of each property. Account for business interests held in trust.

Name of Business, Corporation, Partnership, Farm; Address of Rental Property	City or County and State	Nature of Enterprise (farming, law, rental property, etc.)	Gross Income	
			\$50,000 or less	More than \$50,000
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 RETURN TO ITEM 8

SCHEDULE G-1 - PAYMENTS FOR REPRESENTATION BY YOU.

List the businesses you represented before any state governmental agency, excluding any court or judge, for which you received total compensation during the past 12 months in excess of \$1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by you.

Identify each business, the nature of the representation and the amount received by dollar category from each such business. You may state the type, rather than name, of the business if you are required by law not to reveal the name of the business represented by you.

Name of Business	Type of Business	Purpose of Representation	Name of Agency	Amount Received				
				\$1,001 to \$10,000	\$10,001 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$250,000	\$250,001 and over
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SCHEDULE G-2 - PAYMENTS FOR REPRESENTATION BY ASSOCIATES.

List the businesses that have been represented before any state governmental agency, excluding any court or judge, by persons who are your partners, associates or others with whom you have a close financial association and who received total compensation in excess of \$1,000 for such representation during the past 12 months, excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such businesses by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Type of Business	Name of State Governmental Agency
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SCHEDULE G-3 - PAYMENTS FOR REPRESENTATION AND OTHER SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association and for which total compensation in excess of \$1,000 was received during the past 12

months.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

	Check if ser- vices were ren- dered	Type of ser- vice ren- dered	Value of Compensation				
			\$1,001 to \$10,000	\$10,001 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$250,000	\$250,001 and over
Electric utilities
Gas utilities
Telephone utilities
Water utilities
Cable television companies
Interstate transportation companies
Intrastate transportation companies
Oil or gas retail companies
Banks
Savings institutions
Loan or finance companies
Manufacturing companies (state type of product, e.g., textile, furniture, etc.)
Mining com-							

panies
 Life insurance companies
 Casualty insurance companies
 Other insurance companies
 Retail companies
 Beer, wine or liquor companies or distributors
 Trade associations
 Professional associations
 Associations of public employees or officials
 Counties, cities or towns
 Labor organizations
 Other

 RETURN TO ITEM 9

SCHEDULE H - REAL ESTATE.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at \$10,000 or more. You may list each parcel of real estate individually if you wish.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.
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RETURN TO ITEM 10

SCHEDULE I - REAL ESTATE CONTRACTS WITH STATE GOVERNMENTAL AGENCIES.

List all contracts, whether pending or completed within the past 12 months, with a state governmental agency for the sale or exchange of real estate in which you or a member of your immediate family holds an interest, including a corporate, partnership or trust interest, option, easement, or land contract, valued at \$10,000 or more. List all contracts with a state governmental agency for the lease of real estate in which you or a member of your immediate family holds such an interest valued at \$1,000 or more. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

List your real estate interest and the person or entity, including the type of entity, which is party to the contract. Describe any management role and the percentage ownership interest you or your immediate family member has in the real estate or entity.

List each governmental agency which is a party to the contract and indicate the county or city where the real estate is located.

State the annual income from the contract, and the amount, if any, of income you or any immediate family member derives annually from the contract.

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B. Any legislator who makes a knowing misstatement of a material fact on the Statement of Economic Interests shall be subject to disciplinary action for such violations by the house in which the legislator sits.

C. In accordance with the rules of each house, the Statement of Economic Interests of all members each house shall be reviewed. If a legislator's Statement is found to be inadequate as filed, the legislator shall notified in writing and directed to file an amended Statement correcting the indicated deficiencies, and a time shall be set within which such amendment shall be filed. If the Statement of Economic Interests, in either its original or amended form, is found to be adequate as filed, the legislator's filing shall be deemed in full compliance with this section as to the information disclosed thereon.

D. Ten percent of the membership of a house, on the basis of newly discovered facts, may in writing request the house in which those members sit, in accordance with the rules of that house, to review the Statement of Economic Interests of another member of that house in order to determine the adequacy of his filing. In accordance with the rules of each house, each Statement of Economic Interests shall be promptly reviewed, the adequacy of the filing determined, and notice given in writing to the legislator whose Statement is in issue. Should it be determined that the Statement requires correction, augmentation or revision, the legislator involved shall be directed to make the changes required within such time as shall be set under the rules of each house.

If a legislator, after having been notified in writing in accordance with the rules of the house in which he sits that his Statement is inadequate as filed, fails to amend his Statement so as to come into compliance within the time limit set, he shall be subject to disciplinary action by the house in which he sits. No legislator shall vote on any question relating to his own Statement.

DRAFTING NOTE: Technical corrections. In schedule D, the term "Honoraria" has been stricken since pursuant to current law (existing § 2.1-639.33) acceptance of honoraria by legislators is prohibited.

~~§ 2.1-639.42 30-XXX. Creation of Senate and House Ethics Advisory Panels; composition terms; quorum and compensation.~~

A. The Senate Ethics Advisory Panel and the House Ethics Advisory Panel are hereby continued. The provisions of ~~§§ 2.1-639.43 30-XXX through 2.1-639.52 30-XXX~~ shall be applicable to each panel.

B. The Senate Ethics Advisory Panel shall be composed of five members: three of whom shall be former members of the Senate; and two of whom shall be citizens of the Commonwealth who have not previously held such office. The members shall be nominated by the Committee on Privileges and Elections of the Senate and confirmed by the Senate. ~~Of the five members to be appointed in 1992 to fill expired terms, one former member of the Senate shall serve for a term of one year, one former member of the Senate and one citizen of the Commonwealth shall serve for terms of three years, and one former member of the Senate and one citizen of the Commonwealth shall serve for terms of four years. Subsequent~~ After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel.

C. The House Ethics Advisory Panel shall be composed of five members: one of whom shall be a retired justice or judge of a court of record; two of whom shall be former members of the House; and two of whom shall be citizens of the Commonwealth, at least one of whom shall not have previously held such office. The members shall be nominated by the Speaker of the House of Delegates and confirmed by the House of Delegates. ~~Of the five members to be appointed in 1992 to fill expired terms, the retired judge or justice shall serve for a term of one year, one former member of the House and one citizen of the Commonwealth shall serve for terms of three years, and one former member of the House and one citizen of the Commonwealth shall serve for terms of four years. Subsequent~~ After initial appointments, all appointments shall be for terms of four years each except for unexpired terms. Nominations shall be made so as to assure bipartisan representation on the Panel.

D. Each panel shall elect its own chairman.

E. No member shall serve more than three successive four-year terms. Vacancies shall be filled only the unexpired term.

F. Three members constitute a quorum of the Panel. A vacancy shall not impair the right of the remaining members to exercise all powers of the Panel.

G. The chairman and members of the Panel, while serving on the business of the Panel, are performing legislative duties and shall be entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.

DRAFTING NOTE: Technical corrections. Reference to original, staggered terms has been deleted as obsolete. This proposed section is comprised of the following existing sections: subsections A through D are § 2.1-639.42, subsection E is § 2.1-639.43, subsection F is § 2.1-639.44, and subsection G is § 2.1-639.51.

~~§ 2.1-639.43. Terms of office; vacancies.~~

~~No member shall serve more than three successive four-year terms. Vacancies shall be filled only for the unexpired term.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 30-XXX (existing § 2.1-639.42) supra.

~~§ 2.1-639.44. Quorum.~~

~~Three members constitute a quorum of the Panel. A vacancy does not impair the right of the remaining members to exercise all powers of the Panel.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection F in proposed § 30-XXX (existing § 2.1-639.42).

~~§ 2.1-639.45 30-XXX. Powers and duties of Panel.~~

The powers and duties of the Panel shall be applied and used only in relation to members of the respective house of the General Assembly for which it is created. In addition to the other powers and duties specified in this article the Panel has the power to organize and preserve statements and reports filed with the Panel for a period of five years from the date of receipt. At the end of the five-year period, these documents may be destroyed.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-639.46 30-XXX. Possible violations. Filing of complaints; procedures; disposition.~~

~~A. Institution of proceedings.—In response to the signed and sworn complaint of any citizen of the Commonwealth filed with submitted to the Panel, the Panel shall inquire into any alleged violation of Articles 2 through 5 (§ 2.1-639.32-30-XXX et seq.) of this chapter by any member of the respective house of the General Assembly in his current term or his immediate prior term. Complaints shall be filed with the Director of the Division of Legislative Services, who shall forthwith promptly submit the complaint to the chairman of the appropriate Panel.~~

~~B. Notice and hearing.—If after such preliminary investigation as it may make, the Panel determines to proceed with an inquiry into the conduct of any legislator, the Panel shall immediately notify in writing the individual of the fact of the inquiry and the charges against him and shall schedule one or more hearings on the matter. The legislator shall have the right to present evidence, cross-examine witnesses, face and examine the accuser, and be represented by counsel at any hearings. In its discretion, the Panel may grant the legislator any other rights or privileges not specifically enumerated herein in this subsection, and, in addition, may hold hearings in closed session. However, the legislator whose conduct is under inquiry, by written request filed with the Panel, may require that all hearings before the Panel concerning the legislator be public.~~

DRAFTING NOTE: Technical corrections only.

~~§-2-1-639.47~~ 30-XXX. Subpoenas.

The Panel is ~~hereby empowered to~~ may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Panel may apply to the Circuit Court of the City of Richmond to compel obedience to the subpoenas of the Panel. Notwithstanding any other provisions of law, every state and local governmental agency, and units and subdivisions thereof shall make available to the Panel any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Panel designates as being necessary for the exercise of its powers and duties.

DRAFTING NOTE: Technical corrections only.

~~§-2-1-639.48~~ 30-XXX. Disposition of cases.

Within 120 days of the ~~Chairman's~~ chairman's receiving a signed and sworn complaint, the Panel, or a majority of its members acting in its name, shall dispose of the matter in one of the following ways:

1. If the Panel determines that the complaint is without merit, the Panel shall dismiss the complaint and take no further action. In such case, the Panel shall retain its records and findings in confidence unless the legislator under inquiry requests in writing that the records and findings be made public.

2. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated the provisions of this chapter but that the violation was not made knowingly, the Panel shall refer the matter by a written report setting forth its findings and the reasons therefor to the appropriate house of the General Assembly for appropriate action. All Panel reports, which are advisory only, shall be delivered to the Clerk of the appropriate house, who shall refer the report to the Committee on Privileges and Elections in accordance with the rules of the appropriate house. Said Committee shall in all cases report, after due hearings and consideration, its determination of the matter and its recommendations and reasons for its resolves to the appropriate house. If the Committee deems disciplinary action warranted, it shall report a resolution to express such action. The appropriate house as a whole shall then consider the resolution, and if it finds the legislator in violation of any provision of this chapter, it may by recorded vote take such disciplinary action as it deems warranted.

3. If the Panel determines that there is a reasonable basis to conclude that the legislator knowingly violated any provision of Article 2 (~~§-2-1-639.32-30-XXX~~ et seq.), 3 (~~§-2-1-639.34-30-XXX~~ et seq.), 4 (~~§-2-1-639.37-30-XXX~~ et seq.) or 5 (~~§-2-1-639.39-30-XXX~~ et seq.) of this chapter, except ~~§ 2-1-639.38 30-XXX~~ or subsection C of §-2-1-639.40-C 30-XXX, it shall refer the matter by a written report setting forth its findings and the reasons therefor to the Attorney General for such action ~~as he shall deem~~ deems appropriate. The Panel shall also file its report with the Clerk of the appropriate house, who shall refer the report in accordance with the rules of his house. In the event the Attorney General determines not to prosecute the alleged violation, he shall notify the Clerk of the appropriate house of his determination and the Clerk shall send the report to the Committee on Privileges and Elections. The matter shall thereafter be handled in accordance with the provisions of subdivision ~~of this subsection.~~

4. If the Panel determines that there is a reasonable basis to conclude that the legislator has violated ~~2-1-639.38 30-XXX~~ or subsection C of §-2-1-639.40-C 30-XXX, it shall refer the matter by a written report to the appropriate house pursuant to subdivision 2. As its first order of business other than organizational matters and committee work, the house in which the member sits shall immediately upon the convening of the next regular or special session take up and dispose of the matter by taking one or more of the following actions: (i) dismiss the complaint; (ii) sustain the complaint and reprimand the member; (iii) sustain the complaint, censure the member and strip the member of his seniority; (iv) sustain the complaint and expel the member by a two-thirds vote of the elected members; (v) in the event the house finds a knowing violation, it may refer the matter to the Attorney General pursuant to subdivision 3.

5. The Panel shall make public any report that it refers pursuant to the provisions of subdivision 2, 3 or 4 on the date it refers its report.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.49 30-XXX.~~ Confidentiality of proceedings.

All proceedings during the investigation of any complaint by the Panel shall be confidential. This rule of confidentiality shall apply to Panel members and their staff, the Committee on Privileges and Elections and its staff and the Division of Legislative Services.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.50 30-XXX.~~ Staff for Panel.

The Panel shall have the authority to hire staff, subject to the approval of the President Pro Tempore of the Senate for the Senate Ethics Advisory Panel and subject to the approval of the Speaker of the House of Delegates for the House Ethics Advisory Panel.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.51.~~ Allowances.

~~The chairman and members of the Panel, while serving on the business of the Panel, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection G in proposed § 30-XX (existing § 2.1-639.42).

~~§-2.1-639.52 30-XXX.~~ Jurisdiction of Panel.

The Senate and House Ethics Advisory Panels shall have jurisdiction over any complaint alleging a violation of Articles 2 (~~§-2.1-639.32 30-XXX~~ et seq.) through 5 (~~§-2.1-639.39 30-XXX~~ et seq.) of this chapter which occurs on or after August 1, 1987, and over any complaint alleging a violation of the Comprehensive Conflict of Interests Act occurring after July 1, 1984, and prior to August 1, 1987.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.53 30-XXX.~~ Senate and House Committees on Standards of Conduct.

Either house of the General Assembly may establish, in its rules, a Committee on Standards of Conduct to be appointed as provided in its rules and consisting of three members, one of whom shall be a member of the minority party. The Committee shall consider any request by a member of its house for an advisory opinion as to whether the facts in a particular case would constitute a violation of the provisions of this chapter and may consider other matters assigned to it pursuant to the rules of its house.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.53:1 30-XXX.~~ Disciplinary sanctions and Adoption of rules governing procedures and disciplinary sanctions.

Each house of the General Assembly shall adopt rules governing procedures and disciplinary sanctions for members who have committed alleged violations of this chapter.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.59 30-XXX.~~ Enforcement.

The provisions of this chapter shall be enforced by the Attorney General. In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties:

1. If he determines that any legislator has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of the legislator; and

2. He shall render advisory opinions to any legislator who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which of his opinions or portions thereof are of general interest to the public and which may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any legislator has the right to seek a declaratory judgment or other judicial relief as provided by law.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.54~~ 30-XXX. Knowing violation of chapter a misdemeanor.

Any legislator who knowingly violates any of the provisions of Articles 2 through 5 (~~§§ 2-1-639.32~~ 30-XXX through ~~2-1-639.41~~ 30-XXX) of this chapter, shall be guilty of a Class 1 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter. There shall be no prosecution for a violation of ~~§ 2-1-639.38~~ 30-XXX or subsection C of § 2-1-639.40 ~~C~~ 30-XXX unless the house in which the member sits has referred the matter to the Attorney General as provided in subdivision 4 of ~~§ 2-1-639.48~~ 30-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.55~~ 30-XXX. Advisory opinions.

A legislator shall not be prosecuted or disciplined for a violation of this chapter if his alleged violation resulted from his good faith reliance on a written opinion of a committee on standards of conduct established pursuant to ~~§ 2-1-639.53~~ 30-XXX, or an opinion of the Attorney General as provided in ~~§ 2-1-639.59~~ 30-XXX, and the opinion was made after his full disclosure of the facts.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.56~~ 30-XXX. Invalidation of contract; rescision of sales.

A. Any contract made in violation of ~~§ 2-1-639.33~~ 30-XXX or ~~§ 2-1-639.35~~ 30-XXX may be declared void and may be rescinded by the contracting or selling governmental authority within five years of the date of ~~such the~~ contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of rescision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase made in violation of ~~§ 2-1-639.33~~ 30-XXX or ~~§ 2-1-639.35~~ 30-XXX may be rescinded by the contracting or selling governmental agency within five years of the date of ~~such the~~ purchase.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-639.57~~ 30-XXX. Forfeiture of money, etc., derived from violation of this chapter.

In addition to any other fine or penalty provided by law, any money or other thing of value derived by a legislator from a violation of ~~§§ 2-1-639.33~~ 30-XXX through ~~2-1-639.38~~ 30-XXX shall be forfeited and, in the event of a knowing violation, there may also be imposed a civil penalty in an amount equal to the amount of money or

ing of value forfeited to the Commonwealth. If the thing of value received by the legislator in violation of this chapter should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of forfeiture.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.61~~ 30-XXX. Criminal prosecutions.

A. Violations of this chapter may be prosecuted notwithstanding the jurisdiction of, or any pending proceeding before, the House or Senate Ethics Advisory Panel.

B. Nothing in this chapter shall limit or affect the application of other criminal statutes and penalties as provided in the Code of Virginia, including but not limited to bribery, embezzlement, perjury, conspiracy, fraud and violations of the Fair Elections Practices Act.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.58~~ 30-XXX. Limitation of actions.

The statute of limitations for the criminal prosecution of a legislator for violation of any provision of this chapter shall be one year from the time the Attorney General has actual knowledge of the violation or five years from the date of the violation, whichever event first occurs.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-639.60~~ 30-XXX. Venue.

Any prosecution for a violation of this chapter shall be brought in the circuit court of the jurisdiction in which the legislator resides, or the jurisdiction in which he resided at the time of the alleged violation if he is no longer a resident of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Auditor of Public Accounts.

~~§-2.1-153~~ 30-XXX. Election, term and compensation; vacancy.

The Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly, for the term of four years, as provided in Article IV, Section 18 of the Constitution of Virginia, and he shall receive such compensation as may be appropriated by law for the purpose. In the event the office of Auditor of Public Accounts becomes vacant while the General Assembly is not in session, the Joint Legislative Audit and Review Commission shall appoint a successor to serve until thirty days after the commencement of the next session of the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§-2.1-154~~ 30-XXX. Official bonds.

The penalty of the bond of the Auditor of Public Accounts shall be fixed by the Governor, ~~but the same~~ which shall not be less than \$5,000. Such of the employees in the office of the Auditor of Public Accounts as, in the opinion of the Governor, should be bonded shall be bonded, and the penalties of such bonds, respectively, shall be fixed by the Auditor of Public Accounts, subject to the approval of the Governor. The premiums on ~~the~~ ~~and mentioned in this section~~ such bonds shall be paid out of the state treasury.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-172~~ 30-XXX. Employment of assistants; location of offices.

~~A. The Auditor of Public Accounts is hereby authorized to may~~ employ, with the approval of the Joint Legislative Audit and Review Commission ~~such the necessary~~ assistants as ~~may be necessary~~ to enable him to carry out the provisions of this chapter.

~~B. The office of the Auditor of Public Accounts shall be located in the City of Richmond, and he shall be provided with suitable offices for the conduct of the business of his department.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-172 and subsection B is § 2.1-171.

~~§ 2.1-171. Location of office of Auditor; offices to be provided.~~

~~The office of the Auditor of Public Accounts shall be located in the City of Richmond, and he shall be provided with suitable offices for the conduct of the business of his department.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 2.1-172).

~~§ 2.1-155~~ 30-XXX. Duties and powers generally.

The Auditor of Public Accounts shall audit all the accounts of every state department, officer, board, commission, institution or other agency ~~in any manner handling~~ any state funds. In the performance of such duties and the exercise of such powers he may employ the services of certified public accountants, provided the cost thereof shall not exceed such sums as may be available out of the appropriation provided by law for the conduct of his office.

~~If, at any time, the Auditor of Public Accounts shall at any time discover~~ discovers any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or ~~if at any time it shall come~~ comes to his ~~knowledge~~ attention that any unauthorized, illegal, or unsafe handling or expenditure of state funds is contemplated but not consummated, in either case he shall ~~forthwith~~ promptly lay the facts before the Governor, the Joint Legislative Audit and Review Commission and the Comptroller.

In compliance with the provisions of the federal Single Audit Act of 1984, Public Law 98-502, the Joint Legislative Audit and Review Commission may authorize the Auditor of Public Accounts to ~~biennially~~ audit ~~biennially~~ the accounts pertaining to federal funds received by state departments, officers, boards, commissions, institutions or other agencies.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-156~~ 30-XXX. Devising system of bookkeeping and accounting for state and local offices.

The Auditor of Public Accounts, under the direction of the Joint Legislative Audit and Review Commission shall devise a modern, effective and uniform system of bookkeeping and accounting for the use of all county, city and town officials and agencies handling the revenues of the Commonwealth or of any political subdivision thereof; ~~provided, that the.~~ The Auditor of Public Accounts and the Governor may approve any existing system.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-169~~ 30-XXX. Power as to witnesses; perjury.

The Auditor of Public Accounts, or his deputy, while conducting any examination authorized by this chapter, ~~shall have power to~~ may (i) administer an oath to any person whose testimony may be required in any such examination, ~~and to (ii)~~ compel the appearance and attendance of such person for the purpose of any such examination and investigation, and to (iii) call for any books and papers necessary to such examination. If any person willfully ~~swear~~ swears falsely in such examination he shall be guilty of perjury.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-170~~ 30-XXX. To whom Auditor to report defaults or irregularities.

If the result of any examination made by the Auditor of Public Accounts, or his deputy, under this chapter, ~~shall show~~ shows that any moneys received have not been properly accounted for or have been paid out contrary to law or that there has been any irregularity, it shall be the duty of such Auditor to report ~~the same~~ it to the Comptroller and the Governor. In case there is any irregularity in the accounts of the Comptroller, the Auditor shall ~~make report of the same~~ it to the Governor and to the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-163~~ 30-XXX. Examination of certain accounts upon direction of state officers.

The Auditor of Public Accounts when called upon by the Governor shall examine the accounts of any institution maintained in whole or in part by the Commonwealth and, upon the direction of the Comptroller, shall examine the accounts of any officer required to settle his accounts with him; and upon the direction of any other state officer at the seat of government he shall examine the accounts of any person required to settle his accounts with such officer.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-160~~ 30-XXX. Inspection of accounts and vouchers; furnishing information and assistance to members of General Assembly; cooperation by state institutions, etc.

A. The Auditor of Public Accounts or his deputy shall, from time to time, inspect ~~and scrutinize~~ the accounts and vouchers of all state officers referred to in ~~§§ 2.1-156 2.2-XXX and 2.1-157 2.2-XXX~~ and upon ~~upon~~ the written request in writing of any member of the General Assembly, the Auditor of Public Accounts shall furnish ~~such~~ the requested information ~~as is called for~~ and shall provide technical assistance upon any matter requested by such member. To this end he shall have access to records of all state institutions, departments and agencies. Such institutions, departments and agencies shall furnish all information requested by the Auditor and shall cooperate with him to the fullest extent.

B. Every inspection authorized by this section shall be made without notice to the official whose accounts are to be inspected, and it shall be the duty of the official whose books and accounts and vouchers are being inspected to produce such books, vouchers and accounts and give the Auditor of Public Accounts or his deputy all necessary help and aid in making the inspection. If any official fails to comply with the requirements of this subsection, he shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-160 and subsection B is § 2.1-161.

~~§ 2.1-161.~~ Inspection to be made without notice; official to produce books, etc., and give aid; penalty.

~~Every such inspection shall be made without notice to the official whose accounts are to be inspected, and it shall be the duty of the official whose books and accounts and vouchers are being inspected to produce such books, vouchers and accounts and give the Auditor of Public Accounts or his deputy all necessary help and aid in making such inspection. Should any official fail to perform the requirements of this section he shall be guilty of a misdemeanor.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 2.1-160) supra.

~~§ 2.1-172.1~~ 30-XXX. Annual report.

The Auditor of Public Accounts shall make an annual report of the ~~acts and doings~~ activities of his office to the Governor and the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-155.3~~ 30-XXX. State agencies, courts, and local constitutional officers to report certain fraudulent transactions; penalty.

A. Upon the discovery of circumstances suggesting a reasonable possibility that a fraudulent transaction has occurred involving funds or property under the control of any state department, court, officer, board, commission, institution or other agency of the Commonwealth, including local constitutional officers and appointed officials exercising the powers of elected constitutional officers, as to which one or more officers or employees of state or local government may be party thereto, the state agency head, court clerk or local official in charge of such entity shall ~~forthwith~~ promptly report such information ~~as is available~~ to the Auditor of Public Accounts ("Auditor") and the Superintendent of State Police ("Superintendent").

B. The Auditor or the Superintendent shall review the information reported pursuant to subsection A and individually determine the most appropriate method to investigate the information. In the event that the Auditor or the Superintendent determines to conduct an investigation, he shall notify the other of the commencement of ~~such~~ the investigation as soon as practicable, unless the information involves the Auditor or the Superintendent.

C. No state department, court, officer, board, commission, institution or other agency of the Commonwealth, including local constitutional officers and appointed officials exercising the powers of elected constitutional officers, shall employ or contract with any person, firm, corporation, or other legal entity to conduct an investigation or audit of information reported pursuant to subsection A without obtaining the prior written approval from the Auditor and the Superintendent. Pending acknowledgement of the report and receipt of the written approval from the Auditor and the Superintendent, the state department, court, officer, board, commission, institution, or other agency of the Commonwealth, including local constitutional officers and appointed officials exercising the powers of elected constitutional officers, may use their employees to audit the circumstances reported in subsection A to prevent the loss of assets.

D. All state departments, courts, officers, boards, commissions, institutions or other agencies of the Commonwealth, including local constitutional officers and appointed officials exercising the powers of elected constitutional officers and their employees, shall cooperate to the fullest extent in any investigation or audit which may occur at the direction of the Auditor or the Superintendent or both as a result of information reported pursuant to subsection A.

E. The willful failure to make the report as required ~~herein by this section~~ shall constitute a Class 3 misdemeanor.

F. Nothing herein shall affect the requirements of § 52-8.2.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-164~~ 30-XXX. Certain political subdivisions to file report of audit; period in which report kept as public record; when audit not required; sworn statement of exempted entities; publication of summary of financial condition; repeal of conflicting provisions.

A. Each authority, commission, district or other political subdivision the members of whose governing body are not elected by popular vote shall annually, within three months after the end of its fiscal year, have an audit

performed covering its financial transactions for such fiscal year according to the specifications of the Auditor of Public Accounts and file with the Auditor of Public Accounts a copy of the report, unless exempted as provided herein in accordance with subsection B. The Auditor of Public Accounts shall receive such reports and keep the same as public records for a period of ten years from their receipt.

B. No audit, however, shall be required for any fiscal year during which such entity's financial transactions did not exceed the sum of \$5,000.

As used ~~herein in this section~~, "financial transactions" shall not include financial transactions involving notes, bonds or other evidences of indebtedness of such entity the proceeds of which are held or advanced by a corporate trustee or other financial institution and not received or disbursed directly by such entity.

In the event an audit is not required ~~by the foregoing~~, the entity shall file a statement under oath certifying that the transactions did not exceed such sum and, as to all transactions involving notes, bonds or other evidences of indebtedness which are exempted, the statement shall be accompanied by an affidavit from the trustee or financial institution certifying that it has performed the duties required under the agreement governing such transactions. Notwithstanding the foregoing, the Auditor of Public Accounts may require ~~such an~~ audit ~~should if he deems such deems it~~ to be necessary to determine the propriety of the entity's financial transactions.

In the case of a water and sewer authority required by a governing body to have an audit conducted as specified in subsection B of ~~§ 15.1-1269.2 B, such~~ 15.2-5145 the authority shall file the certified audit with the Auditor of Public Accounts.

At the time the report required ~~herein by this section~~ is filed with the Auditor of Public Accounts every such authority, commission, district or other political subdivision, except those exempted from the audit report requirement ~~as provided herein~~, shall publish, in a newspaper of general circulation in the county, city or town wherein ~~such the~~ authority, commission, district or other political subdivision is located, a summary statement reflecting the financial condition of ~~such the~~ authority, commission, district or other political subdivision, which shall include a reference to where the detailed statement may be found.

Any provision of law, general or special, which by its terms requires an audit that is not required by this ~~statute is section~~ shall be repealed to the extent of any conflict.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-165 30-XXX.~~ Audit of accounts of city and county officers handling state funds; audit report thereof; reimbursement of expenses.

A. At least once in every two years, and at ~~such other~~ times as the Governor ~~may direct, it shall be the duty of directs~~, the Auditor of Public Accounts, either in person or through his assistants, ~~to shall~~ audit all accounts and records of every city and county official and agency in ~~this the~~ Commonwealth handling state funds, making a detailed written report thereof to the Governor within thirty days after each audit. Reports so made shall be public records, and the Governor shall transmit copies of the report to the General Assembly at each regular session ~~hereof copies of the same.~~

B. Every city and county, the accounts and records of whose officials or agencies are audited in accordance with subsection A, shall reimburse the Commonwealth to the extent of one-half of the expense connected with the audit, to be paid into the state treasury by the Auditor of Public Accounts. All such sums so repaid shall be placed by the Comptroller to the credit of the current appropriation made to the Auditor of Public Accounts and may be used by him for the purpose of carrying out the provisions of subsection A.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-165 and subsection B is § 2.1-166.

~~§ 2.1-166. Reimbursement of part of expense of such audit.~~

~~Every locality, the accounts and records of whose officials or agencies are audited in pursuance of § 2-1-165, shall reimburse the Commonwealth to the extent of one half of the expense connected therewith, the same to be paid into the state treasury on the presentation by the Auditor of Public Accounts of a bill therefor. All such sums so repaid shall be placed by the Comptroller to the credit of the current appropriation made to the Auditor of Public Accounts and may be used by the latter for the purpose of carrying out the provisions of § 2-1-165.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 2.1-165) supra.

~~§ 2-1-167 30-XXX. Auditor to perform services for counties, cities, school divisions and certain towns; costs.~~

A. The Auditor of Public Accounts, when requested by the governing body of any unit of local government, may make and establish a system of bookkeeping and accounting for such unit which shall conform to generally accepted accounting principles. He shall make and establish a uniform system of fiscal reporting for the treasurers or other chief financial officers, clerks of the courts and school divisions of all counties and cities, and all towns having a population of 3,500 or ~~over more~~ and all towns constituting a separate school division regardless of population. He may at any time, examine the books and accounts of such officers, and report to the supervisors or councils, the findings of his investigation, if it relates to the affairs of such county or city or town.

B. The cost of such service shall be borne by the county or city receiving the service of the Auditor of Public Accounts and shall not exceed an amount sufficient to reimburse the Commonwealth for the actual cost to the Commonwealth of the service. The fees so charged, upon an account rendered by the Auditor of Public Accounts, shall be remitted by the treasurer of the county or city out of any funds within his control, within thirty days to the State Treasurer, together with the account rendered by the Auditor of Public Accounts. The Auditor of Public Accounts shall pay into the state treasury the amount so received to the credit of the funds of the Auditor of Public Accounts so that it may be available for carrying out the provisions of subsection A.

No part of the cost and expense of any such audit shall be paid by any county or city whose board of supervisors or other governing body or city council has its accounts audited annually by a certified public accountant according to specifications furnished by the Auditor of Public Accounts and furnishes him with a copy of the audit.

The costs of any audit of the books and accounts of any city treasurer who neither collects nor disburses any city revenues or local taxes shall not be required to be paid by the city or any such treasurer.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 2.1-167 and subsection B is § 2.1-168.

~~§ 2.1-168. Cost of such service.~~

~~The cost of such service as may be so required shall be borne by the county or city receiving the service of the Auditor of Public Accounts and shall not exceed an amount sufficient to reimburse the Commonwealth for the actual cost to the Commonwealth of such service. The fees so charged the counties and cities for the service herein mentioned, upon an account rendered by the Auditor of Public Accounts, shall be remitted by the treasurer of the county or city out of any funds in his hands, within thirty days to the State Treasurer, together with the account rendered by the Auditor of Public Accounts, who shall pay into the state treasury the amount so received to the credit of the funds of the Auditor of Public Accounts so that such moneys may be available for carrying out the provisions of § 2.1-167. But no part of the cost and expense of any such audit shall be paid by any county or city whose board of supervisors or other governing body or city council has its accounts audited annually by a certified public accountant according to specifications furnished by the Auditor of Public Accounts and furnishes such Auditor with a copy of such audit. And the costs of any audit of the books and accounts of any city treasurer who neither collects nor disburses any city revenues or local taxes shall not be required to be paid by the city or any such treasurer.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 2.1-168).

~~§ 2-1-155-2~~ 30-XXX. Assumption of duties by Joint Legislative Audit and Review Commission upon failure of Auditor to perform; procedure.

~~While the General Assembly is in recess~~ Whenever the General Assembly is not in session, the Joint Legislative Audit and Review Commission ~~shall have the authority to~~ may perform any of the duties of the Auditor of Public Accounts upon its determination that the Auditor is unable or unwilling to perform any of his duties by reason of incapacity, malfeasance in office, neglect of duty, conflict of interest, or criminal activity relating to the performance of his duties. Such action shall, after notice to the Auditor of Public Accounts and an opportunity to be heard, require a three-fifths vote of all Commission members and shall be effective until the House of Delegates, acting at the next regular or special session of the General Assembly, ~~shall determine~~ determines whether to institute impeachment proceedings against the Auditor, as provided in Article IV, Section 17 of the Constitution of Virginia or until the Joint Legislative Audit and Review Commission, by a majority vote of its membership, determines that the Auditor of Public Accounts can resume the performance of his duties. Upon institution of impeachment proceedings by the House of Delegates, the Commission may continue to perform such duties until the conclusion of impeachment proceedings.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Code Commission.

~~§ 9-77.4~~ 30-XXX. Virginia Code Commission—continued; membership, terms and vacancies; compensation; staff.

A. The Virginia Code Commission (the "Commission"), established by Chapter 400 of the 1946 Acts of Assembly, hereinafter referred to in this chapter as "Commission," is continued as a is established in the legislative agency branch of state government. ~~The Commission shall be composed~~ consist of:

1. Two members of the Senate appointed by the Senate Committee on Privileges and Elections ~~of that body~~ for terms coincident with their terms as members of the Senate, and two members of the House of Delegates appointed by the Speaker ~~thereof~~ of the House of Delegates for terms coincident with their terms as members of the House of Delegates;

2. Two circuit court judges, both of whom may be retired or inactive, appointed by the Governor for terms of four years each. If the Governor fails to make such appointment within ninety days of the expiration of the term or the occurrence of a vacancy, the Speaker ~~of the House of Delegates~~ shall make the appointment. If the Governor fails a second time to make such appointment, the Senate Committee on Privileges and Elections shall make the appointment, and the Speaker and Privileges and Elections Committee shall alternate such appointments thereafter;

3. One former member of the House of Delegates appointed by the Speaker ~~thereof~~ and one former member of the Senate appointed by the Senate Committee on Privileges and Elections, both for four-year terms, who shall be entitled to all the rights granted under § 30-5; and

4. The Attorney General, or an assistant Attorney General designated by the Attorney General, and the Director of the Division of Legislative Services, ~~as members ex officio.~~

B. All ~~such~~ members of the Commission shall serve until the expiration of their terms or until their successors shall qualify. Subsequent appointments shall be made for similar terms, and vacancies shall be filled for the unexpired terms by the persons authorized to make the in the manner of the original appointments.

C. Members of the Commission shall receive compensation as provided in § 30-19.12. All members shall receive their necessary expenses incurred in the performance of their duties.

D. The Division of Legislative Services shall provide staff support to the Commission. The Commission may also directly employ part-time or full-time personnel as needs occur, including experts who have special knowledge of specific titles of the Code being revised.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A and B are § 9-77.4, subsection C is § 9-77.5, and subsection D is § 9-77.6.

~~§ 9-77.5. Compensation and expenses.~~

~~Members of the Commission shall receive compensation as provided in § 14.1-18. All members shall receive their necessary expenses incurred in attendance upon meetings or otherwise incurred in the performance of their duties.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 30-XXX (existing § 9-77.4) supra.

~~§ 9-77.6. Staff support; employees and consultants.~~

~~The Division of Legislative Services shall provide such staff support, both administrative and professional, as the Commission may require. The Commission may also directly employ part time or full time personnel as needs occur, including experts who have special knowledge of specific titles of the Code being revised.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 30-XXX (existing § 9-77.4) supra.

~~§ 9-77.7 30-XXX. Publication of Code of Virginia and Administrative Code; authority regarding type and form.~~

~~The Commission is charged with the responsibility of publishing and maintaining a Code of the general and permanent statutes of the Commonwealth. The Commission shall also have the responsibility of publishing and maintaining an administrative code when the Commission determines that the publication of such an administrative code is within the best interests of the citizens of the Commonwealth and will not result in an expenditure of general fund revenues unless provided in the general appropriations act the Virginia Administrative Code.~~

~~The Commission may arrange for the Code of Virginia and an administrative code the Virginia Administrative Code (i) to be printed and published by or at the expense of the Commonwealth and sold and otherwise distributed by the Commonwealth, or the Commission may arrange for the Code of Virginia and an administrative code (ii) to be privately printed and published, under the direction and supervision of the Commission and upon such terms as the Commission may provide, and sold and distributed by the publisher or publishers upon such terms, including terms as to price, as the Commission may provide.~~

~~The Commission shall have full discretion to arrange for the publication of annotated or unannotated copies of the Code of Virginia and an administrative code the Virginia Administrative Code; to fix the number of volumes; and to decide all questions of form, makeup and arrangement, including title pages, prefaces, annotations, indices, tables of contents and reference, appendices, paper, type, binding and lettering. The Commission may arrange for the Code of Virginia and an administrative code the Virginia Administrative Code to be made permanent editions and kept current by means of supplements and replacement volumes.~~

DRAFTING NOTE: Technical corrections. Language stricken in the first paragraph has been deleted as obsolete since the Virginia Administrative Code is now published.

~~§-9-77-8 30-XXX.~~ Contracting with publishers; property rights regarding Code of Virginia and ~~administrative code-Virginia Administrative Code~~ material.

A. The Commission is ~~authorized to~~ may enter into a ~~contract or~~ contracts with any reputable person, ~~persons, or firm~~ for such editorial work, printing, indexing, annotating and other work as may be necessary. All parts of any code published or authorized to be published by the Commission, including statute text, regulation text, catchlines, historical citations, numbers of sections, articles, chapters and titles, frontal analyses and revisor's notes, shall become and remain the exclusive property of the Commonwealth to be used only as the Commission may direct. However, the Commission shall acknowledge a property right in and the right to copyright materials prepared and added to any code by the person or ~~persons or firm~~ preparing it. Such materials may include, inter alia, case annotations, indices, various notes concerning sections and reference tables.

B. Trade secrets or proprietary information submitted by any person ~~or firm~~ contracting or proposing to contract with the Commission in connection with the publication of (i) the Code of Virginia, (ii) the Virginia Administrative Code or (iii) any other materials published by the Commission shall not be subject to public disclosure under the Virginia Freedom of Information Act (~~§-2-1-340-2.2-XXX~~ et seq.). However, the person or firm shall invoke the protections of this subsection prior to or upon submission of the data or other materials to be protected and state the reasons why protection is necessary. The Commission may, in closed ~~or executive~~ session, discuss, consider, review or deliberate upon proposals which contain trade secrets or proprietary information submitted by any person ~~or firm~~ contracting or proposing to contract with the Commission in connection with the publication of the Code of Virginia or the Virginia Administrative Code.

DRAFTING NOTE: Technical corrections only.

~~§-9-77-9 30-XXX.~~ Codification of session laws.

Immediately following each regular session of the General Assembly, the Commission shall arrange for the codification and incorporation into the Code of Virginia all general and permanent statutes enacted at such regular sessions and at all special sessions that have occurred between that regular session and the immediately preceding regular session. ~~Such~~ The statutes may be incorporated by supplements to each volume, replacement of any volume or volumes, or a combination thereof.

Unless prevented by unusual circumstances, this work and the distribution of each supplement and replacement volume shall be completed prior to the date when the statutes contained in each such supplement and replacement volume become effective.

DRAFTING NOTE: Technical corrections only.

~~§-9-77-10 30-XXX.~~ Authority for minor changes to the Code of Virginia.

The Commission may correct unmistakable printer's errors, misspellings and other unmistakable errors in the statutes as incorporated into the Code of Virginia, and may make consequential changes in the titles of officers and agencies, and other purely consequential changes made necessary by the use in the statutes of titles, terminology and references, or other language no longer appropriate.

The Commission may renumber, rename, and rearrange any Code of Virginia titles, chapters, articles, and sections in the statutes adopted, and make corresponding changes in lists of chapter, article, and section headings, catchlines, and tables, when, in the judgment of the Commission, it is necessary because of any disturbance or interruption of orderly or consecutive arrangement.

The Commission may correct unmistakable errors in cross-references to Code of Virginia sections and may change cross-references to Code of Virginia sections which have become outdated or incorrect due to subsequent amendment to, revision, or repeal of the sections to which reference is made.

The Commission may omit from the statutes incorporated into the Code of Virginia provisions which, in the judgment of the Commission, are inappropriate in a code, such as emergency clauses, clauses providing for specific nonrecurring appropriations and general repealing clauses.

DRAFTING NOTE: Technical corrections only.

~~§ 9-77.10:1~~ 30-XXX. Authority for minor changes to the Virginia Administrative Code.

The Commission may correct unmistakable printer's errors, misspellings and other unmistakable errors in the regulations as incorporated into the Virginia Administrative Code, and may make consequential changes in the titles of officers and agencies, and other purely consequential changes made necessary by the use in the regulations of titles, terminology and references, or other language no longer appropriate.

The Commission may renumber, rename and rearrange any Virginia Administrative Code titles, sections or other divisions within the regulations which have been proposed, adopted or have become effective and make corresponding changes in lists of subject and section headings, catchlines and tables, when in the judgment of the Commission it is necessary because of any disturbance or interruption of orderly or consecutive arrangement.

The Commission may correct unmistakable errors in the cross-references to Code of Virginia or Virginia Administrative Code sections and may change cross-references to such sections which have become outdated or incorrect due to subsequent amendment to, revision or repeal of the sections to which reference is made.

The Commission may omit from the regulations incorporated into the Virginia Administrative Code provisions which, in the judgment of the Commission, are inappropriate in a code, including, but not limited to, (i) effective date clauses and (ii) severability clauses, which are provided for under ~~§ 9-6.14:5.1~~ 2.2-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 9-77.14~~ 30-XXX. Revision of the Code of Virginia; construction of statutes relating to titles amended.

The Code of Virginia shall continue to be gradually revised by revising one title at a time. The Commission shall have the responsibility for drafting title revision and recodification bills for introduction into the General Assembly. In the revision of each title, all other sections of the Code of Virginia relating to the same subject matter shall be revised to the extent necessary. Whenever in a title revision or recodification bill an existing section of a title of the Code of Virginia is repealed and replaced with a renumbered section and that section so repealed was effective with an uncodified enactment, the repeal of that section, alone, shall not affect the uncodified enactment. The title revision or recodification bill shall expressly repeal the uncodified enactment in order for the enactment to be repealed.

Whenever, during any session of the General Assembly, there shall have been enacted any statute purporting to revise, rearrange, amend, and recodify any title of the Code of Virginia, such statute shall be deemed to have been enacted prior to any other statute enacted at such session adding to, repealing, or amending and reenacting any portion of such title. Every such other statute shall be deemed to have so added to, repealed, or amended and reenacted, as the case may be, such title as so revised, rearranged, amended, and recodified. Effect shall be given to any such other, or subsequent, statute only to the extent of any apparent changes in the law as it existed prior to such session.

DRAFTING NOTE: Technical corrections only.

~~§ 9-77.14:04~~ 30-XXX. Codification of rules of evidence.

The Commission shall have the responsibility for drafting rules of evidence for introduction into the General Assembly in accordance with the recommendations of the Supreme Court as provided in subsection E of § 8.01-3-E. All other sections of the Code of Virginia relating to evidentiary matters shall be revised to the extent necessary.

DRAFTING NOTE: Technical corrections only.

~~§ 9-77.14:02~~ 30-XXX. Publication of Virginia State Bar advisory opinions.

The Commission, in conjunction with the Virginia State Bar, shall arrange for the incorporation of all advisory opinions issued by the Virginia State Bar's Standing Committees on Legal Ethics and Unauthorized Practice of Law into the Code of Virginia. Such opinions, including appropriate indices, may be incorporated into the Code of Virginia by the addition of a volume to the Code and kept current by means of pocket parts or supplements and by replacement volumes.

DRAFTING NOTE: Technical corrections only.

~~§ 9-77.12~~ 30-XXX. Responsibilities as to administrative law; appointment of Administrative Law Advisory Committee; staff.

A. In conjunction with the responsibility granted to the Commission ~~of for~~ publishing and maintaining an ~~administrative code~~ the Virginia Administrative Code as set forth in ~~§ 9-77.7~~ 30-XXX, the Commission shall continually monitor the operation of the Administrative Process Act (~~§ 9-6.14:1~~ 2.2-XXX et seq.) and the Virginia Register Act (~~§ 9-6.15~~ 2.2-XXX et seq.) to ensure that those laws provide the most practical means to administrative agencies of the Commonwealth for the promulgation, amendment and repeal of administrative law within the powers granted to such agencies by the General Assembly, and to recommend from time to time such changes as it deems appropriate.

B. The Commission shall appoint an Administrative Law Advisory Committee to assist the Commission in fulfilling its responsibilities under subsection A and shall name the chair.

1. The Advisory Committee shall be a legislative branch agency and shall consist of representatives from state agencies, the Office of the Executive Secretary of the Supreme Court, the regulated communities, consumer and other public interest groups, local governments, the bar and the academic community. The number of members shall be determined by the Commission. Members shall serve two-year terms and shall be reimbursed for their expenses incurred in attending meetings and other functions of the Advisory Committee.

2. The Advisory Committee shall submit an annual work plan and budget to the Commission for approval. Funds necessary to support any such budget approved by the Commission shall be paid from sums appropriated to the Commission. The Commission may authorize the Advisory Committee to undertake research projects, hire consultants, sponsor conferences, hold public hearings, conduct surveys and engage in other efforts consistent with assisting the Commission in fulfilling its responsibilities under subsection A. The Advisory Committee shall report its findings and recommendations annually to the Code Commission, and that report shall be forwarded to the Governor and the General Assembly.

~~3. The Advisory Committee shall develop and submit a plan for the reduction of state agency regulations to the Commission by January 1, 1995.~~

~~4. Staff assistance shall be provided to the Advisory Committee by the Division of Legislative Services.~~

DRAFTING NOTE: Technical corrections. Existing Subdivision 3 has been deleted as obsolete.

Chapter X.

Virginia Crime Commission.

~~§ 9-125~~ 30-XXX. Virginia Crime Commission ~~created~~; purpose; membership; terms; compensation.

~~There is hereby created the A. The Virginia State Crime Commission, hereinafter referred to as (the "Commission") is established in the legislative branch of state government. The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study, report and make recommendations on all areas of public safety and protection. In so doing it shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders. The Commission shall make such recommendations as it deems appropriate with respect to the foregoing matters, and shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and criminal procedure. The Commission shall cooperate with the executive branch of state government, the Attorney General's office and the judiciary who are in turn encouraged hereby to cooperate with the Commission. The Commission will cooperate with governments and governmental agencies of other states and the United States.~~

B. The Commission shall consist of thirteen members to be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; three citizen members to be appointed by the Governor; and the Attorney General or his designee.

C. The term of each appointee shall be for four years, except that the Attorney General shall serve a term coincident with his term of office. Whenever any legislative member fails to retain his membership in the house from which he was appointed, his membership on the Commission shall become vacated and the appointing authority who appointed such vacating member shall make an appointment from his respective house to fulfill the vacated term.

D. The Commission shall elect its own chairman annually.

E. Members of the Commission shall receive compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10). All such expense payments, however, shall come from existing appropriations to the Virginia Crime Commission.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-125 and subsection B through E are § 9-126.

~~§ 9-126. Membership; appointment; terms; vacancies; chairman; expenses.~~

~~The Commission shall be composed of thirteen members: six shall be appointed by the Speaker of the House of Delegates from the membership thereof; three shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate; three shall be appointed by the Governor from the Commonwealth at large; and the Attorney General of Virginia or his designee shall serve as an ex officio member with full voting privileges. One half of the initial appointments made by the Speaker of the House of Delegates, and two thirds of the initial appointments made by the Governor and by the Privileges and Elections Committee of the Senate shall be members of the Virginia State Crime Commission created by House Joint Resolution No. 113 of the 1966 Regular Session of the General Assembly and continued by subsequent legislative action. The term of each appointee shall be for four years; with the exception of the Attorney General whose membership on the Commission shall be concurrent with his term as Attorney General of Virginia. Whenever any legislative member fails to retain his membership in the House from which he was appointed, his membership on the Commission shall become vacated and the appointing authority who appointed such vacating member shall make an appointment from his respective House to fulfill the vacated term. The Commission shall elect its own chairman annually. Members of the Commission shall receive compensation as provided in § 14.1-18 and shall be paid their necessary expenses incurred in the performance of their duties. Provided, however, that all such expense payments shall come from existing appropriations to the Virginia Crime Commission.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B through E in proposed § 30-XXX (existing § 9-125) supra.

~~§ 9-134 30-XXX.~~ Executive director, counsel and other personnel.

The Commission shall be authorized to may appoint and employ and, at pleasure remove, an executive director, counsel, and such other persons as it ~~may deem~~ deems necessary; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor.

DRAFTING NOTE: Technical corrections only.

~~§ 9-134 30-XXX.~~ Powers ~~enumerated~~ and duties of Commission.

~~With respect to the performance of its functions, duties and powers subject to limitations contained herein, the A.~~ The Commission shall ~~be authorized as follows~~ have the power and duty to:

~~a. To maintain~~ 1. Maintain offices, hold meetings and functions at any place within the Commonwealth that ~~it may deem~~ deems necessary;

~~b. To conduct~~ 2. Conduct private and public hearings, and ~~to designate~~ a member of the Commission to preside over such hearings;

~~e.~~ Pursuant to a resolution adopted by a majority ~~of the members~~ of the Commission, witnesses ~~attending~~ appearing before the Commission may be examined privately and the Commission shall not make public the particulars of such examination. The Commission shall not have the power to take testimony at private or public hearings unless at least three of its members are present at such hearings;

~~d.~~ Witnesses appearing before the Commission at its request shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the Commonwealth, if such witnesses request such fees and mileage.

3. Conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-XXX, and in connection with the faithful execution and effective enforcement of the laws of the Commonwealth with particular reference but not limited to organized crime and racketeering, and formulate its recommendations to the Governor and the General Assembly.

4. Submit an annual report of its recommendations to the Governor and the General Assembly. The Commission shall make such further interim reports to the Governor and the General Assembly as it deems advisable or as required by the Governor or by concurrent resolution of the General Assembly.

B. At the direction or request of the legislature by concurrent resolution or of the Governor, the Commission shall, or at the request of any department, board, bureau, commission, authority or other agency created by the Commonwealth, or to which the Commonwealth is a party, the Commission may, study the operations, management, jurisdiction, powers and interrelationship of any such department, board, bureau, commission, authority or other agency, which has any direct responsibility for enforcing the criminal laws of the Commonwealth.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subdivisions 1 and 2 of subsection A is § 9-134, subdivision 3 of subsection A is § 9-127, subdivision 4 of subsection A is § 9-132, and subsection B is § 9-128.

~~§ 9-127.~~ Studies and recommendations generally.

~~The Commission shall have the duty and power to make studies and to gather information and data in order to accomplish its purposes as set forth in § 9-125, and in connection with the faithful execution and effective~~

~~enforcement of the laws of the Commonwealth with particular reference but not limited to organized crime and racketeering, and to formulate its recommendations to the Governor and the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears as subdivision 3 of subsection A in proposed § 30-XXX (existing § 9-134) supra.

~~§ 9-128. Studies of operations, etc., of law enforcement agencies.~~

~~At the direction or request of the legislature by concurrent resolution or of the Governor, the Commission shall, or at the request of any department, board, bureau, commission, authority or other agency created by the Commonwealth, or to which the Commonwealth is a party, the Commission may, study the operations management, jurisdiction, powers and interrelationship of any such department, board, bureau, commission, authority or other agency, which has any direct responsibility for enforcing the criminal laws of the Commonwealth.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 9-134) supra.

~~§ 9-132. Reports to Governor and General Assembly.~~

~~The Commission shall make an annual report to the Governor and the General Assembly, which report shall include its recommendations. The Commission shall make such further interim reports to the Governor and the General Assembly as it shall deem advisable or as shall be required by the Governor or by concurrent resolution of the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears as subdivision 4 of subsection A in proposed § 30-XXX (existing § 9-134) supra.

~~§ 9-136 30-XXX. Cooperation of other state agencies; consultation with other states.~~

~~A. The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by ~~this~~ the Commonwealth, or to which the Commonwealth is a party or any political subdivision thereof, cooperation and assistance in the performance of its duties.~~

~~B. The Commission shall examine matters relating to law enforcement extending across the boundaries of the Commonwealth into other states; and may consult and exchange information with officers and agencies of other states with respect to law-enforcement problems of mutual concern to this and other states.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-136 and subsection B is § 9-129.

~~§ 9-129. Cooperation with agencies of other states.~~

~~The Commission shall examine matters relating to law enforcement extending across the boundaries of the Commonwealth into other states; and may consult and exchange information with officers and agencies of other states with respect to law-enforcement problems of mutual concern to this and other states.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 9-136) supra.

~~§ 9-130 30-XXX. Commission to refer cases of crime or official misconduct to appropriate authorities.~~

~~Whenever it shall ~~appear~~ appears to the Commission that there is reasonable cause, for official investigation or prosecution ~~for~~ of a crime, or for the removal of a public officer for misconduct, the Commission shall refer the matter and such information as has come to its attention to the officials authorized and having the~~

duty and authority to conduct investigations or to prosecute criminal offenses, or to remove such public officer, or to the judge of an appropriate court of record with recommendation that a special grand jury be convened.

DRAFTING NOTE: Technical corrections only.

~~§ 9-133~~ 30-XXX. Publication of information.

By such means and to such extent as it ~~shall deem~~ deems appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the Commonwealth and other activities of the Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 9-137~~ 30-XXX. Disclosure of certain information by employee a misdemeanor.

Any employee of the Commission who ~~shall disclose~~ discloses to any person other than the Commission or an officer having the power to appoint one or more of the Commissioners the name of any witness appearing before the Commission in a private hearing or ~~disclose~~ discloses any information obtained or given in a private hearing except as directed by the Governor, a court of record or the Commission, shall be guilty of a Class 1 misdemeanor.

DRAFTING NOTE: Technical corrections only.

~~§ 9-138~~ 30-XXX. Impounding of certain documents.

Upon the application of the Commission or duly authorized member of its staff, the judge of any court of record may impound any exhibit or document received or obtained in any public or private hearing held in connection with a hearing conducted by the Commission, and may order such exhibit to be retained by, or delivered to and placed in custody of the Commission, ~~provided such~~. The order may be rescinded by further order of the court made after five days' notice to the Commission or upon its application or with its consent, all in the discretion of the court.

DRAFTING NOTE: Technical corrections only.

~~§ 9-135~~ 30-XXX. Construction of chapter.

Nothing contained in this chapter shall be construed to supersede, repeal or limit any power, duty or function of the Governor or any department or agency of ~~this~~ the Commonwealth, or any political subdivision thereof, as prescribed or defined by law.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Joint Commission on Health Care.

~~§ 9-344~~ 30-XXX. Joint Commission created on Health Care; purpose; membership; terms; compensation; staff.

~~There is hereby created, as a legislative agency, the A.~~ The Joint Commission on Health Care, hereinafter referred to as (the "Commission") is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality,

affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

B. The Commission shall consist of sixteen legislative members as follows: seven members of the Senate to be appointed by the Senate Committee on Privileges and Elections, and nine members of the House of Delegates, three of whom shall be members of the Committee on Health, Welfare and Institutions to be appointed by the Speaker of the House of Delegates.

C. Members of the Commission shall serve for five-years terms. Whenever any legislative member fails to retain his membership in the house from which he was appointed, his membership shall be vacated, and the appointing authority who appointed such vacating member shall make an appointment from his respective house to fulfill the vacated term.

D. The members of the Commission shall elect a chairman and vice chairman.

E. Members of the Commission shall receive compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10). However, all such expense payments shall come from existing appropriations to the Commission.

F. The Commission may appoint, employ, and remove an executive director and such other persons as it deems necessary, and determine their duties and fix their salaries or compensation within the amounts appropriated therefor. The Commission may also obtain such assistance as it deems necessary from other legislative and executive agencies and may employ experts who have special knowledge of the issues before it.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-311, subsections B through E are § 9-312, and subsection F is § 9-314.

~~§ 9-312. Membership; compensation.~~

~~The Commission shall be composed of sixteen legislative members: seven members of the Senate to be appointed by the Senate Committee on Privileges and Elections, and nine members of the House of Delegates of whom three shall be members of the Committee on Health, Welfare and Institutions to be appointed by the Speaker of the House.~~

~~The term of each appointee shall be for five years. Whenever any legislative member fails to retain his membership in the house from which he was appointed, his membership shall be vacated, and the appointing authority who appointed such vacating member shall make an appointment from his respective house to fulfill the vacated term. The members of the Commission shall elect a chairman and vice chairman.~~

~~Members of the Commission shall receive compensation as provided in § 14.1-18 and shall be paid their necessary expenses incurred in the performance of their duties. All such expense payments, however, shall come from existing appropriations to the Joint Commission on Health Care.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B through E in proposed § 30-XXX (existing § 9-311) supra.

~~§ 9-313 30-XXX. Duties and powers Powers and duties of Commission.~~

The Commission shall have the ~~duty and power~~ power and duty to study and to gather information and data to accomplish its purposes as set forth in ~~§ 9-314 30-XXX~~ and to report its recommendations to the Governor and the General Assembly.

The Chairman of the Commission shall have the authority to invite other interested parties to sit with the Commission and to participate in its deliberations.

The Commission shall study the operations, management, jurisdiction, powers and interrelationships of any department, board, bureau, commission, authority or other agency with any direct responsibility for the provision and delivery of health care in the Commonwealth.

The Commission shall examine matters relating to health services in other states and shall consult and exchange information with officers and agencies of other states with respect to health-service problems of mutual concern. The Commission may maintain offices and may hold meetings and functions at any place within the Commonwealth that it ~~may deem~~ deems necessary.

The Commission shall make an annual report of its recommendations to the Governor and the General Assembly. The Commission shall make such further interim reports to the Governor and the General Assembly as it deems advisable or as required by the Governor or the General Assembly.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections; the first four paragraphs are § 9-313 and the last paragraph is § 9-315.

~~§ 9-314. Staff and staff support.~~

~~The Commission shall be authorized to appoint, employ, and remove an executive director and such other persons as it may deem necessary and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. The Commission may also obtain such assistance as it may deem necessary from other legislative and executive agencies and may employ experts who have special knowledge of the issues before it.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection F in proposed § 30-XXX (existing § 9-311) supra.

~~§ 9-315. Annual report.~~

~~The Commission shall make an annual report to the Governor and the General Assembly, which shall include its recommendations. The Commission shall make such further interim reports to the Governor and the General Assembly as it shall deem advisable or as shall be required by the Governor or the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears as the last paragraph of proposed § 30-XXX (existing § 9-313) supra.

~~§ 9-316 30-XXX. Sunset.~~

The provisions of this chapter shall expire on July 1, 2002.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Commission on Youth.

~~§ 9-292 30-XXX. Virginia Commission created on Youth; purpose; membership; terms; compensation.~~

~~There is hereby created the A. The Virginia Commission on Youth, hereinafter referred to as (the "Commission") is established in the legislative branch of state government. The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families. In so doing, it shall encourage the development of uniform policies and services to youth across the Commonwealth and~~

provide a forum for continuing review and study of such services. In addition to its own proposals, the Commission shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting youth.

B. The Commission shall consist of twelve members to be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and three citizen members to be appointed by the Governor.

C. All appointments shall be for a term of four years each. Vacancies shall be filled for the unexpired terms. Whenever any legislative member fails to retain his membership in the house from which he was appointed he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term.

D. The Commission shall elect its chairman annually.

E. Members of the Commission shall receive compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10). However, all such expense payments shall come from existing appropriations to the Commission.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-292 and subsection B through E are § 9-293.

~~§ 9-293. Membership; terms; vacancies; chairman; expenses.~~

~~The Commission shall be composed of twelve members, six of whom shall be appointed by the Speaker of the House of Delegates from the membership thereof, three of whom shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate, and three of whom shall be appointed by the Governor from the Commonwealth at large. All appointments shall be for a term of four years each. Vacancies shall be filled for the unexpired terms. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. The Commission shall elect its chairman annually. Members of the Commission shall receive compensation as provided in § 14.1-18 and shall be paid their necessary expenses incurred in the performance of their duties. However, all such expense payments shall come from existing appropriations to the Virginia Commission on Youth.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B through E in proposed § 30-XXX (existing § 9-293) supra.

~~§ 9-294 30-XXX. Powers and duties of the Commission.~~

The Commission shall have the ~~following powers and duties~~power and duty to:

1. ~~To undertake~~Undertake studies and to gather information and data in order to accomplish its purposes as set forth in ~~§ 9-292 30-XXX~~, and to formulate and present its recommendations to the Governor and the General Assembly.

2. At the direction or request of the legislature by concurrent resolution or of the Governor, or at the request of any department, board, bureau, commission, authority or other agency created by the Commonwealth or to which the Commonwealth is party, ~~to~~ study the operations, management, jurisdiction or powers of any such department, board, bureau, commission, authority or other agency which has responsibility for services to youth.

DRAFTING NOTE: Technical corrections only.

~~§ 9-295 30-XXX.~~ Executive director; staff; compensation.

The Commission is ~~authorized to~~ may appoint and employ and, at its pleasure, remove an executive director and such other persons as it ~~may deem~~ deems necessary to assist it in carrying out its duties as set forth in this chapter. The Commission is ~~authorized to~~ may determine the duties of such staff and ~~to fix~~ their salaries or compensation within the amounts appropriated therefor.

DRAFTING NOTE: Technical corrections only.

~~§ 9-296 30-XXX.~~ Cooperation of other state agencies.

The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by ~~this the~~ the Commonwealth, or to which the Commonwealth is party, or from any political subdivision of the Commonwealth, cooperation and assistance in the performance of its duties.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Virginia Commission on Intergovernmental Cooperation.

~~§ 9-53 30-XXX.~~ ~~(Effective January 12, 2000)~~ Establishment of Virginia Commission on Intergovernmental Cooperation; membership; duties; appointments; staff.

~~There is hereby established, in the legislative branch, the~~ A. The Virginia Commission on Intergovernmental Cooperation, which (the "Commission:") is established in the legislative branch of state government. The Commission shall consist of the following members: (i) the members of the Commission on Interstate Cooperation of the Senate, (ii) the members of the House Committee on Interstate Cooperation of the House of Delegates, and (iii) the Clerk of the Senate and the Clerk of the House of Delegates who shall serve as ex officio, nonvoting members of the Commission.

B. The chairman and vice-chairman of the Commission shall serve for a period of two years, and the chairmanship and vice-chairmanship shall alternate between the chairman of the Senate Commission on Interstate Cooperation and the chairman of the House Committee on Interstate Cooperation.

C. The Commission on Intergovernmental Cooperation shall select such officials of state government as to it deems proper to serve as ex officio, nonvoting members of the Commission for terms of four years each.

D. The Division of Legislative Services shall furnish upon request such staff assistance and services to the Commission and its committees as may be required to carry forth the charge of the Commission.

~~The Commission shall:~~

- ~~1. Encourage and arrange conferences with officials of other states and other units of government;~~
- ~~2. Carry forward the participation of Virginia as a member of the Council of State Governments, both regionally and nationally;~~
- ~~3. Formulate proposals for cooperation between Virginia and other states;~~
- ~~4. Establish such committees as it deems advisable to conduct conferences and formulate proposals concerning subjects of interstate cooperation;~~
- ~~5. Monitor and evaluate the Commonwealth's participation in interstate compacts;~~

~~6. Review, evaluate, and recommend suggested uniform state legislation;~~

~~7. Require, at its discretion, from any appointee representing Virginia on any interstate compact, commission, committee, or board, a report on that organization's work and accomplishments;~~

~~8. Review, evaluate, and make recommendations concerning federal policies which are of concern to the Commonwealth;~~

~~9. Establish such committees as deemed advisable and designate the members of every such committee. State officials who are not members of the Commission may be appointed as members of any such committee, but at least one member of the Commission shall be a member of every such committee; and~~

~~10. Appoint persons drawn from the membership of the Senate, the membership of the House of Delegates, and officials of state and local government to serve on those intergovernmental boards, committees, and commissions as to which the Commonwealth is entitled to such appointment, or is invited to make such appointment; provided that members of the General Assembly shall be appointed as follows:~~

~~a. If an appointment be made from the membership of the Senate, such an appointment shall be made by the Commission on Interstate Cooperation of the Senate and shall be approved by the Committee on Privileges and Elections of the Senate; and~~

~~b. If an appointment be made from the membership of the House of Delegates, such appointment shall be made by the Committee on Interstate Cooperation of the House of Delegates and shall be approved by the Speaker of the House of Delegates.~~

~~The Commission may provide such rules as it considers appropriate concerning the membership and the functioning of any committee established.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is the first paragraph of § 9-53 and subsections B and C are § 9-55. The language shown as stricken has been moved to proposed § 30-XXX, Powers and Duties of the Commission, infra.

§ 30-XXX. Powers and duties of Commission.

The Commission shall have the power and duty to:

1. Encourage and arrange conferences with officials of other states and other units of government;

2. Carry forward the participation of Virginia as a member of the Council of State Governments, both regionally and nationally;

3. Formulate proposals for cooperation between Virginia and other states;

4. Establish such committees as it deems advisable to conduct conferences and formulate proposals concerning subjects of interstate cooperation;

5. Monitor and evaluate the Commonwealth's participation in interstate compacts;

6. Review, evaluate, and recommend suggested uniform state legislation;

7. Require, at its discretion, from any appointee representing Virginia on any interstate compact, commission, committee, or board, a report on that organization's work and accomplishments;

8. Review, evaluate, and make recommendations concerning federal policies which are of concern to the Commonwealth;

9. Establish such committees as deemed advisable and designate the members of every such committee. State officials who are not members of the Commission may be appointed as members of any such committee, but at least one member of the Commission shall be a member of every such committee; and

10. Appoint persons drawn from the membership of the Senate, the membership of the House of Delegates, and officials of state and local government to serve on those intergovernmental boards, committees, and commissions as to which the Commonwealth is entitled to such appointment, or is invited to make such appointment; provided that members of the General Assembly shall be appointed as follows:

a. If an appointment be made from the membership of the Senate, such an appointment shall be made by the Commission on Interstate Cooperation of the Senate and shall be approved by the Committee on Privileges and Elections of the Senate; and

b. If an appointment be made from the membership of the House of Delegates, such appointment shall be made by the Committee on Interstate Cooperation of the House of Delegates and shall be approved by the Speaker of the House of Delegates.

The Commission may provide such rules as it considers appropriate concerning the membership and the functioning of any committee established.

DRAFTING NOTE: Technical corrections. This proposed section is derived from existing § 9-53 supra.

~~§ 9-54 30-XXX. Commission of Senate and standing committee of House of Delegates on interstate cooperation Interstate Cooperation.~~

~~A. There is hereby established a Commission on Interstate Cooperation of the Senate, to consist of six senators. The members and chairman of this Commission shall be designated by the Senate Committee on Privileges and Elections of the Senate.~~

~~B. There is hereby established a standing Committee on Interstate Cooperation of the House of Delegates, also to consist of six members; and the members and chairman of this Committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the House of Delegates.~~

~~C. Such bodies of the Senate and of the House of Delegates shall function during the regular sessions of the General Assembly and also during the interim periods between such sessions. Their members shall serve until their successors are designated.~~

DRAFTING NOTE: Technical corrections only.

~~§ 9-55. Members of Commission; chairman.~~

~~The Commission on Intergovernmental Cooperation shall be composed of the following members: (i) the members of the Commission on Interstate Cooperation of the Senate, (ii) the members of the Committee on Interstate Cooperation of the House of Delegates, and (iii) the Clerk of the Senate and the Clerk of the House of Delegates who shall serve as ex officio, nonvoting members of the Commission. The chairman and vice chairman of the Commission shall serve for a period of two years, and the chairmanship and vice chairmanship shall alternate between the chairman of the Senate Commission on Interstate Cooperation and the chairman of the House Committee on Interstate Cooperation.~~

~~The Commission on Intergovernmental Cooperation shall select such officials of state government as to it shall seem proper to serve as ex officio members of the Commission without vote for terms of four years each.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections A through C of proposed § 30-XXX (existing § 9-53) supra.

~~§ 9-55.1. Division of Legislative Services to furnish assistance and services.~~

~~The Division of Legislative Services shall furnish upon request such staff assistance and services to the Commission and its committees as may be required to carry forth the charge of the Commission.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection D in proposed § 30-XXX (existing § 9-53) supra.

Chapter X.

Small Business Commission.

~~§ 9-336 30-XXX. Small Business Commission established; purpose; membership; terms; compensation staff.~~

~~A. The Small Business Commission (the "Commission") is hereby established as a in the legislative agency of the Commonwealth and is hereafter referred to in this chapter as the "Commission." branch of state government. The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study, report and make recommendations on issues of concern to small businesses in the Commonwealth.~~

~~B. The Commission shall consist of fourteen members to be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House; four members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and four citizen members, each of whom shall have previously demonstrated small business experience or expertise, to be appointed by the Governor.~~

~~All appointments to the Commission shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any member may be reappointed for successive terms.~~

~~C. The members of the Commission shall elect a chairman and a vice chairman annually.~~

~~D. Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.12 and all members shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of the duties as provided in § 2.2-XXX (§ 2.1-20.10).~~

~~E. The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.~~

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-336, subsections B through D are § 9-337, and subsection E is § 9-339.

~~§ 9-337. Membership; terms; vacancies; chairman and vice chairman; compensation.~~

~~A. The Commission shall consist of 14 members as follows: six members from the House of Delegates, to be appointed by the Speaker of the House; four members from the Senate, to be appointed by the Senate Committee on Privileges and Elections; and four members from the Commonwealth at large, each of whom shall have previously demonstrated small business experience or expertise, to be appointed by the Governor.~~

~~B. All appointments to the Commission shall be for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any member may be reappointed for successive terms.~~

~~C. The members of the Commission shall elect a chairman and a vice chairman annually.~~

~~D. Legislative members of the Commission shall receive such compensation as is set forth in § 14.1-18 and all members shall be reimbursed for their actual expenses incurred by them in the performance of their duties in the work of the Commission.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B through D in proposed § 30-XXX (existing § 9-336) supra.

~~§ 9-338 30-XXX. Powers and duties of the Commission.~~

The Commission shall have the power and duty to:

1. Evaluate the impact of existing statutes and proposed legislation on small businesses.
2. Assess the Commonwealth's small business assistance programs and examine ways to enhance their effectiveness.
3. Provide small business owners and advocates with a forum to address their concerns.
4. Report annually its findings and recommendations to the Governor and the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 9-339. Staff; cooperation from other state agencies.~~

~~The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 30-XXX (existing § 9-336) supra.

Chapter X.

Virginia Chesapeake Bay Partnership Council.

~~§ 9-334 30-XXX. Virginia Chesapeake Bay Partnership Council established; purpose; membership; terms; compensation; staff; cooperation of certain agencies.~~

~~A. The Virginia Chesapeake Bay Partnership Council, referred to in this chapter as (the "Council"), is hereby established as a permanent in the legislative agency of the Commonwealth branch of state government. The Council's purpose is of the Council shall be to advise the Governor, the Secretary of Natural Resources, and the General Assembly regarding the coordination of Virginia's efforts in the regional Bay program, strategic planning for Bay restoration and implementation of Virginia's commitments.~~

~~In carrying out its duties, the Council shall assist in the coordination of timely and efficient implementation of Bay programs and commitments; review and help disseminate to the public information regarding the restoration progress; consult with Virginia's representatives to the interstate Chesapeake Bay Program; and help facilitate strategic partnerships with businesses, local governments, resource users, environmental and conservation organizations and citizens. The Council shall also nominate persons and organizations to receive the "Friend of the Bay Award" (§ 2.1-51.8:3). The Council shall have no regulatory authority to carry out its duties.~~

~~B. The Council shall consist of nineteen members as follows: four citizen members appointed by the Speaker of the House of Delegates; four citizen members appointed by the Senate Committee on Privileges and Elections; four citizen members appointed by the Governor; and the chairmen of the House Chesapeake and its Tributaries Committee, the House Conservation and Natural Resources Committee, the Senate Agriculture,~~

Conservation and Natural Resources Committee and the Chairman of the Chesapeake Bay Commission Virginia delegation. The chairmen of the three standing committees of the legislature may select a member of their respective committees to serve in their place. The Chairman of the Chesapeake Bay Commission Virginia delegation may select a member from among the legislative members of the delegation to serve in his place. Nonvoting ex officio members shall include a Virginia representative of the three standing advisory committees of the interstate Chesapeake Bay Program. Citizen members shall include representatives of the scientific and technical community, locally elected government officials, representatives of environmental organizations specifically working on Chesapeake Bay matters, representatives of educational institutions and other interest groups.

C. Citizen members shall serve for terms of four years. Legislative members' terms of service shall coincide with their term as chairman of their respective committees. Any vacancies shall be filled by the Governor, the Speaker of the House, and the Senate Committee on Privileges and Elections, as appropriate. Citizen members shall receive no compensation for their service but shall receive reimbursement for actual expenses. The Council shall meet at the call of the chairman or at least three times per year.

D. The Council shall elect a chairman from among its legislative members.

E. Staffing for the Council shall be provided by the Division of Legislative Services.

F. All agencies of the Commonwealth with responsibility for Chesapeake Bay-related programs shall assist with the Council in its work and deliberations.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-334, subsections B through E are § 9-335. Language shown as stricken has been moved to proposed § 30-XXX, Powers and duties of Council, infra.

§ 30-XXX. Duties of the Council.

In carrying out its duties, the Council shall assist in the coordination of timely and efficient implementation of Bay programs and commitments; review and help disseminate to the public information regarding the restoration progress; consult with Virginia's representatives to the interstate Chesapeake Bay Program; and help facilitate strategic partnerships with businesses, local governments, resource users, environmental and conservation organizations and citizens. The Council shall also nominate persons and organizations to receive the "Friend of the Bay Award" in accordance with § 2.2-XXX (§ 2.1-51.8:3). The Council shall have no regulatory authority to carry out its duties.

DRAFTING NOTE: Technical corrections. This proposed section is derived from the second paragraph of existing § 9-334.

§ 9-335. Membership; terms; compensation.

~~The Council shall consist of nineteen members as follows: four citizen members appointed by the Speaker of the House of Delegates; four citizen members appointed by the Senate Committee on Privileges and Elections; four citizen members appointed by the Governor; and the chairmen of the House Chesapeake and its Tributaries Committee, the House Conservation and Natural Resources Committee, the Senate Agriculture, Conservation and Natural Resources Committee and the Chairman of the Chesapeake Bay Commission Virginia delegation. The chairmen of the three standing committees of the legislature may select a member of their respective committee to serve in their place. The Chairman of the Chesapeake Bay Commission Virginia delegation may select a member from among the legislative members of the delegation to serve in his place. Nonvoting ex officio members shall include a Virginia representative of the three standing advisory committees of the interstate Chesapeake Bay Program. Citizen members shall include representatives of the scientific and technical community, locally elected government officials, representatives of environmental organizations specifically working on Chesapeake Bay matters, representatives of educational institutions and other interest groups. The Council shall elect a chairman from among its legislative members.~~

~~Citizen members shall serve for terms of four years. Legislative members' terms of service shall coincide with their term as chairman of their respective committees. Any vacancies shall be filled by the Governor, the Speaker of the House, and the Senate Committee on Privileges and Elections, as appropriate. Citizen members shall receive no compensation for their service but shall receive reimbursement for actual expenses. The Council shall meet at the call of the chairman or at least three times per year.~~

~~Staffing for the Council shall be provided by the Division of Legislative Services. All agencies of the Commonwealth with responsibility for Chesapeake Bay-related programs shall assist with the Council in its work and deliberations.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through E in proposed § 30-XXX (existing § 9-334) supra.

Chapter X.

State Water Commission.

§ 30-XXX. State Water Commission; membership; terms; compensation; staff.

A. The State Water Commission (the "Commission") is established in the legislative branch of state government. The Commission shall consist of fifteen members to be appointed as follows: the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources; seven additional members of the House of Delegates at large appointed by the Speaker; four additional members of the Senate at large appointed by the Committee on Privileges and Elections; and two citizen members to be appointed by the Governor.

B. Legislative members shall serve terms coincident with their terms of office. Gubernatorial appointees shall serve for terms of four years and may succeed themselves, but vacancies during their terms shall be filled only for the unexpired portion of the term.

C. The members of the Commission shall elect a chairman and a vice chairman.

D. Commission members shall be compensated as specified in § 30-19.12, and shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).

E. The Division of Legislative Services shall serve as staff to the Commission.

F. All agencies of the Commonwealth shall assist the Commission upon request.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A through D are § 9-145.9 and subsections E and F are § 9-145.10.

~~§ 9-145.8~~ 30-XXX. Powers and duties of the Commission-established; functions.

~~The State Water Commission, referred to in this chapter as "Commission," is established as a permanent agency of the Commonwealth. It shall perform the following functions~~have the power and duty to:

1. Study all aspects of water supply and allocation problems in the Commonwealth, whether these problems are of a quantitative or qualitative nature;
2. Coordinate the legislative recommendations of all other state entities having responsibilities with respect to water supply and allocation issues; and
3. Report annually its findings and recommendations to the Governor and the General Assembly.

DRAFTING NOTE: Technical corrections only.

~~§ 9-145.9. Membership; compensation; chairman and vice chairman.~~

~~A. The Commission shall consist of fifteen members as follows: the Chairmen of the House Committee on Conservation and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources; seven additional members of the House of Delegates at large appointed by the Speaker; four additional members of the Senate at large appointed by the Committee on Privileges and Elections; and two members from the Commonwealth at large appointed by the Governor. The legislative members' terms of office shall coincide with their service in the General Assembly. Gubernatorial appointees shall serve for terms of four years and may succeed themselves, but vacancies during their terms shall be filled only for the unexpired portion of the term.~~

~~B. Commission members shall be compensated as specified in § 14.1-18, and shall be reimbursed for expenses incurred in the performance of their duties.~~

~~C. The members of the Commission shall elect a chairman and a vice chairman.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections B through D of proposed § 30-XXX supra.

~~§ 9-145.10. Staff.~~

~~The Division of Legislative Services shall serve as staff to the Commission. All agencies of the Commonwealth shall assist the Commission upon request.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections E of proposed § 30-XXX supra.

Chapter X.

Virginia Coal and Energy Commission.

§ 30-XXX. Virginia Coal and Energy Commission; membership; terms; compensation; staff.

A. The Virginia Coal and Energy Commission (the "Commission") is established in the legislative branch of state government. The Commission shall consist of twenty members to be appointed as follows: five members of the Senate to be appointed by the Committee on Privileges and Elections; eight members of the House of Delegates to be appointed by the Speaker of the House of Delegates; and seven citizen members to be appointed by the Governor. The citizen members shall include representatives of industry, government and groups or organizations identified with production and conservation of coal, natural gas, and energy.

B. Legislative members shall serve terms coincident with their terms of office. Members appointed by the Governor shall serve for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.

C. The members of the Commission shall elect its own chairman annually.

D. Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.1 and all members shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).

E. The Division of Legislative Services shall serve the Commission as its secretariat and central administrative office and shall furnish the Commission with such services as the Commission deems necessary.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsections A through D are § 9-145.2 and subsection E is § 9-145.3.

~~§ 9-145.1 30-XXX. Commission established; agency assistance; powers~~ Powers and duties of Commission.

~~The Virginia Coal and Energy Commission is hereby established as a permanent agency of the Commonwealth and is hereafter referred to in this chapter as "Commission."~~

A. The Commission shall generally study all aspects of coal as an energy resource and endeavor to stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources other than petroleum. The Commission shall have no authority to promulgate rules and adopt regulations. All agencies of the Commonwealth shall assist the Commission in its work. In addition to the aforementioned general powers, the Commission shall also perform the following functions:

~~A-1.~~ 1. Act in an advisory capacity to the Governor and executive branch agencies upon energy related matters;

~~B-2.~~ 2. Investigate and consider such questions and problems relating to the field of coal and energy utilization and alternative energy sources as may be submitted;

~~C-3.~~ 3. Make recommendations to the Governor and General Assembly on its own initiative;

~~D-4.~~ 4. Consult with applicable state agencies on all matters regarding energy conservation, including the promotion and implementation of initiatives for the public-at-large to conserve energy;

~~E-5.~~ 5. Endeavor to encourage research designed to further new and more extensive use of the coal as well as alternative and renewable energy resources of the Commonwealth;

~~F-6.~~ 6. Effectively disseminate any such proposals to groups and organizations, both state and local, so as to stimulate local governing bodies and private business initiative in the field of energy related matters; and

~~G-7.~~ 7. Coordinate its efforts with those of the Virginia Solar Energy Center established pursuant to § 45.1-391 and the Virginia Center for Coal and Energy Research established pursuant to Article 2.01 (§ 23-135.7:1 et seq.) of Chapter 11 of Title 23;

~~H-8.~~ 8. Actively seek federal and other funds to be used to carry out its functions;

~~I-9.~~ 9. Seek to establish alternative fuel capability within the Commonwealth.

B. The Commission shall report its findings and recommendations to the Governor and the General Assembly on an annual basis.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-145.1 and subsection B is § 9-145.4.

~~§ 9-145.2. Membership; terms; vacancies; chairman; compensation.~~

~~A. The Commission shall consist of twenty members, of whom five shall be appointed by the Committee on Privileges and Elections of the Senate from the membership of the Senate, eight shall be appointed by the Speaker of the House of Delegates from the membership thereof and seven shall be appointed from the Commonwealth at large by the Governor. The at large appointees shall include representatives of industry, government and groups or organizations identified with production and conservation of coal, natural gas, and energy.~~

~~B. The terms of office of the legislative members shall be coincident with their service in the house from which appointed; the appointees of the Governor shall serve for terms of four years and their successors shall be appointed for like terms, but vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.~~

~~C. The members of the Commission shall elect its own chairman annually.~~

~~D. Legislative members of the Commission shall receive such compensation as is set forth in § 14.1-18 and all members shall be reimbursed for their actual expenses incurred by them in the performance of their duties in the work of the Commission.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsections A through D in proposed § 30-XXX, supra.

~~§ 9-145.3. Secretarial and administrative office; support services.~~

~~The Division of Legislative Services shall serve the Commission as its secretariat and central administrative office and shall furnish the Commission with such services as the Commission shall deem necessary.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection E in proposed § 30-XXX, supra.

~~§ 9-145.4. Annual report.~~

~~The Commission shall report its findings and recommendations to the Governor and the General Assembly on an annual basis.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection B in proposed § 30-XXX (existing § 9-145.1) supra.

Chapter X.

Commission on Early Childhood and Child Day Care Programs.

~~§ 9-291.1 30-XXX. Commission created; powers and duties; appointment and on Early Childhood and Child Day Care Programs; purpose; membership; terms of members; vacancies, etc; compensation; staff.~~

~~A. There is hereby created the The Commission on Early Childhood and Child Day Care Programs hereinafter referred to as (the "Commission") is established in the legislative branch of state government. The purpose of the Commission shall be, ~~through its powers and performance of duties set forth in this chapter,~~ to study and provide recommendations addressing the need for quality developmental early childhood and child day care programs and services. In so doing, it shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible early childhood and child day care programs and provide a forum for continuing the review and study of such programs and services. In addition to its own proposals, the Commission shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting such programs and services.~~

~~B. The Commission shall be composed consist of nineteen members. ~~Appointments shall be made to be~~ appointed as follows: seven members ~~from~~ of the House of Delegates to be appointed by the Speaker of the House; four members ~~from~~ of the Senate to be appointed by the Senate Committee on Privileges and Elections and three citizens to be appointed by the Governor, one of whom shall be a representative of the business community, and one of whom shall be a representative of local government. In addition, the Commissioner of Social Services, the Superintendent of Public Instruction, the Director of the State Council of Higher Education, the Chancellor of the Virginia Community College System, and the Chairman of the Child Day Care Council shall~~

~~serve as ex officio members with full voting privileges. The members of the Commission shall elect a chairman and a vice chairman annually.~~

~~All such members of the Commission shall serve until the expiration of their terms of office or until their successors shall qualify. However, the appointments of citizen members shall be for a term of five years. Subsequent appointments shall be made for similar terms, and vacancies shall be filled for the unexpired terms by the persons authorized to make the original appointments.~~

~~C. The members of the Commission shall elect a chairman and a vice-chairman annually.~~

~~D. Commission members shall be compensated as specified in § 14-148 30-19.12, and shall be reimbursed for expenses incurred in the performance of their duties all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-XXX (§ 2.1-20.10).~~

~~C. The Commission shall have the power and duty to:~~

- ~~1. Determine the number of at-risk four-year-olds in the Commonwealth and the number of such children who are not enrolled in developmental early childhood or child day care programs;~~
- ~~2. Determine the number of school-age children in the Commonwealth and the extent of the need for public school day care programs;~~
- ~~3. Develop a mechanism for the phased integration of and funding for quality developmental early childhood and child day care programs;~~
- ~~4. Assess the need for additional child day care services, and the types of program options desired by families, including the need for employer-sponsored child day care services for state employees;~~
- ~~5. Recommend ways to promote significant parental, state and local, public-private sector, and corporate involvement in and support of early childhood and child day care programs;~~
- ~~6. Monitor and evaluate the implementation of programs to provide appropriate education and training for early childhood professionals and child day care providers;~~
- ~~7. Recommend eligibility criteria for participation in and appropriate ways by which early childhood and day care programs may be provided which minimize the potentiality for competition between the Commonwealth and private day care providers;~~
- ~~8. Review the status of agency efforts to promote the coordination and dissemination of child care information and day care services;~~
- ~~9. Develop incentives to promote the recruitment and retention of qualified early childhood professionals and child day care providers;~~
- ~~10. Review the provisions of and monitor the implementation of the Family Support Act of 1988, the Child Care Act, P.L. 101-508, the Head Start Authorization Increase, P.L. 101-120, and such other federal legislation and regulations concerning early childhood and child day care programs as may be enacted, and recommend such amendments to relevant state statutes as may be necessary to ensure consistency between state and federal law and regulations;~~
- ~~11. Analyze the several policy and legal issues related to early childhood and day care programs, e.g., establishment of entitlement programs, effect on the compulsory school attendance laws, modifications in licensing requirements, and program content, and determine the need for the development of appropriate policy or changes in current state policy and laws pertaining to such issues;~~

~~12. Determine the appropriate mechanism for and level of funding necessary to assist low income families and the working poor in obtaining quality, affordable child day care services, including the impact of any state, local, or federal fiscal exigency on early childhood and child day care programs and services;~~

~~13. Coordinate the revision and implementation of child day care licensing laws and review such related matters as may be referred to it;~~

~~14. Monitor and coordinate health and early intervention programs for young children and such children with special needs to ensure the delivery of appropriate services; and~~

~~15. Recommend any statutory, regulatory, or policy changes as it deems necessary to ensure the viability of quality, affordable and accessible early childhood and child day care programs.~~

~~D~~E. The Division of Legislative Services shall provide ~~such~~ staff support, both administrative and professional, ~~as to~~ the Commission may require.

E. The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by this Commonwealth, or to which the Commonwealth is party, or from any political subdivision of the Commonwealth, cooperation and assistance as it may deem necessary in the performance of its duties.

~~E. The Commission shall report its findings and recommendations regarding early childhood and child day care programs and services to the 1992 Session of the General Assembly, and thereafter, report annually on the status and needs concerning such programs and services in the Commonwealth to the Governor and the General Assembly.~~

DRAFTING NOTE: Existing subsections C and E, shown here as stricken, now appear as subsections A and B in proposed § 30-XXX, Powers and Duties of the Commission, infra. In subsection B, the deletion of the language "with full voting privileges" as it relates to the ex officio members does not eliminate their right to vote on this Council. The term "ex officio" means by virtue of the office and does not address voting rights. The Code Commission has adopted the position in this title revision, that voting rights accompany all members appointed ex officio unless the statute states that such members are not to vote.

§ 30-XXX. Powers and duties of the Commission; annual report.

A. The Commission shall have the power and duty to:

1. Determine the number of at-risk four-year-olds in the Commonwealth and the number of such children who are not enrolled in developmental early childhood or child day care programs;

2. Determine the number of school age children in the Commonwealth and the extent of the need for public school day care programs;

3. Develop a mechanism for the phased integration of and funding for quality developmental early childhood and child day care programs;

4. Assess the need for additional child day care services, and the types of program options desired by families, including the need for employer-sponsored child day care services for state employees;

5. Recommend ways to promote significant parental, state and local, public-private sector, and corporate involvement in and support of early childhood and child day care programs;

6. Monitor and evaluate the implementation of programs to provide appropriate education and training for early childhood professionals and child day care providers;

7. Recommend eligibility criteria for participation in and appropriate ways by which early childhood and day care programs may be provided which minimize the potentiality for competition between the Commonwealth and private day care providers;

8. Review the status of agency efforts to promote the coordination and dissemination of child care information and day care services;

9. Develop incentives to promote the recruitment and retention of qualified early childhood professionals and child day care providers;

10. Review the provisions of and monitor the implementation of the Family Support Act of 1988, the Child Care Act, P.L. 101-508, the Head Start Authorization Increase, P.L. 101-120, and such other federal legislation and regulations concerning early childhood and child day care programs as may be enacted, and recommend such amendments to relevant state statutes as may be necessary to ensure consistency between state and federal law and regulations;

11. Analyze the several policy and legal issues related to early childhood and day care programs, e.g., establishment of entitlement programs, effect on the compulsory school attendance laws, modifications in licensing requirements, and program content, and determine the need for the development of appropriate policy or changes in current state policy and laws pertaining to such issues;

12. Determine the appropriate mechanism for and level of funding necessary to assist low income families and the working poor in obtaining quality, affordable child day care services, including the impact of any state, local, or federal fiscal exigency on early childhood and child day care programs and services;

13. Coordinate the revision and implementation of child day care licensing laws and review such related matters as may be referred to it;

14. Monitor and coordinate health and early intervention programs for young children and such children with special needs to ensure the delivery of appropriate services; and

15. Recommend any statutory, regulatory, or policy changes as it deems necessary to ensure the viability of quality, affordable and accessible early childhood and child day care programs.

B. The Commission shall report its findings and recommendations regarding early childhood and child day care programs and services to the Governor and the General Assembly on an annual basis.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of subsections C and E of existing § 9-291.1.

SECTIONS RELOCATED FROM TITLE 9 TO
TITLE 3.1 (Agriculture), TITLE 6.1 (Banking), TITLE 17.1- (Supreme Court),
TITLE 23-(EDUCATIONAL INSTITUTIONS), and TITLE 51.1.

Title 3.1.

Chapter X.

Tobacco Indemnification and Community Revitalization Commission.

~~§ 9-380~~ 3.1-XXX. Definitions.

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

"Active tobacco producer" means a person who is the actual producer, as determined by the United States Department of Agriculture (USDA), of tobacco on a farm where tobacco is produced pursuant to a tobacco farm marketing quota or farm acreage allotment for the 1998 crop year as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to ~~§ 9-384~~ 3.1-XXX.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to ~~§ 9-385~~ 3.1-XXX.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

"Quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Tobacco farmer" means a person who is an active tobacco producer, a quota holder, or both.

DRAFTING NOTE: Technical corrections only.

~~§ 9-384~~ 3.1-XXX. Commission created; purposes.

A. The Tobacco Indemnification and Community Revitalization Commission is ~~hereby~~ created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is ~~hereby~~ vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of determining the appropriate recipients of moneys in the Tobacco Indemnification and Community Revitalization Fund and causing distribution of such moneys for the purposes provided in this chapter, including using moneys in the Fund to (i) provide payments to tobacco farmers as compensation for the adverse economic effects resulting from loss of investment in specialized tobacco equipment and barns and lost tobacco production opportunities associated with a decline in quota and (ii) revitalize tobacco dependent communities. The Commission shall have only those powers enumerated in ~~§ 9-383~~ 3.1-XXX.

DRAFTING NOTE: Technical corrections only.

~~§ 9-382~~ 3.1-XXX. Membership; terms; vacancies; chairman.

A. The Commission shall be composed of thirty-one members as follows:

1. Six members shall be appointed by the Speaker of the House of Delegates from the membership thereof in accordance with the principles of Rule 16 of the House of Delegates adopted at the 1998 Regular Session of the General Assembly;

2. Four members shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate;

3. The Secretary of Commerce and Trade or his designee;

4. The Secretary of Finance or his designee;

5. The Commissioner of Agriculture and Consumer Affairs or his designee;

6. Three members shall be active flue-cured tobacco producers appointed by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor from a list of six persons provided by the members of the General Assembly appointed to the Commission;

7. Three members shall be active burley tobacco producers appointed by the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor from a list of three persons provided by the members of the General Assembly appointed to the Commission;

8. One member shall be a representative of the Virginia Farm Bureau Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm Bureau Federation; and

9. Eleven members shall be citizens appointed by the Governor. Of the eleven citizen members, three shall be appointed by the Governor from a list of nine provided by the members of the General Assembly appointed to the Commission.

With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of Finance or his designee and the Commissioner of Agriculture and Consumer Affairs or his designee, all members of the Commission shall reside in the Southside and Southwest regions of the Commonwealth and shall be subject to confirmation by the General Assembly. To the extent feasible, appointments representing the Southside and Southwest regions shall be proportional to the tobacco quota production of each region.

Except as otherwise provided herein, all appointments shall be for terms of four years each. Vacancies shall be filled for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The initial appointments of the active flue-cured tobacco producers, the active burley tobacco producers, and the citizen members shall be as follows: one active flue-cured tobacco producer, one active burley tobacco producer and four citizen members shall be appointed for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and four citizen members shall be appointed for terms of three years; and one active flue-cured tobacco producer, one active burley tobacco producer and three citizen members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of four years.

B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Commission. A majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.

C. Members of the Commission shall receive reimbursement for actual expenses incurred in the performance of their duties on behalf of the Commission. Such expenses shall be paid from the Fund.

DRAFTING NOTE: Technical corrections only.

~~§ 9-383~~ 3.1-XXX. Powers and duties of the Commission.

A. ~~The Commission is hereby granted, shall have, and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following the power and duty to:~~

1. ~~To adopt~~ Adopt, use, and alter at will an official seal;
2. ~~To make~~ Make bylaws for the management and regulation of its affairs;
3. ~~To maintain~~ Maintain an office at such place or places within this Commonwealth as it may designate;
4. ~~To accept~~ Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;
5. ~~To determine~~ Determine how moneys in the Fund are to be distributed and to authorize distribution of moneys in the Fund for the purposes set forth in this chapter;
6. ~~To make~~ Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. ~~To invest~~ Invest its funds as provided in this chapter or permitted by applicable law; and
8. ~~To do~~ Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied, including use of whatever lawful means may be necessary and appropriate to recover any payments wrongfully made from the Fund.

~~B. The Commission shall cause moneys in the Fund to be distributed as follows:~~

1. ~~To cause payment to be made to tobacco farmers in the Commonwealth for the decline or elimination of tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998. To the extent such tobacco farmers are not otherwise compensated by a national tobacco community trust fund and to the extent moneys are available in the Fund, the Commission shall cause compensation to be paid to such tobacco farmers in an amount equal to the total lost asset value in quota incurred annually by such tobacco farmers. To the extent an active tobacco producer is not otherwise compensated by a national tobacco community trust fund and to the extent moneys are available in the Fund, the Commission shall also cause compensation to be paid to an active tobacco producer for the economic loss resulting from any annual quota reduction. The total asset loss value in quota and economic losses for active tobacco producers in Virginia is estimated to be \$1.2 billion. The Commission shall establish criteria for determining economic loss resulting from any annual quota reduction. When establishing such criteria, the Commission shall consider any similar criteria established pursuant to creation of a national tobacco community trust fund; and~~
2. ~~To promote economic growth and development in tobacco dependent communities in an equitable manner throughout the southside and southwest regions of the Commonwealth, in order to assist such communities in reducing their dependency on tobacco and tobacco-related business.~~

~~DB.~~ The Commission shall undertake studies and gather information and data in order to determine (i) the economic consequences of the reduction in or elimination of quota for tobacco growers, (ii) the potential for alternative cash crops, and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth.

C. The Commission shall submit a report annually to the Governor and the General Assembly.

DRAFTING NOTE: Technical corrections. Existing subsection B now appears as proposed § 30-XXX, Distribution of Fund, infra. Proposed subsection C is § 9-388.

~~§ 9-384~~ 3.1-XXX. Appointment of director; counsel to the Commission.

A. The Governor shall appoint an executive director subject to confirmation by the General Assembly. The compensation of the executive director shall be determined by the Commission, subject to approval by the Governor. The executive director shall ~~be serve as~~ be serve as the secretary to the Commission and shall administer the affairs and business of the Commission in accordance with the provisions of this chapter and subject to the policies, control and direction of the Commission. The Commission may employ technical experts and ~~such~~ other officers, agents and employees, permanent and temporary, as ~~it may require~~ requires, and shall determine their qualifications, duties and compensation. The Commission may delegate to one or more of its agents or employees ~~such the administrative duties as it may deem~~ deems proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

B. The Office of the Attorney General shall provide counsel to the Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 9-385~~ 3.1-XXX. Tobacco Indemnification and Community Revitalization Fund.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is ~~hereby~~ created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

§ 3.1-XXX. Distribution of Fund.

The Fund shall be distributed by the Commission for the following purposes:

1. The compensation of Virginia tobacco farmers for the decline or elimination of tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998.

To the extent tobacco farmers in Virginia are not otherwise compensated by a national tobacco community trust fund and to the extent moneys are available in the Fund, the Fund shall be used to compensate tobacco farmers in an amount equal to the total lost asset value in quota incurred annually by such tobacco farmers.

To the extent active tobacco producers in Virginia are not otherwise compensated by a national tobacco community trust fund and to the extent moneys are available in the Fund, the Fund shall be used to compensate active tobacco producers for the economic loss resulting from any annual quota reduction.

For the purposes of this section, the total asset loss value in quota and economic losses for active tobacco producers in Virginia shall be estimated to be \$1.2 billion.

The Commission shall establish criteria for determining economic loss resulting from any annual quota reduction, including any similar criteria established pursuant to the creation of a national tobacco community trust fund; and

2. The stimulation of economic growth and development in tobacco-dependent communities in an equitable manner throughout the southside and southwest regions of the Commonwealth, to assist such communities in reducing their dependency on tobacco and tobacco-related business.

DRAFTING NOTE: Technical corrections. This proposed section is subsection B from existing § 9-383.

~~§ 9-386 3.1-XXX. Audit Form of accounts; annual audit.~~

A. The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

B. The accounts of the Commission shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: subsection A is § 9-387 and subsection B is § 9-386.

~~§ 9-387. Forms of accounts and records.~~

~~The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection A in proposed § 3.1-XXX (existing § 3-386) supra.

~~§ 9-388. Reports to the Governor and General Assembly.~~

~~The Commission shall submit a report annually to the Governor and the General Assembly.~~

DRAFTING NOTE: Technical corrections. This section now appears as subsection C in proposed § 3.1-XXX (existing § 9-383) supra.

~~§ 9-389 3.1-XXX. Public Declaration of public purpose; exemption from taxation.~~

A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience and prosperity.

B. The Commission ~~will~~ shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Commission and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Commission under the provisions of this chapter.

DRAFTING NOTE: Technical corrections only.

Title 6.1

~~§ 2.1-23 6.1-XXX. Saturday closing of banks.~~

It shall be lawful for any bank as defined in § 6.1-4, including national banking associations and federal reserve banks, to permit any one or more or all of its offices to remain closed on any one or more or all Saturdays, as the bank, by resolution of its board of directors, may from time to time determine. Any Saturday on which an office of a bank ~~shall remain~~ remains closed, as herein permitted, shall ~~as to such office,~~ constitute a legal holiday as to such office, and any act authorized, required or permitted to be performed at, by or with respect to any such office on a Saturday on which the office is so closed, may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

DRAFTING NOTE: Technical corrections. This section has been relocated here from Title 2.1 for more appropriate placement.

Title 17.1.

Chapter X.

Judicial Review and Inquiry Commission.

~~§ 2.1-37.4~~ 17.1-XXX. Definitions and application of chapter.

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

"Commission" means the Judicial Inquiry and Review Commission provided for in Article VI, Section 10 of the Constitution of Virginia, ~~"subordinate"~~

~~"courts of record" means all courts of record except the Supreme Court, but including the Court of Appeals, and "judge"~~

"Judge" means a justice of the Supreme Court, judge of the Court of Appeals, judge of a circuit or district court, member of the State Corporation Commission, or a member of the Virginia Workers' Compensation Commission, all of whom shall be subject to investigations and proceedings under the provisions of this chapter.

DRAFTING NOTE: Technical corrections. The definition of "subordinate courts of record" has been deleted as unnecessary. That term is not used in this chapter.

~~§ 2.1-37.3~~ 17.1-XXX. ~~(For effective date — See note)~~ Commission created; membership and terms of office.

There is ~~hereby~~ created a Judicial Inquiry and Review Commission, composed of seven persons who shall be citizens and residents of ~~this~~ the Commonwealth. The members of the Commission shall be chosen by the vote of a majority of the members elected to each house of the General Assembly. The Commission, annually, shall elect one of its members to be chairman of the Commission for the ensuing year.

The Commission shall consist of three judicial members, who shall be (i) one active judge of a circuit court, (ii) one active judge of a general district court and (iii) one active judge of a juvenile and domestic relations district court; two lawyer members, who shall be active members of the Virginia State Bar who are not judges and who have practiced law in ~~this~~ the Commonwealth for fifteen or more years immediately preceding their appointment; and two public members who shall not be active or retired judges and shall never have been licensed lawyers.

~~The~~ After the initial appointments, the term of office of each member shall be four years commencing on July 1, ~~except that the initial terms commencing on July 1, 1979, shall be as follows: The term of one public member shall be four years; the term of the general district court judge member shall be four years; and the term of the juvenile and domestic relations district court judge member shall be three years.~~ No member of the Commission shall be eligible to serve more than two consecutive terms.

Commission membership terminates whenever a member resigns or ceases to possess the qualifications that made him eligible for appointment. During any vacancy which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next session of the General Assembly. Upon election of a successor by the General Assembly, the new member of the Commission shall serve for the remainder of the term of office of his predecessor.

Any member of the Commission who is the subject of an investigation or hearing by it or is otherwise personally involved therein shall be disqualified by the Commission from acting in such proceedings. In such a case the Governor shall appoint a person possessing the original qualifications of such member as prescribed by this section to serve temporarily as a substitute member of the Commission in such proceedings.

DRAFTING NOTE: Technical corrections. Language relating to the terms of initial appointees has been deleted as obsolete.

~~§ 2-1-37.3~~ 17.1-XXX. (~~Delayed effective date—See notes~~) Commission created; membership and terms of office.

There is ~~hereby~~ created a Judicial Inquiry and Review Commission, composed of seven persons who shall be citizens and residents of ~~this~~ the Commonwealth. The members of the Commission shall be chosen by the vote of a majority of the members elected to each house of the General Assembly. The Commission, annually, shall elect one of its members to be chairman of the Commission for the ensuing year.

The Commission shall consist of three judicial members, who shall be (i) one active judge of a circuit court, (ii) one active judge of a general district court and (iii) one active judge of a family court; two lawyer members, who shall be active members of the Virginia State Bar who are not judges and who have practiced law in ~~this~~ the Commonwealth for fifteen or more years immediately preceding their appointment; and two public members who shall not be active or retired judges and shall never have been licensed lawyers.

~~The~~ After the initial appointments, the term of office of each member shall be four years commencing on July 1, ~~except that the initial terms commencing on July 1, 1970, shall be as follows: The term of one public member shall be four years; the term of the general district court judge member shall be four years; and the term of the juvenile and domestic relations district court judge member shall be three years.~~ No member of the Commission shall be eligible to serve more than two consecutive terms.

Commission membership terminates whenever a member resigns or ceases to possess the qualifications that made him eligible for appointment. During any vacancy which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until thirty days after the commencement of the next session of the General Assembly. Upon election of a successor by the General Assembly, the new member of the Commission shall serve for the remainder of the term of office of his predecessor.

Any member of the Commission who is the subject of an investigation or hearing by it or is otherwise personally involved therein shall be disqualified by the Commission from acting in such proceedings. In such a case the Governor shall appoint a person possessing the original qualifications of such member as prescribed by this section to serve temporarily as a substitute member of the Commission in such proceedings.

DRAFTING NOTE: Technical corrections. Language relating to the terms of initial appointees has been deleted as obsolete.

~~§ 2-1-37.4~~ 17.1-XXX. Powers and duties of Commission generally.

The Commission is ~~hereby~~ vested with the power, and it shall be its duty, to investigate charges arising out of the present or any prior term of office which would be the basis for retirement, censure, or removal of a judge under Article VI, Section 10 of the Constitution of Virginia and the provisions of this chapter even though the subject judge may have been reelected to a new term of office.

The Commission, after such investigation as it deems necessary, may order and conduct hearings at such times and places in the Commonwealth as it shall determine.

If the Commission finds the charges to be well-founded, and sufficient to constitute the basis for retirement, censure, or removal of a judge, it may file a formal complaint before the Supreme Court.

The Commission shall have the authority to make rules, not in conflict with the provisions of this chapter or of general law, to govern investigations and hearings conducted by it.

No act of the Commission shall be valid unless concurred in by a majority of its members.

DRAFTING NOTE: Technical corrections. This proposed section is comprised of the following existing sections: the first three paragraphs are § 2.1-37.4, the fourth paragraph is § 2.1-37.5, and the last paragraph is § 2.1-37.6.

~~§ 2.1-37.5. Power to make rules.~~

~~The Commission shall have the authority to make rules, not in conflict with the provisions of this chapter or of general law, to govern investigations and hearings conducted by it.~~

DRAFTING NOTE: Technical corrections. This section now appears as the fourth paragraph in proposed § 17.1-XXX (existing § 2.1-37.4).

~~§ 2.1-37.6. Concurrence of majority in acts of Commission required.~~

~~No act of the Commission shall be valid unless concurred in by a majority of its members.~~

DRAFTING NOTE: Technical corrections. This section now appears as the last paragraph in proposed § 17.1-XXX (existing § 2.1-37.4).

~~§ 2.1-37.7. 17.1-XXX. Officers and employees; experts and reporters; witnesses; legal counsel.~~

The Commission may (i) employ such officers, assistants, and other employees as it deems necessary for the performance of the its duties and exercise of the powers conferred upon it, ~~may~~; (ii) arrange for and compensate medical and other experts and reporters, ~~may~~; (iii) arrange for attendance of witnesses, including witnesses not subject to subpoena; and ~~may~~ (iv) pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, Section 10 of the Constitution of Virginia and the provisions of this chapter, whether or not specifically enumerated herein. The Attorney General shall, if requested by the Commission, act as its counsel generally or in any particular investigation or proceeding.

The Commission may employ counsel, notwithstanding the provisions of ~~§ 2.1-122, as amended 2.2-XXX.~~

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.8. 17.1-XXX. Compensation and expenses.~~

~~Each member~~ Members of the Commission shall be allowed his all reasonable and necessary expenses for travel, board, and lodging incurred in the performance of his their duties. ~~The members shall receive compensation for their services as provided in § 14.1-48 30-19.12.~~ These and all other necessary expenses of the Commission shall be paid by the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.8: 17.1-XXX. Annual report.~~

On or before December 1 of each year, the Commission shall publish a report detailing the activities of the Commission for the prior year. The report shall include the number of complaints filed with the Commission; the number of complaints originating from attorneys, judges, court employees, or the general public; the number of complaints dismissed based on (i) failure to fall within the jurisdiction of the Commission, (ii) failure to state a violation of the Canons of Judicial Conduct, or (iii) failure of the Commission to reach a conclusion that the Canons were breached; the number of complaints for which the Commission concluded that the Canons of Judicial Conduct were breached; and the number of cases from which the staff or any member of the Commission recused himself due to an actual or possible conflict.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.2~~ 17.1-XXX. Jurisdiction of Supreme Court.

In addition to the jurisdiction conferred on the Supreme Court by Article VI, Section 1 and Section 10 of the Constitution of Virginia, to conduct hearings and impose sanctions upon the filing by the Commission of complaints against justices of the Supreme Court, judges of other courts of record, and members of the State Corporation Commission, the Supreme Court by virtue of this chapter shall have the same jurisdiction, to be exercised in the same manner, upon the filing by the Commission of complaints against all other judges as defined ~~herein~~ in this chapter.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.9~~ 17.1-XXX. Oaths; inspection of books and records; subpoenas.

In the conduct of investigations and formal hearings, the Commission may ~~(a)~~(i) administer oaths and affirmations; ~~(b)~~(ii) order and otherwise provide for the inspection of books and records; and ~~(c)~~(iii) issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and other records or tangible evidence relevant to any such investigation or formal hearing.

The power to administer oaths and affirmations, to issue subpoenas, or to make orders for or concerning the inspection of books and records may be exercised by any member of the Commission, unless the Commission shall otherwise determine.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.10~~ 17.1-XXX. Scope of process.

In any investigation or formal proceeding in any part of the Commonwealth, any process issued pursuant to the provisions of ~~§ 2.1-37.9~~ 17.1-XXX shall be effective throughout the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2.1-37.14~~ 17.1-XXX. Order compelling witness to attend and testify.

If any person refuses to attend or testify or produce any writings or things required by any such subpoena, the Commission may petition any court of record in the Commonwealth for an order compelling such person to attend and testify or produce the writings or things required by the subpoena before the Commission. The court shall order such person to appear before it at a specified time and place and ~~then and there~~ show cause why he had not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court that the subpoena was regularly issued, the court shall order such person to appear before the Commission at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with by such court as for contempt of court.

All process in any such case may be served in the manner prescribed by law for service of process in civil actions.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.12~~ 17.1-XXX. Depositions.

In any pending investigation or formal hearing, the Commission may order the deposition of a person residing within or without the Commonwealth to be taken in such form and subject to such limitations as may be prescribed in the order. If the subject judge and counsel for the Commission do not stipulate as to the manner of taking the deposition, either the judge or counsel for the Commission may file in a trial court of record a petition entitled "In the Matter of Proceeding of Judicial Inquiry and Review Commission No. (state number)" and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk of the court and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. Upon failure of the person named in the subpoena to appear and testify, he shall be dealt with by such court as for contempt of court. If the deposition is that of a person residing or present within this Commonwealth, the petition shall be filed in the court of record of the county or corporation in which such person resides or is present; otherwise in the Circuit Court of the City of Richmond.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.12:1~~ 17.1-XXX. Suspension of judge.

A. In any pending investigation or formal hearing, the Commission may suspend a judge with pay if it finds that there is probable cause to believe that the continued performance of judicial duties by the judge constitutes both a substantial and immediate threat to the public interest in the administration of justice.

B. The Commission shall give the judge reasonable notice of such suspension as prescribed by the rules of the Commission and, if requested by the judge or his attorney, shall schedule a hearing during the first fifteen days of the suspension in order to determine whether justice would be served for the suspension to continue until the completion of the investigation or formal hearing. There shall be no investigation or formal hearing conducted or a suspension imposed relating to matters which are the subject of a pending criminal case in which a judge is the defendant until final disposition of such case by a court of competent jurisdiction, including the exhaustion of all appeals.

C. Any judge whose powers are suspended by the Commission shall not exercise judicial powers during such suspension, but shall continue to be bound by the Canons of Judicial Conduct.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.12:2~~ 17.1-XXX. Physical or mental examination.

A. Whenever the Commission has probable cause to believe a judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness, the Commission, after preliminary investigation by informal conference, may direct that the judge submit to a mental or physical examination by a health care provider approved by the Commission after consultation with the judge. The health care provider's report shall be in writing. Upon request, the judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any health care provider regarding the judge's mental or physical condition.

B. Any judge ordered to be examined pursuant to this section shall be afforded reasonable notice and an opportunity for a hearing before such examination is conducted as to any matters regarding the examination and as to whether there is probable cause to believe that the judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness. During such hearing, the judge shall have the right to call witnesses on his behalf.

C. All costs related to examinations conducted at the direction of the Commission shall be paid out of sums appropriated for the operation of the Commission. The failure of a judge to submit to an examination ordered pursuant to this section or to provide waivers and releases required by this section shall constitute grounds for a new charge.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.13~~ 17.1-XXX. Confidentiality of papers and proceedings.

All papers filed with and proceedings before the Commission, and under §§ ~~2-1-37.14~~ 17.1-XXX and ~~2-1-37.12~~ 17.1-XXX, including the identification of the subject judge as well as all testimony and other evidence and any transcript thereof made by a reporter, shall be confidential and shall not be divulged, other than to the Commission, by any person who (i) either files a complaint with the Commission, or receives such complaint in an official capacity, ~~or~~ (ii) investigates such complaint; (iii) is interviewed concerning such complaint by a member, employee or agent of the Commission, ~~or~~ or (iv) participates in any proceeding of the Commission; or in the official recording or transcription thereof, ~~except that the~~. However, the record of any proceeding filed with the Supreme Court shall lose its confidential character. However, if

If the Commission finds cause to believe that any witness under oath has willfully and intentionally testified falsely, the Commission may direct the chairman or one of its members to report such finding and the details leading thereto including any transcript thereof to the attorney for the Commonwealth of the city or county where such act occurred for such disposition as to a charge of perjury as the Commonwealth may be advised. In any subsequent prosecution for perjury based thereon, the proceedings before the Commission relevant thereto shall lose their confidential character.

All records of proceedings before the Commission which are not filed with the Supreme Court in connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the Commission.

However, a judge who is under investigation by the Commission, or any person authorized by him, may divulge information pertaining to a complaint filed against such judge as may be necessary for the judge to investigate the allegations in the complaint in preparation for the proceedings before the Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.14~~ 17.1-XXX. Privilege.

The filing of papers with and the giving of testimony before the Commission shall be privileged, except where such filing of papers or giving of testimony is motivated or accompanied by actual malice. No other publication of such papers or proceedings shall be privileged in any action for defamation except that ~~(a)~~(i) the record filed by the Commission with the Supreme Court, in support of a formal complaint filed therewith, continues to be privileged and ~~(b)~~(ii) a writing which was privileged before its filing with the Commission ~~does~~ shall not lose such privilege by such filing.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.15~~ 17.1-XXX. Witness fees; mileage; exception.

A. Each witness, other than an officer or employee of the Commonwealth or a political subdivision thereof, or an officer or an employee of a court of this Commonwealth, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in civil cases. The amount shall be paid by the Commission from funds appropriated for the use of the Commission.

B. This section shall not apply to an officer or employee of the Commonwealth or a political subdivision thereof, or an officer or an employee of a court of the Commonwealth.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.16~~ 17.1-XXX. Costs.

No award of costs shall be made in any proceeding before the Commission or the Supreme Court.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.17~~ 17.1-XXX. Assistance and information.

State and local public bodies and departments, officers and employees thereof, and officials and all personnel of the courts of ~~this~~ the Commonwealth shall cooperate with and give reasonable assistance and information to the Commission and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the Commission.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.17:4~~ 17.1-XXX. (~~Contingent effective date—see notes~~) Transmission of certain information to Virginia State Bar, House and Senate Committees for Courts of Justice, and other members of the General Assembly.

A. The Judicial Inquiry and Review Commission shall transmit to the appropriate District Committee of the Virginia State Bar any complaint or evidence that may come to its attention with reference to the alleged misconduct of a judge or substitute judge which relates to his private practice of law.

B. The Commission shall also transmit any evidence that it has in its possession with reference to the alleged misconduct of any judge whose election is to be considered at the next session of the General Assembly to (i) the House and Senate Committees for Courts of Justice and (ii) any member of the General Assembly, upon request. Such evidence shall include the nature of the complaint, the current status of the complaint, the duration of any suspension and the evidence supporting the probable cause finding therefor, a description of any remedial course of action, and a statement concluding whether any such remedial course was successfully undertaken. A copy of any evidence in whatever form so transmitted shall be sent to the judge in question. Any member of the General Assembly who knowingly discloses such information shall be subject to any sanctions which may be imposed by the Committee on Standards of Conduct.

DRAFTING NOTE: Technical corrections only.

~~§ 2-1-37.18~~ 17.1-XXX. Service of process; execution of orders.

It shall be the duty of the sheriffs and sergeants in the several counties, cities, and towns, upon request of the Commission or its authorized representative, to serve process and execute all lawful orders of the Commission or entered by the court at its request without costs therefor.

DRAFTING NOTE: Technical corrections only.

Title 23.

Chapter X.

Board of Regents; Gunston Hall.

~~§ 9-99.4~~ 23-XXX. Board of Regents of Gunston Hall; Board of Visitors for Gunston Hall.

There is hereby created the Board of Regents of Gunston Hall and the Board of Visitors for Gunston Hall. Membership of both collegial bodies shall be pursuant to the terms and conditions of the deed of gift of Gunston Hall from Louis Hertle to the Commonwealth of Virginia. The duties for the two boards are prescribed in Chapter

138 of the 1932 Acts of Assembly and Chapter 175 of the 1948 Acts of Assembly. As such, the Board of Regents is declared an educational institution with all the rights, powers, privileges, and immunities under law. The Board of Regents shall manage, maintain and operate Gunston Hall, and accept and administer gifts of real and personal property made for the benefit of Gunston Hall.

DRAFTING NOTE: Technical corrections only.

Chapter X.

Frontier Culture Museum of Virginia.

§ 9-99.2 23-XXX. Frontier Culture Museum of Virginia created; purpose.

There is hereby created the Frontier Culture Museum of Virginia as a state agency. The purpose of the museum is to construct, operate, and maintain, in the Augusta County/Staunton/Waynesboro area of the Commonwealth of Virginia, an outdoor museum in order to commemorate on an international scale the contribution which the pioneers and colonial frontiersmen and frontierswomen of the eighteenth and nineteenth centuries made to the creation and development of the United States of America. The Museum is an educational institution with responsibility to administer certain historical and interpretive programs as may be established.

DRAFTING NOTE: Technical corrections only.

§ 9-99.3 23-XXX. Board of Trustees; membership; terms; officers and committees; compensation.

The Frontier Culture Museum of Virginia shall be administered by a Board of Trustees consisting of no more than twenty-five members. The members shall be appointed as follows: Five members ~~shall of the House of Delegates shall~~ be appointed by the Speaker of the House of Delegates ~~from membership thereof for terms concurrent with the terms for which they have been elected to office;~~ three members ~~shall of the Senate shall~~ be appointed by the Senate Committee on Privileges and Elections Committee of the Senate ~~from membership thereof for terms concurrent with the terms for which they have been elected to office;~~ and nine citizen members shall be appointed by the Governor ~~from the Commonwealth at large for four-year terms, provided that initial appointments.~~

Legislative members shall serve terms coincident with their terms of office. Members appointed by the Governor shall be serve terms as follows: three members appointed shall serve for one year, two members appointed shall serve for two years, two members appointed shall serve for three years, and two members appointed shall serve for four years. Thereafter, members appointed shall serve for four-year terms. Appointments to fill vacancies shall be made for the unexpired term. The Governor may appoint, upon recommendation of the Board of Trustees, eight additional members for four-year terms who may be nonresidents of the Commonwealth and who ~~will shall~~ serve at no expense to the Commonwealth.

The Board of Trustees shall elect a chairman, vice-chairman, and such other officers as are ~~deemed it~~ deems necessary and seven. Seven or more of ~~its the~~ members ~~to of~~ the Board of Trustees shall constitute an executive committee.

The Board of Trustees shall be reimbursed for actual expenses and shall be compensated at the per diem rate established for members of the General Assembly for meetings.

DRAFTING NOTE: Technical corrections only.

§ 9-99.4 23-XXX. Powers and duties of Board of Trustees.

The Board of Trustees shall have the following ~~powers~~ power to:

1. ~~To establish~~ Establish, operate, and maintain the Frontier Culture Museum of Virginia to commemorate the contributions which the pioneers and colonial frontiersmen and frontierswomen made to the creation of this nation;
2. ~~To employ~~ Employ an executive director and such assistants as may be required and confer such duties and responsibilities as determined necessary;
3. ~~To adopt~~ Adopt a flag, seal, and other emblems for use in connection with the Museum;
4. ~~To establish~~ Establish a nonprofit corporation to develop and maintain public awareness of the Frontier Culture Museum of Virginia;
5. ~~To receive~~ Receive and expend gifts, grants, and donations of any kind from whatever sources determined;
6. ~~To adopt such~~ Adopt regulations and set fees concerning the use and visitation of properties under its control;
7. ~~With the consent of the Governor, to acquire~~ Acquire, with the consent of the Governor, lands, property and structures deemed necessary to the purpose of the Museum by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Museum may proceed in the manner provided by law for the Commonwealth Transportation Commissioner in §§ 33.1-89 through 33.1-132;
8. ~~With the consent of the Governor, to convey~~ Convey by lease land to any person, association, firm or corporation, with the consent of the Governor, for such terms and on such conditions as the Museum may determine;
9. ~~To enter~~ Enter into contracts to further the purpose of the Museum, which have been approved by the Attorney General; and
10. ~~To elect~~ Elect any past member of the Board of Trustees to the honorary position of trustee emeritus. Trustees emeriti shall serve as honorary members for life, shall not have voting privileges and shall be elected in addition to those positions set forth in § ~~9-99.3 23-XXX~~.

DRAFTING NOTE: Technical corrections only.

~~§ 9-99.04. 23-291. (Effective until July 1, 2008)~~ Agency cooperation; celebration of the 400th anniversary of the founding of Jamestown.

A. All agencies of the Commonwealth ~~are authorized~~ may, consistent with the mission of the agency, ~~to~~ provide assistance and advice to the Foundation in fulfilling all things necessary and proper to plan for and implement the 400th celebration of the first permanent English settlement in the New World.

B. The various agencies and institutions of the Commonwealth shall, upon request of the Foundation and approval of the respective agency head, designate a liaison to coordinate assistance and services to the Foundation from their agencies and institutions.

DRAFTING NOTE: Technical corrections only. This proposed section is § 9-99.01 which has been relocated here from Title 9.

~~§ 9-99.02 23-292. (Effective until July 1, 2008)~~ Authorization of actions directly related to anniversary celebration.

With prior approval of the Governor, the Foundation is ~~authorized to~~ may perform the following actions directly related to the planning, coordination and implementation of the celebration of the 400th anniversary of the founding of Jamestown in 1607:

1. Solicit and accept donations of materials and services to defray expenses;
2. Retain all nongeneral funds including interfund transfers heretofore transferred to central agencies for expense reimbursement and identified savings;
3. Procure any goods and services with minimum requirements associated with the maximum delegated authority available to any state agency or institution in the executive branch;
4. Consider all position levels, which may fluctuate depending upon workload and funding availability, for reference only;
5. Receive assistance and advice from state agencies and institutions without charge; and
6. Contact international, national, interstate, regional, and other state and local elected and appointed officials.

DRAFTING NOTE: Technical corrections only. This proposed section is § 9-99.02 which has been relocated here from Title 9.

Title 51.1.

Chapter X.

Health Insurance Credits for Certain Retirees.

~~§ 2.1-20.1-2~~ 51.1-XXX. Health insurance credits for retired state employees.

A. The Commonwealth shall provide a credit toward the cost of health insurance coverage for any former state employee, as defined in ~~§ 2.1-20.1-2~~ 2.2-XXX, who retired under the Virginia Retirement System, State Police Officers Retirement System, Judicial Retirement System or any retirement system authorized pursuant to § 51.1-126 and who (i) rendered at least fifteen years of total creditable service under the Retirement System or (ii) rendered service as a temporary employee of the General Assembly in 1972 and became a member of the retirement system from 1972 to 1985 immediately following such temporary service. The amount of each monthly health insurance credit payable under this section shall be four dollars per year of creditable service, not to exceed a maximum monthly allowance of \$120, which amount shall be credited monthly to any retired state employee participating in the state retiree health benefits program pursuant to ~~§ 2.1-20.1-6~~ 2.2-XXX or an alternative personal health insurance plan as provided herein. However, such credit shall not exceed the health insurance premium for retiree-only coverage as provided under such alternative personal health insurance plan. Any retired state employee retired under the provisions of §§ 51.1-156 and 51.1-307 shall receive the maximum credit provided by this section. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.) or 3 (§ 51.1-300 et seq.) of Title 51.1 who elects to defer his retirement pursuant to subsection C of §§ 51.1-153, 51.1-205 or § 51.1-305 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

B.-4. For those retired state employees ~~participating~~:

1. Participating in the state retiree health benefits program, such credit shall be applied to the monthly premium deducted from benefits payable to retired state employees in accordance with Chapters 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.) and 3 (§ 51.1-300 et seq.) of Title 51.1. In the event that either no benefit is payable or the benefit payable is insufficient to deduct the entire health care premium, the payment of the credit shall be determined in the manner prescribed by the Virginia Retirement System. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

~~2. For those retired state employees not~~ Not electing or eligible to participate in the state retiree health benefits program and who purchase an alternative personal health insurance policy from a carrier or organization of his own choosing, such retirees shall be eligible to receive a credit in the amount specified in subsection A. Eligibility for the credit and payment for the credit shall be determined in a manner prescribed by the Virginia Retirement System.

~~3C.~~ 3C. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), or 3 (§ 51.1-300 et seq.) of Title 51.1 who (i) rendered at least fifteen years of total creditable service as a state employee as defined in § ~~2-1-20-1:2.2-XXX~~ and (ii) after terminating state service, was employed by a local government that does not elect to provide a health insurance credit under § ~~2-1-20-1:3 2.2-XXX~~ or § ~~2-1-20-1:4 2.2-XXX~~, shall be eligible for the credit provided by subsection A, provided that the retired employee is participating in a health insurance plan. The Commonwealth shall be charged with the credit as provided for in subsection ~~CD~~. In such case, the health insurance credit shall be determined based upon the amount of state service or service as a teacher rendered by the employee.

~~GD.~~ GD. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided by this section to reflect the cost of such credits in the employer contribution rate pursuant to § 51.1-145, and prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance credit program provided for in this section shall be recovered from the health insurance credit trust fund.

~~DE.~~ DE. Notwithstanding anything contained in this section to the contrary, the Medical College of Virginia Hospitals Authority shall pay the cost of coverage for employees of such Authority who (i) retired under the Virginia Retirement System or any retirement system authorized pursuant to §§ 23-50.16:24.1, 51.1-126, 51.1-126.1, or former § 51.1-126.2; (ii) were employed by such Authority prior to July 1, 1998, and were not subsequently rehired by such Authority on or after July 1, 1998; and (iii) served no less than fifteen years of creditable service as regularly employed full-time employees of such Authority or the Commonwealth.

DRAFTING NOTE: Technical corrections only. This section was relocated here from Title 2.1 because it deals with retirees.

~~§-2-1-20-1:3~~ 5.1-XXX. Health insurance credits for retired teachers.

A. A teacher, as defined in § 51.1-124.3, retired under the Virginia Retirement System who rendered at least fifteen years of total creditable service under the System shall receive a health insurance credit to his monthly retirement allowance, which shall be applied to reduce the retired member's health insurance premium cost. The amount of each monthly health insurance credit payable under this section shall be two dollars and fifty cents for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of seventy-five dollars; ~~however.~~ However, each former member whose retirement was for disability shall receive a monthly health insurance credit of seventy-five dollars. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement. The cost of such credit shall be borne by the Commonwealth.

B. In addition to the health insurance credit authorized in subsection A, localities which participate in the Virginia Retirement System may elect to provide an additional health insurance credit of one dollar per month for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of thirty dollars. The costs of such additional health insurance credit shall be borne by the locality.

~~C.-4.~~ C.-4. Those retired employees who purchase an alternative personal health insurance policy from a carrier or organization of their own choosing shall be eligible to receive a credit in the amount specified in ~~subdivision C-2~~ subsection D. Eligibility for the credit and payment of the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2D. The credit shall be in (i) the amount provided in subsection A, or subsection A and subsection B if the additional credit authorized by subsection B is provided or (ii) the amount of premium paid for the personal health insurance policy, whichever is less.

3E. Any person included in the membership of a retirement system provided by Chapter 1 (§ 51.1-124.1 et seq.), 2 (§ 51.1-200 et seq.), or 3 (§ 51.1-300 et seq.) of Title 51.1 who (i) rendered at least fifteen years of total creditable service as a teacher as defined in § 51.1-124.3 and (ii) after terminating service as a teacher, was employed by a local government that does not elect to provide a health insurance credit under ~~§ 2-1-20.1:4 2.2-XXX~~, shall be eligible for the credit provided by subsection A and subsection B if provided by the school division from which the service described in clause (i) was rendered, provided that the retired employee is participating in a health insurance plan. The Commonwealth and local school division, if appropriate, shall be charged with the credit as provided for in subsection ~~DE~~. In such case, the health insurance credit shall be determined based upon the amount of state service or service as a teacher rendered by the employee.

DE. The Virginia Retirement System shall (i) actuarially determine the amount necessary to fund all credits provided under this section, (ii) reflect the cost of such credits in the applicable employer contribution rate pursuant to §§ 51.1-145, 51.1-204, and 51.1-304, and (iii) prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance program provided for in this section shall be recovered from the health insurance credit trust fund.

DRAFTING NOTE: Technical corrections only. This section was relocated here from Title 2.1 because it deals with retirees.

~~§ 2-1-20.1:4~~ 51.1-XXX. Health insurance credits for retired local government employees.

A. Retired local government employees, whose localities have elected to participate in the Virginia Retirement System, who have rendered at least fifteen years of total creditable service under the System shall receive a health insurance credit to his monthly retirement allowance, which shall be applied to reduce the retired member's health insurance premium cost, provided the retiree's employer elects to participate in the credit program. The amount of each monthly health insurance credit payable under this section shall be \$1.50 for each full year of the retired member's creditable service, not to exceed a maximum monthly credit of forty-five dollars; however, each former member whose retirement was for disability shall receive a monthly health insurance credit of forty-five dollars. Eligibility for the credit shall be determined in a manner prescribed by the Virginia Retirement System. Any member who elects to defer his retirement pursuant to subsection C of § 51.1-153 shall be entitled to receive the allowable credit provided by this section on the effective date of his retirement.

~~B.4~~. Those retired employees who purchase an alternative policy from a carrier or organization of their own choosing shall be eligible to receive a credit in the amount specified in subsection ~~B-2 C~~. Eligibility for the credit and payment of the credit shall be determined in a manner prescribed by the Virginia Retirement System.

2C. The credit shall be in the amount provided in subsection A or the amount of premium paid for the personal health insurance policy, whichever is less.

GD. The cost of the monthly health insurance credit payable under this section shall be borne by the locality.

DE. The Virginia Retirement System shall actuarially determine the amount necessary to fund all credits provided under this section, reflect the cost of such credits in the applicable employer contribution rate pursuant to § 51.1-145, and prescribe such terms and conditions as are necessary to carry out the provisions of this section. The costs associated with the administration of the health insurance credit program provided for in this section shall be recovered from the health insurance credit trust fund.

DRAFTING NOTE: Technical corrections only. This section was relocated here from Title 2.1 because it deals with retirees.

~~§ 2.1-20.1:5~~ 51.1-XXX. (Contingent effective date - see note) Optional supplemental health insurance credit for retired state employees.

A. As used in this section, "lump sum payment amount" means the amount a state employee is entitled to be paid upon the date of retirement from state service, in accordance with the applicable rules and procedures of the employee's agency or institution, for any (i) accumulated annual leave balance, (ii) accumulated sick leave balance, and (iii) wages and salary for any period for which the employee worked and has not yet been paid.

B. Any state employee retiring from service pursuant to subsection A, B or D of § 51.1-153, § 51.1-156, subsection A, B or D of § 51.1-205, or subsection A, B or B1 of § 51.1-305 on or after July 1, 1999, who participates in the state health insurance plan, shall have the option to require that his lump sum payment amount be credited to a supplemental health insurance credit account which would qualify under Internal Revenue Code § 125 to be used to supplement the amount of the monthly health insurance credit provided pursuant to ~~§ 2.1-20.1:2~~ 2.2-XXX. Such option shall be irrevocably exercised on or before the employee's last day of service.

C. Amounts credited to supplemental health insurance credit accounts shall be deposited in a special fund in the state treasury. Interest accruing on amounts in the special fund shall be credited pro rata among the accounts. Amounts shall be paid from the special fund at the request of the Department of Personnel and Training, which shall determine, in cooperation with the Board of Trustees of the Virginia Retirement System, the amount required to be withdrawn from an electing retired employee's supplemental health insurance credit account in order to cover, in conjunction with the health care credit, the premium for the retiree-only or family health insurance coverage.

D. Amounts in a retiree's supplemental health insurance credit account shall be exempt from taxation and exempt from execution, attachment, garnishment or any other process to the same extent, and subject to the same conditions, as are retirement allowances and benefits pursuant to § 51.1-124.4.

E. In the event that an electing retiree dies prior to exhausting the amount in the retiree's supplemental health insurance credit account, the balance in the account shall be paid in the same manner as provided in § 51.1-163.

DRAFTING NOTE: Technical corrections only. This section was relocated here from Title 2.1 because it deals with retirees.

~~§ 2.1-20.1:6~~ 51.1-XXX. Participation in the state retiree health benefits program.

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

"Involuntarily separated" means separated from state service as the result of any dismissal, requested resignation, or failure to obtain reappointment, excluding a separation resulting from a conviction for a felony or crime involving moral turpitude or dishonesty or a separation related to the job performance or misconduct of the state employee.

"Retiree health benefits program" or "program" means the plan for providing health insurance coverage for retired state employees provided pursuant to subsection E of ~~§ 2.1-20.1~~ 2.2-XXX.

"State employee" ~~has means~~ the same meaning as that term is defined in § 2.1-20.1 ~~2.2-XXX~~.

"State retiree" means a state employee retired under the Virginia Retirement System, State Police Officers' Retirement System, Judicial Retirement System or any retirement system authorized pursuant to § 51.1-126, who is eligible to receive a monthly retirement annuity from that retirement system.

B. A state retiree shall be eligible to participate in the retiree health benefits program only if he makes an election to participate in the program within thirty-one days following the date of termination of employment with the Commonwealth. A retired state employee who fails to elect to participate in the state health plan within thirty-

one days of the effective date of retirement, or who, once having elected to participate, discontinues participation, is barred from participating in the state health plan thereafter.

C. Any state retiree who was involuntarily separated who on July 1, 1999, is participating in the retiree health benefits program and is receiving monthly retirement annuity payments may elect, by notifying the Virginia Retirement System and the Department of Personnel and Training before September 1, 1999, to cease receiving monthly retirement annuity payments until reapplying for such benefits at a later date and to continue participation in the retiree health benefits program.

DRAFTING NOTE: Technical corrections only. This section was relocated here from Title 2.1 because it deals with retirees.

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