HOUSE BILL NO. 1291

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology on February 27, 2012)

(Patron Prior to Substitute—Delegate Gilbert)

A BILL to amend and reenact §§ 2.2-203, 2.2-203.2:1, 2.2-212, 2.2-214, 2.2-215, 2.2-221, 2.2-230, 2.2-435.8, 2.2-517, 2.2-712, 2.2-1111, 2.2-1117, 2.2-1118, 2.2-1122, 2.2-1137, 2.2-1201, 2.2-1204, 2.2-1507, 2.2-2001, 2.2-2001.1, 2.2-2004, 2.2-2006, 2.2-2012, 2.2-2101, as it is currently effective and as it shall become effective, 2.2-2411, 2.2-2528, 2.2-2626, 2.2-2627, 2.2-2664, 2.2-2666.3, 2.2-2674.01, 2.2-2676, 2.2-2677, 2.2-2696, 2.2-3000, 2.2-3003 through 2.2-3005.1, 2.2-3401, 2.2-3402, 2.2-3501, 2.2-3705.2, 2.2-3705.3, 2.2-3705.5, 2.2-3711, 2.2-3902, 2.2-4002, 2.2-4006, 2.2-4024, 2.2-4117, 2.2-4118, 2.2-4343, 2.2-4344, as it is currently effective and as it shall become effective, 2.2-4345, 2.2-5300, 2.2-5510, 3.2-102, 3.2-109, 3.2-111, 3.2-114, 3.2-1100, 3.2-1102, 3.2-1800, 3.2-1802 through 3.2-1808, 3.2-1810, 3.2-1812, 3.2-1813, 3.2-1815, 3.2-2400 through 3.2-2410, 3.2-6588, 4.1-207.1, 4.1-223, 8.01-44.3, 8.01-66.9, 8.01-384.1, 8.01-418.2, 8.01-581.23, 9.1-102, 9.1-108, 10.1-104, 10.1-107, 10.1-400, 10.1-603.2, 10.1-603.2:1, 10.1-603.2:2, 10.1-603.4, 10.1-603.8:1, 10.1-603.12, 10.1-603.12:1, 10.1-603.14, 10.1-1102, 10.1-1103, 10.1-1183, 10.1-1186, 15.2-738, 15.2-1507, 15.2-1535, 15.2-1604, 15.2-1805, 15.2-2159, 15.2-2232, 16.1-287, 16.1-293, 19.2-164.1, 19.2-389, 22.1-17.1, 22.1-19, 22.1-209.1:2, 22.1-214, 22.1-217, 22.1-217.01, 22.1-253.13:5, 22.1-289, 22.1-346.2, 23-9.9:01, 23-50.16:24, 30-34.2:1, 30-182, 30-193, 30-198, 30-326, 32.1-23.1, 32.1-45.1, 32.1-64.1, 32.1-89, 32.1-102.1, 32.1-116.1, 32.1-127.1:04, 32.1-283.5, 32.1-330.3, 37.2-304, 37.2-312.1, 37.2-504, 37.2-505, 37.2-605, 37.2-802, 37.2-1000, 37.2-1010, 37.2-1015, 40.1-51.4:4, 44-123.3, 45.1-161.292:2, 45.1-161.292:11, 45.1-161.292:19 through 45.1-161.292:22, 45.1-161.292:24 through 45.1-161.292:29, 45.1-161.292:71, 45.1-186.1, 45.1-194, 46.2-221, 46.2-411, 46.2-649.1, 46.2-1217, 51.1-124.3, 51.1-124.22, 51.1-124.27, 51.1-1101, 51.5-1, 51.5-2, 51.5-5.01, 51.5-9, 51.5-31, 51.5-33, 51.5-39.2, 51.5-39.7, 51.5-39.10, 51.5-41, 51.5-44, 53.1-5, 53.1-10, 53.1-32, 53.1-32.1, 53.1-41, 53.1-63.1, 54.1-300, 54.1-500, 54.1-500.1, 54.1-501, 54.1-516, 54.1-700, 54.1-701, 54.1-703, 54.1-704.1, 54.1-704.2, 54.1-705, 54.1-706, 54.1-1500, 54.1-2200, as it is currently effective and as it shall become effective, 54.1-3005, 54.1-3408, 57-60, 58.1-344.3, 58.1-439.11, 58.1-609.1, 58.1-662, 58.1-2259, 58.1-3703, 58.1-3840, 59.1-198, 59.1-203, 59.1-207.3, 59.1-207.34, 59.1-207.39, 59.1-207.44, 59.1-429, 59.1-432, 59.1-473, 62.1-44.5, 62.1-229.4, 63.2-100, 63.2-215, 63.2-313, 63.2-315, 63.2-401, 63.2-405, 63.2-1600, 63.2-1601, 63.2-1602, 63.2-1605, 63.2-1606, 63.2-1700, 63.2-1706, 63.2-1734, 63.2-1810, 63.2-2100, 63.2-2102, 66-3, 66-10, 66-13, 66-25.1, as it is currently effective and as it shall become effective, 66-25.1:2, and 66-25.4 of the Code of Virginia; to amend the Code of Virginia by adding in Article 2 of Chapter 2 of Title 2.2 a section numbered 2.2-203.2:2, by adding in Chapter 5 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-520 through 2.2-524, by adding sections numbered 2.2-1202.1 and 2.2-1501.1, by adding in Chapter 24 of Title 2.2 an article numbered 23, consisting of sections numbered 2.2-2465 through 2.2-2469, by adding in Article 9 of Chapter 26 of Title 2.2 a section numbered 2.2-2627.1, by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3903, by adding in Chapter 18 of Title 3.2 an article numbered 3, consisting of sections numbered 3.2-1816 through 3.2-1822, by adding sections numbered 3.2-2407.1 and 4.1-103.02, by adding in Chapter 2 of Title 22.1 a section numbered 22.1-20.1, by adding in Chapter 1 of Title 46.2 a section numbered 46.2-116, by adding in Chapter 9 of Title 51.5 a section numbered 51.5-39.13, by adding in Title 51.5 a chapter numbered 14, containing articles numbered 1 through 12, consisting of sections numbered 51.5-116 through 51.5-181, by adding sections numbered 54.1-1500.1 and 54.1-1500.2, by adding in Chapter 15 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-1506 through 54.1-1509, by adding sections numbered 54.1-2200.1 and 54.1-2200.2, by adding in Chapter 22 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-2208.1 through 54.1-2208.4, and by adding a section numbered 66-13.1; and to repeal § 2.2-118, Chapter 7 (§§ 2.2-700 through 2.2-720), Chapter 10 (§§ 2.2-1000 and 2.2-1001), Article 9 (§§ 2.2-2328 through 2.2-2335) of Chapter 22, Articles 6 (§§ 2.2-2411 and 2.2-2412), 7 (§§ 2.2-2413 and 2.2-2414), 12 (§§ 2.2-2426 through 2.2-2433), and 13 (§ 2.2-2434) of Chapter 24, Articles 8 (§§ 2.2-2620 through 2.2-2625), 9 (§§ 2.2-2626 and 2.2-2627), 10 (§§ 2.2-2628 through 2.2-2629.2), 12 (§§ 2.2-2632 through 2.2-2639), and 26 (§§ 2.2-2675 through 2.2-2678) of Chapter 26, Articles 2 (§§ 2.2-2705 through 2.2-2708.1) and 4 (§ 2.2-2711) of Chapter 27, and § 2.2-4118 of Title 2.2, Chapter 25 (§§ 3.2-2500 through

3.2-2510), §§ 3.2-3901, 3.2-3902, 3.2-3903, and 3.2-3905, and Chapter 41 (§§ 3.2-4100 through 3.2-4111) of Title 3.2, Article 4 (§§ 10.1-217.1 through 10.1-217.6) of Chapter 2, §§ 10.1-406, 10.1-603.14:1, 10.1-1172, Chapter 18 (§§ 22.1-339 through 22.1-345.1) of Title 22.1, §§ 45.1-161.292:15, 45.1-161.292:16, 45.1-161.292:18, 45.1-161.292:23, 45.1-195, and 45.1-196, § 46.2-224 and Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2, § 51.5-2 and Chapters 2 (§§ 51.5-3 through 51.5-5.01), 3 (§§ 51.5-8 through 51.5-10.1), 3.1 (§§ 51.5-12.1 through 51.5-12.4), 4 (§§ 51.5-13 through 51.5-14.1), 5 (§§ 51.5-15 through 51.5-22), and 6 (§§ 51.5-23 through 51.5-30) of Title 51.5, Article 3 (§§ 54.1-517.3, 54.1-517.4, and 54.1-517.5) of Chapter 5, § 54.1-703.2, Chapter 14 (§§ 54.1-1400 through 54.1-1405), §§ 54.1-1502 and 54.1-1503, Chapter 17 (§§ 54.1-1700 through 54.1-1706), and § 54.1-2202, as it is currently effective and as it shall become effective, of Title 54.1, §§ 63.2-800, 63.2-1528, 63.2-1602.1, 63.2-1604, and 63.2-1735 of the Code of Virginia and the second enactment of Chapter 551 of the Acts of Assembly of 2011, relating to the Governor's reorganization of the executive branch of state government; elimination of the Commonwealth Competition Council, the Interagency Dispute Resolution Council, the Virginia Public Buildings Board, the Virginia Council on Human Resources, the Small Business Advisory Board, the Board of Surface Mining Review, the Board of Mineral Mining Examiners, the Virginia National Defense Industrial Authority, the Virginia Public Broadcasting Board, the Hemophilia Advisory Board, the Boating Advisory Committee, the Council on Indians, the Foundation for Virginia's Natural Resources, the Board of Correctional Education, the Virginia Juvenile Enterprise Committee, the Board of Transportation Safety, and the Board of Towing and Recovery Operators; consolidation of the Department of Employment Dispute Resolution into the Department of Human Resource Management, the Human Rights Council and the Office of Consumer Affairs of the Department of Agriculture and Consumer Services into the Office of the Attorney General, the Reforestation of Timberlands Board into the Board of Forestry, the Seed Potato Board and the Potato Board, the Bright Flue-Cured Tobacco Board and the Dark-Fired Tobacco Board, the Pesticide Control Board into the Board of Agriculture and Consumer Services, the Board for Opticians and the Board for Hearing Aid Specialists, the Board for Geology and the Board for Professional Soil Scientists and Wetland Professionals, the Department for Aging, the Department of Rehabilitative Services, and adult services and adult protective services of the Department of Social Services into the Department for Aging and Rehabilitative Services, the Advisory Board on Child Abuse and Neglect into the Family and Children's Trust Fund, the Child Day-Care Council into the Board of Social Services, the Chippokes Plantation Farm Foundation and Board of Trustees and the Scenic River Board into the Board of Conservation and Recreation, the Department of Correctional Education into the Departments of Corrections and Juvenile Justice, and the Virginia War Memorial Foundation becomes the Virginia War Memorial Board under the Department of Veterans Services; deregulation of the professions of hair braiding and mold inspectors and mold remediators; transfer of certain powers and duties from the Department of Environmental Quality to the Department of Conservation and Recreation concerning environmental education, from the Virginia Soil and Water Conservation Board to the State Water Control Board concerning municipal separate storm sewer system (MS4) permitting, and from the Governor's Office of Substance Abuse Prevention to the Department of Alcoholic Beverage Control concerning substance abuse prevention.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-203.2:1, 2.2-1111, 2.2-2012, 2.2-2101, as it is currently effective and as it shall become effective, and 23-9.9:01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section number 2.2-1501.1 as follows:

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

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

As used in this section, ~~"commercial activities" and "commercial source" shall mean the same as those terms are defined in § 2.2-2620~~ *unless the context requires a different meaning:*

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

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

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system;

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002;

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped; *and*

7. ~~Require that on or before October 1, 2009, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the Department of General Services' website; and~~

~~8.~~ Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 59.1-284.25, for use in on-road internal combustion engines. The conditions shall take into consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel.

C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

§ 2.2-1501.1. Additional duties of Department; commercial activities list.

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

"Commercial activity" means performing services or providing goods that can normally be obtained from private enterprise.

"Commercial activities list" means the list of all commercial activities performed by employees of the Commonwealth.

"Privatization" means a variety of techniques and activities that promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.

B. From such funds as are appropriated for this purpose, the Department shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Department's findings and recommendations.

2. Determine the privatization potential of a program or activity, perform cost/benefit analyses, and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

3. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity that is subject to a privatization recommendation.

C. The commercial activities list developed by the Department in accordance with this section shall be updated every two years and posted on the Internet. In addition, the Department shall solicit at least annually in the Virginia Register public comments on the commercial activities list and invite recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. All comments received shall be considered, and reasonable accommodation shall be made to permit representatives of any private entity, upon their request, to meet with the Department and the appropriate state agency to discuss their comments.

§ 2.2-2012. Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to § 2.2-2007 or to the individual strategic plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § 2.2-4301, VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

C. VITA may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

D. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

E. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

~~F. The CIO shall, on or before October 1, 2009, and every two years thereafter, solicit from each state agency and public institution of higher education a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The CIO shall make the lists available to the public on VITA's website.~~

§ 2.2-2101. (Effective until July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; ~~to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621;~~ to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-233; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735.

§ 2.2-2101. (Effective July 1, 2013) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions.

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to

members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; ~~to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621;~~ to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-233; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Open Education Curriculum Board, who shall be appointed as provided in § 2.2-2463; or to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735.

§ 23-9.9:01. Reports of expenditures of state funds.

~~A.~~ The governing body of each public institution of higher education shall provide the State Council of Higher Education annual data indicating the apportionment and amounts of expenditures that the relevant institution expends by category, including academic costs, administration, research, and public service, as defined by the Council. The Council shall compile and submit a report of such data annually to the Governor and the General Assembly.

~~B. The Director of the State Council of Higher Education shall, on or before October 1, 2009, and every two years thereafter, solicit from each public institution of higher education that has received restructured financial and operational authority a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the State Council of Higher Education's website.~~

2. That Article 8 (§§ 2.2-2620 through 2.2-2625) of Chapter 26 of Title 2.2 of the Code of Virginia is repealed.*

3. That § 2.2-4118 of the Code of Virginia is repealed.*

4. That §§ 2.2-1137 and 30-193 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1137. Location, construction or lease of state consolidated office buildings.

~~Subject to the authority of the Virginia Public Buildings Board, the~~ *The* Department shall be responsible for the location and construction or lease of state consolidated office buildings at the seat of government and throughout the Commonwealth for joint use by state agencies, departments and institutions.

§ 30-193. Capitol Square Preservation Council; membership; terms; compensation and expenses; quorum; "Capitol Square" defined.

A. The Capitol Square Preservation Council (the Council) is established in the legislative branch of state government. The Council shall consist of ~~14~~ *13* members as follows: three members appointed by the Speaker of the House of Delegates, after consideration of the 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, if any; two members appointed by the Senate Committee on Rules, after consideration of the 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, if any; ~~six~~ *five* nonlegislative citizen members appointed by the Governor, two after consideration of the lists of nominations provided by the governing bodies of the Virginia Chapter of the American Society of Landscape Architects and the Virginia Historical Society, if any, one ~~each~~ from the ~~memberships~~ *membership* of the ~~Virginia Public Buildings Board and the~~ Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion and two citizens at large; ~~and~~ the Secretary of Administration, or his designee~~,~~*;* and the Clerks of the House of Delegates and the Senate who shall serve ex officio with voting privileges. Nonlegislative citizen members shall be citizens of the Commonwealth.

B. A personnel committee of the Council is established, consisting of the Clerk of the House of Delegates, the Clerk of the Senate, the Secretary of Administration, and the chairman of the Council or their designees. The personnel committee shall establish the personnel policies for the Executive Director of the Council employed pursuant to § 30-194. The Executive Director shall report to the personnel committee regarding proposed

projects and activities and shall seek the prior approval of the personnel committee for personnel expenditures related to such projects and activities.

~~B.~~ *C.* Following the initial staggering of terms, all appointments to the Council shall be for terms of three years, except any legislative member appointed shall serve a term coincident with his terms of office. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term in the same manner as the original appointment. No member shall be eligible to serve more than two successive three-year terms, except any legislative member appointed may be reappointed for successive terms without limitation. 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.~~ *D.* 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.~~ *E.* Members of the Council shall not receive compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided from existing appropriations to the Council.

~~E.~~ *F.* For the purposes of this article, "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 50 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.

5. That Article 13 (§ 2.2-2434) of Chapter 24 of Title 2.2 of the Code of Virginia is repealed.*

6. That §§ 2.2-1201 and 51.1-1101 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1201. Duties of Department; Director.

A. The Department shall have the following duties:

1. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and recommend necessary amendments thereto.

2. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend necessary amendments thereto.

3. Design and maintain a personnel information system that shall support the operational needs of the Department and of state agencies, and that shall provide for the management information needs of the Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay, status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

4. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth.

5. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance. In no event shall workers' compensation leave affect the total number of hours credited during a performance cycle for purposes of calculating incentive increases in salary based on such performance evaluations.

6. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

7. Design and utilize an application form which shall include, but not be limited to, information on prior volunteer work performed by the applicant.

8. Establish and administer a comprehensive and integrated program of employee training and management development.

9. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

10. Establish and administer a program to ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment.

11. Establish and administer regulations relating to disciplinary actions; however, no disciplinary action shall include the suspension without pay for more than 10 days of any state employee who is under investigation without a hearing conducted either by a level of supervision above the employee's immediate supervisor or by his agency head.

12. Adopt and implement a centralized program to provide awards to employees who propose procedures or ideas that are adopted and that will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect. The centralized program shall be designed to (i) protect the identity of the individual making the proposal while it is being evaluated for implementation by a state agency, (ii) publicize the acceptance of proposals and financial awards to state employees, and (iii) include a reevaluation process that individuals making proposals may access if their proposals are rejected by the evaluating agency. The reevaluation process must include individuals from the private sector. State employees who make a suggestion or proposal under this section shall receive initial confirmation of receipt within 30 days. A determination of the feasibility of the suggestion or proposal shall occur within 60 days of initial receipt.

13. Develop state personnel policies and, after approval by the Governor, disseminate and interpret state personnel policies and procedures to all agencies. Such personnel policies shall permit an employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an acceptable use policy for the Internet. At a minimum, the Department's acceptable use policy shall contain provisions that (i) prohibit use by state employees of the Commonwealth's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet and (ii) establish strict disciplinary measures for violation of the acceptable use policy. An agency head may supplement the Department's acceptable use policy with such other terms, conditions, and requirements as he deems appropriate. The Director of the Department shall have the final authority to establish and interpret personnel policies and procedures and shall have the authority to ensure full compliance with such policies. However, unless specifically authorized by law, the Director of the Department shall have no authority with respect to the state grievance procedures.

13a. Develop state personnel policies, with the approval of the Governor, that permit any full-time state employee who is also a member of the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard to carry forward from year to year the total of his accrued annual leave time without regard to the regulation or policy of his agency regarding the maximum number of hours allowed to be carried forward at the end of a calendar year. Any amount over the usual amount allowed to be carried forward shall be reserved for use only as leave taken pursuant to active military service as provided by § 2.2-2903.1. Such leave and its use shall be in addition to leave provided under § 44-93. Any leave carried forward for the purposes described remaining upon termination of employment with the Commonwealth or any department, institution or agency thereof that has not been used in accordance with § 2.2-2903.1 shall not be paid or credited in any way to the employee.

14. Ascertain and publish on an annual basis, by agency, the number of employees in the service of the Commonwealth, including permanent full-time and part-time employees, those employed on a temporary or contractual basis, and constitutional officers and their employees whose salaries are funded by the Commonwealth. The publication shall contain the net gain or loss to the agency in personnel from the previous fiscal year and the net gains and losses in personnel for each agency for a three-year period.

15. Submit a report to the members of the General Assembly on or before September 30 of each year showing (i) the total number of ~~full-~~ *full-time* and part-time employees, (ii) contract temporary employees, (iii) hourly temporary employees, and (iv) the number of employees who voluntarily and involuntarily terminated their employment with each department, agency or institution in the previous fiscal year.

16. Administer the workers' compensation insurance plan for state employees in accordance with § 2.2-2821.

17. Work jointly with the Department of General Services and the Virginia Information Technologies Agency to develop expedited processes for the procurement of staff augmentation to supplement salaried and wage employees of state agencies. Such processes shall be consistent with the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The Department may perform contract administration duties and responsibilities for any resulting statewide augmentation contracts.

B. The Director may convene such ad hoc working groups as the Director deems appropriate to address issues regarding the state workforce.

§ 51.1-1101. Sickness and disability program; disability insurance policies.

A. The Board shall develop, implement, and administer a sick leave, short-term disability, and long-term disability benefits program in accordance with the provisions of this chapter. The Board is authorized to delegate or assign to any person any of the duties required to be performed by the Board pursuant to this chapter. The Board is authorized to purchase long-term disability insurance policies for participating employees. The policies shall be purchased from and carried with a disability insurance company which is authorized to do business in the Commonwealth. Each policy shall contain a provision stipulating the maximum expense and risk charges that are determined by the Board to be on a basis consistent with the general level of charges made by disability insurance companies under policies of long-term disability insurance issued to large employers. The Board may require that the policies have reinsurance with a disability insurance company incorporated or organized under the laws of and authorized to do business in the Commonwealth. This section is not intended to abrogate the final authority of the Director of the Department of Human Resource Management under subdivision *A* 13 of § 2.2-1201 to establish and interpret personnel policy and procedures, such as the sick leave policy.

B. Notwithstanding the provisions of subsection A, the Board may self-insure long-term disability benefits in accordance with the standards set forth in § 51.1-124.30.

7. That Article 26 (§§ 2.2-2675 through 2.2-2678) of Chapter 26 of Title 2.2 of the Code of Virginia is repealed.*

8. That §§ 2.2-203, 2.2-2676, 2.2-2677, 2.2-3000, 2.2-3003 through 2.2-3005.1, 2.2-3705.3, 2.2-4117, 2.2-4118, 8.01-418.2, 8.01-581.23, 15.2-738, 15.2-1507, 23-50.16:24, 30-34.2:1, 40.1-51.4:4, 44-123.3, 51.1-124.22, and 51.1-124.27 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 2 of Title 2.2 a section numbered 2.2-203.2:2 and by adding a section numbered 2.2-1202.1 as follows:

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

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

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

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

§ 2.2-1202.1. Additional powers and duties of Director; employment dispute resolution.

The Director shall:

1. Establish a comprehensive program of employee relations management that includes alternative processes for resolving employment disputes;

2. Establish the grievance procedure and a statewide mediation program;

3. Adopt rules and set hearing officer fees for grievance hearings;

4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure; (ii) direct full compliance with the grievance procedure process; (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 the findings; and (iv) rule on the qualification of a grievance or the question of access to the grievance procedure;

5. Render final decisions, containing the reasons for such decision, on all matters related to procedural compliance with the grievance procedure;

6. Establish a process to select, on a rotating basis, hearing officers for grievance hearings from (i) the list maintained by the Executive Secretary of the Supreme Court or (ii) attorneys hired as classified employees by the Department through a competitive selection process; train and assign such hearing officers to conduct grievance hearings; evaluate the quality of their services to determine eligibility for continued selection; and, if deemed ineligible for continued selection, establish policies for removing such hearing officers from consideration for future selection;

7. Publish hearing officer decisions and Department rulings;

8. Establish a training program for human resources personnel on employee relations management and employment rights and responsibilities;

9. Implement a comprehensive training and instructional program for all supervisory personnel that includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct onsite training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;

10. Provide information upon the request of any employee concerning personnel policies, regulations, and law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

11. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;

12. Collect information and statistical data regarding the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

13. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

14. Conduct such training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings as the Director determines appropriate;

15. Exercise such other powers and perform such other duties as may be requested by the Governor; and

16. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this section.

§ 2.2-2676. Virginia Council on Human Resources; membership; terms; compensation and expenses.

A. The Virginia Council on Human Resources (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of ~~17~~ *16* members. Eight nonlegislative citizen members shall be appointed by the Governor, subject to confirmation by the General Assembly, as follows: two state employees in management positions, two state employees in nonmanagement positions, one retired state employee, one citizen member at large, one member that is either a teacher or a member of a local school board and one member from local government as defined in § 2.2-1204. Four nonlegislative citizen members shall be appointed by the Speaker of the House of Delegates as follows: one state employee, one retired state employee, and two citizens at large. Three members shall be appointed by the Senate Committee on Rules as follows: one state employee, one retired employee, and one citizen at large. In addition, the Director of the Department of Human Resource Management ~~and the Director of the Department of Employment Dispute Resolution, or their designees,~~ *or his designee* shall serve as *an* ex officio ~~members~~ *member* without voting privileges. All members shall be citizens of the Commonwealth.

B. After the initial staggering of terms, all appointments shall be for a term of four years. Vacancies shall be filled for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

C. The Council shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members of the Council shall constitute a quorum. Meetings of the Council shall be held upon the call of the chairman or whenever the majority of the members so request.

D. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses shall be provided by the Department of Human Resources.

§ 2.2-2677. Powers and duties.

A. The Council shall have the power and duty to:

1. Advise the Governor~~,~~ *and* the Director of the Department of Human Resource Management ~~and the Director of the Department of Employment Dispute Resolution~~ on all matters relating to personnel administration;

2. Review all public employer-employee relations throughout the Commonwealth;

3. Review the Department of ~~Employment Dispute Resolution's~~ *Human Resource Management's* 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 Human Resource Management's training and management programs, compensation and classification practices, benefit programs, and recruitment practices;

6. Advise the Governor on issues and concerns of state retirees and active employees regarding health insurance coverage and other health related benefits; and

7. Advise the Department of Human Resource Management on any plan or plans, subject to approval by 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 Council shall be charged with the responsibility of monitoring the Commonwealth's equal employment opportunity practices so as to assure 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 Human Resource Management 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; and (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 Human Resource Management, 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.

The Council shall review the progress of state agency affirmative action plans and programs, and make recommendations for changes as warranted.

§ 2.2-3000. Policy of the Commonwealth; responsibilities of state agencies under this chapter.

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

B. To fully achieve the objectives of this chapter and to create uniformity, each agency in the executive branch of state government shall:

1. Require supervisory personnel to be trained in the grievance procedure, personnel policies, and conflict resolution;

2. Familiarize employees with their grievance rights and promote the services of the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*;

3. Cooperate with investigations conducted pursuant to the authority granted by clause (iii) of subdivision 4 of § ~~2.2-1001~~ *2.2-1202.1*;

4. Participate in the mediation program;

5. Evaluate supervisors on the effectiveness of employee relations management, including, but not limited to, their handling of grievances; and

6. Recognize the right of employees to fully participate in the grievance process without retaliation.

C. The Department of ~~Employment Dispute Resolution~~ *Human Resource Management* shall monitor agencies' activities under this section.

§ 2.2-3003. Grievance procedure generally.

A. As part of the Commonwealth's program of employee relations management, the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter.

B. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

C. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within 30 calendar days of the employee's knowledge of the event

that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

D. Upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy, subject to the agency head's approval. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

E. Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party, in a timely fashion. Upon such request a party shall have a duty to search its records to ensure that all such relevant documents are provided. Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

F. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

G. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency shall be made to the agency head. The Director of the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* shall render all decisions related to procedural compliance, and such decisions shall contain the reasons for such decision and shall be final.

H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.

§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally.

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. 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 ~~Employment Dispute Resolution~~ *Human Resource Management* (the ~~"~~Director~~"~~). Upon receipt of

an appeal, the agency shall transmit the entire grievance record to the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* within five workdays. The Director shall render a decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

E. 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~~ *30* 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 shall be final and shall not be appealable. The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

F. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is employed or in any other locality agreed to by the employee, employer, and hearing officer. The employee and the agency may be represented by legal counsel or a lay advocate, the provisions of § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and be cross-examined.

§ 2.2-3005. Hearing officers; duties.

A. Nothing in this chapter shall create, nor shall be construed to create, a property interest in selection or assignment to serve as a hearing officer for grievance hearings.

B. The Director of the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, on a rotating basis, (i) from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 2.2-4024 or (ii) from attorneys hired as classified employees by the Department through a competitive selection process. Hearing officer fees shall be reasonable, in accordance with compensation guidelines developed by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall meet the criteria established by the Director pursuant to subdivision 6 of § ~~2.2-1001~~ *2.2-1202.1* and attend annually at least one day of training in employment law or state personnel policies and organizations. The training shall be conducted by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* or an organization approved by the Virginia State Bar for continuing legal education.

C. Hearing officers shall have the following powers and duties:

1. Hold conferences for the settlement or simplification of issues;

2. Dispose of procedural requests;

3. Issue orders requiring testimony or the production of evidence;

4. Administer oaths and affirmations;

5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee a verbatim recording of the evidence;

6. Receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* pursuant to § ~~2.2-1001~~ *2.2-1202.1*; and

7. Take other actions as necessary or specified in the grievance procedure.

§ 2.2-3005.1. Scope of hearing officer's decision; agency cooperation; cost of hearing; decision of hearing officer.

A. For those issues qualified for a hearing, the hearing officer may order appropriate remedies. Relief may include (i) reinstatement to the same position, or if the position is filled, to an equivalent position, (ii) back pay, (iii) full reinstatement of fringe benefits and seniority rights, (iv) mitigation or reduction of the agency disciplinary action, or (v) any combination of these remedies. In grievances challenging discharge, if the hearing officer finds that the employee has substantially prevailed on the merits of the grievance, the employee shall be entitled to recover reasonable attorney fees, unless special circumstances would make an award unjust. All awards of relief, including attorney fees, by a hearing officer must be in accordance with rules established by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*.

B. The agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses including the grievant's attorney fees that the hearing officer may award.

C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, including any award of reasonable attorney fees pursuant to this section, and (iii) be final and binding if consistent with law and policy.

D. The provisions of this section relating to the award of attorney fees shall not apply to any local government or agency thereof that is otherwise subject to the grievance procedure set forth in this chapter.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

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 of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. 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 that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such 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.

7. (Effective until July 1, 2012) 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) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (v) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. 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. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

7. (Effective July 1, 2012) Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. 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. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* with respect to an investigation, consultation, or mediation under ~~Chapter 10 (§ 2.2-1000 et seq.) of this title~~ *§ 2.2-1202.1*, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

13. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an

investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ 2.2-4117. State agency promotion of dispute resolution proceedings.

A. Each state agency shall adopt a written policy that addresses the use of dispute resolution proceedings within the agency and for the agency's program and operations. The policy shall include, among other things, training for employees involved in implementing the agency's policy and the qualifications of a neutral to be used by the agency.

B. The head of each state agency shall designate an existing or new employee to be the dispute resolution coordinator of the agency. The duties of a dispute resolution coordinator may be collateral to those of an existing official.

C. Each state agency shall review its policies, procedures and regulations and shall determine whether and how to amend such policies, procedures and regulations to authorize and encourage the use of dispute resolution proceedings.

D. Any state agency may use the services of other agencies' employees as neutrals and an agency may allow its employees to serve as neutrals for other agencies as part of a neutral-sharing program.

E. This chapter does not supersede the provisions of subdivision 2 of § ~~2.2-1001~~ *2.2-1202.1* and subdivision B 4 of § 2.2-3000, which require certain agencies to participate in the mediation program administered by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*.

§ 2.2-4118. Interagency Dispute Resolution Advisory Council.

A. The Interagency Dispute Resolution Advisory Council is hereby created as an advisory council to the Secretary of Administration.

B. The Council shall consist of the Secretary of Administration or his designee, the Director of the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*, both serving ex officio, two dispute resolution coordinators from each Secretariat appointed by each Secretary, and three persons who are not employees of the Commonwealth, at least two of whom have experience in mediation, appointed by the Governor. The appointees who are not employees of the Commonwealth may be selected from nominations submitted by the Virginia Mediation Network and the Virginia State Bar and the Virginia Bar Association Joint Committee on Alternative Dispute Resolution, who may each nominate two persons for each such vacancy. In no case shall the Governor be bound to make any appointment from such nominations. Ex officio members of the Council shall serve terms coincident with their terms of office. The Secretary of Administration or his designee shall serve as chairman of the Council.

C. Beginning July 1, 2009, members of the Council shall serve the following terms:

1. For members appointed by each Secretariat, one shall serve a term of two years and one shall serve a term of three years; and

2. For members appointed by the Governor, two shall serve terms of two years and one shall serve a term of three years.

Thereafter, the members of the Council shall be appointed for terms of three years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no member shall serve more than two consecutive three-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

D. The Council shall have the power and duty to:

1. Conduct training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings.

2. Publish educational materials as it deems appropriate on the use of dispute resolution proceedings.

3. Report on its activities as may be appropriate and on the use of dispute resolution proceedings, including recommendations for changes in the law to the Governor and General Assembly.

E. Every state agency shall cooperate with and provide such assistance to the Council as the Council may request.

§ 8.01-418.2. Evidence of polygraph examination inadmissible in any proceeding.

The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be admissible in any proceeding conducted pursuant to ~~Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2~~ *§ 2.2-1202.1* or conducted by any county, city or town over the objection of any party except as to disciplinary or other actions taken against a polygrapher.

§ 8.01-581.23. Civil immunity.

When a mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, or who is trained and serves as a mediator through the statewide mediation program established pursuant to § ~~2.2-1001(2)~~ *2.2-1202.1*, then that mediator, mediation programs for which that mediator is providing services, and a mediator co-mediating with that mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator.

§ 15.2-738. Modification of grievance procedure.

Notwithstanding the provisions ~~in Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2, and~~ *of* §§ *2.2-1202.1,* 15.2-1506, and 15.2-1507~~,~~ to the contrary, in any county which has the county manager plan of government provided for in this chapter, a grievance procedure may be established which permits an Equal Employment Opportunity officer, except the Director of the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* appointed pursuant to § ~~2.2-1000~~ *2.2-1200* and any employees thereof, to be present at any step of a grievance procedure established under § 15.2-1506. Such officer shall not be an advocate or representative on behalf of either the grievant or management.

§ 15.2-1507. Provision of grievance procedure; training programs.

A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to certify it as provided in this section, the local governing body shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The locality shall provide its employees with copies of the applicable grievance procedure upon request. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Each grievance procedure, and each amendment thereto, in order to comply with this section, shall be certified in writing to be in compliance by the city, town or county attorney, and the chief administrative officer of the locality, and such certification filed with the clerk of the circuit court having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision 2 (iii) below; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) 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. For the purposes of clause (iv) there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and

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

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

(1) Appointees of elected groups or individuals;

(2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;

(3) Deputies and executive assistants to the chief administrative officer of a locality;

(4) Agency heads or chief executive officers of government operations;

(5) Employees whose terms of employment are limited by law;

(6) Temporary, limited term and seasonal employees;

(7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

b. Notwithstanding the exceptions set forth in subdivision 3 a above, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board or authority which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided such grant does not exceed or violate the general law or public policy of the Commonwealth.

6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time which is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

7. Compliance.

a. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel or administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the chief administrative officer, or his designee.

b. The chief administrative officer, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his designee, shall determine compliance issues. Compliance determinations made by the chief administrative officer shall be subject to judicial review by filing petition with the circuit court within 30 days of the compliance determination.

8. Management steps.

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

b. Management steps shall provide for a review with higher levels of local government authority following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the local government. Personal face-to-face meetings are required at all of these steps.

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

9. Qualification for panel or administrative hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within 10 calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief administrative officer, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his designee to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the chief administrative officer to transmit the record on or before a certain date.

b. Within 30 days of receipt of such records by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the chief administrative officer or his designee 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 chief administrative officer or his designee, 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 final and is not appealable.

10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of the attorney shall serve as a panel member.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of ~~Employment Dispute Resolution~~ *Human Resource Management* and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of ~~Employment Dispute Resolution~~ *Human Resource Management*. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules which are promulgated shall include, but need not be limited to the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel or hearing officer, and the

grievant and his attorney, at least ~~ten~~ *10* days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels and hearing officers have the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

(5) That all evidence be presented in the presence of the panel or hearing officer and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing officer in advance of the hearing;

(7) That the majority decision of the panel or the decision of the hearing officer, acting within the scope of its or his authority, be final, subject to existing policies, procedures and law;

(8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

11. Implementation of final hearing decisions.

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

B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under the provisions of this section which would result in the reinstatement of any employee of a sheriff's office, who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the decision of the panel or hearing officer was consistent with provisions of law and written policy.

§ 23-50.16:24. Employees of the Authority.

A. Until July 1, 2001, employees of the Authority shall be considered employees of the Commonwealth. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board of Directors of the Authority shall develop and adopt policies and procedures that will afford its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants and shall prohibit discrimination because of race, religion, color, sex or national origin. Any grievance procedure adopted by the Board other than that contained in ~~Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2~~ *§ 2.2-1202.1* shall take effect no earlier than July 1, 1997; however, such grievance procedure shall not take effect unless the Authority delivers copies of such grievance procedure to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance on or before January 1, 1997.

B. The Authority shall issue a written notice to all persons whose employment will be transferred to the Authority. The date upon which such written notice is issued shall be referred to herein as the "Option Date." Each person whose employment will be transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of the Medical College of Virginia Hospitals who~~:~~ (i) elects not to become employed by the Authority and who is not reemployed by any department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to transfer to employment by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.

C. Without limiting its power generally with respect to employees, the Authority may employ any person employed by the University in the operation of the hospital facilities and may assume obligations under any employment agreement for such person and the University may assign any such contract to the Authority.

D. The Authority and the University may also enter into agreements providing for the purchase of services of employees of the University utilized in the operation of the hospital facilities by payment of such amounts as may be agreed upon to cover all or part of the salaries and other costs of such employees.

E. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, shall continue to be a member of such health insurance

plan under the same terms and conditions as if no transfer had occurred. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees, residents and interns and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees, interns and residents under the state employees' health insurance plan, provided that such agreement shall require the Authority to pay the costs of providing health insurance coverage under such plan.

F. Notwithstanding any other provision of law to the contrary, any person whose employment is transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement System, or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other such authorized retirement plan under the same terms and conditions as if no transfer had occurred. Alternatively, such employee (and any employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be covered by the Virginia Retirement System) may elect, during an open enrollment period from April 1, 2001, through April 30, 2001, to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § 23-50.16:24.1 by transferring assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to the Authority's retirement plan. The following rules shall apply:

1. With respect to any transferred employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan, the Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for such transferred employees.

2. Transferred employees who elect to become members of the retirement program established by the Authority for the benefit of its employees shall be given full credit for their creditable service as defined in § 51.1-124.3, vesting and benefit accrual under the retirement program established by the Authority. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan as authorized by Article 4 of Chapter 1 of Title 51.1.

3. For transferred employees who elect to become members of the retirement program established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Authority assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For purposes hereof, the basic benefits shall be the benefit accrued under the Virginia Retirement System or other such authorized retirement plan, based on creditable service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan, so that the transfer of assets to the retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan.

§ 30-34.2:1. Powers, duties and functions of Capitol Police.

The Capitol Police may exercise within the limits of the Capitol Square, when assigned to any other property owned, leased, or controlled by the Commonwealth or any agency, department, institution or commission thereof, and pursuant to the provisions of §§ 15.2-1724, 15.2-1726, and 15.2-1728, all the powers, duties and functions which are exercised by the police of the city, or the police or sheriff of the county within which said property is located. The jurisdiction of the Capitol Police shall further extend 300 feet beyond the boundary of any property they are required to protect, such jurisdiction to be concurrent with that of other law-enforcement officers of the locality in which such property is located. Additionally, the Capitol Police shall have concurrent jurisdiction with law-enforcement officers of the City of Richmond and of any county contiguous thereto in any case involving the theft or misappropriation of the personal property of any member or employee of the General Assembly. Members of the Capitol Police, when assigned to accompany the Governor, members of the Governor's family, the Lieutenant Governor, the Attorney General, members of the General Assembly, or members of the Virginia Supreme Court, or when directed to serve a summons issued by the Clerk of the Senate or the Clerk of the House of Delegates, a joint committee or commission thereof or any committee of either house shall be vested with all

the powers and authority of a law-enforcement officer of any city or county in which they are required to be. All members of the Capitol Police shall be subject to the provisions of *§ 2.2-1202.1 and* Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 ~~and to the provisions of Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2~~.

The assignment of jurisdiction to any property pursuant to this section shall be approved by the Legislative Support Commission.

The Division of Capitol Police shall have the authority to enter into contracts or agreements necessary or incidental to the performance of its duties.

§ 40.1-51.4:4. Prohibition of use of polygraphs in certain employment situations.

A. As used in this section, the term "lie detector test" means any test utilizing a polygraph or any other device, mechanism or instrument which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.

B. Notwithstanding the provisions of § 40.1-2.1, it shall be unlawful for any law-enforcement agency as defined in § 9.1-500 or regional jail to require any employee to submit to a lie detector test, or to discharge, demote or otherwise discriminate against any employee for refusal or failure to take a lie detector test, except that the chief executive officer of a law-enforcement agency or the superintendent of a regional jail may, by written directive, require an employee to submit to a lie detector test related to a particular internal administrative investigation concerning allegations of misconduct or criminal activity. No employee required to submit to a lie detector test shall be discharged, demoted or otherwise discriminated against solely on the basis of the results of the lie detector test.

C. Any person who believes that he has been discharged, demoted or otherwise discriminated against by any person in violation of this section may, within ~~ninety~~ *90* days after such alleged violation occurs, file a complaint with the Commissioner. Upon a finding by the Commissioner of a violation of this section, the Commissioner shall order, in the event of discharge or demotion, reinstatement of such person to his former position with back pay plus interest at a rate not to exceed eight percent per annum. Such orders of the Commissioner which have become final under the Virginia Administrative Process Act (§ 2.2-4000 et seq.) may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. The Commissioner, or his authorized representative, shall have the right to petition circuit court for injunctive or such other relief as may be necessary for enforcement of this section. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section.

D. The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be submitted, referenced, referred to, offered or presented in any manner in any proceeding conducted pursuant to ~~Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2~~ *§ 2.2-1202.1* or conducted by any county, city or town except as to disciplinary or other actions taken against a polygrapher.

§ 44-123.3. Fort Pickett Police; powers; duties; functions.

There is hereby established within the Department of Military Affairs the Fort Pickett Police Department. The Fort Pickett Police may exercise within the limits of the Fort Pickett Reservation and, when assigned to any other property owned or controlled by the Commonwealth or any agency, department, institution or commission thereof, all the powers, duties and functions that are exercised by the police of the city, or the police or sheriff of the county within which said property is located. The jurisdiction of the Fort Pickett Police shall further extend 300 feet beyond the boundary of any property they are required to protect, such jurisdiction to be concurrent with that of other law-enforcement officers of the locality in which such property is located. The Fort Pickett Police shall refer any complaint which alleges a felony violation to the Virginia State Police or the sheriff of the appropriate jurisdiction who, in cooperation with the Fort Pickett Police, shall conduct an investigation if an investigation is warranted. All members of the Fort Pickett Police shall be subject to the provisions of ~~Chapters 10 (§ 2.2-1000 et seq.) of Title 2.2~~ *§ 2.2-1202.1* and Chapter 5 (§ 9.1-500 et seq.) of Title 9.1. The Fort Pickett Police Department shall be under the supervision of the Adjutant General, or his designee. The pay structure for the officers and supervisors of the Fort Pickett Police Department shall be the same as that set by the Compensation Board for sheriffs' offices.

§ 51.1-124.22. Board to administer Retirement System; powers and duties.

A. The Retirement System shall be administered by the Board of Trustees, whose powers and duties include but are not limited to:

1. Appointing a director, who shall not be a member of the Board, to serve as the chief administrative officer of the Retirement System at the pleasure of the Board.

2. Maintaining records of all of its proceedings and making such records available for inspection by the public.

3. Employing an actuary as its technical advisor and employing other persons and incurring expenditures as it deems necessary for the efficient administration of the Retirement System.

4. Causing an actuarial investigation to be made of all the experience under the Retirement System at least once in each four-year period. The Board shall also cause actuarial gain/loss analyses to be made in conjunction with each actuarial valuation of the System. Pursuant to such investigations and analyses, the Board shall periodically revise the actuarial assumptions used in the computation of employer contribution rates.

5. Causing a biennial actuarial valuation to be made of the assets and liabilities of the Retirement System with respect to each employer. Pursuant to the results of such valuations, the Board shall prepare a statement as to the employer contribution rates applicable to each employer.

6. Publishing the results of each actuarial valuation of the assets and liabilities.

7. Publishing annual financial statements of the Retirement System or annual reports in accordance with §§ 51.1-1000 through 51.1-1003.

8. Promulgating regulations and procedures and making determinations necessary to carry out the provisions of this title.

9. Purchasing insurance to insure against losses suffered by the Retirement System if any member of the Board or of any advisory committee breaches the standard of care in § 51.1-124.30.

10. Adopting rules and policies that bring the Retirement System into compliance with any applicable law or regulation of this Commonwealth or the United States.

11. Establishing and administering, for the officers and employees of the Retirement System, (i) a compensation plan which is consistent with the provisions set forth in the general appropriations act for this purpose and (ii) a grievance procedure which is consistent with the provisions of ~~Chapter 10 (§ 2.2-1000 et seq.) of Title 2.2~~ *§ 2.2-1202.1* and any regulations promulgated pursuant thereto.

12. Investing in real estate to be held as a nonrevenue producing asset and used by the Retirement System for administrative offices.

13. Charging and collecting administrative fees to pay actual costs incurred by the Retirement System in administrating and overseeing any retirement plan or service award fund other than the Virginia Retirement System (§ 51.1-124.1 et seq.), the State Police Officers' Retirement System (§ 51.1-200 et seq.), the Virginia Law Officers' Retirement System (§ 51.1-211 et seq.), or the Judicial Retirement System (§ 51.1-300 et seq.), for which it is responsible from the Commonwealth or participating political subdivisions whose employees benefit under such retirement plans. Any fee charged under the authority granted herein shall be for costs incurred directly related to the administration and oversight of the retirement plan or service award fund, as determined by the Board. Such fee shall be charged to the employer whose employees benefit under the retirement plan and to the service award fund in the case of costs incurred in administrating and overseeing service award funds. Overpayments from benefits received under the Virginia Retirement System, the State Police Officers' Retirement System, the Virginia Law Officers' Retirement System, the Judicial Retirement System, the Virginia Sickness and Disability Program (§ 51.1-1100 et seq.), or Health Insurance Credits for Certain Retirees (§ 51.1-1400 et seq.), may be deducted from life insurance benefits payable under Chapter 5 (§ 51.1-500 et seq.) ~~of this title~~.

14. The Board is authorized to charge and collect from participating employers any penalties, interest, compliance fees, or other charges charged to the Retirement System by the Internal Revenue Service or other regulatory body.

B. The Board shall be vested with the powers and duties of the Board of Trustees of the abolished system to the extent necessary for the payment of vested rights and the return of accumulated contributions.

C. The Commonwealth, the Board, employees of the Retirement System, the Investment Advisory Committee of the Retirement System, and any other advisory committee established by the Board shall not incur any liability for any losses suffered by the deferred compensation, the cash match, or the defined contribution retirement plans established or administered under the authority of this title, except as provided in § 51.1-124.30.

§ 51.1-124.27. Employees of the Retirement System.

The officers and employees of the Virginia Retirement System shall be exempt from the provisions of *§ 2.2-1202.1 and of* the Virginia Personnel Act~~, Chapter 10 (§ 2.2-1000 et seq.) and Chapter 29~~ (§ 2.2-2900 et seq.) ~~of~~

~~Title 2.2~~. Personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

9. That Chapter 10 (§§ 2.2-1000 and 2.2-1001) of Title 2.2 of the Code of Virginia is repealed.

10. That as of July 1, 2012, the Department of Human Resource Management shall be deemed successor in interest to the Department of Employment Dispute Resolution to the extent the 8th enactment of this act transfers powers and duties. All right, title, and interest in and to any real or tangible personal property vested in the Department of Employment Dispute Resolution to the extent the 8th enactment of this act transfers powers and duties as of July 1, 2012, shall be transferred to and taken as standing in the name of the Department of Human Resource Management.

11. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of the 8th enactment of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of the 8th enactment of this act.

12. That all rules and regulations adopted by the Department of Employment Dispute Resolution that are in effect on July 1, 2012, and which pertain to the subject of the 8th enactment of this act shall remain in full force and effect until altered, amended, or rescinded by the Department of Human Resource Management.*

13. That §§ 2.2-517, 2.2-3705.3, 2.2-3902, 3.2-102, 3.2-114, 4.1-207.1, 4.1-223, 15.2-1604, 59.1-203, 59.1-207.3, 59.1-207.34, 59.1-207.39, 59.1-207.44, 59.1-429, 59.1-432, and 59.1-473 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-520 through 2.2-524, and by adding in Chapter 39 of Title 2.2 a section numbered 2.2-3903, as follows:

§ 2.2-517. Division of Consumer Counsel created; duties.

A. There is created in the Department of Law a Division of Consumer Counsel (the "Division") that shall represent the interests of the people as consumers.

B. The duties of the Division shall be to:

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

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

C. *In addition, the Division shall:*

1. Establish mechanisms by which to receive complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include establishing a statewide, toll-free telephone hotline to be administered by the Division; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Division through the Internet;

2. Establish and administer programs that facilitate resolution of complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program;

3. Promote consumer education in cooperation with the Department of Education and inform the public of policies, decisions, and legislation affecting consumers;

4. Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state, and local departments or agencies charged with enforcement of consumer laws;

5. Maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the

names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws; and

6. Have the authority, in the same manner as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials.

D. 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.

~~D.~~ *E.* 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.

Article 4.

Division of Human Rights.

§ 2.2-520. Division of Human Rights created; duties.

A. There is created in the Department of Law a Division of Human Rights (the Division) to assist in the prevention of and relief from alleged unlawful discriminatory practices.

B. The duties of the Division shall be to:

1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon complaints alleging unlawful discriminatory practices;

2. Adopt, promulgate, amend, and rescind regulations consistent with this article pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.). However, the Division shall not have the authority to adopt regulations on a substantive matter when another state agency is authorized to adopt such regulations;

3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Division's authority designed to prevent such acts;

4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice;

5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia;

6. Promote creation of local commissions to aid in effectuating the policies of this article and to enter into cooperative worksharing or other agreements with federal agencies or local commissions, including the deferral of complaints of discrimination to federal agencies or local commissions;

7. Make studies and appoint advisory councils to effectuate the purposes and policies of the article and to make the results thereof available to the public;

8. Accept public grants or private gifts, bequests, or other payments, as appropriate; and

9. Furnish technical assistance upon request of persons subject to this article to further comply with the article or an order issued thereunder.

§ 2.2-521. Procedure for issuance of subpoena duces tecum.

Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, he may apply to the judge of the circuit court of the jurisdiction in which the respondent resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section, "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employer, employment agency, labor organization, joint labor-management committee, or an agent thereof.

§ 2.2-522. Filing with Division deemed filing with other state agencies.

Filing of a written complaint with the Division of Human Rights shall be deemed filing with any state agency for the purpose of complying with any time limitation on the filing of a complaint, provided the time limit for filing

with the other agency has not expired. The time limit for filing with other agencies shall be tolled while the Division is either investigating the complaint or making a decision to refer it. Complaints under this article shall be filed with the Division within 180 days of the alleged discriminatory event.

§ 2.2-523. Confidentiality of information; penalty.

A. The Division shall not make public, prior to a public hearing pursuant to § 2.2-520, investigative notes and other correspondence and information furnished to the Division in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice.

B. Nothing in this section, however, shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

§ 2.2-524. Powers of local commissions.

A local human rights or human relations commission established prior to the effective date of this article or any predecessor statute may exercise any such additional powers as may have been granted heretofore to that commission pursuant to applicable provisions of §§ 15.2-725, 15.2-853, and 15.2-854 or municipal charter provisions.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

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 of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § ~~2.2-2638~~ *2.2-252*, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. 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 that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such 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.

7. (Effective until July 1, 2012) 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) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (v) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. 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. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

7. (Effective July 1, 2012) Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vi) the auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. 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. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.)~~ of this title~~, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

13. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of

teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and the elderly.

The provisions of this chapter shall be construed liberally for the accomplishment of its policies. Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the age of ~~eighteen~~ *18* years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the ~~Human Rights Council (the "Council") in accordance with § 2.2-2634~~ *Division of Human Rights of the Department of Law (the Division) in accordance with § 2.2-520* alleging unlawful discriminatory practice under a Virginia statute that is enforced by a Virginia agency shall be referred to that agency. The ~~Council~~ *Division* may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the ~~Council~~ *Division* shall have no further jurisdiction over the complaint. The ~~Council~~ *Division* shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

§ 2.2-3903. Causes of action not created.

A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than 15 persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation, or of age if the employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge or, if the employee has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the discharge, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. The court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302.

However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the 12-month limitation.

In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter, supersede, or otherwise modify the authority of the Division or of any local human rights or human relations commissions established pursuant to § 15.2-853 or 15.2-965.

§ 3.2-102. General powers and duties of the Commissioner.

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. ~~Have the authority, in the same manner as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials;~~

~~2. Establish mechanisms by which to receive complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through computer networks such as the Internet;~~

~~3. Establish and administer programs that facilitate resolution of complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program. He shall submit an annual written report on or before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation, and Natural~~

~~Resources on his activities pursuant to this subdivision and subdivision 2 of this subsection during the preceding calendar year;~~

~~4.~~ Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products; and

~~5.~~ *2.* Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.

§ 3.2-114. Powers and duties of Office.

~~A.~~ The Office shall have only such powers as may be necessary to ~~perform the following duties:~~ *exercise such powers and perform such duties as requested by the Commissioner under the Virginia Consumer Protection Act (§ 59.1-196 et seq.) and the Solicitation of Contributions law (§ 57-48 et seq.).*

~~1. Promote consumer education in cooperation with the Department of Education and inform the public of policies, decisions and legislation affecting consumers;~~

~~2. Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state and local departments or agencies charged with enforcement of consumer laws;~~

~~3. Maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws;~~

~~4. Enter into agreements or accept commissions from federal agencies; and~~

~~5. Exercise such powers and perform such duties as requested by the Commissioner under the Virginia Consumer Protection Act (§ 59.1-196 et seq.).~~

~~B. If the department or agency to which a complaint is referred pursuant to subdivision A 2 determines that the matter cannot be settled at an administrative level, the complaint together with all supporting evidence may be transmitted to the appropriate enforcement officer for such legal action as may be necessary.~~

~~C. The responsibility of the Office in these matters shall not be limited to those areas of peculiar interest to the Department, but shall embrace the consumer programs and responsibilities of all the departments and agencies of the Commonwealth.~~

§ 4.1-207.1. Restricted wholesale wine licenses.

The Board may grant a wholesale wine license to a nonprofit, nonstock corporation created in accordance with subdivision B ~~5~~ *3* of § 3.2-102, which shall authorize the licensee to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this title and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2 of § 4.1-207.

§ 4.1-223. Conditions under which Board shall refuse to grant licenses.

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision 3 b of subsection B of § 4.1-216 or (ii) the nonprofit, nonstock corporation established pursuant to subdivision B ~~5~~ *3* of § 3.2-102 in exercising any privileges granted under § 4.1-207.1.

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed $10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

5. Mixed beverage license to any member, agent or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § 4.1-231 is paid to the Board.

§ 15.2-1604. Appointment of deputies and employment of employees; discriminatory practices by certain officers; civil penalty.

A. It shall be an unlawful employment practice for a constitutional officer:

1. To fail or refuse to appoint or hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of appointment or employment, because of such individual's race, color, religion, sex or national origin; or

2. To limit, segregate, or classify his appointees, employees or applicants for appointment or employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of the individual's race, color, religion, sex or national origin.

B. Nothing in this section shall be construed to make it an unlawful employment practice for a constitutional officer to hire or appoint an individual on the basis of his sex or national origin in those instances where sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular office. The provisions of this section shall not apply to policy-making positions, confidential or personal staff positions, or undercover positions.

C. With regard to notices and advertisements:

1. Every constitutional officer shall, prior to hiring any employee, advertise such employment position in a newspaper having general circulation or a state or local government job placement service in such constitutional officer's locality except where the vacancy is to be used (i) as a placement opportunity for appointees or employees affected by layoff, (ii) as a transfer opportunity or demotion for an incumbent, (iii) to fill positions that have been advertised within the past 120 days, (iv) to fill positions to be filled by appointees or employees

returning from leave with or without pay, (v) to fill temporary positions, temporary employees being those employees hired to work on special projects that have durations of three months or less, or (vi) to fill policy-making positions, confidential or personal staff positions, or special, sensitive law-enforcement positions normally regarded as undercover work.

2. No constitutional officer shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such constitutional officer indicating any preference, limitation, specification, or discrimination, based on sex or national origin, except that such notice or advertisement may indicate a preference, limitation, specification, or discrimination based on sex or national origin when sex or national origin is a bona fide occupational qualification for employment.

D. Complaints regarding violations of subsection A ~~of this section~~ may be made to the ~~Virginia Council on Human Rights~~ *Division of Human Rights of the Department of Law*. The ~~Council~~ *Division* shall have the authority to exercise its powers as outlined in ~~§ 2.2-2634~~ *Article 4 (§ 2.2-520 et seq.) of Chapter 5 of Title 2.2*.

E. Any constitutional officer who willfully violates the provisions of subsection C shall be subject to a civil penalty not to exceed $2,000.

§ 59.1-203. Restraining prohibited acts.

A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of § 59.1-200 or 59.1-200.1. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved.

B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town determines that a person subject to the provisions of this chapter intends to depart from this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before said attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as provided in § 59.1-202.

C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of § 59.1-200 or 59.1-200.1.

D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of *subdivisions A 18, 28, 29, 31, 39, and 41, as it relates to motor fuels, of* § 59.1-200 ~~or 59.1-200.1~~ *and § 59.1-335.12*, and, if necessary, to request, but not to require, an appropriate legal official to bring an action to enjoin such violation.

§ 59.1-207.3. Written estimate for repair work required upon request; charge in excess of estimate; conditions; display of sign required; limitations on liability for delay; exception.

A. Upon request by a customer, prior to the commencement of any repair work on a motor vehicle for which a customer may be charged more than ~~twenty-five dollars~~ *$25*, every automobile repair facility doing business in the Commonwealth shall provide the customer a written statement of (i) the estimated cost of labor necessary to complete the work, (ii) the estimated cost of parts necessary to complete work, (iii) a description of the problem or work as described or authorized by the customer, and (iv) the estimated completion time. An automobile repair facility shall have no obligation to provide such written statements prior to 10:00 a.m. or after 4:00 p.m. during a working day.

B. Where a written estimate is requested, no repair work on the motor vehicle may be undertaken, other than such diagnostic work as may be necessary for the preparation of an estimate, until the written estimate has been provided the customer and the customer has authorized the work, either in writing or orally, and no charge for repair work in excess of the written estimate by more than ~~ten~~ *10* percent or, in the case of any motor vehicle which is at least ~~twenty-five~~ *25* model years old, ~~twenty~~ *20* percent or extension of the time for the work may be made unless the additional work represented by such excess charge or the time extension has been authorized, in writing or orally, by the customer.

C. An automobile repair facility may impose reasonable conditions for its obligations to provide written estimates to a customer, including the imposition of a reasonable fee for the preparation of a written estimate and related diagnostic work; provided that any such conditions shall be disclosed to the customer at the time of his request by writing or by sign conspicuously posted at the entrance of the automobile repair facility.

Each automobile repair facility shall display in a conspicuous place at any point where vehicles are normally received for repairs, a sign which states that:

1. The customer may receive a written estimate on request;

2. No repair work charge may exceed the written estimate by more than ~~ten~~ *10* percent unless the additional work represented by the excess charge has been authorized by the customer;

3. Any conditions imposed by the automobile repair facility in providing written estimates, such as the limited hours when written estimates will be prepared or the amount of the reasonable fee charged for preparing a written estimate and for related diagnostic work;

4. The facility shall offer to return all replaced parts except warranty, core charge or trade-in parts required to be returned to a manufacturer or distributor; and

5. Any complaints can be made to the ~~Virginia Office of Consumer Affairs~~ *Division of Consumer Counsel of the Department of Law*.

The sign heading "Customer Rights" shall be in letters at least one and one-half inches high and the remaining print shall be in letters at least one-fourth inch high with spacing between letters, words and lines so as to be clearly legible.

D. An automobile repair facility shall not be liable for breach of the written estimated completion date for a repair if the delay is occasioned by (i) an act of God or (ii) an unexpected shortage of labor or parts or (iii) other causes beyond the control of the automobile repair facility.

E. Nothing in this section shall require an automobile repair facility to give a written estimate if the facility is unwilling to perform the requested repair work.

F. The provisions of this section shall not apply to the repair of any motor vehicle which is any car listed in the Official Judging Manual of the Antique Automobile Club of America.

§ 59.1-207.34. Definitions.

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

"Adjustment program" means any extended policy program under which a manufacturer undertakes to pay for all or any part of the cost of repairing, or to reimburse purchasers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability or performance, other than service provided under a safety or emission-related recall program. This term shall not include ad hoc adjustments made by a manufacturer on a case-by-case basis.

~~"Board" means the Board of Agriculture and Consumer Services.~~

"Consumer" means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle and shall also include any person to whom such motor vehicle is transferred and any other person entitled by the terms of adjustment program to enforce its obligations.

"Dealer" means any motor vehicle dealer as defined in § 46.2-1500.

"Division" means the Division of Consumer Counsel in the Department of Law.

"Manufacturer" means any person, whether resident or nonresident, who manufactures, assembles, or imports motor vehicles for sale or distribution in this Commonwealth.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100, but shall not include any motorcycle or motor home.

§ 59.1-207.39. Regulations.

The ~~Board~~ *Division* is authorized to promulgate reasonable regulations in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 59.1-207.44. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) ~~of this title~~. It shall be the responsibility of any supplier who uses a comparison price to be able to substantiate the basis for any price comparisons made by the supplier. Upon the request of the Attorney General, any attorney for the Commonwealth, *or* the attorney of any county, city, or town, ~~or the Commissioner of the Virginia Department of Agriculture and Consumer Services,~~ a supplier shall provide documentation to substantiate the basis for any comparison price utilized by the supplier in any advertisement governed by this chapter. No provision of this chapter shall be construed to apply to any supplier whose advertising practices are governed by § 46.2-1581.

§ 59.1-429. Definitions.

As used in this chapter:

~~"Board" means the Virginia Board of Agriculture and Consumer Services.~~

~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.~~

"Division" means the Division of Consumer Counsel in the Department of Law.

"Information provider" means any person providing pay-per-call services.

"Long distance carrier" means any interexchange telephone company providing services within the Commonwealth.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed by telephone, through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Telephone company" means a certificated local exchange telephone company which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

§ 59.1-432. Regulations.

The ~~Board~~ *Division* is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to pay-per-call service advertising or solicitation. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 59.1-473. Legal action or arbitration.

A. The remedies afforded by this chapter are cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

B. In addition to any other remedies otherwise available to him, any consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. Such damages may also be recovered through the arbitration mechanism described in subsection C.

C. All persons subject to this chapter shall have the option of submitting any disputes arising under the provisions of this chapter to the arbitration mechanism established and administered by the ~~Dispute Resolution Unit of the Office of Consumer Affairs, Division of Consumer Protection, pursuant to subdivision B 3 of § 3.2-102~~ *Division of Consumer Counsel of the Department of Law, pursuant to subdivision C 2 of § 2.2-517*. Such mechanism shall ensure that the arbitration is conducted by a neutral third party.

14. That Article 12 (§§ 2.2-2632 through 2.2-2639) of Chapter 26 of Title 2.2 of the Code of Virginia is repealed.

15. That as of July 1, 2012, the Division of Human Rights of the Department of Law shall be deemed the successor in interest to the Human Rights Council. All right, title, and interest in and to any real or tangible personal property vested in the Human Rights Council as of July 1, 2012, shall be transferred to and taken as standing in the name of the Division of Human Rights of the Department of Law.

16. That the Governor may transfer an appropriation or any portion thereof within a state agency established, abolished, or otherwise affected by the provisions of the 13th enactment of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of the 13th enactment of this act, provided that any such transfer shall be limited to salary and fringe benefits for any personnel transferred and reasonable administrative overhead and costs.

17. That all rules and regulations adopted by the Human Rights Council that are in effect as of July 1, 2012, shall remain in full force and effect until altered, amended, or rescinded by the Division of Human Rights of the Department of Law.*

18. That §§ 10.1-1102 and 10.1-1103 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1102. Board of Forestry.

The Board of Forestry within the Department of Forestry, referred to in this chapter as the Board, shall be composed of ~~one member from each congressional district~~ *13 members* appointed by the Governor. *At least two members shall be representatives of the pine pulpwood industry; two members shall be representatives of the pine lumber industry; two members shall be representatives of the hardwood lumber industry; one member shall be a representative of the timber harvesting industry; and two members shall be small forest landowners. In making appointments to the Board, the Governor shall take into account the geographic diversity of board membership as it relates to Virginia's forest resources.* Beginning July 1, ~~2011~~ *2012*, the Governor's appointments shall be staggered as follows: four members for a term of one year, three members for a term of two years, ~~and four~~ *three* members for a term of three years, *and three members for a term of four years*. ~~Thereafter,~~ *After the initial*

staggering of terms, appointments shall be for four-year terms. The State Forester shall serve as executive officer of the Board.

No member of the Board, except the executive officer, shall be eligible for more than two successive terms; however, persons subsequently appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies they were appointed to fill have expired. All vacancies in the membership of the Board shall be filled by the Governor for the unexpired term.

The Board shall meet at least three times a year for the transaction of business. Special meetings may be held at any time upon the call of the executive officer of the Board, or a majority of the members of the Board.

Members of the Board shall be reimbursed for all reasonable and necessary expenses incurred as a result of their membership on the Board.

§ 10.1-1103. Powers of the Board.

A. The Board shall be charged with matters relating to the management of forest resources in the Commonwealth.

B. The Board shall advise the Governor and the Department on the state of forest resources within the Commonwealth and the management of forest resources. The Board shall encourage persons, agencies, organizations and industries to implement development programs for forest resource management and counsel them in such development. In addition, the Board shall recommend plans for improving the state system of forest protection, management and replacement, and shall prepare an annual report on the progress and conditions of state forest work.

C. The Board shall formulate recommendations to the State Forester concerning regulations and other matters applicable to Article 10 (§ 10.1-1170 et seq.), including types of equipment to be purchased, rental rates for equipment, and reforestation practices.

19. That § 10.1-1172 of the Code of Virginia is repealed.

20. That the terms of the persons currently serving as members of the Reforestation Board and the Board of Forestry shall expire on July 1, 2012.

21. That the new appointments to the Board of Forestry made after July 1, 2012, shall be made in accordance with the provisions the 18th enactment of this act.*

22. That §§ 3.2-1800, 3.2-1802 through 3.2-1808, 3.2-1810, 3.2-1812, 3.2-1813, and 3.2-1815 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 18 of Title 3.2 an article numbered 3, consisting of sections numbered 3.2-1816 through 3.2-1822, as follows:

Article 1.

Potato Board Membership and Authority.

§ 3.2-1800. Definitions.

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

"Approved seed potatoes" means disease-free potatoes and parts thereof that conform to the standards established by the Potato Board.

"Board" means the Potato Board.

"Handler" means any person who is a processor, dealer, shipper, or exporter who purchases potatoes from a grower, or who acts as the grower's agent, or any person who holds a produce dealer or commission merchant license from the Department. The term also means any producer who packs, processes, or otherwise performs the functions of a handler pursuant to the provisions of this chapter.

"Jurisdiction" means any locality where potatoes are produced according to the records of the Department.

"Potatoes" means all varieties of potatoes except sweet potatoes.

"Producer" means any person who, in a calendar year, grows a minimum of 40,000 pounds of potatoes in the Commonwealth.

"Seed potatoes" means potatoes and parts thereof intended for the propagation or production of commercial potatoes.

§ 3.2-1802. Potato Board membership terms.

The terms for appointments to the ~~Potato~~ Board shall be four years. *All members may be reappointed.* The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.

§ 3.2-1803. Potato Board officers and compensation.

A. The ~~Potato~~ Board shall elect a chairman and such other officers as deemed appropriate.

B. Members of the Potato Board ~~may be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Potato Board~~ *shall receive such compensation for the performance of their*

duties as provided in § 2.2-2813. Members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

C. The Potato Board shall meet at least once each year prior to the beginning of the seed potato buying season, at the call of the chairman, and whenever the majority of the members so request. A majority of the members shall constitute a quorum.

§ 3.2-1804. Powers and duties of the Potato Board.

A. The ~~Potato~~ Board shall have charge of the management and expenditures of the Virginia Potato Fund established in the state treasury.

B. The ~~Potato~~ Board may expend funds to provide for programs of research, education, publicity, advertising, and other promotion; manage the fund so as to accumulate a reserve for contingencies; establish an office and employ such technical and professional assistants as may be required; contract for research, publicity, advertising and other promotional services; and take all actions as will assist in strengthening and promoting the best interest of producers of potatoes.

C. In carrying out the purposes of this chapter, the ~~Potato~~ Board may cooperate with other state, regional, and national agricultural organizations in research, education, publicity, advertising, and other promotional activities.

D. The ~~Potato~~ Board may establish an executive committee and charge it with those powers, duties, and functions as the ~~Potato~~ Board deems proper.

E. The chairman of the ~~Potato~~ Board shall make an annual report to the ~~Potato~~ Board including a statement of the total receipts and disbursements for the year and shall file a copy of the report and the audit required by § 3.2-1810 with the Commissioner.

F. The Board shall adopt regulations to establish standards for seed potatoes and to carry out the provisions of this chapter and, at the recommendation of the chairman, request that the Commissioner, the Dean of the College of Agriculture and Life Sciences at Virginia Polytechnic Institute and State University, the Chairman of the Certified Seed Board, and the Director of the Eastern Shore Agricultural Research and Extension Center at Painter appoint representatives to advise the Board.

Article 2.

Potato Referenda and Fund.

§ 3.2-1805. Referenda.

Upon a petition, or its own motion, or that of an interested person properly made, the Board may hold a referendum on the continuance of the tax. If a petition is not presented to the Board or the Board is not otherwise advised, the tax to support additional research and promotion of potatoes shall continue to be levied and collected as provided for in this ~~chapter~~ *article*. The cost of conducting any referendum as prescribed in this ~~chapter~~ *article* shall be paid from funds paid into the Virginia Potato Fund. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

§ 3.2-1806. Management of referenda; Commissioner's duties; notice.

A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this ~~chapter~~ *article*.

B. The Commissioner shall, at least 60 days before the referendum is to be held, mail notice to the clerk of the circuit court in each locality where producers are located.

The clerk of the circuit court shall post the notice and the regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall give notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in each locality where producers are located at least 60 days prior to the holding of any referendum pursuant to the provisions of this ~~chapter~~ *article*. The notice shall contain the date, hours, voting places, and method of voting in the referendum, the amount of tax to be collected, the means by which the tax shall be collected, the general purposes for how the taxes will be used, and the regulations adopted by the Board hereunder.

C. The Commissioner, with the assistance of the petitioners, shall prepare and distribute in advance of the referendum all necessary ballots and supplies required for the referendum and shall under regulations adopted by the Board and with the assistance of the petitioners and the Extension Service arrange for the necessary polling places.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.

§ 3.2-1807. Question to be printed on ballots.

The question to be printed on the ballots used in a referendum pursuant to this ~~chapter~~ *article* shall be as follows:

"Do you favor additional research, education, publicity, advertising, and other promotion of potatoes and the continuation of the levy of two cents ($0.02) per 100 pounds in accordance with the provisions of the ~~Potato~~ Board law to support the same?

_____ Yes

_____ No."

§ 3.2-1808. Persons eligible to vote.

Each producer in the Commonwealth who produced 40,000 pounds of potatoes during the year next preceding the date of the referendum held pursuant to this ~~chapter~~ *article* shall be eligible to vote in the referendum if he certifies to the required production. The certification shall be on forms approved by the Board. Any person meeting these requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in any other respect. Any person who is not an individual shall vote by its authorized representative.

§ 3.2-1810. Virginia Potato Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Potato Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller.

All moneys levied and collected pursuant to this ~~chapter~~ *article* 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 chapter.

Expenditures and disbursements from the Fund shall be made by the ~~Potato~~ Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the ~~Potato~~ Board.

The Auditor of Public Accounts shall audit all the accounts of the ~~Potato~~ Board as is provided for in § 30-133.

§ 3.2-1812. Collection of delinquent tax; civil action.

The tax imposed under the provisions of this ~~chapter~~ *article* and unpaid on the date when due shall bear interest at a rate determined in accordance with § 58.1-1812, from and after the due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Board and the person adjudged in default shall pay the costs of the proceeding. The Attorney General, at the request of the Commissioner, shall institute an appropriate action for the collection of the amount of any tax past due under this ~~chapter~~ *article*, including interest thereon.

§ 3.2-1813. Records to be kept by handlers.

Every handler shall keep a complete record of the potatoes subject to the provisions of this ~~chapter~~ *article* that have been packed, processed, or handled by him for a period of time not less than three years from the time the potatoes were packed, processed, or handled. The records shall be open to the inspection of the Commissioner and shall be established and maintained as required by the Commissioner.

§ 3.2-1815. Licenses.

The Commissioner shall revoke the produce dealer or commission merchant license of any handler who fails to report, pay the tax, or perform any other duty required of him pursuant to the provisions of this ~~chapter~~ *article*.

Article 3.

Seed Potato Standards.

§ 3.2-1816. Standards required of seed potatoes.

Any seed potatoes sold, offered for sale, advertised, or shipped in the Commonwealth shall conform to the standards of approved seed potatoes.

§ 3.2-1817. Exempted sales.

Nothing in this article shall prohibit the sale of seed potatoes sold by the grower to a planter who has personal knowledge of the conditions under which the seed potatoes were grown.

§ 3.2-1818. Inspection of potatoes; right of entry; fees; records required.

A. The Commissioner shall inspect any seed potatoes. The Commissioner may enter any place of business, warehouse, common carrier, or other place where seed potatoes may be found for the purpose of an inspection. It is unlawful for any person to interfere with such inspections.

B. The fee for inspection shall not exceed the lesser of the current rate for federal-state inspection of table stock potatoes or the reasonable cost of inspection. The Commissioner shall abate any fee to the extent funds are appropriated from the general fund for seed potato inspection.

C. Bills of lading, invoices, or other records accompanying any shipment of approved seed potatoes shall give the name of the consignee, consignor, and custodian, if any. The Commissioner shall have the right to inspect such records.

§ 3.2-1819. "Stop sale" order; seizure; condemnation.

A. When the Commissioner finds seed potatoes sold or offered for sale in violation of this article or any regulation hereunder, he may issue a "stop sale" order to the owner or custodian. It is unlawful for anyone to sell any seed potatoes under a "stop sale" order until the Commissioner has evidence that such potatoes will (i) not be used for propagation purposes or (ii) be used outside the Commonwealth. When the Commissioner has such evidence, he shall issue a notice releasing potatoes from the "stop sale" order.

B. Any shipment of seed potatoes in violation of this article shall be subject to seizure on complaint of the Commissioner to the appropriate court in the county or city where the seed potatoes are located. If the court finds the seed potatoes to be in violation and orders condemnation, the owner shall be permitted to post a bond for double the amount of the value of the seed potatoes. Then the owner shall have 10 days from the date of the order of condemnation to denature, destroy, or process the potatoes for other than propagation purposes. If the owner fails to post the bond required or act within the time limit set forth in this subsection, then the court shall order that the seed potatoes be denatured, destroyed, or processed for other than propagation purposes.

§ 3.2-1820. Commissioner may permit sale of substandard potatoes and experimental varieties.

The Commissioner may permit the sale of seed potatoes that do not meet the standards of approved seed potatoes when he deems necessary. The Commissioner may permit the sale of experimental varieties of potatoes for propagation purposes. He may delegate the authority granted in this section to the Board.

§ 3.2-1821. Notice; hearings.

A. If the Commissioner finds a violation of this article or of any regulation adopted pursuant to this article, he shall notify the custodian of the seed potatoes in writing, designating a time and place for a hearing, and send a copy of the notice to the owner or shipper. Any party notified shall be given an opportunity to be heard under the regulations adopted pursuant to this article. If it appears after proper hearing that any of the provisions of this article have been violated, the Commissioner may certify the facts to the attorney for the Commonwealth in the county or city where the violation occurred and furnish him with a copy of the results of the inspection duly authenticated and under the oath of the inspector.

B. It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of this article, and to whom any violation is reported, to commence proceedings in the appropriate court.

§ 3.2-1822. Penalties.

Any person violating any provision of this article or any regulation adopted pursuant to this article is guilty of a Class 1 misdemeanor.

23. That Chapter 41 (§§ 3.2-4100 through 3.2-4111) of Title 3.2 of the Code of Virginia is repealed.

24. That all regulations, rules, and standards adopted by the Seed Potato Board pursuant to Chapter 41 (§ 3.2-4100 et seq.) of Title 3.2 of the Code of Virginia that are in effect as of July 1, 2012, shall be administered by the Potato Board and shall remain in full force and effect until the Potato Board adopts regulations pursuant to the 22nd enactment of this act.

25. That the gubernatorial appointees to the Potato Board holding office on July 1, 2012, shall continue to serve until such time as the existing terms might expire or become renewed.

26. That the terms of the members of the Seed Potato Board shall expire on July 1, 2012.*

27. That §§ 3.2-1100, 3.2-1102, and 3.2-2400 through 3.2-2410 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-2407.1 as follows:

§ 3.2-1100. Diversion of dedicated revenues.

A. The unexpended balances of the following special funds shall not be diverted or expended for any purpose other than each fund's intended purpose unless authorized by a specific act of Assembly. The special funds are:

1. Apple Fund (§ 3.2-1206);
2. Peanut Fund (§ 3.2-1906);
3. Plant Pollination Fund (§ 3.2-2806);
4. Virginia Agricultural Foundation Fund (§ 3.2-2905);
5. Virginia Bright Flue-Cured Tobacco Promotion Fund (§ 3.2-2407);

6. Virginia Beef Industry Fund (§ 3.2-1305);
7. Virginia Corn Fund (§ 3.2-1411);
8. Virginia Cotton Fund (§ 3.2-1511);
9. Virginia Dark-Fired Tobacco Promotion Fund ~~(§ 3.2-2506)~~ *(§ 3.2-2407.1)*;
10. Virginia Egg Fund (§ 3.2-1605);
11. Virginia Horse Industry Promotion and Development Fund (§ 3.2-1704);
12. Virginia Marine Products Fund (§ 3.2-2705);
13. Virginia Milk Commission Assessments Fund (§ 3.2-3220);
14. Virginia Pork Industry Fund (§ 3.2-2005);
15. Virginia Potato Fund (§ 3.2-1810);
16. Virginia Sheep Industry Promotion and Development Fund (§ 3.2-2111);
17. Virginia Small Grains Fund (§ 3.2-2211);
18. Virginia Soybean Fund (§ 3.2-2311); and
19. Virginia Wine Promotion Fund (§ 3.2-3005).

B. No provision of this subtitle shall be construed to give any board the authority to expend funds for legislative or political activity.

§ 3.2-1102. Collection of delinquent assessments; civil action.

Except as provided in §§ 3.2-1721, 3.2-1812, *and* 3.2-2408~~, and 3.2-2509~~, the Tax Commissioner shall immediately notify any person who fails to pay an assessment pursuant to Part B of this subtitle and shall add a five percent penalty to the amount due. If such deficiency is not paid within 30 days after the date of such notice, then the amount of the deficiency shall bear interest, in accordance with § 58.1-15, from the date the amount was due, and the Tax Commissioner shall collect any interest as part of the delinquent amount. If any person is delinquent in any payment of the money due or interest thereon, then the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Tax Commissioner, and any person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Tax Commissioner, shall institute action in an appropriate court for the collection of any money due under Part B of this subtitle, including interest thereon. The Tax Commissioner may waive or remit such penalty, or portion thereof, in his discretion for good cause shown.

CHAPTER 24.

~~BRIGHT FLUE-CURED~~ TOBACCO BOARD.

§ 3.2-2400. Definitions.

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

"Grower" means any person actually engaged in the growing and producing of bright flue-cured tobacco *or type 21 dark-fired tobacco*.

"Handler" means any manufacturer, dealer, processor, or any other business entity that purchases tobacco directly from the grower.

"Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.

§ 3.2-2401. Tobacco Board; composition and appointment of members.

The ~~Bright Flue-Cured~~ Tobacco Board is ~~continued~~ *hereby established* within the Department. The ~~Bright Flue-Cured~~ Tobacco Board shall consist of ~~seven~~ *nine* members ~~with one member from each production area~~. *Each of the six production areas* of flue-cured tobacco *set out in § 3.2-2402 shall have a representative on the Tobacco Board, and three members shall represent, as nearly as possible, each important type 21 dark-fired tobacco-producing section in the Commonwealth*. The Governor shall appoint members from nominations made by ~~the Flue-Cured Tobacco Committee of~~ the ~~Virginia~~ Farm Bureau Federation and other tobacco grower organizations existing in tobacco-producing counties. Each member shall be a citizen of the Commonwealth and engaged in producing tobacco in the Commonwealth. Each organization shall submit two or more nominations for each available position at least 90 days before the expiration of the member's term for which the nomination is being provided. If the organizations fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the foregoing criteria.

§ 3.2-2402. Production areas designated.

The following production areas *of flue-cured tobacco* are designated for the purposes of this chapter:

Area I - Pittsylvania County;

Area II - Counties of ~~Pittsylvania,~~ Henry, Patrick, ~~and~~ Carroll, *Franklin, Bedford, Campbell, and Appomattox*;

Area III - Halifax County;

Area IV - ~~Counties of Franklin, Bedford, Campbell, Appomattox, and Charlotte; Area V -~~ Mecklenburg County;

Area ~~VI~~ *V* - Counties of *Charlotte,* Lunenburg, Prince Edward, Nottoway, Cumberland, Amelia, Powhatan, and Chesterfield; and

Area ~~VII~~ *VI* - Counties of Brunswick, Dinwiddie, Greensville, Prince George, Sussex, and Southampton and the City of Suffolk.

§ 3.2-2403. Tobacco Board membership terms.

The terms for appointments to the ~~Bright Flue-Cured~~ Tobacco Board shall be for four years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.

§ 3.2-2404. Tobacco Board officers and compensation.

A. ~~The Bright Flue-Cured~~ Tobacco Board shall elect one of its members as chairman and such other officers as deemed appropriate.

B. The members of the ~~Bright Flue-Cured~~ Tobacco Board shall receive a per diem of $10 for each day spent in attendance on meetings of the ~~Bright Flue-Cured~~ Tobacco Board and shall be reimbursed for actual expenses incurred in such attendance.

§ 3.2-2405. Powers and duties of the Tobacco Board.

A. All funds levied and collected under this chapter shall be administered by the ~~Bright Flue-Cured~~ Tobacco Board.

B. The ~~Bright Flue-Cured~~ Tobacco Board shall plan and conduct campaigns of education, advertising, publicity, sales promotion, and research to increase the demand for, and the consumption of, ~~Virginia~~ bright flue-cured ~~tobacco~~ *and type 21 dark-fired tobaccos.*

C. The ~~Bright Flue-Cured~~ Tobacco Board may make contracts, expend moneys of the Bright Flue-Cured Tobacco Promotion Fund *and the Dark-Fired Tobacco Promotion Fund*, and do whatever else may be necessary to effectuate the purposes of this chapter.

D. The ~~Bright Flue-Cured~~ Tobacco Board may cooperate with other state, regional, and national agricultural organizations in research, advertising, publicity, education, and other means of promoting the sale, use, and exportation of ~~bright flue-cured tobacco~~ *bright-flue-cured and type 21 dark-fired tobaccos*, and expend moneys of the Bright Flue-Cured Tobacco Promotion Fund *and the Dark-Fired Tobacco Promotion Fund* for such purposes.

E. The ~~Bright Flue-Cured~~ Tobacco Board may appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the ~~Bright Flue-Cured~~ Tobacco Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this chapter shall be required to furnish surety bonds.

F. The Chairman shall make a report at the annual meeting of the ~~Bright Flue-Cured~~ Tobacco Board and furnish members with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and the audit required by § 3.2-2407 with the Commissioner.

§ 3.2-2406. Levy of excise tax.

An excise tax of 20 cents ($0.20) per 100 pounds is levied on all bright flue-cured ~~tobacco~~ *and type 21 dark-fired tobaccos* that ~~is~~ *are* harvested in the Commonwealth and sold by the grower~~,~~ and shall be payable by the grower.

§ 3.2-2407. Bright Flue-Cured Tobacco Promotion Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Bright Flue-Cured Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under this chapter *on all bright flue-cured tobacco* shall be paid into the state treasury and credited to the Fund.

Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the administration and enforcement of this chapter *with respect to bright flue-cured tobacco*, including the collection of taxes, the payment of personal services and expenses of employees and agents of the ~~Bright Flue-Cured~~ Tobacco Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the ~~Bright Flue-Cured~~ Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the ~~Bright Flue-Cured~~ Tobacco Board.

The Auditor of Public Accounts shall audit all the accounts of the ~~Bright Flue-Cured~~ Tobacco Board as is provided for in § 30-133.

§ 3.2-2407.1. Dark-Fired Tobacco Promotion Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Dark-Fired Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under this chapter on type 21 dark-fired tobacco shall be paid into the state treasury and credited to the Fund.

Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the administration and enforcement of this chapter with respect to type 21 dark-fired tobacco, including the collection of taxes, the payment of personal services and expenses of employees and agents of the Tobacco Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Tobacco Board.

The Auditor of Public Accounts shall audit all the accounts of the Tobacco Board as is provided for in § 30-133.

§ 3.2-2408. Collection and disposition of tax; reports.

Every grower shall pay the excise ~~tax~~ *taxes* on bright flue-cured *and all type 21 dark-fired* tobacco to the warehouse or handler where and when the tobacco is first sold. Each warehouse or handler is designated an agent of the Department for the purpose of collecting such excise tax. The tax shall be paid to the Department, to the credit of the ~~Bright Flue-Cured~~ Tobacco Board, on or before the ~~10th~~ *tenth* day of the month following its collection~~, and~~. *Taxes paid on bright flue-cured tobacco shall be* promptly paid into the state treasury to the credit of the Bright Flue-Cured Tobacco Promotion Fund *and taxes paid on type 21 dark-fired tobacco shall be promptly paid into the state treasury to the credit of the Dark-Fired Tobacco Promotion Fund.*

§ 3.2-2409. Records to be kept by warehouse and handler.

Each warehouse or handler shall keep a complete record of the excise tax collected by him and shall preserve such record for a period of not less than three years from the time of collection. Such record shall be open to the inspection of the ~~Bright Flue-Cured~~ Tobacco Board and its duly authorized agents.

§ 3.2-2410. Collection of unpaid excise tax and interest thereon.

If the tax imposed by this chapter is not paid when due or any funds collected by a warehouse or handler are not remitted to the ~~Bright Flue-Cured~~ Tobacco Board as required in this chapter, the amount due shall bear interest at the rate of one percent per month from the due date until payment. If any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected to the ~~Bright Flue-Cured~~ Tobacco Board, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the ~~Bright Flue-Cured~~ Tobacco Board, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the ~~Bright Flue-Cured~~ Tobacco Board, shall institute action for the collection of the amount of any tax past due under this chapter, including interest thereon.

28. That Chapter 25 (§§ 3.2-2500 through 3.2-2510) of Title 3.2 of the Code of Virginia is repealed.

29. That as of July 1, 2012, the Tobacco Board established pursuant to the 27th enactment of this act shall be deemed successor in interest to the Dark-Fired Tobacco Board and the Bright Flue-Cured Tobacco Board. All right, title, and interest in and to any real or tangible personal property vested in, any debts or liabilities owed to the Dark-Fired Tobacco Board and the Bright Flue-Cured Tobacco Board, and any enforcement actions taken on behalf of the Dark-Fired Tobacco Board and the Bright Flue-Cured Tobacco Board as of July 1, 2012, shall be transferred to and taken as standing in the name of the Tobacco Board.

30. That the gubernatorial appointees to the Dark-Fired Tobacco Board and the Bright Flue-Cured Tobacco Board holding office on July 1, 2012, shall continue to serve on the Tobacco Board established pursuant to the 27th enactment of this act until such time as the existing terms might expire or become renewed. However, any new appointments made after July 1, 2012, shall be made in accordance with the provisions of this act.*

31. That §§ 2.2-4006, 3.2-109, 3.2-111, and 3.2-3900 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the ~~Pesticide Control Board~~ *Board of Agriculture and Consumer Services* adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy pursuant to subsection B of § 54.1-3307.

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 § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

§ 3.2-109. Board of Agriculture and Consumer Services; appointments; qualifications; terms of office.

The Board *of Agriculture and Consumer Services* is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government and may adopt regulations in accordance with the provisions of this title. The Board shall consist of *(i)* one member from each congressional district, at least ~~seven~~ *eight* of whom shall be currently practicing farmers, *and (ii) two at-large members, one of whom shall be a structural commercial applicator of pesticides and one of whom shall be engaged in the commercial sale or application of agricultural pesticides; all members to be* appointed by the Governor for a term of four years~~,~~ and confirmed by the General Assembly. The presidents of the Virginia Polytechnic Institute and State University and Virginia State University or their designees shall be ex officio members of the Board with voting privileges. *All members of the Board shall be citizens of the Commonwealth.* No member of the Board, except the ex officio members, shall be eligible for more than two successive terms; provided that persons appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies they were appointed to fill have expired. All vacancies in the membership of the Board shall be filled by the Governor for the unexpired term.

§ 3.2-111. General powers and duties of the Board.

A. The Board shall be charged with all matters tending to the promotion of the agricultural interests of the Commonwealth. It shall have power to receive, hold in trust, and administer any donation made to it for the advancement of the agricultural interests of the Commonwealth.

B. The Board shall have power to purchase or lease land, not to exceed 1,000 acres, for the programs of the Department, and shall regulate and prescribe the salaries of such officers and employees of the Department who shall be employed in such programs.

C. The Board shall also be required to advise the Governor on the state of the agricultural industry and to advise him on promoting the development of the industry; encouraging persons, agencies, organizations, and industries to develop the industry; working closely with all agencies concerned with rural resources development; coordinating efforts toward maximum farm and off-farm employment; examining marketing procedures and new techniques for selling the Commonwealth's farm products; formulating plans for developing new markets for such products; and such other matters as the Governor may request.

D. The Board shall not adopt any regulation that prohibits or restricts a person, his immediate family, or his guests from consuming products or commodities grown or processed on his property provided that the products or commodities are not offered for sale to the public.

E. The Board shall oversee the development of a farmers market system.

F. To carry out the provisions of Chapter 39 (§ 3.2-3900 et seq.).

§ 3.2-3900. Definitions.

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

"Active ingredient" means (in the case of a pesticide other than a plant regulator, defoliant, desiccant, or anti-desiccant) an ingredient that will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

"Agricultural commodity" means any plant or part thereof, animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

~~"Board" means the Pesticide Control Board.~~

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3.

"Certification" or "certified" means the recognition granted by the Board to an applicator who has completed all the requirements of Article 3.

"Certified applicator" means a person who: (i) has satisfactorily completed the Board requirements for certification as a commercial applicator, registered technician, or private applicator; and (ii) has been issued a valid certificate.

"Commercial applicator" means any person who has completed the requirements for certification to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Device" means any instrument or contrivance intended for: (i) trapping, destroying, repelling, or mitigating insects or rodents; or (ii) destroying, repelling, or mitigating fungi, bacteria, weeds or other pests as may be designated by the Commissioner. Device shall not include treated wood products, simple mechanical devices such as rattraps, or equipment used for the application of pesticide when sold separately.

"Fumigant" means any substance or mixture of substances that emits or liberates gases, fumes, or vapors capable of destroying vermin, rodents, insects, and other pests.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

"Ingredient statement" or "guaranteed analysis statement" means a statement containing: (i) the name and percentage of each active ingredient; (ii) the total percentage of the inert ingredients; and (iii) if the pesticide contains arsenic in any form, the percentages of total and water soluble arsenic.

"Insect" means any small invertebrate animal generally having a segmented form and belonging to the class Insecta including beetles, bugs, and bees. For purposes of this act, the term insect shall also mean classes of arthropods whose members are usually wingless and have more than six legs including spiders, mites, ticks, centipedes, and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon the pesticide or device or any of its containers or wrappers; (ii) accompanying the pesticide or device at any time; or (iii) referenced on the label or in literature accompanying the pesticide or device. Labeling shall not include current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department, the State Board of Health, or similar federal or state institutions when accurate, nonmisleading reference is made to such official publications and such agencies are authorized by law to conduct research in the field of pesticides.

"Licensed" or "licensee" means a person issued a license by the Board to engage in the sale, storage, distribution, recommendation, or application of pesticides for compensation.

"Pest" means any deleterious organism that is: (i) any vertebrate animal other than man; (ii) any invertebrate animal excluding any internal parasite of living man or other living animals; (iii) any plant growing where not wanted, and any plant part such as a root; or (iv) any bacterium, virus, or other microorganisms (except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs as defined by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. § 321(g) (1), and cosmetics as defined by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. § 321(i)). Any organism classified as endangered, threatened, or otherwise protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.

"Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, other forms of plant or animal life, bacterium, or viruses, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance intended to become an active ingredient in any substance defined in clause (i) and (ii).

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include: (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products, unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the Board.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Private applicator" means an individual who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

"Registered technician" means an individual who has satisfactorily completed the Board requirements for certification to apply general use pesticides, and to apply restricted use pesticides while under the direct supervision of a certified commercial applicator. Registered technicians render services similar to those of a certified commercial applicator, but have not completed all the requirements to be eligible for certification as a commercial applicator.

"Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the U.S. Environmental Protection Agency.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal declared by the Commissioner to be a pest.

"Serious violation" means a violation of this chapter or regulation adopted hereunder that results in a substantial probability of death or serious physical harm to persons, serious harm to property, or serious harm to the environment unless the person or licensee did not or could not with the exercise of reasonable diligence know of the violation.

"State special use" or "pesticide classified for restricted use in the Commonwealth" means any pesticide that is judged by the Board after special review to be so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment (other than the pests it is intended to prevent, destroy, control, or mitigate) that additional restrictions on its sale, purpose, use, or possession are required.

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

"Use" means the employment of a pesticide for the purposes of: (i) preventing, destroying, repelling, or mitigating any pest; or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include applying, mixing, handling, or transferring a pesticide after the manufacturer's original seal is broken, and any act consistent with the label.

32. That §§ 3.2-3901, 3.2-3902, 3.2-3903, and 3.2-3905 of the Code of Virginia are repealed.

33. That the regulations of the Pesticide Control Board shall be administered by the Board of Agriculture and Consumer Services and shall remain in full force and effect until the Board of Agriculture and Consumer Services promulgates regulations pursuant to the 31st enactment of this act.*

34. That §§ 54.1-300 and 54.1-1500 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-1500.1 and 54.1-1500.2 and by adding in Chapter 15 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-1506 through 54.1-1509, as follows:

§ 54.1-300. Definitions.

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

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists~~, Board for~~ *and* Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, Virginia Board for Asbestos, Lead, Mold, and Home Inspectors, and Common Interest Community Board.

CHAPTER 15.

HEARING AID SPECIALISTS *AND OPTICIANS*.

§ 54.1-1500. Definitions.

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

"Board" means the Board for Hearing Aid Specialists *and Opticians*.

"Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmolds, but excluding batteries and cords.

"License" means a license issued under this chapter to hearing aid specialists.

"Licensed optician" means any person who is the holder of a license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optometrist" means any person authorized by Virginia law to practice optometry.

"Licensed physician" means any person licensed by the Board of Medicine to practice medicine and surgery.

"Optician" means any person not exempted by § 54.1-1506 who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances, to the human face.

"Practice of fitting or dealing in hearing aids" means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations or sale of hearing aids, (ii) the sale of hearing aids, or (iii) the making of impressions for earmolds. A practitioner, at the request of a physician or a member of a related profession, may make audiograms for the professional's use in consultation with the hard-of-hearing.

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or practitioners.

"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist.

§ 54.1-1500.1. Board for Hearing Aid Specialists and Opticians; qualifications and terms of members; officers.

A. The Board for Hearing Aid Specialists and Opticians shall consist of 15 members, as follows: four licensed hearing aid specialists, of which at least one shall be licensed as an audiologist by the Board of Audiology and Speech-Language Pathology, six licensed opticians, one otolaryngologist, one ophthalmologist, and three citizen members.

B. One of the citizen members shall be a hearing aid user or a person who has a family member who is or has been a hearing aid user. Each hearing aid specialist and the otolaryngologist shall have at least five years of

experience in their respective fields immediately prior to appointment. Each of the opticians shall have at least five years of experience prior to appointment and the ophthalmologist shall have practiced ophthalmology for at least five years prior to appointment.

C. The terms of Board members shall be four years.

D. The Board shall elect a chairman and vice-chairman from its membership.

§ 54.1-1500.2. Nominations for Board appointments.

A. The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the Medical Society of Virginia. The appointment of one of the hearing aid specialist members may be made from a list of at least three names submitted to the Governor by the Speech-Language Hearing Association of Virginia. The appointment of the remaining hearing aid specialist members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Society of Hearing Aid Specialists. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration, and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

B. The appointment of the licensed optician members may be made from a list of at least three names for each vacancy submitted to the Governor by the Opticians Association of Virginia for each appointee who is an optician, and by the Medical Society of Virginia for each appointee who is a physician. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

Article 3.

Opticians.

§ 54.1-1506. Exemptions.

The provisions of this chapter shall not apply to:

1. Any licensed physician or licensed optometrist;

2. Any individual, partnership, or corporation engaged in supplying ophthalmic prescriptions and supplies exclusively to licensed physicians, licensed optometrists, licensed opticians, or optical scientists;

3. Any person who does not hold himself out to the public as an "optician," and who works exclusively under the direct supervision and control of a licensed physician or licensed optometrist or licensed optician, and in the same location;

4. The sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, or binoculars that are completely preassembled and sold as merchandise; or

5. Any optician who (i) does not regularly practice in Virginia; (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district, or possession of the United States; (iii) volunteers to provide free health care to an underserved area of the Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world; (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board; (v) notifies the Board, within 15 days prior to the voluntary provision of services of the dates and location of such services; and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board.

§ 54.1-1507. Practice of opticians restricted.

No person shall practice or offer to practice as an optician in the Commonwealth unless he holds a license issued under this chapter.

§ 54.1-1508. Optical prescriptions, ocular refraction, etc.

Nothing in this chapter shall authorize an optician, or anyone else not otherwise authorized by law, to make, issue, or alter optical prescriptions, or to practice ocular refraction, orthoptics, or visual training, or to fit contact lenses except on the prescription of an ophthalmologist or optometrist and under his direction, or to advertise or offer to do so in any manner.

§ 54.1-1509. Permissible practices.

Notwithstanding the provisions of subdivisions 7 and 8 of § 54.1-3204, a licensed optician is authorized to prepare and dispense eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists; duplicate and reproduce previously prepared eyeglasses, spectacles, lenses, or related appurtenances; and, in accordance with such prescriptions, duplications, or reproductions, measure, adapt, fit, and adjust eyeglasses, spectacles, lenses, or appurtenances to the human face. A licensed optician shall not, however, duplicate a contact lens solely from a previously prepared contact lens.

35. That §§ 54.1-1502 and 54.1-1503 and Chapter 17 (§§ 54.1-1700 through 54.1-1706) of Title 54.1 of the Code of Virginia are repealed.

36. That all members of the Board for Hearing Aid Specialists and the Board for Opticians shall maintain their terms of appointment and continue as members of the Board for Hearing Aid Specialists and Opticians.

37. That the rules and regulations adopted by the Board for Hearing Aid Specialists and the Board for Opticians that are in effect as of July 1, 2012, shall remain in full force and effect until altered, amended, or rescinded by the Board for Hearing Aid Specialists and Opticians created in the 34th enactment of this act.*

38. That §§ 54.1-300 and 54.1-2200, as it is effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-2200.1 and 54.1-2200.2 and by adding in Chapter 22 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-2208.1 through 54.1-2208.4, as follows:

§ 54.1-300. Definitions.

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

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, ~~Board for Geology,~~ Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists~~ and~~, Wetland Professionals, *and Geologists*, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, Virginia Board for Asbestos, Lead, Mold, and Home Inspectors, and Common Interest Community Board.

CHAPTER 22.

SOIL SCIENTISTS, *WETLAND PROFESSIONALS, AND GEOLOGISTS*.

§ 54.1-2200. (Effective until July 1, 2013) Definitions.

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

"Board" means the Board for Professional Soil Scientists ~~and~~, Wetland Professionals, *and Geologists*.

"Department" means the Department of Professional and Occupational Regulation.

"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become certified.

"Eligible wetland professional" means a person who possesses the qualifications specified in this chapter to become certified.

"Geologist" means a person engaged in the public practice of geology.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Practice of wetland delineation" means the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in this chapter for certification.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the Board through certification.

"Virginia certified professional soil scientist" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who has been granted certification by the Board.

"Virginia certified professional wetland delineator" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.

"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

"Wetland professional" means a person having special knowledge of wetland science and the methods and principles of wetland delineation as acquired by education and experience in the formation, description and mapping of wetlands.

"Wetland science" means the science dealing with the physical, chemical, and biological properties of wetland systems integrated through ecological and morphological relationships.

"Wetlands" means the same as that term is defined in §§ 28.2-1300 and 62.1-44.3.

§ 54.1-2200. (Effective July 1, 2013) Definitions.

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

"Board" means the Board for Professional Soil Scientists ~~and~~, Wetland Professionals*, and Geologists*.

"Department" means the Department of Professional and Occupational Regulation.

"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become licensed.

"Eligible wetland professional" means a person who possesses the qualifications specified in this chapter to become certified.

"Geologist" means a person engaged in the public practice of geology.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Practice of wetland delineation" means the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in this chapter for certification.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the Board through certification.

"Virginia certified professional wetland delineator" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.

"Virginia licensed professional soil scientist" means a person who possesses the qualifications required for licensure by the provisions of this chapter and the regulations of the Board and who has been granted a license by the Board.

"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

"Wetland professional" means a person having special knowledge of wetland science and the methods and principles of wetland delineation as acquired by education and experience in the formation, description and mapping of wetlands.

"Wetland science" means the science dealing with the physical, chemical, and biological properties of wetland systems integrated through ecological and morphological relationships.

"Wetlands" means the same as that term is defined in §§ 28.2-1300 and 62.1-44.3.

§ 54.1-2200.1. Board for Professional Soil Scientists, Wetland Professionals, and Geologists; membership; quorum.

A. Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists shall be composed of 13 members as follows: three certified professional soil scientists, three certified professional wetland delineators, three geologists, and three citizen members. The State Geologist shall serve as an ex officio member of the Board. The geologist members shall be of varied backgrounds. The professional soil scientist members shall have experience in at least one of the following areas: (i) soil mapping and classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv) environmental protection regulations. Of the wetland professional members, one shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science, and one shall have experience with natural resource regulations. The terms of the members shall be for four years.

B. The Board shall annually elect a chairman from its membership. Seven board members, consisting of at least two soil scientists, two professional wetland delineators, two geologists, and one citizen, shall constitute a quorum.

C. The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.

D. The Governor may select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor may notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.

§ 54.1-2200.2. Board for Professional Soil Scientists, Wetland Professionals, and Geologists; membership; quorum.

A. Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists shall be composed of 13 members as follows: three licensed professional soil scientists, three certified professional wetland delineators, three geologists, and three citizen members. The State Geologist shall serve as an ex officio member of the Board. The geologist members shall be of varied backgrounds. The professional soil scientist members shall have experience in at least one of the following areas: (i) soil mapping and classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv) environmental protection regulations. Of the wetland professional members, one shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science, and one shall have experience with natural resource regulations. Terms of the members shall be for four years.

B. The Board shall annually elect a chairman from its membership. Seven board members, consisting of at least two soil scientists, two professional wetland delineators, two geologists, and one citizen, shall constitute a quorum.

C. The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.

D. The Governor may select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor may notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.

Article 3.

Geologists.

§ 54.1-2208.1. Exemptions.

A. The certification program set forth in this article is voluntary and shall not be construed to prevent or affect the practice of geology by uncertified geologists; however, no person may represent himself as a Virginia certified professional geologist unless he has been so certified by the Board.

B. This article shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law, including the practice of licensed professional engineers lawfully practicing engineering in its various specialized branches.

§ 54.1-2208.2. Certification; minimum qualifications.

A. Any person practicing or offering to practice as a geologist or in a geological specialty in this Commonwealth may submit reasonable evidence to the Board that he is qualified to practice and to be certified as provided in this article. The Board shall approve the application for certification of any person who, in the opinion of the Board, has satisfactorily met the requirements of this article and who has paid any applicable fees fixed by the Board.

Certifications shall expire at intervals as designated by the Board. A certification may be renewed by the Board upon receipt of a formal request accompanied by any applicable fees.

B. To be eligible for certification as a professional geologist, an applicant shall meet each of the following minimum qualifications:

1. Be of ethical character.

2. Have a baccalaureate or higher degree from an accredited college or university with either a major in geology, engineering geology, geological engineering, or related geological sciences; or have completed at least 30 semester hours or the equivalent in geological science courses leading to a major in geology.

3. Have at least seven years of geological work that shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist or a minimum of three years of experience in responsible charge of geological work. The adequacy of the position and the required supervision and experience shall be determined by the Board in accordance with standards set forth in its

regulations. The following criteria of education and experience qualify toward the required seven years of geological work:

a. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work.

b. The Board may consider, in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required in this section.

4. Have successfully passed an appropriate examination approved by the Board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

At the discretion of the Board, separate examinations may be prepared for various subspecialities of geology; however, there will be no specialty certification, only certification as a professional geologist.

§ 54.1-2208.3. Waiver of examination.

The Board may waive the examination requirement for certification as a professional geologist for an applicant who otherwise meets the requirements of this article and who also meets any of the following conditions:

1. Makes written application to the Board and has at least 12 years of geological work that includes the geological work as specified in subsection B of 54.1-1403.

2. Makes written application to the Board and holds an unexpired certificate of registration, certification, or license to engage in the practice of geology issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

§ 54.1-2208.4. Professional ethics and conduct.

A. The Board, in coordination with an ad hoc panel of certified professional geologists convened by the Board and representing various geological interests in Virginia, shall have prepared and adopted a Code of Professional Ethics and Conduct that shall be published and made known in writing to every Virginia certified professional geologist and applicant for certification under this article. The Board may revise and amend this code as needed and shall forthwith notify each certified professional geologist in writing of such revisions or amendments.

B. The full Board, by majority vote, shall have the power to suspend, revoke, or refuse to renew the certification of any professional geologist who, after an appropriate formal hearing, is found to have been involved in:

1. Any fraud or deceit in obtaining certification;

2. Any violation of the Code of Professional Ethics and Conduct or other regulations of the Board;

3. Demonstrated gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist; or

4. Any conviction of a felony which, in the opinion of the Board, would adversely affect the practice of geology.

C. The Board, by majority vote of the quorum, may reinstate a revoked or suspended certification to any professional geologist who makes written application to the Board showing good cause for such action.

39. That Chapter 14 (§§ 54.1-1400 through 54.1-1405) of Title 54.1 and § 54.1-2202, as it is currently effective and as it shall become effective, of the Code of Virginia are repealed.

40. That § 54.1-2200.1 in the 38th enactment of this act is effective until July 1, 2013.

41. That § 54.1-2200.2 in the 38th enactment of this act is effective July 1, 2013.

42. That all members of the Board for Professional Soil Scientists and Wetland Professionals and the Board for Geology shall maintain their terms of appointment and continue as members of the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

43. That all rules and regulations adopted by the Board for Professional Soil Scientists and Wetland Professionals and the Board for Geology that are in effect as of July 1, 2012, shall remain in full force and effect unless altered, amended, or rescinded by the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.*

44. That § 30-182 of the Code of Virginia is amended and reenacted as follows:

§ 30-182. Small Business Commission; purpose; membership; terms; compensation and expenses; staff; voting on recommendations.

A. The Small Business Commission (the Commission) is established in the legislative branch of state government. The purpose of the Commission shall be to study, report and make recommendations on issues of concern to small businesses in the Commonwealth.

B. The Commission shall consist of ~~14~~ *16* members that include 10 legislative members and ~~four~~ *six* nonlegislative citizen members. Members shall be appointed as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; four members of the Senate to be appointed by the Senate Committee on Rules; and ~~four~~ *six* nonlegislative citizen members, each of whom shall have previously demonstrated small business experience or expertise, to be appointed by the Governor. Nonlegislative citizen members shall be citizens of the Commonwealth.

All gubernatorial appointments to the Commission shall be for terms of two years. Legislative members shall serve terms coincident to their terms of office. All members may be reappointed for successive terms. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

C. The members of the Commission shall elect a chairman and a vice-chairman annually, who shall be members of the General Assembly. A majority of the members of the Commission shall constitute a quorum. The Commission shall meet at the call of the chairman or whenever a majority of the members so request.

D. Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expenses shall be paid from existing appropriations to the Commission.

E. Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis and other services as requested by the Commission. All agencies of the Commonwealth shall assist the Commission, upon request.

F. No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

45. That Article 7 (§§ 2.2-2413 and 2.2-2414) of Chapter 24 of Title 2.2 of the Code of Virginia is repealed.*

46. That §§ 45.1-186.1 and 45.1-194 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-186.1. Notice of noncompliance served on operator.

A. The Director may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the Director to:

1. Apply the control techniques and institute the actions approved in his operations and reclamation plan;

2. Comply with any required amendments to the operations or reclamation plan; or

3. Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto which affect the health, safety and welfare of the Commonwealth.

B. A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in *writing in* what respects the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice.

C. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, which, when collected, shall be deposited in the state treasury in a special reclamation fund to be used by the Director in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: (i) of the bond shall be returned to the corporate surety; or (ii) of the collateral security, certified check or cash that has been deposited in lieu of bond, shall be returned to the person who provided it originally or to the operator. ~~If the operator files with the Director notice that he will appeal the order revoking the permit and declaring a forfeiture to the Board of Surface Mining Review, then the Director's orders under this section shall be held in abeyance until the appeal is determined by the Board of Surface Mining Review~~ *Within 30 days of the issuance of any permit revocation or bond forfeiture*

made under this section, the operator may request a review pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

§ 45.1-194. Appeals from decisions of the Department.

An appeal from any order~~, rule or regulation~~ of the Department shall be ~~taken first to the Board of Surface Mining Review hereinafter created~~ *conducted in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act*. The appeal shall be taken within ~~thirty~~ *30* days following the issuance of the order~~, rule or regulation~~ by forwarding to the Director by certified mail a notice of appeal designating the order~~, rule or regulation~~ from which the appeal is taken.

~~Upon receipt thereof, the Board shall set the hearing at a place within the county where the major portion of the land involved in the order, rule or regulation appealed from is located and such hearing shall be held by the Board within sixty days from the date notice of appeal is received. The Board shall issue its opinion of the appeal within sixty days following the completion of the hearing.~~

~~The Board shall have the power to subpoena and bring before it any person in the Commonwealth or take testimony of any such person by deposition with the same fees and mileage in the same manner as prescribed by law in judicial procedure in courts of the Commonwealth in civil cases. Any party to any hearing before the Board shall have the right to the attendance of witnesses in his behalf.~~

47. That §§ 45.1-195 and 45.1-196 of the Code of Virginia are repealed.*

48. That §§ 45.1-161.292:2, 45.1-161.292:11, 45.1-161.292:19 through 45.1-161.292:22, 45.1-161.292:24 through 45.1-161.292:29, and 45.1-161.292:71 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-161.292:2. Definitions.

As used in this chapter and in Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) ~~of this title~~ and in regulations promulgated under such chapters, unless the context requires a different meaning:

"Abandoned area" means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than ~~thirty~~ *30* minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned mine fire not extinguished within ~~thirty~~ *30* minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment or refuse pile which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, or refuse pile; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than ~~thirty~~ *30* minutes; and (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Director.

"Approved competent person" means a person designated by the Department as having the authority to function as a mine foreman even though the person has less than five years' experience but more than two years' experience. If an approved competent person has met all the criteria for a mine foreman certification other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

"Armored cable" means a cable provided with a wrapping of metal, plastic or other approved material.

"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is task trained in accordance with requirements of the federal mine safety law.

"Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working place.

"Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the ~~Board of Mineral Mining Examiners~~ *Department* authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Competent person" means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Department" means the Department of Mines, Minerals and Energy.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed at an underground mine for a period of ~~thirty~~ *30* days, or at a surface mine for a period of ~~sixty~~ *60* days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

"Independent contractor" means any person that contracts to perform services or construction at a mine.

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed entrances to abandoned areas and by analysis contains not less than ~~nineteen and one-half~~ *19.5* percent oxygen nor more than ~~one-half of one~~ *0.5* percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), any other person.

"Licensed operator" means the operator who has obtained the license for a particular mine under § 45.1-161.292:30.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the mineral extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes.

"Mine fire" means an unplanned fire not extinguished within ~~thirty~~ *30* minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman ~~duly~~ issued by ~~action of~~ the ~~Board of Mineral Mining Examiners~~ *Department*.

"Mine inspector" means a public employee assigned by the Director to make mine inspections as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and other applicable laws.

"Miner" means any individual working in a mineral mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Mineral mine" means a surface mineral mine or an underground mineral mine.

"Mineral Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) ~~of this title~~, and shall include any regulations promulgated thereunder, where applicable.

"Operator" means any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

"Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned or worked-out areas. Area within a panel shall not be deemed abandoned until inaccessible or sealed.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or any injury other than a sprain or strain which requires an admission to a hospital for ~~twenty-four~~ *24* hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

"Surface mineral mine" means (i) the pit and other active and inactive areas of surface extraction of minerals; (ii) on-site mills, shops, loadout facilities, and related structures appurtenant to the excavation and processing of minerals; (iii) impoundments, retention dams, tailing ponds, and other areas appurtenant to the extraction of minerals from the site; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) equipment, machinery, tools and other property used in, or to be used in, the work of extracting minerals from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used for surface-disturbing exploration (other than by drilling or seismic testing) or preparation of a site for surface mineral extraction activities. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activities other than exploratory drilling or seismic testing, and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless ~~(i)~~ *(a)* the mineral is extracted for its unique or intrinsic characteristics, or ~~(ii)~~ *(b)* the mineral requires processing prior to its intended use.

"Travel way" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Underground mineral mine" means (i) the working face and other active and inactive areas of underground excavation of minerals; (ii) underground travel ways, shafts, slopes, drifts, inclines and tunnels connected to such areas; (iii) on-site mills, loadout areas, shops, and related facilities appurtenant to the excavation and processing of minerals; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) impoundments, retention dams, tailing ponds and waste areas appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) private ways and roads appurtenant to such area; and (viii) the areas used to prepare a site for underground mineral excavation activities. A site shall commence being an underground mineral mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground mineral mine upon completion of initial reclamation activities.

"Work area," as used in Chapter 14.4 (§ 45.1-161.253 et seq.) ~~of this title~~, means those areas of a mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Working face" means any place in a mine in which work of extracting minerals from their natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine inby the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

§ 45.1-161.292:11. Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than ~~twenty-five~~ *25* years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued *prior to July 1, 2012,* by the Board of Mineral Mining Examiners *or on or after July 1, 2012, by the Department*. ~~Persons currently appointed as mine inspectors to inspect mineral mines shall have until July 1, 1996, to obtain a mine inspector certificate from the Board of Mineral Mining Examiners.~~

§ 45.1-161.292:19. Certification of certain persons employed in mineral mines; powers of the Department.

A. The ~~Board of Mineral Mining Examiners~~ *Department* may require certification of persons who work in mineral mines and persons whose duties and responsibilities in relation to mineral mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the ~~Board~~ *Department*, and a person holding such a certification shall be authorized to perform the tasks which this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated by ~~the Board or~~ the Department requires be performed by such a certified person:

1. Surface foreman;
2. Surface foreman open pit;
3. Underground foreman;
4. Surface blaster;
5. Electrical repairman;
6. Underground mining blaster;
7. General mineral miner; and
8. Mine inspector.

B. Certification shall also be required for such additional tasks as the ~~Board~~ *Department* may require by regulation.

C. The ~~Board~~ *Department* shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.

§ 45.1-161.292:20. Examinations required for Mineral Mining Certifications.

A. The ~~Board of Mineral Mining Examiners~~ *Department* may require examination of applicants for certification; however, the ~~Board~~ *Department* shall require examination of applicants for a mine inspector certification. The ~~Board~~ *Department* may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as provided by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) for general mineral miner and surface foreman certifications, the ~~Board~~ *Department* shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the ~~Board~~ *Department* shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the ~~Board~~ *Department*, shall periodically be published, and shall be of uniform application to all applicants.

B. Any certificate issued by the ~~Board~~ *Department*, except the general mineral miner certification, shall be valid from the date of issuance for a period of five years, unless renewed, or unless revoked ~~by the Board~~ pursuant to § 45.1-161.292:26. The general mineral miner certification shall be valid from the date of issuance until it may be revoked ~~by the Board~~ pursuant to § 45.1-161.292:26.

§ 45.1-161.292:21. Performance of certain tasks by uncertified persons; penalty.

It ~~shall be~~ *is* unlawful for any person to perform any task requiring certification by the ~~Board of Mineral Mining Examiners~~ *Department* until he has been certified. It ~~shall be~~ *is* unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this section shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense. A certificate issued by the Board of ~~Examiners prior to July 1, 1994~~ *Mineral Mining Examiners prior to July 1, 2012*, shall be acceptable as a certificate issued by the ~~Board of Mineral Mining Examiners~~ *Department* until the ~~Board of Mineral Mining Examiners~~ *Department* shall provide otherwise by appropriate regulations.

§ 45.1-161.292:22. Examination fees; Mineral Mining Examiners' Fund.

~~A.~~ A fee of ~~ten dollars~~ *$10* shall be paid to the Director by each person examined. All fees shall be paid before the commencement of the examination. All such fees collected, together with moneys collected pursuant to ~~§§ 45.1-161.292:23 and~~ *§* 45.1-161.292:25, shall be retained by the Department and shall be promptly paid by the Director into the state treasury and shall constitute the Mineral Mining Examiners' Fund. The fund shall be administered by the Director for the payment of the ~~compensation and expenses of the Board of Mineral Mining Examiners and its members for which purpose such moneys are hereby appropriated.~~

~~B. The~~ cost of printing certificates and other necessary forms and the incidental expenses incurred by the ~~Board~~ *Department* in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article ~~shall also be paid out of the Mineral Mining Examiners' Fund~~. The Director shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

§ 45.1-161.292:24. Reciprocal acceptance of other certifications.

In lieu of an examination prescribed by law or regulation, the ~~Board of Mineral Mining Examiners~~ *Department* may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in this Commonwealth, provided that (i) the ~~Board~~ *Department* finds that the requirements for certification in such other state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the ~~Board~~ *Department* are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the ~~Board~~ *Department* and without additional testing, training, or other requirements not directly related to program administration.

§ 45.1-161.292:25. Renewal of certificates.

The holder of any certificate issued by the Board of Mineral Mining Examiners *or the Department*, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The ~~Board~~ *Department* shall establish requirements for renewal of a certificate in accordance with the procedure set forth in subsection A of § 45.1-161.292:20. The ~~Board~~ *Department* shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal which is not renewed by the fifth anniversary of its issuance, or previous renewal, shall be invalid. As a condition to renewal, the holder shall provide the ~~Board~~ *Department* with such administrative information as is reasonably required ~~by the Board,~~ and shall pay the examination fee as provided in § 45.1-161.292:22.

§ 45.1-161.292:26. Revocation of certificates.

A. The ~~Board of Mineral Mining Examiners~~ *Department* may revoke any certificate upon finding that the holder has (i) been intoxicated while in duty status; (ii) neglected his duties; (iii) violated any provision of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any other mineral mining law of the Commonwealth; (iv) used any controlled substance without the prescription of a licensed physician; or (v) other sufficient cause.

B. The ~~Board~~ *Department* may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division of Mineral Mining or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) ~~ten~~ *10* persons working at the mine at which such person is employed, or, if less than ~~ten~~ *10* persons are working at the mine, a majority of the workers at the mine.

C. ~~An affirmative vote of a majority of members of the Board who are qualified to vote shall be required for any action to revoke a certificate.~~

~~D.~~ Prior to revoking a certificate, the ~~Board~~ *Department* shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing ~~may~~ *shall* be conducted ~~by the Board or, in the Board's discretion,~~ by a hearing officer as provided in § 2.2-4024.

~~E~~ *D.* Any person who has been aggrieved by a decision of the ~~Board~~ *Department* shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 45.1-161.292:27. Reexamination.

The holder of a certificate revoked pursuant to § 45.1-161.292:26 shall be entitled to examination by the ~~Board of Mineral Mining Examiners~~ *Department* after three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the ~~Board~~ *Department* that the cause for revocation of his certificate has ceased to exist.

§ 45.1-161.292:28. General mineral miner certification.

A. Every person commencing work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners *or the Department*. Any person who has worked in a mineral mine in Virginia prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the ~~Board~~ *Department* that he has knowledge of first aid practices and has a general working knowledge of the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and applicable regulations pertaining to mineral mining health and safety.

§ 45.1-161.292:29. Foreman certification.

A. At any mineral mine where three or more persons work during any part of a ~~twenty-four hour~~ *24-hour* period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only persons holding a foreman certificate in accordance with § 45.1-161.292:19 shall be employed as mine foremen. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. Applicants for a foreman certificate shall have had at least five years of experience at mineral mining or other experience deemed appropriate by the ~~Board of Mineral Mining Examiners~~ *Department* and demonstrate to the ~~Board~~ *Department* a thorough knowledge of the theory and practice of mineral mining by making ~~eighty-five~~ *85* percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the ~~Board~~ *Department*.

C. The certified mine foreman shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to miners starting work in the affected area.

D. Independent contractors working in a mineral mine who are engaged in activities other than the extraction or processing of minerals and working in a clearly demarcated area where (i) no mining-associated hazards exist and (ii) no other miners travel or work while engaged in extraction or processing activities, shall employ a competent person who shall examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to personnel starting work in the affected area.

§ 45.1-161.292:71. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the ~~Board of Mineral Mining Examiners~~ *Department*. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this section. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

49. That §§ 45.1-161.292:15, 45.1-161.292:16, 45.1-161.292:18, and 45.1-161.292:23 of the Code of Virginia are repealed.

50. That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy.*

51. That §§ 2.2-2666.3, 2.2-3705.2, and 2.2-3711 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2666.3. (For contingent expiration - see Editor's note) Oceana/Fentress Military Advisory Council created; composition; duties; staff support.

A. The Oceana/Fentress Military Advisory Council (the Oceana/Fentress Council) is hereby created as a subunit of the Virginia Military Advisory Council. The Oceana/Fentress Council shall be composed of two members of the Chesapeake City Council, two members of the Virginia Beach City Council, those members of the Virginia General Assembly whose districts encompass Naval Air Station Oceana and Naval Auxiliary

Landing Field Fentress, the Commander, Navy Mid-Atlantic Region or his representative, *and* the Commanding Officer of Naval Air Station Oceana or his representative~~, and the Executive Director of the Virginia National Defense Industrial Authority~~.

B. The Oceana/Fentress Council shall identify and study and provide advice and comments to the Virginia Military Advisory Council on issues of mutual concern to the Commonwealth and the Navy concerning Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress and address such other issues as the Governor or the Virginia Military Advisory Council may determine to be appropriate subjects of consideration.

C. Such staff support as is necessary for the conduct of the Oceana/Fentress Council's business shall be furnished by the Office of the Secretary of Veterans Affairs and Homeland Security.

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

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, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. 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 that 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.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems. The same categories of records of any governmental or nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency;

and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

6. 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 or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

8. [Expired.]

9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.

10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

12. Records of the Virginia Military Advisory Council~~, the Virginia National Defense Industrial Authority,~~ *or* any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council~~, the Authority,~~ or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council~~, the Authority,~~ or such commission or organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

13. Documentation or other information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and

systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, the disclosure of which would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

14. Documentation or other information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building, or structure or the safety of any person.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party.

Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, 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 subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such

security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, 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.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council~~, the Virginia National Defense Industrial Authority,~~ *or* any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Indemnification and Community Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

52. That Article 9 (§§ 2.2-2328 through 2.2-2335) of Chapter 22 of Title 2.2 of the Code of Virginia is repealed.*

53. That §§ 54.1-700, 54.1-701, 54.1-703, 54.1-704.1, 54.1-704.2, 54.1-705, and 54.1-706 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-700. Definitions.

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

"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.

"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.

"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.

"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.

"Board" means the Board for Barbers and Cosmetology.

"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.

"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.

~~"Braiding salon" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein hair braiding is offered or practiced on a regular basis for compensation.~~

~~"Braiding school" means a place or establishment licensed by the Board to accept and train students and which offers a hair braiding curriculum approved by the Board.~~

"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, ~~braids,~~ dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, ~~braiding,~~ dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical

apparatus or appliances, but shall not include *hair braiding or* such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Esthetician" means a person who engages in the practice of esthetics for compensation.

"Esthetics" includes, but is not limited to, the following practices of administering cosmetic treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating, or performing any other similar procedure on the skin of the human body or scalp by means of cosmetic preparations, treatments, any nonlaser device, electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person, tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and removing unwanted hair from the body of any person by the use of tweezing, chemical, or mechanical means. However, "esthetics" is not a healing art and shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of chiropractic" shall mean the same as those terms are defined in § 54.1-2900.

"Esthetics instructor" means a licensed esthetician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of esthetics.

"Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein esthetics is offered or practiced on a regular basis for compensation under regulations of the Board.

~~"Hair braider" means a person who engages in the practice of hair braiding on a regular basis for compensation.~~

~~"Hair braiding" means the braiding, twisting, wrapping, weaving, extending, or locking of natural human hair by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.~~

"Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers to the public for compensation, without the use of laser technology, lymphatic drainage, chemical exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the Board to practice lymphatic drainage, chemical exfoliation with products other than Schedules II through VI controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.), and microdermabrasion of the epidermis.

"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.

"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.

"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.

"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.

"Physical (wax) depilatory" means the wax depilatory product or substance used to remove superfluous hair.

"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.

"School of esthetics" means a place or establishment licensed by the Board to accept and train students and which offers an esthetics curriculum approved by the Board.

"Tattoo parlor" means any place in which tattooing is offered or practiced.

"Tattoo school" means a place or establishment licensed by the Board to accept and train students in tattooing.

"Tattooer" means any person who for remuneration practices tattooing.

"Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including

permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

"Wax technician" means any person licensed by the Board who removes hair from the hair follicle using a physical (wax) depilatory or by tweezing.

"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.

"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.

"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;

2. Registered nurses licensed to practice in the Commonwealth;

3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, ~~hair braiders,~~ estheticians, barber instructors, cosmetology instructors, wax technician instructors, nail technician instructors, or esthetics instructors who practice only on inmates of or patients in such sanatoria or institutions;

4. Persons licensed as funeral directors or embalmers in the Commonwealth;

5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, ~~hair braider,~~ tattooer, body-piercer, or esthetician;

6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, ~~hair braiding,~~ tattooing, body-piercing, or esthetics;

7. Persons working in a cosmetology salon whose duties are expressly confined to ~~hair braiding or~~ the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;

8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, ~~hair braiding salon,~~ or esthetics spa licensed by the Board in accordance with the Board's regulations;

9. Schools of barbering, nail care, waxing, *or* cosmetology~~, or hair braiding~~ in public schools; and

10. Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.

§ 54.1-703. License required.

No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, ~~hair braiding,~~ tattooing, body-piercing, or esthetics without a valid license issued by the Board, except as provided in § 54.1-701.

§ 54.1-704.1. License required for barbershop, cosmetology salon, nail care salon, waxing salon, tattoo parlor, body-piercing salon, and esthetics spa.

No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon, ~~hair braiding salon,~~ tattoo parlor, body-piercing salon, or esthetics spa without a valid license issued by the Board.

The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician, waxing technician, tattooer, body-piercer, or esthetician who does not have an ownership interest in a licensed barbershop, cosmetology salon, nail care salon, waxing salon, ~~hair braiding salon,~~ tattoo parlor, body-piercing salon, or esthetics spa in which he is employed.

§ 54.1-704.2. License required for schools of barbering, cosmetology, nail care, waxing, tattooing, body-piercing, or esthetics.

Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology, nail care, waxing, ~~hair braiding,~~ tattooing, body-piercing, or esthetics unless licensed by the Board pursuant to its regulations.

§ 54.1-705. Inspections.

A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, ~~hair braiding salon,~~ tattoo parlor, body-piercing salon, and esthetics spa in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action.

B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing salons and schools, nail care salons and schools, ~~hair braiding salons and schools,~~ tattoo parlors and schools, body-piercing salons and schools, and esthetics spas and schools for compliance with regulations promulgated by the Board.

C. The Board shall specify procedures for enforcement of compliance with the disease control and disclosure requirements of § 18.2-371.3, including unannounced inspections by appropriate personnel.

D. The Board or the Virginia Department of Health, or an affiliated local health department, may regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and body-piercing salons.

§ 54.1-706. Different requirements for licensure.

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology, nail care, waxing, ~~hair braiding,~~ tattooing, body-piercing, and esthetics.

54. That § 54.1-703.2 of the Code of Virginia is repealed.*

55. That §§ 54.1-300, 54.1-500, 54.1-500.1, 54.1-501, and 54.1-516 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-300. Definitions.

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

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, Virginia Board for Asbestos, Lead, ~~Mold,~~ and Home Inspectors, and Common Interest Community Board.

§ 54.1-500. Definitions.

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

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.

"Board" means the Virginia Board for Asbestos, Lead, ~~Mold,~~ and Home Inspectors.

"Certified home inspection" means any inspection of a residential building for compensation conducted by a certified home inspector. A certified home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A certified home inspection may be limited in scope as provided in a home inspection contract, provided such contract is not inconsistent with the provisions of this chapter or the regulations of the Board.

"Certified home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been certified by the Board.

"Dust clearance sampling" means an on-site collection of dust or other debris that is present after the completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a report explaining the results.

"Dust sampling technician" means an individual licensed by the Board to perform dust clearance sampling.

"Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.

"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15 U.S.C. § 2683).

"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.

"Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead abatements.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.

"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" mean an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

~~"Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and spore-producing structures.~~

~~"Mold analysis" means the examination of a sample collected during a mold inspection for the purpose of (i) determining the amount or presence of or identifying the genus, species, or functional grouping of any living or dead mold present in the sample or (ii) identifying or determining the amount or presence of any fungal products including, but not limited to, mycotoxins and fungal volatile organic compounds present in the sample.~~

~~"Mold inspection" includes (i) an inspection, investigation, or survey of a dwelling or other structure to determine the presence of mold; (ii) the development of a mold management plan or mold remediation protocol; or (iii) the collection or analysis of a mold sample.~~

~~"Mold inspector" means an individual who has been licensed by the Board to perform mold inspections.~~

~~"Mold remediation" means cleaning mold from building material surfaces or the removal of contaminated building materials that are unsalvageable and other activities, including applying biocides or antimicrobial compounds and sanitization protocols, intended to prevent future mold contamination.~~

~~"Mold remediator" means an individual licensed by the Board to perform mold remediation.~~

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training program, an accredited lead training program, an accredited renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is performed as a part of a lead abatement. As used in this definition, "compensation" shall include the receipt of (i) pay for work performed, such as that paid to contractors and subcontractors; (ii) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (iii) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

§ 54.1-500.1. Virginia Board for Asbestos, Lead, and Home Inspectors; membership; meetings; offices; quorum.

The Virginia Board for Asbestos, Lead, ~~Mold,~~ and Home Inspectors shall be appointed by the Governor and composed of ~~15~~ *14* members as follows: one shall be a representative of a Virginia-licensed asbestos contractor, one shall be a representative of a Virginia-licensed lead contractor, one shall be a representative of a Virginia-licensed renovation contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia-licensed lead risk assessor, one shall be a Virginia-licensed renovator, one shall be a Virginia-licensed dust sampling technician, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos, lead, or renovation training program, one shall be a member of the Board for Contractors, two shall be certified home inspectors, ~~one shall be a licensed mold inspector or a licensed mold remediator,~~ and two shall be citizen members. After initial staggered terms, the terms of members of the Board shall be four years, except that vacancies may be filled for the remainder of the unexpired term. The two home inspector members appointed to the Board shall have practiced as home inspectors for at least five consecutive years immediately prior to appointment. ~~The mold inspector or mold remediator member appointed to the Board shall have practiced as a mold inspector or mold remediator for at least three consecutive years immediately prior to appointment. The mold inspector or mold remediator member shall not vote on any matters before the Board except matters related to mold inspection or remediation until July 1, 2010.~~ The renovation contractor, renovator, and dust sampling technician members appointed to the board shall have practiced respectively as a renovation contractor, renovator, or dust sampling technician for at least five consecutive years prior to appointment.

The Board shall meet at least four times each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. Eight members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

§ 54.1-501. Powers and duties of the Board.

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos, lead, and renovation licenses, and governing conflicts of interest among various categories of asbestos, lead, and renovation licenses;

2. Approve the criteria for accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, training managers, and principal instructors;

3. Approve accredited asbestos training programs, accredited lead training programs, accredited renovation training programs, examinations and the grading system for testing applicants for asbestos, lead, and renovation licensure;

4. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors;

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations;

7. Promulgate regulations for certification of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home

inspectors certified by the Board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties; *and*

8. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the (i) approval of accredited renovation training programs, (ii) licensure of individuals and firms to engage in renovation, and (iii) establishment of standards for performing renovation consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency (EPA) regulations. Such regulations of the Board shall be consistent with the EPA Lead Renovation, Repair, and Painting Program final rule~~; and~~

~~9. Promulgate regulations for licensing of mold inspectors and mold remediators not inconsistent with this chapter regarding the professional qualifications of such applicants, the requirements necessary for passing applicable examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the mold inspectors and mold remediators licensed by the Board, the implementation of exemptions from licensure requirements, and the proper discharge of its duties. The Board shall have the discretion to impose different requirements for licensure for the performance of mold inspections and mold remediation~~.

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, fine, suspend or revoke (i) the license of a lead contractor, lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor, asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor, asbestos worker, renovator, dust sampling technician, or renovation contractor or (ii) the approval of an accredited asbestos training program, accredited lead training program, accredited renovation training program, training manager or principal instructor, if the licensee or approved person or program:

1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;

2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or

3. Fails to meet any applicable federal or state standard when performing an asbestos project or service, performing lead-based paint activities, or performing renovations.

B. The Board may reprimand, fine, suspend or revoke the license of, (i) any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project, (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project, or (iii) any renovation contractor who employs or permits an individual without a renovator's license to perform or to direct others who perform renovations.

C. The Board may reprimand, fine, suspend or revoke the certification of a home inspector.

~~D. The Board may reprimand, fine, suspend, or revoke the license of a mold inspector or remediator.~~

56. That Article 3 (§§ 54.1-517.3, 54.1-517.4, and 54.1-517.5) of Chapter 5 of Title 54.1 of the Code of Virginia is repealed.*

57. That §§ 2.2-203, 2.2-1122, 2.2-2006, 2.2-3501, and 15.2-2232 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by in Chapter 2 of Title 22.1 a section numbered 22.1-20.1 as follows:

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

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

§ 2.2-1122. Aid and cooperation of Division may be sought by any public body or public broadcasting station in making purchases; use of facilities of Virginia Distribution Center; services to certain volunteer organizations.

A. Virginia public broadcasting stations as defined in ~~§ 2.2-2427~~ *§ 22.1-20.1*, and public bodies as defined in § 2.2-4300 who are empowered to purchase material, equipment, and supplies of any kind, may purchase through the Division. When any such public body, public broadcasting station, or duly authorized officer requests the Division to obtain bids for any materials, equipment and supplies, and the bids have been obtained by the Division, the Division may award the contract to the lowest responsible bidder, and the public body or public broadcasting station shall be bound by the contract. The Division shall set forth in the purchase order that the materials, equipment and supplies be delivered to, and that the bill be rendered and forwarded to, the public body

or public broadcasting station. Any such bill shall be a valid and enforceable claim against the public body or public broadcasting station requesting the bids.

B. The Division may make available to any public body or public broadcasting station the facilities of the Virginia Distribution Center maintained by the Division; however, the furnishing of any such services or supplies shall not limit or impair any services or supplies normally rendered any department, division, institution or agency of the Commonwealth.

C. The ~~Virginia Public Broadcasting~~ Board *of Education* shall furnish to the Division a list of public broadcasting stations in Virginia for the purposes of this section.

D. The services or supplies authorized by this section shall extend to any volunteer fire company or volunteer rescue squad that is recognized by an ordinance to be a part of the safety program of a county, city or town when the services or supplies are sought through and approved by the governing body of such county, city or town.

E. "Public broadcasting station" means the same as that term is defined in § 22.1-20.1.

§ 2.2-2006. Definitions.

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

"Commonwealth information technology project" means any state agency information technology project that is under Commonwealth governance and oversight.

"Commonwealth Project Management Standard" means a document developed and recommended by the Chief Information Officer (CIO) pursuant to § 2.2-2008, and approved by the Secretary pursuant to § 2.2-225, that describes the methodology for conducting information technology projects, and the governance and oversight used to ensure project success.

"Communications services" includes telecommunications services, automated data processing services, and management information systems that serve the needs of state agencies and institutions.

"Confidential data" means information made confidential by federal or state law that is maintained by a state agency in an electronic format.

"Enterprise" means an organization with common or unifying business interests. An enterprise may be defined at the Commonwealth level or secretariat level for program and project integration within the Commonwealth, secretariats, or multiple agencies.

"Information technology" means telecommunications, automated data processing, applications, databases, the Internet, management information systems, and related information, equipment, goods, and services. The provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

"ITAC" means the Information Technology Advisory Council created in § 2.2-2699.5.

"Major information technology project" means any Commonwealth information technology project that has a total estimated cost of more than $1 million or that has been designated a major information technology project by the Secretary pursuant to § 2.2-225.

"Noncommercial telecommunications entity" means any public broadcasting station as defined in § ~~2.2-2427~~ *22.1-20.1*.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Public telecommunications entity" means any public broadcasting station as defined in § ~~2.2-2427~~ *22.1-20.1*.

"Public telecommunications facilities" means all apparatus, equipment and material necessary for or associated in any way with public broadcasting stations *as defined in § 22.1-20.1* or public broadcasting services ~~as those terms are defined in § 2.2-2427~~, including the buildings and structures necessary to house such apparatus, equipment and material, and the necessary land for the purpose of providing public broadcasting services, but not telecommunications services.

"Public telecommunications services" means public broadcasting services ~~as defined in § 2.2-2427~~.

"Secretary" means the Secretary of Technology.

"State agency" or "agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act. However, the terms "state agency," "agency," "institution," "public body," and "public institution of higher education," shall not include the University of Virginia Medical Center.

"Technology asset" means hardware and communications equipment not classified as traditional mainframe-based items, including personal computers, mobile computers, and other devices capable of storing and manipulating electronic data.

"Telecommunications" means any origination, transmission, emission, or reception of 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 necessary land.

§ 2.2-3501. Definitions.

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

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"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 § ~~2.2-2427~~ *2.2-2006*.

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.1-23.03 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within ~~sixty~~ *60* days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ~~ten~~ *10* days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within ~~sixty~~ *60* days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or subdivision A 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility *on or before July 1, 2012,* by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 *or after July 1, 2012, by the Board of Education pursuant to § 22.1-20.1* shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The ~~Virginia Public Broadcasting~~ Board *of Education* shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within ~~ninety~~ *90* days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than ~~sixty~~ *60* additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

§ 22.1-20.1. Powers and duties of the Board related to public broadcasting stations; disbursement of funds.

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

"Public broadcasting station" means any noncommercial, educational television or radio station that (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 and studios 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, until July 1, 2012, was qualified by the Virginia Public Broadcasting Board to receive state funds under standards and criteria established by the Virginia Public Broadcasting Board pursuant to law, or, after July 1, 2012, was qualified by the Board of Education in accordance with this section. Public broadcasting station shall not include any institution of higher education that 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 of Education approves its request.

B. The Board shall have the power and duty to:

1. Receive, allocate, and dispense funds appropriated by the General Assembly and 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 § 2.2-1122. To avoid unnecessary duplication of public broadcasting services, the Board shall consider: (i) the 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) the 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.

C. The Director of the Department of Planning and Budget shall oversee and approve the disbursement of all funds appropriated to the Board for the purposes enumerated in this section. Upon approval, the funds of the Board shall be disbursed for the following general purposes:

1. Annual operating-grant-funding to public broadcasting stations for developing, acquiring, producing, and distributing programs and related services that support local needs of preschool 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 that inform, educate, and entertain the citizenry with noncommercial programming.

2. Annual contract-funding to public broadcasting stations to regionally manage and provide programming and related services that directly support the instructional activities of local schools and home educators.

3. Matching-capital-funding to public broadcasting stations for construction and equipment modernization to keep Virginia stations consistent with industry standards.

4. Funding for specific programs and projects to be provided by a public broadcasting station that may not be included in another funding category.

58. That Article 12 (§§ 2.2-2426 through 2.2-2433) of Chapter 24 of Title 2.2 of the Code of Virginia is repealed.*

59. That §§ 2.2-212, 2.2-214, 2.2-435.8, 2.2-1204, 2.2-1507, 2.2-2001.1, 2.2-2411, 2.2-2528, 2.2-3705.5, 2.2-4002, 2.2-4345, 2.2-5510, 8.01-66.9, 15.2-1535, 15.2-2159, 19.2-389, 30-326, 32.1-23.1, 32.1-102.1, 32.1-116.1, 32.1-127.1:04, 32.1-283.5, 32.1-330.3, 37.2-304, 37.2-312.1, 37.2-504, 37.2-505, 37.2-605, 37.2-1000, 37.2-1010, 37.2-1015, 46.2-221, 46.2-411, 51.5-1, 51.5-31, 51.5-33, 51.5-39.2, 51.5-39.7, 51.5-39.10, 51.5-41, 51.5-44, 57-60, 58.1-344.3, 58.1-439.11, 58.1-2259, 63.2-100, 63.2-313, 63.2-315, 63.2-401, 63.2-405, 63.2-1600, 63.2-1601, 63.2-1602, 63.2-1605, and 63.2-1606 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 51.5 a section numbered 51.5-39.13 and in Title 51.5 a chapter numbered 14, containing articles numbered 1 through 12, consisting of sections numbered 51.5-116 through 51.5-181, as follows:

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

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

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

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

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

§ 2.2-435.8. Workforce program evaluations; sharing of certain data.

A. Notwithstanding any provision of law to the contrary, the agencies specified in subsection D may share data from within their respective databases solely to (i) provide the workforce program evaluation and policy analysis required by subdivision A 8 of § 2.2-435.7 and clause (i) of subdivision A 10 of § 2.2-435.7 and (ii) conduct education program evaluations that require employment outcomes data to meet state and federal reporting requirements.

B. Data shared pursuant to subsection A shall not include any personal identifying information, shall be encrypted, and shall be transmitted to the Governor or his designee. Upon receipt of such data, the Governor or his designee shall re-encrypt the data to prevent any participating agency from connecting shared data sets with existing agency files. For the purposes of this section:

1. "Identifying information" means the same as that term is defined in § 18.2-186.3, and

2. "Encrypted" means the same as that term is defined in § 18.2-186.6.

C. The Governor or his designee and all agencies authorized under this section shall destroy or erase all shared data upon completion of all required evaluations and analyses. The Governor or his designee may retain a third-party entity to assist with the evaluation and analysis.

D. The databases from the following agencies relating to the specific programs identified in this subsection may be shared solely to achieve the purposes specified in subsection A:

1. Virginia Employment Commission: Unemployment Insurance, Job Service, Trade Act, and Veterans Employment Training Programs;

2. Virginia Community College System: Postsecondary Career and Technical Education, Workforce Investment Act Adult, Youth and Dislocated Worker Programs;

3. Department ~~of~~ *for Aging and* Rehabilitative Services: Vocational Rehabilitation *and Senior Community Services Employment Program*;

4. Department for the Blind and Vision Impaired: Vocational Rehabilitation;

5. Department of Education: Adult Education and Family Literacy, Special Education, and Career and Technical Education;

~~6. Department for the Aging: Senior Community Services Employment Program;~~

~~7.~~ *6.* Department of Labor and Industry: Apprenticeship;

~~8.~~ *7.* Department of Social Services: Supplemental Nutrition Assistance Program and Virginia Initiative for Employment Not Welfare;

~~9.~~ *8.* Department of Business Assistance: Virginia Jobs Investment Program;

~~10.~~ *9.* Department of Correctional Education: Career and Technical Education Programs;

~~11.~~ *10.* Department of Juvenile Justice: Youth Industries and Institutional Work Programs; and

~~12.~~ *11.* The State Council of Higher Education for Virginia.

§ 2.2-1204. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions.

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans," subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, employees of area agencies on aging, and retirees, and the dependents of such employees, officers, teachers, employees of area agencies on aging, and retirees. The plan or plans shall be rated separately from the plan established pursuant to § 2.2-2818 to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, by the local school board in the case of teachers, or by the governing body of an area agency on aging in the case of its employees, and (iii) subject to regulations adopted by the Department. In addition, at the option of a governing body, school board, or area agency on aging that has elected to participate in the health insurance plan or plans offered by the Department, the governing body, school board, or area agency on aging may elect to participate in the long-term care or other benefit program that the Department may make available to the governing body, school board, or area agency on aging.

B. The plan established by the Department shall satisfy the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), shall consist of a flexible benefits structure that permits the creation of multiple plans of benefits and may provide for separate rating groups based upon criteria established by the Department. The Department shall adopt regulations regarding the establishment of such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and egress, mandatory employer contributions and financial reserves, and the administration of the plan or plans. The Department may engage the services of other

professional advisors and vendors as necessary for the prudent administration of the plan or plans. The assets of the plan or plans, together with all appropriations, premiums and other payments, shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge reasonable fees to recover the actual costs of investing the assets of the plan or plans.

In establishing the participation requirements, the Department may provide that those employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.

C. In the event that the financial reserves of the plan fall to an unacceptably low level as determined by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to raise the reserve level to one that is considered adequate. The State Treasurer may make such a loan, to be repaid on such terms and conditions as established by him.

D. For the purposes of this section:

"Area agency on aging" means any agency designated pursuant to § ~~2.2-703~~ *51.5-135*.

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from § 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, mental health, mental retardation and substance abuse services board, center for independent living funded in whole or in part by the Department ~~of~~ *for Aging and* Rehabilitative Services pursuant to the provisions of ~~Chapter 6 (§ 51.5-23 et seq.)~~ *Article 10 (§ 51.5-161 et seq.) of Chapter 14* of Title 51.5, or library board of a county, city, or town shall be deemed to be employees of local government.

"Governing body," with regard to a center for independent living, means the governing board of an applicant established to operate the center for independent living as required by subsection B of § ~~51.5-23~~ *51.5-161*.

"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.

E. 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, employees of area agencies on aging, 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 that 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 Human Resource Management 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 Human Resource Management 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.

§ 2.2-1507. Participation of certain agencies in budget development process of other agencies.

Agencies having responsibilities granted under §§ ~~2.2-703,~~ 2.2-2011, ~~and~~ 2.2-2696*, and 51.5-135* shall participate in the budget development process of relevant agencies and receive from these agencies, prior to submission to the Department their proposed programs and budgets. Recommendations to the appropriate agencies and the secretaries of the Governor on related matters shall be made prior to budget submissions.

§ 2.2-2001.1. Program for mental health and rehabilitative services.

The Department, in cooperation with the Department of Behavioral Health and Developmental Services and the Department ~~of~~ *for Aging and* Rehabilitative Services, shall establish a program to monitor and coordinate mental health and rehabilitative services support for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service. The program shall also support family members affected by covered military members' service and deployments. The purpose of the program is to ensure that adequate and timely assessment, treatment, and support are available to veterans, service members, and affected family members.

The program shall facilitate support for covered individuals to provide timely assessment and treatment for stress-related injuries and traumatic brain injuries resulting from military service, and subject to the availability of public and private funds appropriated for them, case management services, outpatient, family support, and other appropriate behavioral health and brain injury services necessary to provide individual services and support.

The program shall cooperate with localities that may establish special treatment procedures for veterans and active military service members such as authorized by §§ 9.1-173 and 9.1-174. To facilitate local involvement and flexibility in responding to the problem of crime in local communities and to effectively treat, counsel, rehabilitate, and supervise veterans and active military service members who are offenders or defendants in the criminal justice system and who need access to proper treatment for mental illness including major depression, alcohol or drug abuse, post traumatic stress disorder, traumatic brain injury or a combination of these, any city, county, or combination thereof, may develop, establish, and maintain policies, procedures, and treatment services for all such offenders who are convicted and sentenced for misdemeanors or felonies that are not felony acts of violence, as defined in § 19.2-297.1. Such policies, procedures, and treatment services shall be designed to provide:

1. Coordination of treatment and counseling services available to the criminal justice system case processing;

2. Enhanced public safety through offender supervision, counseling, and treatment;

3. Prompt identification and placement of eligible participants;

4. Access to a continuum of treatment, rehabilitation, and counseling services in collaboration with such care providers as are willing and able to provide the services needed;

5. Where appropriate, verified participant abstinence through frequent alcohol and other drug testing;

6. Prompt response to participants' noncompliance with program requirements;

7. Ongoing monitoring and evaluation of program effectiveness and efficiency;

8. Ongoing education and training in support of program effectiveness and efficiency;

9. Ongoing collaboration among public agencies, community-based organizations and the U.S. Department of Veterans Affairs health care networks, the Veterans Benefits Administration, volunteer veteran mentors, and veterans and military family support organizations; and

10. The creation of a veterans and military service members' advisory council to provide input on the operations of such programs. The council shall include individuals responsible for the criminal justice procedures program along with veterans and, if available, active military service members.

§ 2.2-2411. Public Guardian and Conservator Advisory Board; purpose; membership; terms.

A. The Public Guardian and Conservator Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to report to and advise the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* 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 10 (§ 37.2-1000 et seq.) of Title 37.2.

B. The Board shall consist of no more than ~~fifteen~~ *15* members who shall be appointed by the Governor as follows: one representative of the Virginia Guardianship Association, one representative of the Virginia

Association of 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~~ *ARC of Virgina*, one representative of the Virginia Alliance for the Mentally Ill, one representative of the Virginia League of Social Service Executives, one representative of the Virginia Association of Community Services Boards, the Commissioner of Social Services or his designee, the Commissioner of Behavioral Health and Developmental Services or his designee, the Director of the Virginia Office for Protection and Advocacy 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 Social Services and Behavioral Health and Developmental Services or their designees, the Director of the Virginia Office for Protection and Advocacy 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 provided in § 2.2-2823.

§ 2.2-2528. (Expires July 1, 2014) Staffing.

The Department ~~of~~ *for Aging and* Rehabilitative Services, and such other executive branch agencies as the Governor may designate, shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

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. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ ~~2.2-706~~ *51.5-122, 51.5-141,* and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation pursuant to Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. 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.

5. 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.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Health Practitioners' Monitoring 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.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to ~~Chapter 3.1 (§ 51.5-12.1 et seq.)~~ *Article 12 (§ 51.5-178 et seq.) of Chapter 14* of Title 51.5, 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.

13. 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.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with

Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030 and 2.2-4031:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The Virginia War Memorial Foundation.

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. (Expires January 1, 2014) The Secretary of Natural Resources in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, militia, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) ~~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 Team pursuant to § 32.1-283.1.
18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.
19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to ~~Chapter 3.1 (§ 51.5-12.1 et seq.)~~ *Article 12 (§ 51.5-178 et seq.) of Chapter 14* of Title 51.5.
20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.
21. The Virginia Breeders Fund created pursuant to § 59.1-372.
22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) ~~of this title~~, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

5. The Department for ~~the~~ Aging *and Rehabilitative Services*, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966~~;~~, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation~~;~~, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000~~;~~, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than $50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 2.2-5510. (Expires July 1, 2013) Strategic plan.

A. Each agency shall develop and maintain a strategic plan for its operations. The plan shall include:

1. A statement of the mission, goals, strategies, and performance measures of the agency that are linked into the performance management system directed by long-term objectives;

2. Identification of priority and other service populations under current law and how those populations are expected to change within the time period of the plan;

3. An analysis of any likely or expected changes in the services provided by the agency; and

4. An analysis of the impact that the aging of the population will have on its ability to deliver services and a description of how the agency is responding to these changes. Each agency shall report every four years in a manner and time frame established by the Secretary of Health and Human Resources in coordination with the Department for ~~the~~ Aging *and Rehabilitative Services* its progress in addressing the impact of the aging of the population, according to guidance established by the Secretary of Health and Human Resources. Based upon information received, the Department for ~~the~~ Aging *and Rehabilitative Services* shall incorporate this information into the Plans for Aging Services required pursuant to § ~~2.2-703.1~~ *51.5-136*.

B. Strategic plans shall also include the following information:

1. Input, output, and outcome measures for the agency;

2. A description of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs; and

3. A description of the activities of the agency that have received either a lesser priority or have been eliminated from the agency's mission or work plan over the previous year because of changing needs, conditions, focus, or mission.

C. The strategic plan shall cover a period of at least two years forward from the fiscal year in which it is submitted and shall be reviewed by the agency annually.

D. Each agency shall post its strategic plan on the Internet.

§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries.

Whenever any person sustains personal injuries and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type of medical or rehabilitative device, apparatus, or treatment which is paid for pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or provided at or paid for by any hospital or rehabilitation center operated by the Commonwealth, the Department ~~of~~ *for Aging and* Rehabilitative Services or any state institution of higher education, the Commonwealth shall have a lien for the total amount paid pursuant to such program, and the Commonwealth or such Department or institution shall have a lien for the total amount due for the services, equipment or devices provided at or paid for by such hospital or center operated by the Commonwealth or such Department or institution, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or of his personal representative against the person, firm, or corporation who is alleged to have caused such injuries.

The Commonwealth or such Department or institution shall also have a lien on the claim of the injured person or his personal representative for any funds which may be due him from insurance moneys received for such medical services under the injured party's own insurance coverage or through an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program shall have priority over the lien for the amounts due for services, equipment or devices provided at a hospital or center operated by the Commonwealth. The Commonwealth's or

such Department's or institution's lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be superior to all other liens created by the provisions of this chapter and otherwise. Expenses for reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the lien may be compromised pursuant to § 2.2-514.

The court in which a suit by an injured person or his personal representative has been filed against the person, firm or corporation alleged to have caused such injuries or in which such suit may properly be filed, may, upon motion or petition by the injured person, his personal representative or his attorney, and after written notice is given to all those holding liens attaching to the recovery, reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities of the case may appear, provided that the injured person, his personal representative or attorney has made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the basis for any such reduction in a written order.

§ 15.2-1535. Members of governing body not to be elected or appointed by governing body to certain offices.

A. Pursuant to Article VII, Section 6 of the Constitution of Virginia, no member of a governing body of a locality shall be eligible, during the term of office for which he was elected or appointed, to hold any office filled by the governing body by election or appointment, except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law and except that a member of a governing body may be named to fill a vacancy in the office of mayor or board chairman if permitted by general or special law.

B. Pursuant to Article VII, Section 6 of the Constitution of Virginia, and without limiting any other provision of general law, a governing body member may be named by the governing body to one or more of the following positions:

1. Director of emergency management pursuant to § 44-146.19;
2. Member of a planning district commission pursuant to § 15.2-4203;
3. Member of a transportation district commission pursuant to § 15.2-4507;
4. Member of a behavioral health authority board pursuant to Chapter 6 (§ 37.2-600 et seq.) of Title 37.2;
5. Member of a hospital or health center commission pursuant to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2;
6. Member of a community services board pursuant to Chapter 5 (§ 37.2-500 et seq.) of Title 37.2;
7. Member of a park authority pursuant to Chapter 57 (§ 15.2-5700 et seq.) of Title 15.2;
8. Member of a detention or other residential care facilities commission pursuant to Article 13 (§ 16.1-315 et seq.) of Chapter 11 of Title 16.1;
9. Member of a board of directors, governing board or advisory council of an area agency on aging pursuant to § ~~2.2-703~~ *51.5-135*;
10. Member of a regional jail or jail farm board, pursuant to § 53.1-106 or of a regional jail authority or jail authority pursuant to Article 3.1 (§ 53.1-95.2 et seq.) of Chapter 3 of Title 53.1;
11. With respect to members of the governing body of a town under 3,500 population, member of an industrial development authority's board of directors pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2;
12. Member of the board of directors, governing board, or advisory council or committee of an airport commission or authority;
13. Member of a Board of Directors of a Regional Industrial Facility Authority pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2;
14. Member of a local parks and recreation commission; and
15. Member of the Board of the Richmond Ambulance Authority.

C. If any governing body member is appointed or elected by the governing body to any office, his qualification in that office shall be void except as provided in subsection B or by other general law.

D. Except as specifically provided in general or special law, no appointed body listed in subsection B shall be comprised of a majority of elected officials as members, nor shall any locality be represented on such appointed body by more than one elected official.

E. For the purposes of this section, "governing body" includes the mayor of a municipality and the county board chairman.

§ 15.2-2159. Fee for solid waste disposal by counties.

A. Accomack County, Augusta County, Floyd County, Highland County, and Wise County may levy a fee for the disposal of solid waste not to exceed the actual cost incurred by the county in procuring, developing,

maintaining, and improving the landfill and for such reserves as may be necessary for capping and closing such landfill in the future. Such fee as collected shall be deposited in a special account to be expended only for the purposes for which it was levied. Except in Floyd County and Wise County, such fee shall not be used to purchase or subsidize the purchase of equipment used for the collection of solid waste. In Augusta County and Highland County, such fee (i) may only be levied upon persons whose residential solid waste is disposed of at a county landfill or county solid waste collection or disposal facility and (ii) shall not be levied upon persons whose residential waste is not disposed of in such landfill or facility if such nondisposal is documented by the collector or generator of such waste as required by ordinance of such county. Documentation provided by a collector of such waste pursuant to clause (ii) shall not be disclosed by the county to any other person.

B. Any fee imposed by subsection A when combined with any other fee or charge for disposal of waste shall not exceed the actual cost incurred by the county in procuring, developing, maintaining, and improving its landfill and for such reserves as may be necessary for capping and closing such landfill in the future.

C. Any county which imposes the fee allowed under subsection A may enter into a contractual agreement with any water or heat, light, and power company or other corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.) of Title 58.1 except Appalachian Power Company, Shenandoah Valley Electric Cooperative, BARC Electric Cooperative and Powell Valley Electric Cooperative for the collection of such fee. The agreement may include a commission for such service in the form of a deduction from the fee remitted. The commission shall be provided for by ordinance, which shall set the rate not to exceed five percent of the amount of fees due and collected.

D. Accomack, Highland and Wise Counties have the following authority regarding collection of said fee:

1. To prorate said fee depending upon the period a resident or business is located in said county during the year of fee levy;

2. To levy penalty for late payment of fee as set forth in § 58.1-3916 of the Code of Virginia;

3. To levy interest on unpaid fees as set forth in § 58.1-3916 of the Code of Virginia;

4. To credit the fee first against the most delinquent use fee account owing;

5. To require payment of the fee prior to approval of an application for rezoning, special exception, variance or other land use permit; and

6. To provide discounts to the standard fee rates for older persons, as defined in § ~~2.2-703~~ *51.5-135*, and disabled persons based on ability to pay.

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner ~~of the Department~~ of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the

conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals applying for a position of employment in which the individual may have access to or process personal identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application for a mortgage lender or mortgage broker license is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department ~~of~~ *for Aging and* Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to ~~Chapter 5 (§ 51.5-15 et seq.)~~ *Article 11 (§ 51.5-170 et seq.) of Chapter 14* of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120; and

42. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be

reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request~~;~~, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 30-326. (Expires July 1, 2014) Autism Advisory Council created; purpose; membership; staff.

A. The Autism Advisory Council (the Council) is established as an advisory council in the legislative branch of state government to promote coordination of services and resources among agencies involved in the delivery of services to Virginians with autism spectrum disorders and to increase public awareness of such services and resources.

B. The Council shall have a total membership of eight members that shall consist of six legislative members and two nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate to be appointed by the Senate Committee on Rules; four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; and two nonlegislative citizen members, of whom one shall be a practicing pediatrician and one shall be an advocate for autism spectrum disorders, to be appointed by the Governor. The Council shall request the participation of the Commissioner of Behavioral Health and Developmental Services, the Commissioner ~~of~~ *for Aging and* Rehabilitative Services, the Commissioner of Health, the Commissioner of Social Services, the Superintendent of Public Instruction, the Executive Director of the Virginia Board for People with Disabilities, the Director of the Department of Medical Assistance Services, the Director of the Virginia Autism Resource Center at Virginia Commonwealth University, and the president of Commonwealth Autism Service, or their designees. Nonlegislative citizen members of the Council shall be citizens of the Commonwealth. Unless otherwise approved in writing by the chairman of the Council and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth for the purpose of attending meetings.

C. Legislative members shall serve terms coincident with their terms of office. All appointments of nonlegislative citizen members shall be for four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Legislative and citizen members may be reappointed; however, no citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's term limit. Vacancies shall be filled in the same manner as the original appointments.

Legislative members of the Council shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expense payments shall be paid from existing appropriations to the Council or, if unfunded, shall be approved by the Joint Rules Committee.

D. The Council shall elect a chairman and vice-chairman annually, who shall be members of the General Assembly. A majority of the members of the Council shall constitute a quorum. The Council shall meet no more than four times a year, upon the call of the chairman or the majority of the members.

E. Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Clerk of the House of Delegates, as may be appropriate for the house in which the chairman serves. The Division of Legislative Services shall provide legal, research, policy analysis, and other services as requested by the Council.

F. No recommendation of the Council shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Council (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Council.

§ 32.1-23.1. Alternative delivery of certain information; Commissioners to develop single application form for pharmaceutical assistance programs and pharmaceutical discount purchasing cards; certain analysis of access to The Pharmacy Connection program.

A. The Commissioner shall create links from the Virginia Department of Health's website to the Virginia Department for ~~the Aging's~~ *Aging and Rehabilitative Services'* website and its affiliated sites pertaining to pharmaceutical assistance programs and pharmaceutical discount purchasing cards. The Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall cooperate with the Commissioner of Health by ensuring that such information is available on the Department for ~~the Aging's~~ *Aging and Rehabilitative Services'* website.

B. The Commissioner shall ensure that all clinical sites administered by local health departments are provided with adequate information concerning the services of the Virginia Department for ~~the~~ Aging *and Rehabilitative Services*, including, but not limited to, its toll-free telephone number and its website information on pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

C. The Commissioner of Health and the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall coordinate the dissemination of information to the public regarding any pharmaceutical discount purchasing card programs while maintaining a neutral posture regarding such programs.

In addition, with such funds as may be made available, the Commissioner of Health and the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall disseminate information to the public concerning recent congressional actions relating to pharmaceutical benefits to be provided under the Medicare program and how such benefits may help senior citizens with the costs of pharmaceutical benefits.

D. The Commissioner shall establish a toll-free telephone number, to be administered by the Virginia Department of Health, which shall provide recorded information concerning services available from the Department for ~~the~~ Aging *and Rehabilitative Services*, the Virginia *Association of* Area Agencies on Aging, and other appropriate organizations for senior citizens.

E. The Commissioner of Health and the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall develop a strategy, in coordination with the Virginia *Association of* Area Agencies on Aging and other private and nonprofit organizations, for disseminating information to the public concerning the availability of pharmaceutical assistance programs and for training senior citizen volunteers to assist in completing applications for pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

F. In addition to the responsibilities set forth in subsections A through E, the Commissioner of Health and the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall encourage pharmaceutical manufacturers to include application forms for pharmaceutical discount purchasing card programs on their respective websites in a format capable of being downloaded and printed by consumers. When practicable, the website maintained by the Department for ~~the~~ Aging *and Rehabilitative Services* shall include direct links to such forms. Further, the Commissioner of Health and the Commissioner ~~of the Department~~ for ~~the~~ Aging *and Rehabilitative Services* shall report to the Governor and General Assembly by October 30, 2004, on the feasibility of developing a single application form for Virginians to use to seek eligibility for the nearly 50 pharmaceutical assistance programs and pharmaceutical discount purchasing cards.

In determining feasibility, the Commissioners shall obtain copies of the application forms used by such pharmaceutical assistance programs and pharmaceutical discount purchasing cards in Virginia, compile a list of the various information required to complete such application forms, identify common elements, and analyze the forms for readability and simplicity. Upon completion of this analysis, the Commissioners shall assess the feasibility of designing a single, concise application form that is logically formatted, written in clear and easily comprehensible language, and covers any and all data that may be required to obtain eligibility for any such pharmaceutical assistance program or pharmaceutical discount purchasing card.

G. In order to maximize the benefits of the new Medicare pharmaceutical discount card program for Virginia's senior citizens, the Commissioner of Health shall annually for two years commencing on July 1, 2005, (i) analyze access to The Pharmacy Connection program vis-a-vis the Medicare pharmaceutical discount card

program, the $600 transitional coverage provided under federal law, and pharmaceutical companies' offers of "wrap-around" coverage for low-income seniors; and (ii) recommend, to the Virginia Health Care Foundation, the Secretary of Health and Human Resources, and the Governor, appropriate localities for expansion of access to The Pharmacy Connection program in Virginia, particularly in areas having high concentrations of low-income seniors. The goal of the Commissioner's analysis shall be to facilitate statewide implementation of The Pharmacy Connection program. The Commissioner shall complete this analysis by October 31 of each year and shall immediately request an estimate of the costs of the recommended expansion of such access from the Virginia Health Care Foundation to be forwarded to the Secretary and the Governor, for inclusion in the appropriation act, in so far as possible and appropriate to promote the health and safety of Virginia's senior citizens.

H. To assist them in completing the responsibilities set forth in subsections E, F, and G, the Commissioners may appoint an advisory task force of stakeholders.

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for individuals with mental retardation that have no more than 12 beds and are in an area identified as in need of residential services for individuals with mental retardation in any plan of the Department of Behavioral Health and Developmental Services.

5. Extended care facilities.

6. Mental hospitals.

7. Mental retardation facilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" shall not include any facility of (i) the Department of Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with mental retardation that has no more than 12 beds and is in an area identified as in need of residential services for people

with mental retardation in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described ~~above~~ in subdivision 9 of the definition of "medical care facility"; (v) the Woodrow Wilson Rehabilitation Center of the Department ~~of~~ *for Aging and* Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;

2. An increase in the total number of beds or operating rooms in an existing medical care facility;

3. Relocation of beds from one existing facility to another~~;~~, provided that "project" shall not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing facility to another existing facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities located in that other planning district and at least half of those beds have not been replaced~~;~~, provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

4. Introduction into an existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services, or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided;

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;

8. Any capital expenditure of $15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures between $5 and $15 million shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved under § 32.1-102.3:2 to nonpsychiatric inpatient beds.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform the health planning activities set forth in this chapter within a health planning region.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services.

§ 32.1-116.1. Prehospital patient care reporting procedure; trauma registry; confidentiality.

A. In order to collect data on the incidence, severity and cause of trauma, integrate the information available from other state agencies on trauma and improve the delivery of prehospital and hospital emergency medical services, there is hereby established the Emergency Medical Services Patient Care Information System. The

Emergency Medical Services Patient Care Information System shall include the Virginia Emergency Medical Services (EMS) Registry and the Virginia Statewide Trauma Registry.

All licensed emergency medical services agencies shall participate in the Virginia EMS Registry by making available to the Commissioner or his designees the minimum data set in the format prescribed by the Board or any other format which contain equivalent information and meets any technical specifications of the Board. The minimum data set shall include, but not be limited to, the type of medical emergency or nature of the call, the response time, the treatment provided and other items as prescribed by the Board.

Each licensed emergency medical services agency shall, upon request, disclose the prehospital care report to law-enforcement officials (i) when the patient is the victim of a crime or (ii) when the patient is in the custody of the law-enforcement officials and has received emergency medical services or has refused emergency medical services.

The Commissioner may delegate the responsibility for collection of this data to the Office of Emergency Medical Services personnel or individuals under contract to the Office. The Advisory Board shall assist in the design, implementation, subsequent revisions and analyses of the data from the Virginia EMS Registry.

B. All licensed hospitals which render emergency medical services shall participate in the Virginia Statewide Trauma Registry by making available to the Commissioner or his designees abstracts of the records of all patients admitted to the institutions with diagnoses related to trauma. The abstracts shall be submitted in the format prescribed by the Department and shall include the minimum data set prescribed by the Board.

The Commissioner shall seek the advice and assistance of the Advisory Board and the Trauma System Oversight and Management Committee in the design, implementation, subsequent revisions and analyses of the Virginia Statewide Trauma Registry.

C. Patient and other data or information submitted to the trauma registry or transmitted to the Commissioner, the Advisory Board, any committee acting on behalf of the Advisory Board, any hospital or prehospital care provider, any regional emergency medical services council, permitted emergency medical services agency, or other group or committee for the purpose of monitoring and improving the quality of care pursuant to § 32.1-111.3, shall be privileged and shall not be disclosed or obtained by legal discovery proceedings, unless a circuit court, after a hearing and for good cause shown arising from extraordinary circumstances, orders disclosure of such data.

D. The Commissioner shall make available and share all information contained in the Virginia Statewide Trauma Registry with the Virginia Department ~~of~~ *for Aging and* Rehabilitative Services so that the Department may develop and implement programs and services for persons suffering from brain injuries.

§ 32.1-127.1:04. Use or disclosure of certain protected health information required.

A. The coordination of prevention and control of disease, injury, or disability and the delivery of health care benefits are hereby declared to be (i) necessary public health activities; (ii) necessary health oversight activities for the integrity of the health care system; and (iii) necessary to prevent serious harm and serious threats to the health and safety of individuals and the public.

B. The Departments of Health, Medical Assistance Services, Behavioral Health and Developmental Services~~,~~ ~~Rehabilitative Services~~, and Social Services, and the Departments for ~~the~~ Aging~~,~~ *and Rehabilitative Services,* the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof shall establish a secure system for sharing protected health information that may be necessary for the coordination of prevention and control of disease, injury, or disability and for the delivery of health care benefits when such protected information concerns individuals who (i) have contracted a reportable disease, including exposure to a toxic substance, as required by the Board of Health pursuant to § 32.1-35 or other disease or disability required to be reported by law; (ii) are the subjects of public health surveillance, public health investigations, or public health interventions or are applicants for or recipients of medical assistance services; (iii) have been or are the victims of child abuse or neglect or domestic violence; or (iv) may present a serious threat to health or safety of a person or the public or may be subject to a serious threat to their health or safety. For the purposes of this section, "public health interventions" shall include the services provided through the ~~Department of~~ *Departments for Aging and* Rehabilitative Services, ~~and the Departments for the Aging,~~ the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof.

Pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, covered entities may disclose protected health information to the secure system without obtaining consent or authorization for such disclosure. Such protected health information shall be used exclusively for the purposes established in this section.

C. The Office of the Attorney General shall advise the Departments of Health, Medical Assistance Services, Behavioral Health and Developmental Services~~, Rehabilitative Services~~, and Social Services and the Departments for ~~the~~ Aging *and Rehabilitative Services*, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof, in the implementation of this section.

§ 32.1-283.5. Adult Fatality Review Team; duties; membership; confidentiality; penalties; report; etc.

A. There is hereby created the Adult Fatality Review Team, hereinafter referred to as the Team, which shall develop and implement procedures to ensure that adult deaths occurring in the Commonwealth are analyzed in a systematic way. The Team shall review the death of any ~~adult, as defined in § 63.2-1603,~~ *person age 60 years or older, or any adult age 18 years or older who is incapacitated, who resides in the Commonwealth or who does not reside in the Commonwealth but who is temporarily in the Commonwealth and who is in need of temporary or emergency protective services* (i) who was the subject of an adult protective services investigation, (ii) whose death was due to abuse or neglect or acts suggesting abuse or neglect, or (iii) whose death came under the jurisdiction of or was investigated by the Office of the Chief Medical Examiner pursuant to § 32.1-283. The Team shall not initiate an adult death review until the conclusion of any law-enforcement investigation or criminal prosecution.

B. The ~~17-member~~ *16-member* team shall consist of the following persons or their designees: the Chief Medical Examiner; the Commissioner of Behavioral Health and Developmental Services; the Commissioner ~~of the Virginia Department~~ for ~~the~~ Aging *and Rehabilitative Services*; ~~the Director of Adult Services/Adult Protective Services of the Department of Social Services;~~ the Director of the Office of Licensure and Certification of the Department of Health; and the State Long-Term Care Ombudsman. In addition, the Governor shall appoint one representative from each of the following entities: a licensed funeral services provider, the Medical Society of Virginia, and local departments of social services, emergency medical services, attorneys for the Commonwealth, law-enforcement agencies, nurses specializing in geriatric care, psychiatrists specializing in geriatric care, and long-term care providers. The Team further shall include two members appointed by the Governor who are advocates for elderly or disabled populations in Virginia. The Chief Medical Examiner shall serve as chair of the Team.

After the initial staggering of terms, members appointed by the Governor shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. The Chief Medical Examiner shall serve terms coincident with his term in office.

C. Upon the request of the chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding an adult whose death is being reviewed by the Team shall be inspected and copied by the chair or his designee, including but not limited to any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner and information or records on the adult maintained by any facility that provided services to the adult, by any social services agency, or by any court. Information, records, or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the chair or his designee pursuant to procedures that shall be developed by the Chief Medical Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In addition, a health care provider shall provide the Team, upon request, with access to the health and mental health records of (i) the adult whose death is subject to review, without authorization; (ii) any adult relative of the deceased, with authorization; and (iii) any minor child of the deceased, with the authorization of the minor's parent or guardian. The chair of the Team also may copy and inspect the presentence report, prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the death of the adult who is the subject of review by the Team.

D. All information obtained or generated by the Team regarding a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in any civil or criminal proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during an adult death review. The Team shall compile all information collected during a review. The findings of the Team may be disclosed or published in statistical or other form, but shall not identify any individuals.

E. All Team members and other persons attending closed Team meetings, including any persons presenting information or records on specific fatalities, shall execute a sworn statement to honor the confidentiality of the

information, records, discussions, and opinions disclosed during meetings at which the Team reviews a specific death. No Team member or other person who participates in a review shall be required to make any statement regarding the review or any information collected during the review. Upon conclusion of a review, all information and records concerning the victim and the family shall be shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

F. Upon notification of an adult death, any state or local government agency or facility that provided services to the adult or maintained records on the adult or the adult's family shall retain the records for the longer of 12 months or until such time as the Team has completed its review of the case.

G. The Team shall compile an annual report by October 1 of each year that shall be made available to the Governor and the General Assembly. The annual report shall include any policy, regulatory, or budgetary recommendations developed by the Team. Any statistical compilations prepared by the Team shall be public record and shall not contain any personally identifying information.

§ 32.1-330.3. Operation of a pre-PACE plan or PACE plan; oversight by Department of Medical Assistance Services.

A. Operation of a pre-PACE plan or PACE plan that participates in the medical assistance services program must be in accordance with a prepaid health plan contract or other PACE contract consistent with Chapter 6 of Title IV of the federal Balanced Budget Act of 1997 with the Department of Medical Assistance Services.

1. As used in this section, "pre-PACE" means of or associated with long-term care prepaid health plans (i) authorized by the ~~United States~~ *U.S.* Health Care Financing Administration pursuant to § 1903 (m) (2) (B) of Title XIX of the United States Social Security Act (42 U.S.C. § 1396b et seq.) and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 et seq.) ~~of this title~~ and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care prepaid health plans.

2. As used in this section, "PACE" means of or associated with long-term care health plans (i) authorized as programs of all-inclusive care for the elderly by Subtitle I (§ 4801 et seq.) of Chapter 6 of Title IV of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 528 et seq., §§ 4801-4804, 1997, pursuant to Title XVIII and Title XIX of the United States Social Security Act (42 U.S.C. § 1395eee et seq.), and the state plan for medical assistance services as established pursuant to Chapter 10 (§ 32.1-323 et seq.) ~~of this title~~ and (ii) which have signed agreements with the Department of Medical Assistance Services as long-term care health plans.

B. All contracts and subcontracts shall contain an agreement to hold harmless the Department of Medical Assistance Services and pre-PACE and PACE enrollees in the event that a pre-PACE or PACE provider cannot or will not pay for services performed by the subcontractor pursuant to the contract or subcontract.

C. During the pre-PACE or PACE period, the plan shall have a fiscally sound operation as demonstrated by total assets being greater than total unsubordinated liabilities, sufficient cash flow and adequate liquidity to meet obligations as they become due, and a plan for handling insolvency approved by the Department of Medical Assistance Services.

D. The pre-PACE or PACE plan must demonstrate that it has arrangements in place in the amount of, at least, the sum of the following to cover expenses in the event of insolvency:

1. One month's total capitation revenue to cover expenses the month prior to insolvency; and

2. One month's average payment of operating expenses to cover potential expenses the month after the date of insolvency has been declared or operations cease.

The required arrangements to cover expenses shall be in accordance with the PACE Protocol as published by On Lok, Inc. in cooperation with the ~~United States~~ *U.S.* Health Care Financing Administration, as of April 14, 1995, or any successor protocol that may be agreed upon between the ~~United States~~ *U.S.* Health Care Financing Administration and On Lok, Inc.

Appropriate arrangements to cover expenses shall include one or more of the following: reasonable and sufficient net worth, insolvency insurance, letters of credit or parental guarantees.

E. Enrollment in a pre-PACE or PACE plan shall be restricted to those individuals who participate in programs authorized pursuant to Title XIX or Title XVIII of the United States Social Security Act, respectively.

F. Full disclosure shall be made to all individuals in the process of enrolling in the pre-PACE or PACE plan that services are not guaranteed beyond a ~~thirty-day~~ *30-day* period.

G. The Board of Medical Assistance Services shall establish a Transitional Advisory Group to determine license requirements, regulations and ongoing oversight. The Advisory Group shall include representatives from each of the following organizations: Department of Medical Assistance Services, Department of Social Services,

Department of Health, Bureau of Insurance, Board of Medicine, Board of Pharmacy, Department for ~~the~~ Aging *and Rehabilitative Services*, and a pre-PACE or PACE provider.

§ 37.2-304. Duties of Commissioner.

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

1. To supervise and manage the Department and its state facilities.

2. To employ the personnel required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between state hospitals and training centers school-age consumers who have been identified as appropriate to be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which a state hospital or training center is located.

7. To provide to the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, a written report setting forth the known facts of critical incidents or deaths of consumers in facilities within 15 working days of the critical incident or death.

8. To work with the appropriate state and federal entities to ensure that any person who has been a consumer in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that will expire 90 days from issuance, a copy of his birth certificate if the consumer was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § 37.2-837, shall implement this provision when discharging consumers.

9. To work with the Department of Veterans Services and the Department ~~of~~ *for Aging and* Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one consumer to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 37.2-312.1. Department to be lead agency for suicide prevention across the lifespan.

With such funds as may be appropriated for this purpose, the Department, in consultation with community services boards and behavioral health authorities, the Department of Health, local departments of health, and the Department for ~~the~~ Aging *and Rehabilitative Services*, shall have the lead responsibility for the suicide prevention across the lifespan program. The Department shall coordinate the activities of the agencies of the Commonwealth pertaining to suicide prevention in order to develop and carry out a comprehensive suicide prevention plan addressing public awareness, the promotion of health development, early identification, intervention and treatment, and support to survivors. The Department shall cooperate with federal, state, and local agencies, private and public agencies, survivor groups, and other interested persons to prevent suicide.

§ 37.2-504. Community services boards; local government departments; powers and duties.

A. Every operating and administrative policy community services board and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. In the case of operating and administrative policy boards, make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

6. In the case of an operating board, appoint an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 ~~of this section~~ and § 37.2-508 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under its jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party payors. Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

8. Accept or refuse gifts, donations, bequests, or grants of money or property from any source and utilize them as authorized by the governing body of each city or county that established it.

9. Seek and accept funds through federal grants. In accepting federal grants, the board shall not bind the governing body of any city or county that established it to any expenditures or conditions of acceptance without the prior approval of the governing body.

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

12. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional *offices of the* Department ~~of~~ *for Aging and* Rehabilitative Services ~~offices~~. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § 37.2-315.

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other community services boards or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the community services board.

16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

18. In the case of operating boards, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

B. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each city or county that established it as to its findings.

3. Review the community mental health, mental retardation, and substance abuse services provided by the local government department and advise the local governing body of each city or county that established it as to its findings.

4. Review and comment on the annual performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department ~~of~~ *for Aging and* Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any person who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. The discharge plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

No person shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify a consumer as ready for discharge and the community services board that is responsible for the person's care disagrees, the community services board shall document in the treatment plan within 30 days of the person's identification any reasons for not accepting the person for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the person back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the state hospital's or training center's determination that the person is ready for discharge in accordance with procedures established by the Department in collaboration with state hospitals, training centers, and community services boards. If the Commissioner determines that the person is ready for discharge, a discharge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to the community services board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider, another community services board, or a behavioral health authority to deliver the services specified in the discharge plan and withhold allocated funds applicable to that consumer's discharge plan from the community services board in accordance with subsections C and E of § 37.2-508.

B. The community services board may perform the functions set out in subdivision A 1 in the case of children by referring them to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The community services board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

§ 37.2-605. Behavioral health authorities; powers and duties.

Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience, and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health services to those residents and persons. An authority shall have the following powers and duties:

1. Review and evaluate public and private community mental health, mental retardation, and substance abuse services and facilities that receive funds from the authority and advise the governing body of the city or county that established it as to its findings.

2. Pursuant to § 37.2-608, submit to the governing body of the city or county that established the authority an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the delivery of services or operation of facilities.

5. Make and enter into all other contracts or agreements as the authority may determine that are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, any subdivision or instrumentality of the Commonwealth, behavioral health providers, insurers, and managed care or health care networks on such terms and conditions as the authority may approve.

6. Make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

7. Appoint a chief executive officer of the behavioral health authority, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the chief executive officer shall be fixed by the authority within the amounts made available by appropriation for this purpose. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. The Department shall approve the selection of the chief executive officer for adherence to minimum qualifications established by the Department and the salary range of the chief executive officer.

8. Authorize the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

9. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 ~~of this section~~ and § 37.2-608 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority, consistent with the provisions of § 37.2-612, and from responsible third party payors. Authorities shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

10. Accept or refuse gifts, donations, bequests, or grants of money or property or other assistance from the federal government, the Commonwealth, any municipality thereof, or any other sources, public or private; utilize them to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance, use, or repayment of any such grant or assistance.

11. Seek and accept funds through federal grants. In accepting federal grants, the authority shall not bind the governing body of the city or county that established it to any expenditures or conditions of acceptance without the prior approval of that governing body.

12. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with applicable regulations.

13. Apply for and accept loans in accordance with regulations established by the board of directors.

14. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; local boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional *offices of the* Department ~~of~~ *for Aging and* Rehabilitative Services ~~offices~~. The agreements shall specify the services to be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

15. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for Behavioral Health and Developmental Services pursuant to § 37.2-315.

16. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and service planning, delivery, and evaluation.

17. Institute, singly or in combination with community services boards or other behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

18. Notwithstanding the provisions of § 37.2-400 and regulations adopted thereunder, release data and information about individual consumers to the Department, so long as the Department implements procedures to protect the confidentiality of that data and information. Every authority shall submit data on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

19. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards.

20. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures, or other entities in carrying out any activities authorized by this chapter.

21. Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter,

including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

22. Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions and in such manner as it may deem proper and such rights, easements, or estates therein as may be necessary for its purposes and sell, lease, and dispose of the same or any portion thereof or interest therein, whenever it shall become expedient to do so.

23. Participate in joint ventures with individuals, corporations, partnerships, associations, or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

24. Conduct or engage in any lawful business, activity, effort, or project that is necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

25. As a public instrumentality, establish and operate its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing governmental entities.

26. Carry out capital improvements and bonding through existing economic or industrial development authorities.

27. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties, and towns are permitted to do under § 51.1-801.

28. Provide an annual report to the Department of the authority's activities.

29. Ensure a continuation of all consumer services during any transition period.

§ 37.2-1000. Definitions.

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

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for ~~the~~ Aging *and Rehabilitative Services* as a public conservator pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2~~ *Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5* or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for ~~the~~ Aging *and Rehabilitative Services* as a public conservator, it may also serve as a conservator for other individuals.

"Estate" includes both real and personal property.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes a (i) local or regional program designated by the Department for ~~the~~ Aging *and Rehabilitative Services* as a public guardian pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2~~ *Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5* or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c) (3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Virginia Department for ~~the~~ Aging *and Rehabilitative Services* as a public guardian, it may also serve as a guardian for other individuals.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the

Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

§ 37.2-1010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for ~~the~~ Aging *and Rehabilitative Services* pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2~~ *Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5* as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian 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 or there is no guardian or conservator appointed within one month of adjudication pursuant to § 37.2-1015. The guidelines for determining indigency set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

§ 37.2-1015. When no guardian or conservator appointed within one month of adjudication.

If a person is adjudicated incapacitated and in need of a guardian or conservator and the court has not identified any person to serve as guardian or conservator within one month from the adjudication, the court may appoint a local or regional program of the Virginia Public Guardian and Conservator Program authorized by the Department for ~~the~~ Aging *and Rehabilitative Services* pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2~~ *Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5*. If there is no such local or regional program within the court's jurisdiction, the court may appoint any local or regional program within 60 miles of the residence of the incapacitated person as identified by the Department for ~~the~~ Aging *and Rehabilitative Services*. However, the court shall not appoint any such local or regional program that has reached or exceeded its ideal ratio of clients to staff pursuant to regulations adopted by the Department for ~~the~~ Aging *and Rehabilitative Services* under § ~~2.2-712~~ *51.5-150*.

If any person appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person, may appoint some other person as fiduciary, taking from the fiduciary the bond required, or shall commit the estate of the respondent to the sheriff of the county or city of which the respondent is an inhabitant; the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

§ 46.2-221. Certain state agencies to report to Department concerning the blind and nearly blind; use of such information by Department; Department to report names of persons refused licenses for defective vision; reports to law-enforcement agencies concerning certain blind or visually impaired persons who operate motor vehicles.

Every state agency having knowledge of the blind or visually handicapped, maintaining any register of the blind, or administering either tax deductions or exemptions for or aid to the blind or visually handicapped shall report in January of each year to the Department the names of all persons so known, registered or benefiting from such deductions or exemptions, for aid to the blind or visually handicapped. This information shall be used by the Department only for the purpose of determining qualifications of these persons for licensure under Chapter 3 ~~of this title~~ *(§ 46.2-300 et seq.)*. If any such state agency has knowledge that any person so reported continues to operate a motor vehicle, such agency may provide this information to appropriate law-enforcement agencies as otherwise permitted by law.

The Department shall report to the Virginia Department for the Blind and Vision Impaired and the Department ~~of~~ *for Aging and* Rehabilitative Services at least annually the name and address of every person who has been refused a driver's license solely or partly because of failure to pass the Department's visual examination.

If any employee of the Virginia Department for the Blind and Vision Impaired makes a report to the Department of Motor Vehicles or provides information to an appropriate law-enforcement agency as required or permitted by this section concerning any client of the agency, it shall not be deemed to have been made in violation of the client-agency relationship.

§ 46.2-411. Reinstatement of suspended or revoked license or other privilege to operate or register a motor vehicle; proof of financial responsibility; reinstatement fee.

A. The Commissioner may refuse, after a hearing if demanded, to issue to any person whose license has been suspended or revoked any new or renewal license, or to register any motor vehicle in the name of the person, whenever he deems or in case of a hearing finds it necessary for the safety of the public on the highways in the Commonwealth.

B. Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended pursuant to § 46.2-389, 46.2-391, 46.2-391.1, or 46.2-417, the Commissioner shall require proof of financial responsibility in the future as provided in Article 15 (§ 46.2-435 et seq.) ~~of this chapter~~, but no person shall be licensed who may not be licensed under the provisions of §§ 46.2-389 through 46.2-431.

C. Whenever the driver's license or registration cards, license plates and decals, or other privilege to drive or to register motor vehicles of any resident or nonresident person is suspended or revoked by the Commissioner or by a district court or circuit court pursuant to the provisions of Title 18.2 or this title, or any valid local ordinance, the order of suspension or revocation shall remain in effect and the driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall not be reinstated and no new driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall be issued or granted unless such person, in addition to complying with all other provisions of law, pays to the Commissioner a reinstatement fee of $30. The reinstatement fee shall be increased by $30 whenever such suspension or revocation results from conviction of involuntary manslaughter in violation of § 18.2-36.1; conviction of maiming resulting from driving while intoxicated in violation of § 18.2-51.4; conviction of driving while intoxicated in violation of § 18.2-266 or 46.2-341.24; conviction of driving after illegally consuming alcohol in violation of § 18.2-266.1 or failure to comply with court imposed conditions pursuant to subsection D of § 18.2-271.1; unreasonable refusal to submit to drug or alcohol testing in violation of § 18.2-268.2; conviction of driving while a license, permit or privilege to drive was suspended or revoked in violation of § 46.2-301 or 46.2-341.21; disqualification pursuant to § 46.2-341.20; violation of driver's license probation pursuant to § 46.2-499; failure to attend a driver improvement clinic pursuant to § 46.2-503 or habitual offender interventions pursuant to former § 46.2-351.1; conviction of eluding police in violation of § 46.2-817; conviction of hit and run in violation of § 46.2-894; conviction of reckless driving in violation of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 or a conviction, finding or adjudication under any similar local ordinance, federal law or law of any other state. Five dollars of the additional amount shall be retained by the Department as provided in this section and $25 ~~dollars~~ shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to ~~Chapter 3.1 (§ 51.5-12.1 et seq.)~~ *Article 12 (§ 51.5-178 et seq.) of Chapter 14* of Title 51.5. When three years have elapsed from the termination date of the order of suspension or revocation and the person has complied with all other provisions of law, the Commissioner may relieve him of paying the reinstatement fee.

D. No reinstatement fee shall be required when the suspension or revocation of license results from the person's suffering from mental or physical infirmities or disabilities from natural causes not related to the use of self-administered intoxicants or drugs. No reinstatement fee shall be collected from any person whose license is suspended by a court of competent jurisdiction for any reason, other than a cause for mandatory suspension as provided in this title, provided the court ordering the suspension is not required by § 46.2-398 to forward the license to the Department during the suspended period.

E. Except as otherwise provided in this section and § 18.2-271.1, reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

F. Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended, the Commissioner shall collect from such person, in addition to all other fees provided for in this section, an additional fee of $40. The Commissioner shall pay all fees collected pursuant to this subsection into the Trauma Center Fund, created pursuant to § 18.2-270.01, for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use.

G. Whenever any person is required to pay a reinstatement fee pursuant to subsection C ~~of this section~~ or pursuant to subsection E of § 18.2-271.1 and such person has more than one suspension or revocation on his record for which reinstatement is required, then such person shall be required to pay one reinstatement fee, the amount of which shall equal the full reinstatement fee attributable to the one of his revocations or suspensions that

would trigger the highest reinstatement fee, plus an additional $5 fee for administrative costs associated with compliance for each additional suspension or revocation. Fees collected pursuant to this subsection shall be set aside as a special fund to be used to meet the expenses of the Department.

§ 51.5-1. Declaration of policy.

It is the policy of ~~this~~ *the* Commonwealth to encourage and enable persons with disabilities to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment. To these ends, the General Assembly directs the Governor, *the* Virginia Office for Protection and Advocacy, ~~Department for the Aging, Department for the Deaf and Hard-of-Hearing, Department~~ *the Virginia Board for People with Disabilities, the Departments* of Education, ~~Department of~~ Health, ~~Department of~~ Housing and Community Development, ~~Department of~~ Behavioral Health and Developmental Services, ~~Board for Rights of Virginians with Disabilities, Department of Rehabilitative Services, Department of~~ *and* Social Services, ~~Department~~ *and the Departments* for *Aging and Rehabilitative Services,* the Blind and Vision Impaired, *and the Deaf and Hard-of-Hearing* and such other agencies as the Governor deems appropriate, to provide, in a comprehensive and coordinated manner which makes the best use of available resources, those services necessary to assure equal opportunity to persons with disabilities in the Commonwealth.

The provisions of this title shall be known and may be cited as "The Virginians ~~With~~ *with* Disabilities Act."

§ 51.5-31. Board created.

There shall be a Virginia Board for People with Disabilities, responsible to the Secretary of Health and Human Resources. The Board shall be composed of ~~40~~ *39* members, to include the head or a person designated by the head of the Department for ~~the~~ Aging *and Rehabilitative Services,* Department for the Deaf and Hard-of-Hearing, Department of Education, Department of Medical Assistance Services, Department of Behavioral Health and Developmental Services, ~~Department of Rehabilitative Services,~~ and the Department for the Blind and Vision Impaired; one representative of the protection and advocacy agency; one representative of the university-affiliated facility; one representative each, to be appointed by the Governor, of a local governmental agency, a manufacturing or a retailing industry, a high-technology industry, a public transit interest, and a nongovernmental agency or group of agencies that provide services for persons with developmental disabilities; a banking executive; one person with disabilities other than developmental disabilities; and 24 persons with developmental disabilities or the parents or guardians of such persons. Of the last 24 persons, at least eight shall be persons with developmental disabilities; at least eight shall be immediate relatives or guardians of persons with mentally impairing developmental disabilities; and at least one person shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

Each member appointed by the Governor shall be appointed for a four-year term~~, except that of the members appointed in 1989, eight shall be appointed for a term of four years, eight shall be appointed for a term of three years, eight shall be appointed for a term of two years, and seven shall be appointed for a term of one year~~. Members so appointed shall be subject to removal at the pleasure of the Governor. Any vacancy other than by expiration of a term shall be filled for the unexpired term. No person appointed by the Governor shall serve for more than two successive terms.

The Board shall elect its chairman.

§ 51.5-33. Powers and duties.

The Board shall have the following powers and duties:

1. To advise the Secretary of Health and Human Resources and Governor on issues and problems of interest to persons with disabilities and on such other matters as either the Secretary or the Governor may request;

2. To submit every three years to the Governor, through the Secretary of Health and Human Resources, an assessment of the needs of persons with disabilities in the Commonwealth, the success in the preceding three years of the state agencies in meeting those needs, programmatic and fiscal recommendations for improving the delivery of services to persons with disabilities, and an assessment of the triennial economic cost and benefit to the Commonwealth of the services and rights afforded persons with disabilities as established in this title;

3. ~~To initiate the development of the plan of cooperation required by § 51.5-2;~~

~~4.~~ To serve as the State Planning Council for the administration of certain federal public health and welfare laws as provided in *42 U.S.C.* § 6000~~of Title 42 of the United States Code~~;

~~5.~~ *4.* To perform all duties and exercise all powers designated by federal law for such state planning councils, including the responsibility for planning activities on behalf of all developmentally disabled persons in the Commonwealth; for receiving, accounting for and disbursing federal funds; for developing and approving the

state plan; and for monitoring and evaluating the implementation of such plan for the provision of services and facilities for persons with developmental disabilities;

~~6.~~ *5.* To be responsible for obtaining information and data from within the Commonwealth, and from time to time, but not less than annually, to review and evaluate the state plan and submit such state plan, and revisions thereto, to the Governor and to the U.S. Secretary of Health and Human Services;

~~7.~~ *6.* To appoint and supervise the Director of the Board and prescribe his duties;

~~8.~~ *7.* To hire such staff and obtain the service of such professional, technical, and clerical personnel necessary to carry out its powers and duties; and

~~9.~~ *8.* To accept gifts and grants on behalf of the Commonwealth, in furtherance of the purpose of this Board.

§ 51.5-39.2. The Virginia Office for Protection and Advocacy; governing board; terms; quorum; expenses; summary of annual work.

A. The Department for Rights of Virginians with Disabilities is hereby established as an independent state agency to be known as the Virginia Office for Protection and Advocacy. The Office is designated as the agency to protect and advocate for the rights of persons with mental, cognitive, sensory, physical or other disabilities and to receive federal funds on behalf of the Commonwealth of Virginia to implement the federal Protection and Advocacy for Individuals with Mental Illness Act, the federal Developmental Disabilities Assistance and Bill of Rights Act, the federal Rehabilitation Act, the Virginians with Disabilities Act and such other related programs as may be established by state and federal law. Notwithstanding any other provision of law, the Office shall be independent of the Office of the Attorney General and shall have the authority, pursuant to subdivision 5 of § 2.2-510, to employ and contract with legal counsel to carry out the purposes of this chapter and to employ and contract with legal counsel to advise and represent the Office, to initiate actions on behalf of the Office, and to defend the Office and its officers, agents and employees in the course and scope of their employment or authorization, in any matter, including state, federal and administrative proceedings. Compensation for legal counsel shall be paid out of the funds appropriated for the administration of the Office. However, in the event defense is provided under Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, counsel shall be appointed pursuant to subdivision 4 of § 2.2-510. The Office shall provide ombudsman, advocacy and legal services to persons with disabilities who may be represented by the Office. The Office is authorized to receive and act upon complaints concerning discrimination on the basis of disability, abuse and neglect or other denial of rights, and practices and conditions in institutions, hospitals, and programs for persons with disabilities, and to investigate complaints relating to abuse and neglect or other violation of the rights of persons with disabilities in proceedings under state or federal law, and to initiate any proceedings to secure the rights of such persons.

B. The Office shall be governed by an 11-member board consisting of 11 nonlegislative citizen members. The members shall be appointed as follows: five citizens at large, of whom one shall be a person with a developmental disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a physical disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with cognitive disabilities, one shall be a person who represents persons with developmental disabilities, and one shall be a person who represents persons with sensory or physical disabilities, to be appointed by the Speaker of the House of Delegates; three citizens at large, of whom one shall be a person with a cognitive disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person who represents persons with mental illnesses, and one shall be a person who represents people with mental or neurological disabilities, to be appointed by the Senate Committee on Rules; and three citizens at large, of whom one shall be a person with a mental illness or the parent, family member, guardian, advocate, or authorized representative of such an individual, one shall be a person with a sensory disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, and one shall be a person with a mental or neurological disability or the parent, family member, guardian, advocate, or authorized representative of such an individual, to be appointed by the Governor. Persons appointed to the board to represent individuals with a disability shall be knowledgeable of the broad range of needs of such persons served by the Office. Persons appointed to the board who have a disability shall be individuals who are eligible for, are receiving, or have received services through the state system that protects and advocates for the rights of individuals with disabilities. In appointing the members of the Board, consideration shall be given to persons nominated by statewide groups that advocate for the physically, developmentally, and mentally disabled. The Virginia Office for Protection and Advocacy shall coordinate and provide to the appointing authorities the lists of nominations for each appointment. The Speaker of the House of Delegates, the Senate Committee on Rules and the Governor shall

not be limited in their appointments to persons so nominated; however, such appointing authorities shall seriously consider the persons nominated and appoint such persons whenever feasible.

No member of the General Assembly, elected official, or current employee of the Department of Behavioral Health and Developmental Services, State Health Department, Department ~~of~~ *for Aging and* Rehabilitative Services, Department for the Blind and Vision Impaired, Virginia Department for the Deaf and Hard-of-Hearing, a community services board, a behavioral health authority, or a local government department with a policy-advisory community services board shall be appointed to the Board.

C. Nonlegislative citizen members shall be appointed for a term of four years, following the initial staggering of terms. All members may be reappointed, except that any member appointed during the initial staggering of terms to a four-year term shall not be eligible for reappointment for two years after the expiration of his term. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All appointments and reappointments shall be subject to confirmation at the next session of the General Assembly. All appointments shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Members shall continue to serve until such time as their successors have been appointed and duly qualified to serve.

D. The Board shall elect a chairman and a vice-chairman from among its members and appoint a secretary who may or may not be a member of the Board. A majority of the members of the Board shall constitute a quorum.

The Board shall meet at least four times each year. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the voting members so request. The chairman shall perform such additional duties as may be established by resolution of the Board.

E. Members shall serve without compensation for their services; however, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Virginia Office for Protection and Advocacy.

F. Members of the Board shall be subject to removal from office only as set forth in Article 7 (§ 24.2-230 et seq.) of Chapter 2 of Title 24.2. The Circuit Court of the City of Richmond shall have exclusive jurisdiction over all proceedings for such removal.

G. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted to the General Assembly's website.

§ 51.5-39.7. (See Editor's notes) Ombudsman services for persons with disabilities.

A. There is hereby created within the Office an ombudsman section. The Director shall establish procedures for receiving complaints and conducting investigations for the purposes of resolving and mediating complaints regarding any activity, practice, policy, or procedure of any hospital, facility or program operated, funded or licensed by the Department of Behavioral Health and Developmental Services, the Department ~~of~~ *for Aging and* Rehabilitative Services, the Department of Social Services, or any other state or local agency, that is adversely affecting the health, safety, welfare or civil or human rights of any person with mental, cognitive, sensory or physical disabilities. After initial investigation, the section may decline to accept any complaint it determines is frivolous or not made in good faith. The ombudsman section shall attempt to resolve the complaint at the lowest appropriate level, unless otherwise provided by law. The procedures shall require the section to:

1. Acknowledge the receipt of a complaint by sending written notice to the complainant within seven days after receiving the complaint;

2. When appropriate, provide written notice of a complaint to the Department of Behavioral Health and Developmental Services or any other appropriate agency within seven days after receiving the complaint. The Department or agency shall report its findings and actions no later than ~~fourteen~~ *14* days after receiving the complaint;

3. Immediately refer a complaint made under this section to the Department of Behavioral Health and Developmental Services or any other appropriate governmental agency whenever the complaint involves an

immediate and substantial threat to the health or safety of a person with mental retardation, developmental disabilities, mental illness, or other disability. The Department or agency receiving the complaint shall report its findings and actions no later than ~~forty-eight~~ *48* hours following its receipt of the complaint;

4. Within seven days after identifying a deficiency in the treatment of a person with a disability that is in violation of state or federal law or regulation, refer the matter in writing to the appropriate state agency. The state agency shall report on its findings and actions within seven days of receiving notice of the matter;

5. Advise the complainant and any person with a disability affected by the complaint, no more than ~~thirty~~ *30* days after it receives the complaint, of any action it has taken and of any opinions and recommendations it has with respect to the complaint. The ombudsman section may request any party affected by the opinions or recommendations to notify the section, within a time period specified by the section, of any action the party has taken on its recommendation; and

6. Refer any complaint not resolved through negotiation, mediation, or conciliation to the Director or the Director's designee to determine whether further protection and advocacy services shall be provided by the Office.

B. The ombudsman section may make public any of its opinions or recommendations concerning a complaint, the responses of persons and governmental agencies to its opinions or recommendations, and any act, practice, policy, or procedure that adversely affects or may adversely affect the health, safety, welfare, or civil or human rights of a person with a disability, subject to the provisions of § 51.5-39.8.

C. The Office shall publicize its existence, functions, and activities, and the procedures for filing a complaint under this section, and send this information in written form to each provider of services to persons with disabilities, with instructions that the information is to be posted in a conspicuous place accessible to patients, residents, consumers, clients, visitors, and employees. The Office shall establish, maintain and publicize a toll-free number for receiving complaints.

§ 51.5-39.10. Immunity.

Any person who in good faith complains to the Office on behalf of a person with a disability *as defined in § 51.5-39.13*, or who provides information or participates in the investigation of any such complaint, shall have immunity from any civil liability and shall not be subject to any penalties, sanctions, restrictions or retaliation as a consequence of making such complaint, providing such information or participating in such investigation.

§ 51.5-39.13. Definitions.

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

"Hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

"Mental impairment" means (i) a disability attributable to mental retardation, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals or (ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual. For the purposes of § 51.5-41, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease, or defect that has been successfully asserted by an individual as a defense to any criminal charge.

"Mobility-impaired person" means any person who has completed training to use a dog for service or support because he is unable to move about without the aid of crutches, a wheelchair, or any other form of support or because of limited functional ability to ambulate, climb, descend, sit, rise, or perform any related function.

"Otherwise qualified person with a disability" means a person with a disability who:

1. For the purposes of § 51.5-41, is qualified to perform the duties of a particular job or position; or

2. For the purposes of § 51.5-42, meets all the requirements for admission to an educational institution or meets all the requirements for participation in its extracurricular programs.

"Person with a disability" means any person who has a physical or mental impairment that substantially limits one or more of his major life activities, or who has a record of such impairment, and that physical or mental impairment:

1. For purposes of § 51.5-41, is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion;

2. For purposes of § 51.5-42, is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational institution;

3. For purposes of § 51.5-44, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service; or

4. For purposes of § 51.5-45, is unrelated to the individual's ability to acquire, rent, or maintain property.

"Physical impairment" means any physical condition, anatomic loss, or cosmetic disfigurement that is caused by bodily injury, birth defect, or illness.

"Three-unit service dog team" means a team consisting of a trained service dog, a disabled person, and a person who is an adult and who has been trained to handle the service dog.

§ 51.5-41. Discrimination against otherwise qualified persons with disabilities by employers prohibited.

A. No employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability.

B. It is the policy of ~~this~~ *the* Commonwealth that persons with disabilities shall be employed in the state service, the service of the political subdivisions of the Commonwealth, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as other persons unless it is shown that the particular disability prevents the performance of the work involved.

C. An employer shall make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, if necessary to assist such person in performing a particular job, unless the employer can demonstrate that the accommodation would impose an undue burden on the employer.

1. In determining whether an accommodation would constitute an undue burden upon the employer, the following shall be considered:

a. Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's work force;

b. Size of the facility where employment occurs;

c. The nature and cost of the accommodations needed, taking into account alternate sources of funding or technical assistance included under §§ ~~51.5-18 and 51.5-26~~ *51.5-165 and 51.5-173*;

d. The possibility that the same accommodations may be used by other prospective employees;

e. Safety and health considerations of the person with a disability, other employees, and the public.

2. Notwithstanding the foregoing, any accommodation which would exceed $500 in cost shall be rebuttably presumed to impose an undue burden upon any employer with fewer than ~~fifty~~ *50* employees.

3. The employer has the right to choose among equally effective accommodations.

4. Nothing in this section shall require accommodations when the authority to make such accommodations is precluded under the terms of a lease or otherwise prohibited by statute, ordinance or other regulation.

5. Building modifications made for the purposes of such reasonable accommodation may be made without requiring the remainder of the existing building to comply with the requirements of the Uniform Statewide Building Code.

D. Nothing in this section shall prohibit an employer from refusing to hire or promote, from disciplining, transferring, or discharging or taking any other personnel action pertaining to an applicant or an employee who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others.

E. Nothing in this section shall be construed as altering the provisions of the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.).

F. This section shall not apply to employers covered by the federal Rehabilitation Act of 1973.

G. No employer who has hired any person because of the requirements of this section shall be liable for any alleged negligence in such hiring.

§ 51.5-44. Rights of persons with disabilities in public places and places of public accommodation.

A. A person with a disability has the same rights as other persons to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

B. A person with a disability is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, subways, boats or any other public conveyances or modes of transportation, restaurants, hotels, lodging places, places of public accommodation, amusement or resort, public entities including schools, and other places to which the

general public is invited subject only to the conditions and limitations established by law and applicable alike to all persons.

C. Each town, city or county, individually or through transportation district commissions, shall ensure that persons with disabilities have access to the public transportation within its jurisdiction by either (i) use of the same transportation facilities or carriers available to the general public or (ii) provision of paratransit or special transportation services for persons with disabilities or (iii) both. All persons with disabilities in the jurisdiction's service area who, by reason of their disabilities, are unable to use the service for the general public shall be eligible to use such paratransit or special transportation service. No fee that exceeds the fee charged to the general public shall be charged a person with a disability for the use of the same transportation facilities or carriers available to the general public. Paratransit or special transportation service for persons with disabilities may charge fees to such persons comparable to the fees charged to the general public for similar service in the jurisdiction service area, taking into account especially the type, length and time of trip. Any variance between special service and regular service fares shall be justifiable in terms of actual differences between the two kinds of service provided.

D. Nothing in this title shall be construed to require retrofitting of any public transit equipment or to require the retrofitting, renovation, or alteration of buildings or places to a degree more stringent than that required by the applicable building code in effect at the time the building permit for such building or place is issued.

E. Every totally or partially blind person shall have the right to be accompanied by a dog, in harness, trained as a guide dog, every deaf or hearing-impaired person shall have the right to be accompanied by a dog trained as a hearing dog on a blaze orange leash, and every mobility-impaired or otherwise disabled person shall have the right to be accompanied by a dog, trained as a service dog, in a harness, backpack, or vest identifying the dog as a trained service dog, in any of the places listed in subsection B without being required to pay an extra charge for the dog~~;~~, provided that he shall be liable for any damage done to the premises or facilities by such dog. The provisions of this section shall apply to persons accompanied by a dog that is in training, at least six months of age, and is (i) in harness, provided such person is an experienced trainer of guide dogs or is conducting continuing training of a guide dog; (ii) on a blaze orange leash, provided such person is an experienced trainer of hearing dogs or is conducting continuing training of a hearing dog; (iii) in a harness, backpack, or vest identifying the dog as a trained service dog, provided such person is an experienced trainer of service dogs or is conducting continuing training of a service dog; (iv) wearing a jacket identifying the recognized guide, hearing or service dog organization, provided such person is an experienced trainer of the organization identified on the jacket; or (v) the person is part of a three-unit service dog team and is conducting continuing training of a service dog.

~~As used in this chapter, "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.~~

~~As used in this chapter, "service dog" means a dog trained to accompany its owner or handler for the purpose of carrying items, retrieving objects, pulling a wheelchair, alerting the owner or handler to medical conditions, or other such activities of service or support necessary to mitigate a disability.~~

~~As used in this chapter, "three-unit service dog team" means a team consisting of a trained service dog, a disabled person, and a person who is an adult and who has been trained to handle the service dog.~~

~~As used in this chapter, "mobility-impaired person" means any person who has completed training to use a dog for service or support because he is unable to move about without the aid of crutches, a wheelchair or any other form of support or because of limited functional ability to ambulate, climb, descend, sit, rise or perform any related function.~~

CHAPTER 14.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES.

Article 1.

General Provisions.

§ 51.5-116. Definitions.

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

"Case management" means a dynamic collaborative process that utilizes and builds on the strengths and resources of consumers to assist them in identifying their needs, accessing and coordinating services, and achieving their goals. The major collaborative components of case management services include advocacy, assessment, planning, facilitation, coordination, and monitoring.

"Case management system" means a central point of contact linking a wide variety of evolving services and supports that are (i) available in a timely, coordinated manner; (ii) physically and programmatically accessible; and (iii) consumer-directed with procedural safeguards to ensure responsiveness and accountability.

"Client" means any person receiving a service provided by the personnel or facilities of a public or private agency, whether referred to as a client, participant, patient, resident, or other term.

"Commissioner" means the Commissioner for Aging and Rehabilitative Services.

"Consumer" means, with respect to case management services, a person with a disability or his designee, guardian, conservator, or committee.

"Department" means the Department for Aging and Rehabilitative Services.

"Functional and central nervous system disabilities" means a disability resulting in functional impairment or impairment of the central nervous system, which may include but is not limited to traumatic brain injury, spinal cord injury, cerebral palsy, arthritis, muscular dystrophy, multiple sclerosis, Prader-Willi syndrome, and systemic lupus erythematosus (lupus).

"Local board" means a local board of social services established pursuant to Article 1 (§ 63.2-300 et seq.) of Chapter 3 of Title 63.2.

"Local department" means a local department of social services established pursuant to Article 2 (§ 63.2-324 et seq.) of Chapter 3 of Title 63.2.

"Local director" means a local director of social services appointed pursuant to § 63.2-325.

"Older person" or "older Virginian" means a person who is age 60 years or older.

"Prader-Willi syndrome" means a specific disorder that is usually caused by chromosomal change, resulting in lifelong functional and cognitive impairments and life-threatening obesity.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation.

§ 51.5-117. Declaration of purpose; Department for Aging and Rehabilitative Services created.

A. It is hereby found and determined by the General Assembly that there exists in the Commonwealth a need to ensure effective programs and services, and to improve coordination of these programs and services, for citizens of the Commonwealth who, for reasons of age, disability, or other physical factors, face challenges in living independently in the community and accessing the full range of programs and services to help them achieve independence and an improved quality of life.

B. To achieve the objectives described in subsection A, there is hereby created the Department for Aging and Rehabilitative Services, with such powers and duties as are set forth in this chapter. The Department shall work to ensure effective communications access, technology, vocational, support, and protective services for these citizens within the agency and across the Commonwealth.

C. The Department shall be in the executive branch of state government and shall be assigned to the Secretary of Health and Human Resources.

§ 51.5-118. Department designated as state agency for purpose of cooperation with federal government.

The Department is designated, subject to the provisions of §§ 51.5-66 and 51.5-77 regarding the Department for the Blind and Vision Impaired, as the state agency for the purpose of cooperating with the federal government in carrying out the provisions and purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and is empowered and directed to cooperate with the federal government in the administration of such act, to prescribe and provide services as may be necessary for the rehabilitation of persons with disabilities, to provide for the supervision of such services, and to disburse and administer federal funds provided for the rehabilitation of such persons.

§ 51.5-119. Department designated as state agency for purpose of coordinating rehabilitative services.

The Department is designated as the state agency for coordinating rehabilitative services to persons with functional and central nervous system disabilities. The Department shall provide for the comprehensive assessment of the need for rehabilitative and support services of such persons, identify gaps in services, promote interagency coordination, develop models for case management, and advise the Secretary of Health and Human Resources, the Governor, and the General Assembly on programmatic and fiscal policies and the delivery of services to such persons.

§ 51.5-120. Cooperation of Department with other state departments.

A. The Department shall collaborate with the Department of Behavioral Health and Developmental Services in activities related to licensing providers of (i) services under the Individual and Families Developmental

Disabilities Support Waiver, (ii) services under the Brain Injury Waiver, and (iii) residential services for individuals with brain injuries as defined in § 37.2-403. These activities include involving advocacy and consumer groups who represent persons with developmental disabilities or brain injuries in the regulatory process; training the Department of Behavioral Health and Developmental Services, local human rights committees, and the State Human Rights Committee on the unique needs and preferences of individuals with developmental disabilities or brain injuries; assisting in the development of regulatory requirements for such providers; and providing technical assistance in the regulatory process and in performing annual inspections and complaint investigations.

B. The Department shall collaborate with the Department of Social Services in activities related to the planning and provision of adult services pursuant to Article 4 (§ 51.5-144 et seq.), adult protective services pursuant to Article 5 (§ 51.5-148), and auxiliary grants pursuant to Article 9 (§ 51.5-159 et seq.).

§ 51.5-121. Authority of Department to request and receive information from other agencies; use of information so obtained.

The Department may request and shall receive from all departments, boards, bureaus, or other agencies of the Commonwealth such records and information as is necessary for the purpose of carrying out the provisions and programs of this chapter, and the same are authorized to provide such information, provided that a written statement from the requesting party stating the reason for seeking such record is submitted and filed with the record sought. The Department may also request and receive records and information necessary for the purpose of carrying out the provisions and programs of this chapter from agencies or political subdivisions of other states. The Department may make such information available to public officials and agencies of the Commonwealth, other states, political subdivisions of the Commonwealth, and political subdivisions of other states in accordance with state and federal law when the request for information relates to administration of the various public assistance or social services programs.

§ 51.5-122. Confidential records and information concerning adult services and adult protective services; penalty.

A. The records, information, and statistical registries of the Department and local departments of social services concerning adult services and adult protective services provided to or on behalf of individuals shall be confidential information, provided that the Commissioner and his agents shall have access to such records, information, and statistical registries, and that such records, information, and statistical registries may be disclosed to any person having a legitimate interest in accordance with state and federal law and regulation.

It shall be unlawful for the Commissioner, his agents or employees, any person who has held any such position, or any other person to whom any confidential record or information is disclosed to disclose, directly or indirectly, such confidential record or information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor.

B. If a request for a record or information concerning applicants for and recipients of adult services provided pursuant to Article 4 (§ 51.5-144 et seq.) or adult protective services provided pursuant to Article 5 (§ 51.5-148) is made to the Department or a local department by a person who does not have a legitimate interest, the Commissioner or local director shall not provide the record or information unless permitted by state or federal law or regulation.

§ 51.5-123. Long-Term Rehabilitative Case Management System.

The Department shall develop and pilot a model for the initiation of a Long-Term Rehabilitative Case Management System. Such system shall provide for the coordination of medical, psychosocial, vocational, rehabilitative, long-term care, and family and community support services for persons with functional and central nervous system disabilities.

The Department shall facilitate the provision of such services by the Department and any other state, local, public, or private nonprofit agency, organization, or facility to such persons.

§ 51.5-124. Eligibility for long-term rehabilitative case management.

A person shall be eligible to receive long-term rehabilitative case management services pursuant to § 51.5-123 if the Department determines such person is disabled indefinitely and requires a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are lifelong or for an extended duration and are individually planned and coordinated, or such person's disability results in substantive functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency. Rehabilitative case management shall not be provided to any person who is eligible for

Medicaid targeted case management or other publicly funded case management or Medicaid transition coordination.

§ 51.5-125. Gifts and donations.

The Department is authorized to receive such gifts and donations, either from public or private sources, as may be offered unconditionally or under such conditions as in the judgment of the Department are proper and consistent with this title. All moneys received as gifts or donations shall be deposited in the state treasury; shall constitute a permanent fund to be called the special fund for the rehabilitation of persons with disabilities; and shall be used by the Department to defray the expenses of rehabilitation and other services, including independent living services and advocacy services, and constructing, equipping, and operating necessary rehabilitation facilities. Such moneys may also be used in matching federal grants for the foregoing purposes. The Department shall annually submit to the Governor a full report of all gifts and donations offered and accepted, the names of the donors, the respective amounts contributed by each donor, and all disbursements of such gifts and donations.

§ 51.5-126. Donation of equipment.

The Department shall retain title to items of nonexpendable equipment purchased by the Department for individuals or groups of individuals, in accordance with this title and the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), while such equipment has an undepreciated monetary value. Once the equipment reaches a depreciated value of zero, the Department may donate the equipment to the individual or group of individuals then authorized to use it by the Department. The donation shall be consistent with the public purpose of the Department. The Department, in concert with the Department of Accounts, shall establish criteria for depreciation of such equipment in accordance with generally accepted accounting principles and maintain depreciation records. The Department shall report a donation pursuant to this section to the Division of Purchases and Supply and to the Auditor of Public Accounts. Nothing in this section shall be construed to excuse the Department from complying with § 2.2-1124 except for equipment donated pursuant to this section.

§ 51.5-127. Commonwealth Council on Aging; purpose; membership; terms.

A. The Commonwealth Council on Aging is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Commonwealth Council on Aging shall be to promote an efficient, coordinated approach by state government to meeting the needs of older Virginians.

B. The Commonwealth Council on Aging shall consist of 24 members as follows: one member from each of the 11 congressional districts of the Commonwealth appointed by the Governor subject to confirmation by the General Assembly; four at-large nonlegislative citizen members appointed by the Speaker of the House of Delegates; four at-large nonlegislative citizen members appointed by the Senate Committee on Rules; and the Commissioner for Aging and Rehabilitative Services, the Director of the Department of Medical Assistance Services, the Commissioner of Social Services, the Secretary of Health and Human Resources, and the President of the Virginia Association of Area Agencies on Aging, or their designees, who shall serve as nonvoting ex officio members. Members of the Commonwealth Council on Aging shall be citizens of the Commonwealth appointed 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 Commonwealth Council on Aging and to inspire the highest degree of cooperation and confidence.

C. After the initial staggering of terms, all appointments shall be for four-year terms.

Appointments to fill vacancies shall be for the unexpired term. No person having served on the Commonwealth Council on Aging for two full consecutive terms shall be eligible for reappointment to the Commonwealth Council on Aging for two years thereafter. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility to serve.

D. The Commonwealth Council on Aging 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. The Commonwealth Council on Aging may adopt bylaws to govern its operations.

E. Members shall receive compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

F. The Department shall provide staff support to the Commonwealth Council on Aging .

§ 51.5-128. Duties of the Commonwealth Council on Aging.

A. The Commonwealth Council on Aging shall have the following duties:

1. Examine the needs of older Virginians and their caregivers 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 and their caregivers. Such advice shall be provided in addition to other regulatory reviews required by the Administrative Process Act (§ 2.2-4000 et seq.);

4. Advocate for and assist in developing the Commonwealth's planning for meeting the needs of the growing number of older Virginians and their caregivers; and

5. Assist and advise the Department with the development and ongoing review of the Virginia Respite Care Grant Program pursuant to Article 8 (§ 51.5-155 et seq.).

B. The Commonwealth Council on Aging 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.

§ 51.5-129. Creation of State Rehabilitation Council; purpose; membership.

The State Rehabilitation Council is established as a designated state council in the executive branch of government for the purpose of providing advice to and performing other functions for the Department regarding vocational services provided pursuant to Title I and Title VI of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. and 29 U.S.C. § 795 et seq., respectively). Membership, terms, and meeting requirements shall be in accordance with federal provisions as provided in 29 U.S.C. § 725.

Article 2.

Commissioner for Aging and Rehabilitative Services.

§ 51.5-130. Commissioner for Aging and Rehabilitative Services.

A. The supervision of the Department shall be the responsibility of the Commissioner for Aging and Rehabilitative Services under the direction and control of the Governor and the Secretary of Health and Human Resources. The Commissioner shall be a person of proven executive and administrative knowledge, skills, and abilities, with appropriate education and substantial experience in the field of aging and rehabilitative services. He shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with that of the Governor.

B. In cooperation with the Commonwealth Council on Aging, the Commissioner shall serve as the Governor's principal advisor on aging issues and shall recommend to the Governor and the General Assembly such policies, legislation, and other actions appropriate to meet the needs of an aging society and to improve aging services in the Commonwealth. In addition, the Commissioner shall serve as Special Assistant to the Governor for Aging Policy and shall report directly to the Governor as necessary on aging policies.

§ 51.5-131. Powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

1. To employ such personnel, qualified by knowledge, skills, and abilities, as may be required to carry out the purposes of this chapter relating to the Department;

2. To make and enter into all contracts and agreements necessary for or incidental to the performance of the Department's duties and the execution of its powers under this title, including but not limited to contracts with the United States, other states, agencies, and governmental subdivisions of the Commonwealth;

3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source and, to these ends, to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable;

4. To perform all acts necessary or convenient to carry out the purposes of this chapter;

5. To develop and analyze information on the needs of older Virginians and persons with disabilities;

6. To establish plans, policies, and programs for the delivery of services to older Virginians and persons with disabilities for consideration by the Governor and the General Assembly. Such policies, plans, and programs for services for those who cannot benefit from vocational rehabilitation shall be prepared over time and as funds become available for such efforts;

7. To operate and maintain the Woodrow Wilson Rehabilitation Center and to organize, supervise, and provide other necessary services and facilities (i) to prepare persons with disabilities for useful and productive lives, including suitable employment, and (ii) to enable persons with disabilities, to the degree possible, to become self-sufficient and have a sense of well-being;

8. To develop criteria for the evaluation of plans and programs relative to the provision of long-term services and supports for older Virginians and persons with disabilities;

9. To investigate the availability of funds from any source for planning, developing, and providing services to older Virginians and persons with disabilities, particularly those not capable of being gainfully employed;

10. To coordinate the Department's plans, policies, programs, and services, and such programs and services required under § 51.5-123, with those of the other state agencies providing services to persons with disabilities so as to achieve maximum utilization of available resources to meet the needs of such persons;

11. To compile and provide information on the availability of federal, state, regional, and local funds and services for older Virginians and persons with disabilities;

12. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor;

13. To promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by the Department;

14. To work with the Department of Veterans Services and the Department of Behavioral Health and Developmental Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1;

15. To promote the use of technologies to realize communication access and increase livability across the Commonwealth; and

16. To perform such other duties as may be required by the Governor and the Secretary of Health and Human Resources.

§ 51.5-132. Commissioner to establish regulations regarding human research.

The Commissioner shall promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, any sheltered workshop, any independent living center, or the Woodrow Wilson Rehabilitation Center. The regulations shall require the human research review committee, as provided in § 32.1-162.19, to submit to the Governor, the General Assembly, and the Commissioner or his designee, at least annually, a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from the proposals as approved.

§ 51.5-133. Cooperation with local authorities.

The Commissioner shall assist and cooperate with local authorities in the administration of this chapter. He shall encourage and direct the training of all personnel of local boards and local departments engaged in the administration of any adult services or adult protective services program within the purview of this chapter. The Commissioner shall collect and publish statistics and such other data as may be deemed of value in assisting public authorities and agencies of the Commonwealth in improving the care of older Virginians and persons with disabilities. The Commissioner shall also, in his discretion, initiate and conduct conferences designed to accomplish such ends and to further coordination of effort in this field.

Article 3.

Services for Older Virginians.

§ 51.5-134. Definitions.

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

"Daily living services" includes homemaker, companion, personal care and chore services, home repair, weatherization, and adult day care.

"Educational services" includes information on the long-term care services provided by agencies of the Commonwealth, its localities, and private sector agencies, and public information as provided in § 2.2-213.1.

"Health care services" includes home health care and community medical care.

"Housing services" includes community-based residential opportunities and retrofitting existing housing as needed.

"Long-term care services" means socialization services, health care services, nutrition services, daily living services, educational services, housing services, transportation services, and supportive services that include (i) a balanced range of health, social, and supportive services to deliver long-term care services to older persons with chronic illnesses or functional impairments; (ii) meaningful choice, increased functional ability, and affordability as determining factors in defining long-term care service needs, which needs shall be determined by a uniform

system for comprehensively assessing the needs and preferences of individuals requiring such services; (iii) service delivery, consistent with the needs and preferences of individuals requiring such services, that occurs in the most independent, least restrictive, and most appropriate living situation possible; and (iv) opportunities for self-care and independent living, as appropriate, by encouraging all long-term care programs to maximize self-care and independent living within the mainstream of life in the community.

"Nutrition services" includes home-delivered meals, food stamps, and congregate meals.

"Socialization services" includes telephone reassurance, friendly visiting, and congregate meals.

"Supportive services" includes adult protective services, mental health and mental retardation services, counseling services, and legal aid.

"Transportation services" includes readily available access to public transportation or area coordinated paratransit systems.

§ 51.5-135. Powers and duties of Department with respect to aging persons; area agencies on aging.

A. The Department shall provide supports and services to improve the quality of life for older persons in the Commonwealth and shall act as a focal point among state agencies for research, policy analysis, long-range planning, and education on aging issues. The Department shall also serve as the lead agency in coordinating the work of state agencies on meeting the needs of an aging society. 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 older persons, evaluate and monitor the services provided for older persons, and provide information to the general public. In furtherance of this mission, the Department shall have, without limitation, the following duties to:

1. Study the economic and physical condition of the residents in the Commonwealth whose age qualifies them for coverage under the Older Americans Act (42 U.S.C. § 3001 et seq.) or any law amendatory or supplemental thereto, 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. Determine the services and facilities, private and governmental and state and local, provided for and available to older persons and recommend to the appropriate persons such coordination of and changes in such services and facilities as will make them of greater benefit to older persons and more responsive to their needs;

3. Act as the designated state unit on aging for the purposes of carrying out the requirements under P.L. 89-73 or any law amendatory or supplemental thereto, 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 laws. The Department 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. Apply, with the approval of the Governor, for and expend such grants, gifts, or bequests from any source that becomes available in connection with its duties under this section, and may comply with such conditions and requirements as may be imposed in connection therewith;

5. Hold hearings and conduct investigations necessary to pass upon applications for approval of a project under the plans and laws set out in subdivision 3, and shall make reports to the U.S. Secretary of Health and Human Services as may be required;

6. Designate area agencies on aging pursuant to P.L. 89-73 or any law amendatory or supplemental thereto of the Congress of the United States and to adopt regulations for the composition and operation of such area agencies on aging, each of which shall be designated as the lead agency in each respective area for the No Wrong Door system of aging and disability resource centers;

7. 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. Provide staff support to the Commonwealth Council on Aging;

9. 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 older Virginians;

10. Provide or contract for the administration of the state long-term care ombudsman program. Such program or contract shall provide a minimum staffing ratio of one ombudsman to every 2,000 long-term care beds, subject to sufficient appropriations by the General Assembly. The Department may also contract with such entities for the administration of elder rights programs as authorized under P.L. 89-73, such as insurance counseling and assistance, and the creation of an elder information/elder rights center;

11. Serve as the focal point for the rights of older persons and their families by establishing, maintaining, and publicizing (i) a toll-free number and (ii) a means of electronic access to provide resource and referral information and other assistance and advice as may be requested; and

12. Develop and maintain a four-year plan for aging services in the Commonwealth, pursuant to § 51.5-136.

B. The governing body of any county, city, or town may appropriate funds for support of area agencies on aging designated pursuant to subdivision A 6.

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 A 3.

§ 51.5-136. Strategic long-range planning for aging services; four-year plan; report.

A. The Department shall develop and maintain a four-year plan for aging services in the Commonwealth. Such plan shall serve to inform the State Plan for Aging Services as required by the U.S. Administration on Aging. In developing the plan, the Department shall consult (i) various state and local services agencies, (ii) businesses, (iii) nonprofit organizations, (iv) advocacy organizations, (v) universities, (vi) providers, (vii) organizations involved in providing services for and advocating for older Virginians and their caregivers, and (viii) stakeholders, including but not limited to the Virginia Association of Area Agencies on Aging; the state's health and human resources agencies, boards, councils, and commissions; the Departments of Transportation, Rail and Public Transportation, Housing and Community Development, and Corrections; and the Virginia Housing Development Authority.

In addition, the plan shall inform and serve as a resource to a long-term blueprint for state and community planning for aging populations that shall be comprehensive and not limited to traditional health and human services issues, but rather consists of broad-based issues of active daily life in communities throughout the Commonwealth.

B. The four-year plan shall include:

1. A description of Virginia's aging population and its impact on the Commonwealth, and issues related to ensuring and providing services to this population at both the state and local levels;

2. Factors for the Department to consider in determining when additional funding may be required for certain programs or services;

3. Information on changes in the aging population, with particular attention to the growing diversity of the population including low-income, minority, and non-English speaking older Virginians;

4. Information on unmet needs and waiting list data for aging-related services as reported by the Virginia Association of Area Agencies on Aging and those state agencies that may maintain and provide this information;

5. Results from periodic needs surveys and customer satisfaction surveys targeted to older Virginians that may be conducted by the Department, the Virginia Association of Area Agencies on Aging, or any other state or local agency from time to time;

6. An analysis by every state agency of how the aging of the population impacts the agency and its services and how the agency is responding to this impact. Such analysis shall be provided to the Department every four years on a schedule and in a format determined by the Secretary of Health and Human Resources in coordination with the Department;

7. The impact of changes in federal and state funding for aging services;

8. The current status and future development of Virginia's No Wrong Door Initiative; and

9. Any other factors the Department deems appropriate.

C. In carrying out the duties provided by this section, the Commissioner shall submit the plan to the Governor and the General Assembly by June 30, 2013. Thereafter, the plan shall be submitted every four years.

§ 51.5-137. Administrative responsibilities of Department regarding long-term care.

The Department shall have the following responsibilities regarding long-term care services in the Commonwealth:

1. Develop appropriate fiscal and administrative controls over public long-term care services in the Commonwealth;

2. 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 impaired older persons in need of services;

3. Identify programmatic resources and assure the equitable statewide distribution of these resources; and

4. Perform ongoing evaluations of the cost-effective utilization of long-term care resources.

§ 51.5-138. Coordination of local long-term care services by localities.

The governing body of each county or city, or a combination thereof, may designate a lead agency and member agencies to accomplish the coordination of local long-term care services and supports. If established, 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 and supports in the locality. 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, the local nursing home pre-admission screening team, and representatives of housing, transportation, and other appropriate local organizations that provide long-term care services. A plan shall be implemented that ensures the cost-effective utilization of all funds available for long-term care services and supports in the locality. Localities are encouraged to provide services and supports within each category of service in the continuum and to allow one person to deliver multiple services, when possible.

§ 51.5-139. Responsibility of Department for complaints regarding long-term care services.

The Department or its designee shall investigate complaints regarding community services that are designed to provide long-term care to older persons and are rendered by the Department of Health, the Department of Social Services, the Department of Behavioral Health and Developmental 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 social services pursuant to § 63.2-1605.

§ 51.5-140. Access to residents, facilities, and patients' records by Office of State Long-Term Care Ombudsman.

The entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act (42 U.S.C. § 3001 et seq.), shall, in the investigation of complaints referred to the program, have the same access to (i) residents, facilities, and patients' records of licensed adult care residences in accordance with § 63.2-1706 and (ii) patients, facilities, and patients' records of nursing facilities or nursing homes 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 Behavioral Health and Developmental 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 this section. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department 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 in accordance with this section. Access to residents, facilities, and patients' records shall be available during normal working hours except in emergency situations.

§ 51.5-141. Confidentiality of records of Office of the State Long-Term Care Ombudsman.

All documentary and other evidence received or maintained by the Department 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 shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be released on a confidential basis in compliance with regulations adopted by the Department and consistent with provisions of subdivision 4 of § 2.2-601 and with the requirements of the Older Americans Act (42 U.S.C. § 3001 et seq.).

The Commissioner 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) the complainant or resident or his legal representative consents in writing to disclosure or (ii) disclosure is required by court order. The Commissioner shall establish procedures to notify long-term care facilities of the nature of complaints and their findings.

§ 51.5-142. 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 making the report or investigation.

§ 51.5-143. Powers and duties of Department relating to universal design and visitability features.

The Department shall publicize guidelines on universal design and visitability features to make structures and dwellings accessible for older Virginians and people who develop mobility impairment. Such guidelines shall be disseminated to the public and posted on the Department's website.

Article 4.

Adult Services.

§ 51.5-144. Definitions.

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

"Adult" means an individual who is 18 years of age or older, or under the age of 18 years if legally emancipated.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult services" means services that are provided by local departments of social services to an adult with an impairment.

"Adult with an impairment" means an adult whose physical or mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living or instrumental activities of daily living.

§ 51.5-145. Responsibility of the Department for adult services.

The Department shall have responsibility for the planning and oversight of adult services in the Commonwealth. Services shall be delivered by local departments of social services, as set out in Article 1 (§ 63.2-1600 et seq.) of Chapter 16 of Title 63.2, and pursuant to regulations and subject to the oversight of the Commissioner.

§ 51.5-146. Adult services.

Adult services provided by the Department together with local departments of social services shall include:

1. Home-based services, including homemaker, companion, or chore services, which will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency, to the extent that federal or state matching funds are made available for such purpose;

2. Adult foster care, including recruitment, approval, and supervision of adult foster care homes;

3. Participation in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;

4. Provision of assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;

5. Participation in long-term care service coordination pursuant to § 51.5-138;

6. Provision of social services or public assistance as defined in § 63.2-100, as appropriate, to consumers discharged from state hospitals or training centers pursuant to §§ 37.2-505 and 37.2-837; and

7. Participation in such other services or programs as may be required pursuant to state or federal law.

§ 51.5-147. Appeal to Commissioner regarding home-based and adult foster care services.

Any applicant for or recipient of home-based and adult foster care services aggrieved by any decision of a local board in granting, denying, changing, or discontinuing services may, within 30 days after receiving written notice of such decision, appeal therefrom to the Commissioner. Any applicant or recipient aggrieved by the failure of the local board to make a decision within a reasonable time may ask for review by the Commissioner. The Commissioner may delegate the duty and authority to duly qualified hearing officers to consider and make determinations on any appeal or review. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to the testimony of witnesses, or other evidence produced at the hearing, reports of investigation of the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts which the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Article 5.

Adult Protective Services.

§ 51.5-148. Establishment of Adult Protective Services Unit; powers and duties.

A. The Department shall have responsibility for the planning and oversight of adult protective services in the Commonwealth. The Commissioner shall establish within the Department for Aging and Rehabilitative Services an Adult Protective Services Unit which shall oversee the planning, administration, and implementation of adult protective services in the Commonwealth. Adult protective services shall be provided to the public by local departments of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 in cooperation with the Department and subject to the regulations and oversight of the Commissioner.

B. The Adult Protective Services Unit shall have the following powers and duties:

1. To work together with local departments of social services to support, strengthen, and evaluate adult protective services programs provided by such local departments;

2. To assist local departments of social services in developing and implementing programs to respond to and prevent adult abuse, neglect, or exploitation;

3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect, and exploitation to mandated reporters and the public;

4. To establish minimum standards of training and provide educational opportunities to qualify social workers in the field of adult protective services to determine whether reports of adult abuse, neglect, or exploitation are substantiated. The Department shall establish and provide a uniform training program for adult protective services workers in the Commonwealth. All adult protective services workers shall complete such training within one year from the date of implementation of the training program or within the first year of their employment;

5. To develop policies and procedures to guide the work of persons in the field of adult protective services;

6. To prepare and disseminate statistical information on adult protective services in Virginia;

7. To operate an adult protective services 24-hour toll-free hotline and provide training and technical assistance to the hotline staff;

8. To provide coordination among the adult protective services program and other state agencies; and

9. To work collaboratively with other agencies in the Commonwealth to facilitate the reporting and investigation of suspected adult abuse, neglect, or exploitation.

Article 6.

Virginia Public Guardian and Conservator Program.

§ 51.5-149. 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 or there is no guardian or conservator appointed within one month of adjudication pursuant to § 37.2-1015. 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 established the statewide Virginia Public Guardian and Conservator Program (the Program) within the Department to (a) facilitate the creation of local or regional programs to provide services as public guardians or conservators and (b) fund, coordinate, administer, and manage such programs.

B. The definitions found in § 37.2-1000 shall apply to this article.

§ 51.5-150. 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 (§ 2.2-4300 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 §§ 37.2-1010 and 37.2-1015, determines that a person is eligible to have a public guardian or conservator appointed;

3. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 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:

a. Minimum training and experience requirements for volunteers and professional staff of the local and regional programs;

b. An ideal range of staff to client ratios for the programs, and 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

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 that 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 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 separation in programs that may be fee-generating;

5. Establish recordkeeping 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 such data to the General Assembly on or before January 1 of each even-numbered 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. Such statistical data shall be posted on the Department's website. In addition, the Department shall enter into a contract with an appropriate research entity with expertise in gerontology, disabilities, and public administration to conduct an evaluation of local public guardian and conservator programs from funds specifically appropriated and allocated for this purpose, and the evaluator shall provide a report with recommendations to the Department and to the Public Guardian and Conservator Advisory Board established pursuant to § 2.2-2411. Trends identified in the report shall be presented to the General Assembly. The Department shall request such a report from an appropriate research entity every four years, provided the General Assembly appropriates funds for that purpose; and

10. Recommend appropriate legislative or executive actions.

C. Nothing in this article shall prohibit the Department from contracting pursuant to subdivision B 2 with an entity that 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 (§ 2.2-4300 et seq.) and recommendations of the Public Guardian and Conservator Advisory Board, the Department may contract with a not-for-profit private entity that 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.

§ 51.5-151. 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 multidisciplinary 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 that 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 that 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 that exceeds the specified staff to client ratio 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 Article 2 (§ 37.2-1019 et seq.) of Chapter 10 of Title 37.2, 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 or conservator shall have authority to make funeral, cremation, or burial arrangements if the public guardian or conservator is not aware of any person that has been otherwise designated to make arrangements for disposition of remains as set forth in § 54.1-2825. A public guardian or conservator shall have authority to make funeral, cremation, or burial arrangements after the death of an incapacitated person if the next of kin of the incapacitated person does not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin to determine if the next of kin wishes to make the burial, cremation, or funeral arrangements. Good faith effort shall include contacting the next of kin identified in the petition for appointment of a guardian or conservator. The funeral service licensee, funeral service establishment, registered crematory, public guardian, or conservator shall be immune from civil liability for any act, decision, or omission resulting from acceptance of any dead body for burial, cremation, or other disposition when the provisions of this section are met, unless such acts, decisions, or omissions resulted from bad faith or malicious intent.

A public guardian shall not have authority 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 admission of an incapacitated person to a mental health facility as provided in subsection B of § 37.2-805.1 and 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.

Article 7.

Alzheimer's Disease and Related Disorders.

§ 51.5-152. Powers and duties of the Department with respect to Alzheimer's disease and related disorders.

The Department shall serve as a referral point for linking families caring for persons with Alzheimer's disease and related disorders with Virginia's chapters of the Alzheimer's Disease and Related Disorders Association. The Department shall provide information, counseling, and referral about services and programs that may support individuals and families dealing with Alzheimer's disease and related disorders.

§ 51.5-153. Alzheimer's and Related Diseases Research Award Fund.

There is established a fund to be known as the Alzheimer's and Related Diseases Research Award Fund, hereafter referred to as "the Fund." The Fund shall be administered by the Virginia Center on Aging and the awards shall be made through an awards committee consisting of representatives from the scientific and medical communities and the general public. The awards shall be given annually to scientists in Virginia in order to support research into the causes of Alzheimer's disease and related disorders, 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.

§ 51.5-154. Alzheimer's Disease and Related Disorders Commission.

A. The Alzheimer's Disease and Related Disorders Commission (the Commission) is established as an advisory commission in the executive branch of state government. The purpose of the entity is to assist people with Alzheimer's disease and related disorders and their caregivers.

B. The Commission shall consist of 15 nonlegislative citizen members. Members shall be appointed as follows: three members to be appointed by the Speaker of the House of Delegates; two members to be appointed by the Senate Committee on Rules; and 10 members to be appointed by the Governor, of whom seven shall be from among the boards, staffs, and volunteers of the Virginia chapters of the Alzheimer's Disease and Related Disorders Association and three shall be from the public at large.

Nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice-chairman from among its membership. A majority of the voting members shall constitute a quorum. The Commission shall meet at least four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the voting members so request.

C. Members shall receive such compensation for the discharge of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

D. The Commission shall have the power and duty to:

1. Examine the needs of persons with Alzheimer's disease and related disorders, as well as the needs of their caregivers, and ways that state government can most effectively and efficiently assist in meeting those needs;

2. Develop and promote strategies to encourage brain health and reduce cognitive decline;

3. Advise the Governor and General Assembly on policy, funding, regulatory, and other issues related to persons suffering from Alzheimer's disease and related disorders and their caregivers;

4. Develop the Commonwealth's plan for meeting the needs of patients with Alzheimer's disease and related disorders and their caregivers, and advocate for such plan;

5. Submit to the Governor, General Assembly, and Department by October 1 of each year an electronic report regarding the activities and recommendations of the Commission, which shall be posted on the Department's website; and

6. Establish priorities for programs among state agencies related to Alzheimer's disease and related disorders and criteria to evaluate these programs.

E. The Department shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

F. The Commission 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 connections therewith.

G. This section shall expire on July 1, 2014.

Article 8.

Virginia Respite Care Grant Program.

§ 51.5-155. Definitions.

As used in this article, unless the context requires otherwise:

"Adult day care services" means the provision of supplementary care and protection during a part of the day only to older adults or disabled adults. Such services may be in or away from the residence of the older adults or adults with disabilities.

"Community respite care organization" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency, or a private nonprofit agency exempt under § 501(c)(3) of the Internal Revenue Code, which has the authority under its applicable charter, laws, or articles of organization to receive funds to support respite care activities.

"Fund" means the Virginia Respite Care Grant Fund established by § 51.5-157.

"Respite care" means the provision of supplementary care and protection for older, infirm, or disabled adults. Respite care includes, but is not limited to, adult day care services.

§ 51.5-156. Respite Care Grant Program established.

Beginning January 1, 2001, any community respite care organization shall be eligible to receive an annual respite care grant in the amount of up to $100,000 for the development, expansion, or start-up operation of adult day care services or other services that provide respite care to older, infirm, or disabled adults. The grants under this article shall be paid from the Fund, as provided in this article, to the community respite care organization. As a condition of a grant, money appropriated from such fund shall be matched by community respite care organization funds (in-kind or cash) earmarked for the development or expansion of respite care services. The total amount of grants to be paid under this article for any year shall not exceed the amount appropriated by the General Assembly to the Fund for payment to community respite care organizations for such year. Only one grant shall be allowed annually for each community respite care organization under the provisions of this section.

§ 51.5-157. Virginia Respite Care Grant Fund established.

There is hereby established a special fund in the state treasury to be known as the Virginia Respite Care Grant Fund, which shall be administered by the Department. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of grants to community respite care organizations pursuant to this article. Unallocated moneys in the Fund in any year shall remain in the Fund and be available for allocation for grants under this article in ensuing fiscal years.

§ 51.5-158. Grant application process; administration.

A. Grant applications shall be submitted by community respite care organizations to the Department between December 1 and March 1. Failure to meet the application deadline shall render the community respite care organization ineligible to receive a grant during such calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. Applications for grants shall include (i) identification of the community respite care organization, (ii) identification of the matching funds, and (iii) such other relevant information as the Department may require. As a condition of receipt of a grant, a community respite care organization shall agree to make available to the Department for inspection, upon request, all relevant and applicable documents to determine whether the community respite care organization meets the requirements for the receipt of grants as set forth in this article, and to consent to the use by the Department, for official purposes, of all relevant information relating to eligibility for the requested grant.

C. The Department shall review applications for grants and determine the amount of the grant to be allocated to each community respite care organization in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

D. A community respite care organization shall have no claim against the Commonwealth with respect to any grant authorized by this article.

E. The Department shall certify to the Comptroller the amount of grant to be allocated to eligible applicants. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller. The Comptroller shall not draw any warrants to issue checks for this program without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act.

F. Actions of the Department relating to the review, allocation, and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Decisions of the Department shall be final and not subject to review or appeal.

G. The Department may examine the records, books, and other applicable documents to determine whether the community respite care organization has satisfied the requirements for grants as set forth in this section.

Article 9.

Auxiliary Grants.

§ 51.5-159. Definitions.

For the purposes of this article:

"Auxiliary grant" means cash payments made to certain older, blind, or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive such benefits but for excessive income.

"Case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care.

§ 51.5-160. Auxiliary grants program; administration of program.

A. The Commissioner is authorized to prepare and implement, effective with repeal of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social Security Act, as amended, and to certain other individuals for whom benefits provided under Title XVI of the Social Security Act, as amended, are not sufficient to maintain the minimum standards of need established by regulations promulgated by the Commissioner. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with regulations of the Commissioner.

Nothing herein is to be construed to affect any such section as it relates to Temporary Assistance for Needy Families, general relief, or services to persons eligible for assistance under P.L. 92-603.

B. Those individuals who receive an auxiliary grant and who reside in licensed assisted living facilities or adult foster care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be set forth in the appropriation act.

C. The Commissioner shall adopt regulations for the administration of the auxiliary grants program that shall include requirements for the Department to use in establishing auxiliary grant rates for licensed assisted living facilities and adult foster care homes. At a minimum, these requirements shall address (i) the process for the facilities and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews, and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the facilities and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.

D. In order to receive an auxiliary grant while residing in an assisted living facility, an individual shall have been evaluated by a case manager or other qualified assessor to determine his need for residential living care. An individual may be admitted to an assisted living facility pending evaluation and assessment as allowed by regulations of the Commissioner, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. The Commissioner shall adopt regulations to implement the provisions of this subsection.

E. Provisions of Chapter 5 (§ 63.2-500 et seq.) of Title 63.2, relating to the administration of public assistance programs, shall govern operations of the auxiliary grant program established pursuant to this section.

Article 10.

Community-Based Services for People with Disabilities.

§ 51.5-161. Awarding of grants; purposes; eligible applicants.

A. The Department is authorized, subject to other requirements of this law, to make grants or enter into contracts, in accordance with rules and regulations of the Commissioner, for the following purposes:

1. To promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities and the integration and full inclusion of individuals with disabilities into the mainstream of society by:

a. Providing financial assistance for expanding and improving the provision of independent living services; and

b. Providing financial assistance to develop and support a statewide network of centers for independent living; and

2. To assist employers in employing, training, and providing other related services to persons with significant disabilities.

B. Applications for the grants and contracts authorized in subdivision A 1 may be made by consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that (i) are designed and operated within a local community by individuals with disabilities and (ii) provide an array of independent living services. Each applicant shall be established and shall have a governing board, the majority of whose members shall be persons with disabilities, for the sole purpose of operating the independent living center.

C. Applications for the grants and contracts authorized in subdivision A 2 may be made by employers in the Commonwealth who wish to take affirmative steps to employ and advance in employment persons with disabilities.

§ 51.5-162. Independent living services.

Independent living services provided pursuant to this article shall be provided in accordance with the federal Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.), as amended.

§ 51.5-163. Centers for independent living.

A. Services provided through grants or contracts with centers for independent living pursuant to this article shall include:

1. Advocacy;

2. Peer counseling;

3. Independent living skills training; and

4. Information and referral.

Services may include other services deemed necessary by the local consumer base.

B. Centers for independent living funded in whole or in part by the Department shall be staffed by persons with disabilities who are trained in the philosophy of independent living. The majority of management staff shall include persons with disabilities.

§ 51.5-164. Statewide Independent Living Council created.

The Statewide Independent Living Council is hereby created to plan, together with the Department, activities carried out under Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. § 796 et seq.) and to provide advice to the Department regarding such activities. Membership and duties shall be constructed according to federal provisions. The Department shall provide staff support for the Council.

§ 51.5-165. Projects with employers.

A. Projects with employers pursuant to this article shall be designed to provide vocational rehabilitation in a realistic employment setting and to provide on-the-job training for persons with disabilities.

B. Services provided by an employer may include:

1. Job orientation;

2. On-the-job training;

3. Job-related basic education;

4. Job coaching and supportive services;

5. Supervisory and human relations training;

6. Special equipment and building alteration; and

7. Other services necessary to prepare persons with disabilities for competitive employment and to assist them during employment.

§ 51.5-166. Eligibility criteria.

The Commissioner shall establish eligibility criteria for services to be applied by programs awarded grants pursuant to this article. Such criteria shall provide that:

1. Eligibility shall be determined without regard to sex, race, national origin, religion, or type of impairment of the person applying for the service;

2. Preference shall be given to applicants for services whose impairments are so severe that they do not presently have the potential for employment, but whose ability to live and function independently within their family settings or communities may be improved by the services for which they have applied; and

3. Services shall not be provided to people who are eligible for prevocational or supported employment services through a Medicaid home and community based waiver program.

§ 51.5-167. Participation by clients in cost of services.

The Commissioner shall establish written standards for determining the extent to which a client shall be financially responsible for the cost of services funded in whole or in part by the Department. Each public or private agency awarded a grant or contract in accordance with § 51.5-161 shall utilize the Commissioner's regulations to maximize the financial participation of persons receiving services.

§ 51.5-168. Rights of clients.

The Commissioner shall establish written standards governing the rights of clients of services provided by public or private agencies in accordance with § 51.5-161. Each such public and private agency shall educate clients and staff regarding those rights and shall provide a procedure to fairly and impartially resolve conflicts and complaints about alleged violations of those rights. Each such agency shall make referrals consistent with the provisions of 29 U.S.C. § 732.

§ 51.5-169. Cooperative agreements with community services boards and schools.

No services funded under the authority of this article shall be provided to:

1. Persons whose primary impairment is mental illness, mental retardation, or substance abuse, except by cooperative agreement with the local community services board established pursuant to Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 when that board is currently offering the same services; or

2. Public school-age persons, except by cooperative agreement with that person's school.

Article 11.

Vocational Rehabilitation.

§ 51.5-170. Eligibility.

The Commissioner shall adopt written standards for determining eligibility for vocational rehabilitation services provided or funded, in whole or in part, by the Department, which ensure that eligibility is determined without regard to sex, race, national origin, religion, or type of impairment of the person applying for services and is determined solely by reference to specific written criteria.

§ 51.5-171. Assessment.

When an individual applies for vocational rehabilitation services provided or funded by the Department, in whole or in part, an assessment shall be made to determine eligibility for benefits according to the standards adopted pursuant to § 51.5-170. If, after an assessment, eligibility is established, a comprehensive assessment shall be conducted to ascertain the nature and scope of services needed by the applicant. Both assessments shall be carried out with the involvement of the applicant and his parents or guardian if appropriate. Both assessments shall include, when appropriate, (i) a review of existing data and, to the extent necessary, the provision of appropriate assessment activities to obtain necessary data to determine eligibility and services needed; (ii) referral for the provision of rehabilitation technology services to assess and develop the individual's capacities to perform in a work environment; and (iii) referral to other agencies and organizations for appropriate assessment services.

§ 51.5-172. Individualized plan for employment.

A written individualized plan for employment for each recipient of vocational rehabilitation services provided or funded by the Department, in whole or in part, shall be developed within a reasonable time and agreed to and signed by the client, his parents or guardian, if appropriate, and a qualified vocational rehabilitation counselor employed by the Department. The plan shall be reviewed at least annually by the client, his parents or guardian, if appropriate, and the qualified vocational rehabilitation counselor.

§ 51.5-173. Services for individuals.

A. Vocational rehabilitation services provided by the Department shall address comprehensively the individual needs of each client to the maximum extent possible with resources available to the Department, through the following:

1. An assessment for determining eligibility and vocational needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

2. Counseling and guidance, including information and support services to assist an individual in exercising informed choice, and referral necessary to help applicants or clients to secure needed services from other agencies;

3. Diagnosis and treatment of physical or mental impairments, including:

a. Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but that is of such a nature that correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

b. Necessary hospitalization in connection with surgery or treatment;

c. Prosthetic and orthotic devices;

d. Eyeglasses and visual services as prescribed by qualified personnel who meet state licensure laws and who are selected by the client;

e. Special services including transplantation and dialysis, artificial kidneys, and supplies necessary for the treatment of clients with end-stage renal disease; and

f. Diagnosis and treatment for mental and emotional disorders by qualified personnel who meet state licensure laws;

4. Vocational and other training services, including the provision of personal and vocational-adjustment services, books, tools, and other training materials, except that no training services provided at institutions of higher education shall be paid for with funds under this article unless maximum efforts have been made to secure grant assistance in whole or part from other funding sources;

5. Maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;

6. Transportation, including adequate training in the use of public transportation vehicles and systems that is provided in connection with the provision of any other services described in this section and needed by the client to achieve an employment outcome;

7. Services to members of a client's family when such services are necessary to assist the client to achieve an employment outcome;

8. Interpreter services provided by qualified personnel for clients who are deaf or hard of hearing and reader services for clients determined to be blind, after an examination by qualified personnel who meet state licensure laws;

9. Rehabilitation technology, including telecommunications and sensory and other technological aids and devices;

10. Job-related services, including job search and assistance, job retention services, follow-up services, and follow-along services;

11. Specific post-employment services necessary to assist the client to retain, regain, or advance in employment;

12. Occupational licenses, tools, equipment, and initial stocks and supplies;

13. On-the-job or other related personal assistance services provided while a client is receiving other services described in this section;

14. Supported employment services which include providing a rehabilitation or other human services agency staff person to assist in job placement, job site training, and job follow-through for the disabled employee;

15. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible clients pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and

16. Transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the individualized plan for employment.

B. Written standards shall be established by the Commissioner detailing the scope and nature of each vocational rehabilitation service authorized herein, the conditions, criteria and procedures under which each service may be provided, and the use of entitlements and other benefits to access these services, when appropriate.

C. In providing the foregoing services, the Department shall determine whether comparable services and benefits are available under any other program unless such a determination would interrupt or delay the progress of the client toward achieving the employment outcome identified in the individualized plan for employment, an immediate job placement, or the provision of such service to any client at extreme medical risk.

§ 51.5-174. Services for groups.

Vocational rehabilitation services provided by the Department for the benefit of groups shall include, to the maximum extent possible with the resources available to the Department:

1. The establishment, development, or improvement of community rehabilitation programs;

2. The provision of other services that promise to contribute significantly to rehabilitation of a group of clients but that are not directly related to the individualized plan for employment of any one client;

3. The use of telecommunications systems, including telephone, television, satellite, radio, and other similar systems that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

4. Technical assistance and support services to businesses that are not subject to Title I of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.); and

5. Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

§ 51.5-175. Community Rehabilitation Program.

When any part of the written individualized plan for employment of a client of the Department includes services in a community rehabilitation program (CRP), that portion of the plan shall be developed jointly with the rehabilitation counselor, a qualified staff member of the CRP, and the client, and, when appropriate, his parents or guardian. Factors to be considered shall include, but not be limited to, proposed activities, activity schedule, and the impact of the activity on the welfare of the client, the client's family, and his community.

When a case is closed upon a client's placement in extended employment in a CRP, the case shall be reviewed by the Department, with the cooperation of the CRP, within 12 months of case closure.

§ 51.5-176. Participation by clients in cost of services.

The Commissioner shall adopt written standards for determining the extent to which clients shall be responsible for the cost of vocational rehabilitation services provided or funded by the Department. However, the provision of the following services by the Department shall not be conditioned on the client's or applicant's ability to pay for the cost of those services: (i) evaluation of rehabilitation potential, except for vocational services other than those of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential; (ii) counseling, guidance, and referral services; and (iii) placement and follow-up. The Department shall maximize financial participation of persons receiving services and shall maximize reimbursement from responsible third party payors.

§ 51.5-177. Client rights regarding services.

The Commissioner shall establish written standards governing the rights of applicants for and clients who receive vocational rehabilitation services which are provided or funded by the Department. The Department shall educate clients and staff regarding those rights and provide a procedure for fairly and impartially resolving conflicts and complaints about alleged violations of those rights. The Department shall make referrals consistent with the provisions of 29 U.S.C. § 732.

Article 12.

Commonwealth Neurotrauma Initiative.

§ 51.5-178. Definitions.

As used in this article,

"Advisory Board" means the Commonwealth Neurotrauma Initiative Advisory Board established pursuant to § 51.5-180.

"Fund" means the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to § 51.5-179.

"Neurotrauma" means an injury to the central nervous system, that is, a traumatic spinal cord or brain injury which results in loss of physical and cognitive functions.

§ 51.5-179. Commonwealth Neurotrauma Initiative Trust Fund established.

A. For the purpose of preventing traumatic spinal cord or brain injuries and improving the treatment and care of Virginians with traumatic spinal cord or brain injuries, there is hereby created in the state treasury a special nonreverting fund to be known as the Commonwealth Neurotrauma Initiative Trust Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller as a revolving fund and shall be administered by the Commonwealth Neurotrauma Initiative Advisory Board in cooperation with the Commissioner. The Fund shall consist of grants, donations, and bequests from public and private sources and funds collected as provided in § 46.2-411. Such moneys shall be deposited into the state treasury to the credit of the Fund and shall be used for the purposes of this article.

B. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the Commissioner and distributed according to the grant procedures established pursuant to § 51.5-181. Moneys in the Fund shall be used to support grants for Virginia-based organizations, institutions, and researchers as follows: (i) 47.5 percent shall be allocated for research on the mechanisms and treatment of neurotrauma, (ii) 47.5 percent shall be allocated for rehabilitative services, and (iii) five percent shall be allocated for the Department's costs for administering and staffing the Commonwealth Neurotrauma Initiative Advisory Board.

§ 51.5-180. Commonwealth Neurotrauma Initiative Advisory Board established; membership; terms; duties and responsibilities.

A. For the purpose of administering the Commonwealth Neurotrauma Initiative Trust Fund, in cooperation with the Commissioner, there is hereby established the Commonwealth Neurotrauma Initiative Advisory Board, hereinafter referred to as the Advisory Board. The Department shall provide organizational staff support for the Advisory Board.

The Advisory Board shall consist of seven members as follows: one person licensed to practice medicine in Virginia experienced with brain or spinal cord injury; one person licensed by a health regulatory board within the Department of Health Professions with experience in brain or spinal cord injury rehabilitative programs or services; one Virginian with traumatic spinal cord injury or a caretaker thereof; one Virginian with traumatic brain injury or a caretaker thereof; one citizen-at-large who shall not be an elected or appointed public official; the Commissioner; and the State Health Commissioner. The Commissioner and the Commissioner of Health may appoint designees to serve on the Advisory Board. Board members shall be appointed by the Governor. Nominations for appointments may be submitted, at the discretion of the Governor, from relevant organizations.

B. All members shall be appointed by the Governor for terms of four years. No member shall serve more than two successive terms of four years. The chairman shall be elected from the membership of the Advisory Board for a term of one year and shall be eligible for reelection. The Advisory Board shall meet at the call of the chairman or the Commissioner.

C. The Advisory Board shall:

1. Administer, in cooperation with the Commissioner, the Commonwealth Neurotrauma Initiative Trust Fund, in accordance with such regulations as shall be established for the Fund by the Commissioner;

2. Recommend to the Commissioner the policies and procedures for the administration of the Fund, including criteria for reviewing and ranking grant applications, distribution of funds, and areas of research needed in accordance with the provisions of subsection B of § 51.5-179;

3. Review and rank, or arrange for reviewers and technical advisers to review and rank, grant applications for education, basic science and clinical research, and rehabilitative research and community-based rehabilitative services; and

4. Report triennially on October 1, to the Governor and the General Assembly, aggregate data on the operations and funding of the Commonwealth Neurotrauma Initiative Trust Fund.

D. The Advisory Board may appoint grant reviewers and other technical advisers to assist it in its duties. Such reviewers and technical advisers shall be appointed in such manner as to provide equal representation from Virginia's three medical schools. Whenever reviewers or technical advisers sit as a committee, the chairman of the Advisory Board or his designee shall serve as chairman.

§ 51.5-181. Procedures for grant applications.

The Commissioner shall promulgate regulations establishing procedures and policies for soliciting and receiving grant applications and criteria for reviewing and ranking such applications, including, but not limited to, goals, timelines, forms, eligibility, and mechanisms to ensure avoidance of any conflicts of interest or appearances thereof. The Commissioner shall receive the recommendations of the Commonwealth Neurotrauma Initiative Advisory Board prior to promulgating or revising any such regulations.

§ 57-60. Exemptions.

A. The following persons shall be exempt from the registration requirements of § 57-49, but shall otherwise be subject to the provisions of this chapter:

1. Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association Montessori Internationale, the American Montessori Society, the Virginia Independent Schools Association, or the Virginia Association of Independent Schools, any foundation having an established identity with any of the aforementioned educational institutions, and any other educational institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and their families.

2. Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use.

3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have not actually raised or received, during any of the three next preceding calendar years, contributions from the public in excess of $5,000, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such are or are not received by any charitable organization during any calendar year, shall be in excess of $5,000, it shall, within 30 days after the date it has received total contributions in excess of $5,000, register with and report to the Commissioner as required by this chapter.

4. Organizations that solicit only within the membership of the organization by the members thereof.

5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered with the Commissioner.

6. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

7. Health care institutions defined herein as any facilities that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department

of Behavioral Health and Developmental Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization that exists solely to support any such health care institutions. For the purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental, medical or other health services where a reasonable minimum fee is charged to cover administrative costs.

8. Civic organizations as defined herein.

9. Agencies providing or offering to provide debt management plans for consumers that are licensed pursuant to Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2.

10. Agencies designated by the Virginia Department for ~~the~~ Aging *and Rehabilitative Services* pursuant to subdivision A 6 of § ~~2.2-703~~ *51.5-135* as area agencies on aging.

11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status under § 501(c)(5) of the Internal Revenue Code.

12. Trade associations that have been granted tax-exempt status under § 501(c)(6) of the Internal Revenue Code.

13. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and that are organized wholly as regional emergency medical services councils in accordance with § 32.1-111.11.

14. Nonprofit organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and that solicit contributions only through (i) grant proposals submitted to for-profit corporations, (ii) grant proposals submitted to other nonprofit organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code, or (iii) grant proposals submitted to organizations determined to be private foundations under § 509(a) of the Internal Revenue Code.

B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall otherwise be exempt from the provisions of this chapter for any year in which it confines its solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has registered under the charitable solicitations ordinance, if any, of each such city and county. No organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10 percent of its gross receipts were paid to any person or combination of persons, located outside the boundaries of such cities and counties, other than for the purchase of real property, or tangible personal property or personal services to be used within such localities. An organization that is otherwise qualified for exemption under this subsection that solicits by means of a local publication, or radio or television station, shall not be disqualified solely because the circulation or range of such medium extends beyond the boundaries of such cities or counties.

C. No charitable or civic organization shall be exempt under this section unless it submits to the Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. Parent organizations may file consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be exempt from the registration provisions of this chapter. If the organization is exempted, the Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee of $10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any of its local chapters.

§ 58.1-344.3. Voluntary contributions of refunds requirements.

A. 1. For taxable years beginning on and after January 1, 2005, all entities entitled to voluntary contributions of tax refunds listed in subsections B and C must have received at least $10,000 in contributions in each of the three previous taxable years for which there is complete data and in which such entity was listed on the individual income tax return.

2. In the event that an entity listed in subsections B and C does not satisfy the requirement in subdivision 1 ~~of this subsection~~, such entity shall no longer be listed on the individual income tax return.

3. a. The entities listed in subdivisions B 21 and B 22 as well as any other entities in subsections B and C added subsequent to the 2004 Session of the General Assembly shall not appear on the individual income tax return until their addition to the individual income tax return results in a maximum of 25 contributions listed on the return. Such contributions shall be added in the order that they are listed in subsections B and C.

b. Each entity added to the income tax return shall appear on the return for at least three consecutive taxable years before the requirement in subdivision 1~~ of this subsection~~ is applied to such entity.

4. The Department of Taxation shall report annually by the first day of each General Assembly Regular Session to the chairmen of the House and Senate Finance Committees the amounts collected for each entity listed under subsections B and C for the three most recent taxable years for which there is complete data. Such report shall also identify the entities, if any, that will be removed from the individual income tax return because they have failed the requirements in subdivision 1~~ of this subsection~~, the entities that will remain on the individual income tax return, and the entities, if any, that will be added to the individual income tax return.

B. Subject to the provisions of subsection A, the following entities entitled to voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions of not less than $1:

1. Nongame wildlife voluntary contribution.

a. All moneys contributed shall be used for the conservation and management of endangered species and other nongame wildlife. "Nongame wildlife" includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife both terrestrial and aquatic, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the Board of Game and Inland Fisheries.

b. All moneys shall be deposited into a special fund known as the Game Protection Fund and which shall be accounted for as a separate part thereof to be designated as the Nongame Cash Fund. All moneys so deposited in the Nongame Cash Fund shall be used by the Commission of Game and Inland Fisheries for the purposes set forth herein.

2. Open space recreation and conservation voluntary contribution.

a. All moneys contributed shall be used by the Department of Conservation and Recreation to acquire land for recreational purposes and preserve natural areas; to develop, maintain, and improve state park sites and facilities; and to provide funds to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

b. All moneys shall be deposited into a special fund known as the Open Space Recreation and Conservation Fund. The moneys in the fund shall be allocated one-half to the Department of Conservation and Recreation for the purposes stated in subdivision 2 a ~~of this subsection~~ and one-half to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

3. Voluntary contribution to political party.

All moneys contributed shall be paid to the State Central Committee of any party that meets the definition of a political party under § 24.2-101 as of July 1 of the previous taxable year. The maximum contribution allowable under this subdivision shall be $25. In the case of a joint return of husband and wife, each spouse may designate that the maximum contribution allowable be paid.

4. United States Olympic Committee voluntary contribution.

All moneys contributed shall be paid to the United States Olympic Committee.

5. Housing program voluntary contribution.

a. All moneys contributed shall be used by the Department of Housing and Community Development to provide assistance for emergency, transitional, and permanent housing for the homeless; and to provide assistance to housing for the low-income elderly for the physically or mentally disabled.

b. All moneys shall be deposited into a special fund known as the Virginia Tax Check-off for Housing Fund. All moneys deposited in the fund shall be used by the Department of Housing and Community Development for the purposes set forth in this subdivision. Funds made available to the Virginia Tax Check-off for Housing Fund may supplement but shall not supplant activities of the Virginia Housing Partnership Revolving Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36 or those of the Virginia Housing Development Authority.

6. Voluntary contributions to the Department for~~ the~~ Aging *and Rehabilitative Services*.

a. All moneys contributed shall be used by the Department for~~ the~~ Aging *and Rehabilitative Services* for the enhancement of transportation services for the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Transportation Services for the Elderly and Disabled Fund. All moneys so deposited in the fund shall be used by the Department for~~ the~~ Aging *and Rehabilitative Services* for the enhancement of transportation services for the elderly and disabled. The Department for~~ the~~ Aging *and Rehabilitative Services* shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to this subdivision annually to the Secretary of Health and Human Resources.

7. Voluntary contribution to the Community Policing Fund.

a. All moneys contributed shall be used to provide grants to local law-enforcement agencies for the purchase of equipment or the support of services, as approved by the Criminal Justice Services Board, relating to community policing.

b. All moneys shall be deposited into a special fund known as the Community Policing Fund. All moneys deposited in such fund shall be used by the Department of Criminal Justices Services for the purposes set forth herein.

8. Voluntary contribution to promote the arts.

All moneys contributed shall be used by the Virginia Arts Foundation to assist the Virginia Commission for the Arts in its statutory responsibility of promoting the arts in the Commonwealth. All moneys shall be deposited into a special fund known as the Virginia Arts Foundation Fund.

9. Voluntary contribution to the Historic Resources Fund.

All moneys contributed shall be deposited in the Historic Resources Fund established pursuant to § 10.1-2202.1.

10. Voluntary contribution to the Virginia Foundation for the Humanities and Public Policy.

All moneys contributed shall be paid to the Virginia Foundation for the Humanities and Public Policy. All moneys shall be deposited into a special fund known as the Virginia Humanities Fund.

11. Voluntary contribution to the Center for Governmental Studies.

All moneys contributed shall be paid to the Center for Governmental Studies, a public service and research center of the University of Virginia. All moneys shall be deposited into a special fund known as the Governmental Studies Fund.

12. Voluntary contribution to the Law and Economics Center.

All moneys contributed shall be paid to the Law and Economics Center, a public service and research center of George Mason University. All moneys shall be deposited into a special fund known as the Law and Economics Fund.

13. Voluntary contribution to Children of America Finding Hope.

All moneys contributed shall be used by Children of America Finding Hope (CAFH) in its programs which are designed to reach children with emotional and physical needs.

14. Voluntary contribution to 4-H Educational Centers.

All moneys contributed shall be used by the 4-H Educational Centers throughout the Commonwealth for their (i) educational, leadership, and camping programs and (ii) operational and capital costs. The State Treasurer shall pay the moneys to the Virginia 4-H Foundation in Blacksburg, Virginia.

15. Voluntary contribution to promote organ and tissue donation.

a. All moneys contributed shall be used by the Virginia Transplant Council to assist in its statutory responsibility of promoting and coordinating educational and informational activities as related to the organ, tissue, and eye donation process and transplantation in the Commonwealth of Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Donor Registry and Public Awareness Fund. All moneys deposited in such fund shall be used by the Virginia Transplant Council for the purposes set forth herein.

16. Voluntary contributions to the Virginia War Memorial Foundation and the National D-Day Memorial Foundation.

All moneys contributed shall be used by the Virginia War Memorial Foundation and the National D-Day Memorial Foundation in their work through each of their respective memorials. The State Treasurer shall divide the moneys into two equal portions and pay one portion to the Virginia War Memorial Foundation and the other portion to the National D-Day Memorial Foundation.

17. Voluntary contribution to the Virginia Federation of Humane Societies.

All moneys contributed shall be paid to the Virginia Federation of Humane Societies to assist in its mission of saving, caring for, and finding homes for homeless animals.

18. Voluntary contribution to the Tuition Assistance Grant Fund.

a. All moneys contributed shall be paid to the Tuition Assistance Grant Fund for use in providing monetary assistance to residents of the Commonwealth who are enrolled in undergraduate or graduate programs in private Virginia colleges.

b. All moneys shall be deposited into a special fund known as the Tuition Assistance Grant Fund. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education for Virginia in accordance with and for the purposes provided under the Tuition Assistance Grant Act (§ 23-38.11 et seq.).

19. Voluntary contribution to the Spay and Neuter Fund.

All moneys contributed shall be paid to the Spay and Neuter Fund for use by localities in the Commonwealth for providing low-cost spay and neuter surgeries through direct provision or contract or each locality may make the funds available to any private, nonprofit sterilization program for dogs and cats in such locality. The Tax Commissioner shall determine annually the total amounts designated on all returns from each locality in the Commonwealth, based upon the locality that each filer who makes a voluntary contribution to the Fund lists as his permanent address. The State Treasurer shall pay the appropriate amount to each respective locality.

20. Voluntary contribution to the Virginia Commission for the Arts.

All moneys contributed shall be paid to the Virginia Commission for the Arts.

21. Voluntary contribution for the Office of Commonwealth Preparedness.

All moneys contributed shall be paid to the Department of Emergency Management for the Office of Commonwealth Preparedness.

22. Voluntary contribution for the cancer centers in the Commonwealth.

All moneys contributed shall be paid equally to all entities in the Commonwealth that officially have been designated as cancer centers by the National Cancer Institute.

23. Voluntary contribution to the Brown v. Board of Education Scholarship Program Fund.

a. All moneys contributed shall be paid to the Brown v. Board of Education Scholarship Program Fund to support the work of and generate nonstate funds to maintain the Brown v. Board of Education Scholarship Program.

b. All moneys shall be deposited into the Brown v. Board of Education Scholarship Program Fund as established in § 30-231.4.

c. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education in accordance with and for the purposes provided in Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

24. Voluntary contribution to the Martin Luther King, Jr. Living History and Public Policy Center.

All moneys contributed shall be paid to the Board of Trustees of the Martin Luther King, Jr. Living History and Public Policy Center.

25. Voluntary contribution to the Virginia Caregivers Grant Fund.

All moneys contributed shall be paid to the Virginia Caregivers Grant Fund established pursuant to § 63.2-2202.

26. Voluntary contribution to public library foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public library foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public library foundation.

27. Voluntary contribution to Celebrating Special Children, Inc.

All moneys contributed shall be paid to Celebrating Special Children, Inc. and shall be deposited into a special fund known as the Celebrating Special Children, Inc. Fund.

28. Voluntary contributions to the Department for ~~the~~ Aging *and Rehabilitative Services*.

a. All moneys contributed shall be used by the Department for ~~the~~ Aging *and Rehabilitative Services* for providing Medicare Part D counseling to the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Medicare Part D Counseling Fund. All moneys so deposited shall be used by the Department for ~~the~~ Aging *and Rehabilitative Services* to provide counseling for the elderly and disabled concerning Medicare Part D. The Department for ~~the~~ Aging *and Rehabilitative Services* shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to the subdivision to the Secretary of Health and Human Resources.

29. Voluntary contribution to community foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each community foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective community foundation. A "community foundation" shall be defined as any institution that meets the membership requirements for a community foundation established by the Council on Foundations.

30. Voluntary contribution to the Virginia Foundation for Community College Education.

a. All moneys contributed shall be paid to the Virginia Foundation for Community College Education for use in providing monetary assistance to Virginia residents who are enrolled in comprehensive community colleges in Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Foundation for Community College Education Fund. All moneys so deposited in the Fund shall be administered by the Virginia Foundation for Community College Education in accordance with and for the purposes provided under the Community College Incentive Scholarship Program (§ 23-220.2 et seq.).

31. Voluntary contribution to the Middle Peninsula Chesapeake Bay Public Access Authority.

All moneys contributed shall be paid to the Middle Peninsula Chesapeake Bay Public Access Authority to be used for the purposes described in § 15.2-6601.

32. Voluntary contribution to the Breast and Cervical Cancer Prevention and Treatment Fund.

All moneys contributed shall be paid to the Breast and Cervical Cancer Prevention and Treatment Fund established pursuant to § 32.1-368.

33. Voluntary contribution to the Virginia Aquarium and Marine Science Center.

All moneys contributed shall be paid to the Virginia Aquarium and Marine Science Center for use in its mission to increase the public's knowledge and appreciation of Virginia's marine environment and inspire commitment to preserve its existence.

34. Voluntary contribution to the Virginia Capitol Preservation Foundation.

All moneys contributed shall be paid to the Virginia Capitol Preservation Foundation for use in its mission in supporting the ongoing restoration, preservation, and interpretation of the Virginia Capitol and Capitol Square.

35. Voluntary contribution for the Secretary of Veterans Affairs and Homeland Security.

All moneys contributed shall be paid to the Office of the Secretary of Veterans Affairs and Homeland Security for related programs and services.

C. Subject to the provisions of subsection A, the following voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions or by making payment to the Department if the individual is not eligible to receive a tax refund pursuant to § 58.1-309 or if the amount of such tax refund is less than the amount of the voluntary contribution:

1. Voluntary contribution to the Family and Children's Trust Fund of Virginia.

All moneys contributed shall be paid to the Family and Children's Trust Fund of Virginia.

2. Voluntary Chesapeake Bay Restoration Contribution.

a. All moneys contributed shall be used to help fund Chesapeake Bay and its tributaries restoration activities in accordance with tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

b. The Tax Commissioner shall annually determine the total amount of voluntary contributions and shall report the same to the State Treasurer, who shall credit that amount to a special nonreverting fund to be administered by the Office of the Secretary of Natural Resources. All moneys so deposited shall be used for the purposes of providing grants for the implementation of tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

3. Voluntary Jamestown-Yorktown Foundation Contribution.

All moneys contributed shall be used by the Jamestown-Yorktown Foundation for the Jamestown 2007 quadricentennial celebration. All moneys shall be deposited into a special fund known as the Jamestown Quadricentennial Fund. This subdivision shall be effective for taxable years beginning before January 1, 2008.

4. State forests voluntary contribution.

a. All moneys contributed shall be used for the development and implementation of conservation and education initiatives in the state forests system.

b. All moneys shall be deposited into a special fund known as the State Forests System Fund, established pursuant to § 10.1-1119.1. All moneys so deposited in such fund shall be used by the State Forester for the purposes set forth herein.

5. Voluntary contributions to Uninsured Medical Catastrophe Fund.

All moneys contributed shall be paid to the Uninsured Medical Catastrophe Fund established pursuant to § 32.1-324.2, such funds to be used for the treatment of Virginians sustaining uninsured medical catastrophes.

6. Voluntary contribution to local school divisions.

a. All moneys contributed shall be used by a specified local public school foundation as created by and for the purposes stated in § 22.1-212.2:2.

b. All moneys collected pursuant to subdivision ~~6~~ a ~~of this subsection~~ or through voluntary payments by taxpayers designated for a local public school foundation over refundable amounts shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public school foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public school foundation.

c. In order for a public school foundation to be eligible to receive contributions under this section, school boards must notify the Department during the taxable year in which they want to participate prior to the deadlines and according to procedures established by the Tax Commissioner.

7. Voluntary contribution to Home Energy Assistance Fund.

All moneys contributed shall be paid to the Home Energy Assistance Fund established pursuant to § 63.2-805, such funds to be used to assist low-income Virginians in meeting seasonal residential energy needs.

8. Voluntary contribution to the Virginia Military Family Relief Fund.

a. All moneys contributed shall be paid to the Virginia Military Family Relief Fund for use in providing assistance to military service personnel on active duty and their families for living expenses including, but not limited to, food, housing, utilities, and medical services.

b. All moneys shall be deposited into a special fund known as the Virginia Military Family Relief Fund, established and administered pursuant to § 44-102.2.

D. Unless otherwise specified and subject to the requirements in § 58.1-344.2, all moneys collected for each entity in subsections B and C shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amount designated for each entity in subsections B and C on all individual income tax returns and shall report the same to the State Treasurer, who shall credit that amount to each entity's respective special fund.

§ 58.1-439.11. Employees with disabilities tax credit.

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

"Qualified employee" means an otherwise qualified person with a disability who has completed or is completing rehabilitative services from the Department ~~of~~ *for Aging and* Rehabilitative Services, the Department for the Blind and Vision Impaired or the U.S. Department of Veterans Affairs. An otherwise qualified person with a disability (i) shall not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit. As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer, and "owner" means, in the case of a corporation, any person who owns five percent or more of the corporation's stock.

"Wages" means wages, within the meaning of § 51(c)(1), (2) and (3) of the Internal Revenue Code without regard to § 51(c)(4) of the Internal Revenue Code, that are paid by an employer to an employee for services performed in the employer's trade or business.

B. Except as provided in subsection D ~~of this section~~, an employer may claim a tax credit in the amounts determined under subsection C ~~of this section~~ for the wages of a qualified employee that are paid in the taxable year for which the employer claims the credit. The same tax credit shall not be applied more than once against different taxes by the same taxpayer.

C. For taxable years beginning on and after January 1, 1999, but before December 31, 2002, an employer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 ~~of this title~~ in an amount equal to ~~twenty~~ *20* percent of the first $6,000 of wages paid annually to each qualified employee during the first two taxable years of such employee's employment.

D. An employer shall not claim the credit allowed under this section for a qualified employee who is on strike or for whom the employer simultaneously receives federal or state employment training benefits. Furthermore, the credit allowed under this section shall be based on actual wages paid during the applicable taxable year.

E. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

F. An employer shall be entitled to the credit granted under this section only for those qualified employees who have been certified as otherwise qualified persons with disabilities to the Department of Taxation by the Department ~~of~~ *for Aging and* Rehabilitative Services, the Department for the Blind and Vision Impaired or the U.S. Department of Veterans Affairs. The Tax Commissioner shall promulgate regulations, in accordance with

the Administrative Process Act (§ 2.2-4000 et seq.), establishing procedures for claiming the credit provided by this section. The Department ~~of~~ *for Aging and* Rehabilitative Services, the Department for the ~~Visually Handicapped~~ *Blind and Vision Impaired* or the U.S. Department of Veterans Affairs shall review requests for certification submitted by employers and shall advise the Tax Commissioner whether an employee qualifies.

G. Any credit not usable for the taxable year may be carried over for the next three taxable years. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered to have first utilized any credit allowed which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

H. No employer shall be eligible to claim a credit under this section if the employer is claiming a tax credit for the same employee under § 58.1-439.

I. The Tax Commissioner shall report annually to the Chairmen of the House Finance and Senate Finance Committees on the status and implementation of the credit established by this section, including certifications for otherwise qualified persons with disabilities.

§ 58.1-2259. Fuel uses eligible for refund.

A. A refund of the tax paid for the purchase of fuel in quantities of five gallons or more at any time shall be granted in accordance with the provisions of § 58.1-2261 to any person who establishes to the satisfaction of the Commissioner that such person has paid the tax levied pursuant to this chapter upon any fuel:

1. Sold and delivered to a governmental entity for its exclusive use;

2. Used by a governmental entity, provided persons operating under contract with a governmental entity shall not be eligible for such refund;

3. Sold and delivered to an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft;

4. Used by an organization described in subdivision 2 of § 58.1-2226 or subdivision 2 of § 58.1-2250 for its exclusive use in the operation of an aircraft, provided persons operating under contract with such an organization shall not be eligible for such refund;

5. Purchased by a licensed exporter and subsequently transported and delivered by such licensed exporter to another state for sales or use outside the boundaries of the Commonwealth if the tax applicable in the destination state has been paid, provided a refund shall not be granted pursuant to this section on any fuel which is transported and delivered outside of the Commonwealth in the fuel supply tank of a highway vehicle or an aircraft;

6. Used by any person performing transportation under contract or lease with any transportation district for use in a highway vehicle controlled by a transportation district created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and used in providing transit service by the transportation district by contract or lease, provided the refund shall be paid to the person performing such transportation;

7. Used by any private, nonprofit agency on aging, designated by the Department for ~~the~~ Aging *and Rehabilitative Services*, providing transportation services to citizens in highway vehicles owned, operated or under contract with such agency;

8. Used in operating or propelling highway vehicles owned by a nonprofit organization that provides specialized transportation to various locations for elderly or disabled individuals to secure essential services and to participate in community life according to the individual's interest and abilities;

9. Used in operating or propelling buses owned and operated by a county or the school board thereof while being used to transport children to and from public school or from school to and from educational or athletic activities;

10. Used by buses owned or solely used by a private, nonprofit, nonreligious school while being used to transport children to and from such school or from such school to and from educational or athletic activities;

11. Used by any county or city school board or any private, nonprofit, nonreligious school contracting with a private carrier to transport children to and from public schools or any private, nonprofit, nonreligious school, provided the tax shall be refunded to the private carrier performing such transportation;

12. Used in operating or propelling the equipment of volunteer firefighting companies and of volunteer rescue squads within the Commonwealth used actually and necessarily for firefighting and rescue purposes;

13. Used in operating or propelling motor equipment belonging to counties, cities and towns, if actually used in public activities;

14. Used for a purpose other than in operating or propelling highway vehicles, watercraft or aircraft;

15. Used off-highway in self-propelled equipment manufactured for a specific off-road purpose, which is used on a job site and the movement of which on any highway is incidental to the purpose for which it was designed and manufactured;

16. Proven to be lost by accident, including the accidental mixing of (i) dyed diesel fuel with tax-paid motor fuel, (ii) gasoline with diesel fuel, or (iii) undyed diesel fuel with dyed kerosene, but excluding fuel lost through personal negligence or theft;

17. Used in operating or propelling vehicles used solely for racing other vehicles on a racetrack;

18. Used in operating or propelling unlicensed highway vehicles and other unlicensed equipment used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner or lessee of such vehicles and not operated on or over any highway for any purpose other than to move it in the manner and for the purpose mentioned. The amount of refund shall be equal to the amount of the taxes paid less one-half cent per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to the credit of the Virginia Agricultural Foundation Fund;

19. Used in operating or propelling commercial watercraft. The amount of refund shall be equal to the amount of the taxes paid less one and one-half cents per gallon on such fuel so used which shall be paid by the Commissioner into the state treasury to be credited as provided in subsection D of § 58.1-2289. If any applicant so requests, the Commissioner shall pay into the state treasury, to the credit of the Game Protection Fund, the entire tax paid by such applicant for the purposes specified in subsection D of § 58.1-2289. If any applicant who is an operator of commercial watercraft so requests, the Commissioner shall pay into the state treasury, to the credit of the Marine Fishing Improvement Fund, the entire tax paid by such applicant for the purposes specified in § 28.2-208;

20. Used in operating stationary engines, or pumping or mixing equipment on a highway vehicle if the fuel used to operate such equipment is stored in an auxiliary tank separate from the fuel tank used to propel the highway vehicle, and the highway vehicle is mechanically incapable of self-propulsion while fuel is being used from the auxiliary tank; or

21. Used in operating or propelling recreational and pleasure watercraft.

B. 1. Any person purchasing fuel for consumption in a solid waste compacting or ready-mix concrete highway vehicle, or a bulk feed delivery truck, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 35 percent of the tax paid on such fuel. For purposes of this section, a "bulk feed delivery truck" means bulk animal feed delivery trucks utilizing power take-off (PTO) driven auger or air feed discharge systems for off-road deliveries of animal feed.

2. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

C. Any person purchasing any fuel on which tax imposed pursuant to this chapter has been paid may apply for a refund of the tax if such fuel was consumed by a highway vehicle used in operating an urban or suburban bus line or a taxicab service. This refund also applies to a common carrier of passengers which has been issued a certificate pursuant to § 46.2-2075 or 46.2-2099.4 providing regular route service over the highways of the Commonwealth. No refund shall be granted unless the majority of the passengers using such bus line, taxicab service or common carrier of passengers do so for travel of a distance of not more than 40 miles, one way, in a single day between their place of abode and their place of employment, shopping areas or schools.

If the applicant for a refund is a taxicab service, he shall hold a valid permit from the Department to engage in the business of a taxicab service. No applicant shall be denied a refund by reason of the fee arrangement between the holder of the permit and the driver or drivers, if all other conditions of this section have been met.

Under no circumstances shall a refund be granted more than once for the same fuel. The amount of refund under this subsection shall be equal to the amount of the taxes paid, except refunds granted on the tax paid on fuel used by a taxicab service shall be in an amount equal to the tax paid less $0.01 per gallon on the fuel used.

Any refunds made under this subsection shall be deducted from the urban highway funds allocated to the highway construction district, pursuant to Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1, in which the recipient has its principal place of business.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of fuel taxes by the Commissioner generally shall apply to the refunds authorized by this subsection. Any county having withdrawn its roads from the secondary system of state highways under provisions of § 11 Chapter 415 of the Acts of 1932 shall receive its proportionate share of such special funds as is now provided by law with respect to other fuel tax receipts.

D. Any person purchasing fuel for consumption in a vehicle designed or permanently adapted solely and exclusively for bulk spreading or spraying of agricultural liming materials, chemicals, or fertilizer, where the vehicle's equipment is mechanically or hydraulically driven by an internal combustion engine that propels the vehicle, is entitled to a refund in an amount equal to 55 percent of the tax paid on such fuel.

E. Refunds resulting from any fuel shipments diverted from Virginia shall be based on the amount of tax paid for the fuel less discounts allowed by § 58.1-2233.

F. Any person who is required to be licensed under this chapter and is applying for a refund shall not be eligible for such refund if the applicant was not licensed at the time the refundable transaction was conducted.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.)~~ of this title~~, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide

central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child ~~aged~~ *age* 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning from foster care to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of

Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance~~, adult services, adult protective services,~~ child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. *Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.*

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-313. Administration of law.

The local boards shall, subject to the regulations of the Board, administer the applicable provisions of this title in their respective counties and cities. *The local boards shall also administer the applicable provisions of Chapter 14 (§ 51.5-116 et seq.) of Title 51.5 pursuant to the regulations of the Commissioner for Aging and Rehabilitative Services.*

§ 63.2-315. Furnishing reports.

The local boards shall furnish to the Commissioner and the governing body of its county or city such reports relating to the administration of this title as the Commissioner and such governing body, respectively, may require. *The local boards shall furnish such reports relating to the administration of applicable provisions of Chapter 14 (§ 51.5-116 et seq.) of Title 51.5 to the Commissioner for Aging and Rehabilitative Services, as may be required.*

§ 63.2-401. Reimbursement of localities by the Commonwealth.

Such funds as are received from the United States and agencies thereof as grants-in-aid for the purpose of providing public assistance and social services grants shall be paid monthly by the Commissioner to each county, city or district fiscal officer as reimbursement of the federal share of such grants as have been paid by each county and city under the provisions of Subtitle II and III of this title. Within the limits of the appropriations of state funds, the Commissioner shall reimburse the entire balance of such public assistance and social services grants as have been paid by each city, county or district fiscal officer after crediting them with the reimbursement made from federal funds. Within the limits of the appropriations of state funds, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of sixty-two and one-half percent of such expenditures made in connection with general relief provided under § 63.2-802. Within the limits of the appropriations of state funds for the purpose, the Commissioner shall reimburse monthly each city, county or district fiscal officer to the extent of eighty percent of expenditures made for auxiliary grants pursuant to § ~~63.2-800~~ *51.5-160*. Within the limits of state funds appropriated for the purpose, the Commissioner shall reimburse to each county, city or district fiscal officer an amount not less than fifty percent or more than sixty-two and one-half

percent of such expenditures, not federally reimbursable, made for the care of children placed in family homes or institutions pursuant to §§ 63.2-900 and 63.2-903.

Administrative expenditures made by the localities in connection with the providing of public assistance grants, other benefits and related social services, including child welfare pursuant to § 63.2-319, shall be ascertained by the Board, and the Commissioner shall, within the limits of available federal funds and state appropriations, reimburse monthly each county, city or district fiscal officer therefor out of such federal and state funds in an amount to be determined by the Board not less than fifty percent of such administrative costs.

The Commissioner also shall reimburse monthly, to the extent funds are available for such purpose, each county, city or district fiscal officer out of state and federal funds, to the extent provided in the preceding paragraph, for monthly rental payments for office space provided the local department in publicly owned buildings, for payments that are based on the cost of initial construction or purchase of a building or a reasonable amount for depreciation of such building, and for the cost of repairs and alterations to either a privately or publicly owned building. However, no monthly rental payment shall exceed a reasonable amount as determined by the Commissioner.

Claims for reimbursement shall be presented by the local board to the Commissioner, and shall be itemized and verified in such manner as the Commissioner may require. Such claim shall, upon the approval of the Commissioner, be paid out of funds appropriated by the Commonwealth and funds received from the federal government for the purposes of Subtitles II and III of this title, to the treasurer or other fiscal officer of the county or city. Wherever two or more counties or cities have been combined to form a district pursuant to § 63.2-306, reimbursements by the Commissioner under this section shall be paid to the district fiscal officer or other person designated to receive such funds by the governing bodies of such counties or cities. The Commonwealth shall reimburse each county and city the full amount of public assistance grants provided for Temporary Assistance for Needy Families.

§ 63.2-405. Provisions for determination of eligibility for medical care and medical assistance; provision of social services; regulations.

A. The Commissioner shall, in compliance with the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, provide for the determination of eligibility for medical care and medical assistance and social services required for (i) state participation under Public Law 97 of the 89th Congress of the United States, approved July 30, 1965, as amended, and regulations of the Department of Health and Human Services; and (ii) other state and federal programs. The Commissioner, subject to the state plan for medical assistance services, applicable regulations of the Board and other state and federal law, may establish policies, in the form of guidance documents, necessary to implement such functions, including safeguarding information concerning applicants and recipients. An application for medical assistance services for a person admitted to a State Veterans Care Center located in the Commonwealth may be filed and processed in the jurisdiction where such Care Center is located.

B. The Commissioner for Aging and Rehabilitative Services shall provide for the determination of eligibility for participation in the Auxiliary Grant Program set forth in Article 9 (§ 51.5-159 et seq.) of Chapter 14 of Title 51.5.

§ 63.2-1600. Home-based services.

Each local board shall provide *for the delivery of home-based services that include homemaker, companion, or chore services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency*, subject to the supervision~~ of the Commissioner~~ and in accordance with regulations~~ adopted by the Board, for the delivery of home-based services that include homemaker, companion or chore services that will allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency~~ *of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5*. Eligibility for such services shall be determined according to regulations~~ adopted by the Board~~ *of the Commissioner for Aging and Rehabilitative Services*. Such services shall be provided to the extent that federal or state matching funds are made available to each locality.

§ 63.2-1601. Authority to provide adult foster care services.

Each local board is authorized to provide adult foster care services that may include recruitment, approval, and supervision *subject to the supervision and* in accordance with regulations~~ adopted by the Board~~ *of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5*.

§ 63.2-1602. Other adult services.

~~Each~~ *Subject to the supervision and in accordance with regulations of the Commissioner for Aging and Rehabilitative Services as provided in Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5, each* local board shall:

1. Participate in nursing home pre-admission screenings of all individuals pursuant to § 32.1-330;

2. Provide assisted living facility assessments of residents and applicants pursuant to § 63.2-1804;

3. Participate in long-term care service coordination pursuant to § ~~2.2-708~~ *51.5-138*;

4. Provide social services or public assistance, as appropriate, to consumers discharged from state hospitals or training centers pursuant to §§ 37.2-505 and 37.2-837; and

5. Participate in other programs pursuant to state and federal law.

§ 63.2-1605. Protective services for adults by local departments.

A. Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, *pursuant to regulations and* subject to supervision of the Commissioner ~~and in accordance with regulations adopted by the Board~~ *for Aging and Rehabilitative Services*, adult protective services for adults who are found to be abused, neglected or exploited and who meet one of the following criteria: (i) the adult is 60 years of age or older or (ii) the adult is 18 years of age or older and is incapacitated. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.2-1608.

B. Upon receipt of the report pursuant to § 63.2-1606, the local department shall determine the validity of such report and shall initiate an investigation within 24 hours of the time the report is received in the local department. Local departments shall consider valid any report meeting all of the following criteria: (i) the subject of the report is an adult as defined in this article, (ii) the report concerns a specific adult and there is enough information to locate the adult, and (iii) the report describes the circumstances of the alleged abuse, neglect, or exploitation.

C. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory, or legal authority for administrative action or criminal investigation.

D. If a local department is denied access to an adult for whom there is reason to suspect the need for adult protective services, then the local department may petition the circuit court for an order allowing access or entry or both. Upon a showing of good cause supported by an affidavit or testimony in person, the court may enter an order permitting such access or entry.

E. In any case of suspected adult abuse, neglect, or exploitation, local departments, with the informed consent of the adult or his legal representative, shall take or cause to be taken photographs, video recordings, or appropriate medical imaging of the adult and his environment as long as such measures are relevant to the investigation and do not conflict with § 18.2-386.1. However, if the adult is determined to be incapable of making an informed decision and of giving informed consent and either has no legal representative or the legal representative is the suspected perpetrator of the adult abuse, neglect, or exploitation, consent may be given by an agent appointed under an advance medical directive or medical power of attorney, or by a person authorized, pursuant to § 54.1-2986. In the event no agent or authorized representative is immediately available then consent shall be deemed to be given.

F. Local departments shall foster the development, implementation, and coordination of adult protective services to prevent adult abuse, neglect, and exploitation.

G. Local departments shall not investigate allegations of abuse, neglect, or exploitation of adults incarcerated in state correctional facilities.

H. Local departments or the adult protective services hotline, upon receiving the initial report pursuant to § 63.2-1606, shall immediately notify the local law-enforcement agency where the adult resides, or where the alleged abuse, neglect, or exploitation took place, or if these places are unknown, then where the alleged abuse, neglect, or exploitation was discovered, when in receipt of a report describing any of the following:

1. Sexual abuse as defined in § 18.2-67.10;

2. Death, serious bodily injury or disease as defined in § 18.2-369 that is believed to be the result of abuse or neglect; or

3. Any other criminal activity involving abuse or neglect that places the adult in imminent danger of death or serious bodily harm.

I. The report and evidence received by the local department and any written findings, evaluations, records, and recommended actions shall be confidential and shall be exempt from disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having

a legitimate interest in the matter in accordance with §§ 63.2-102 and 63.2-104 and pursuant to official interagency agreements or memoranda of understanding between state agencies.

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the suspected abuse, neglect or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including, but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; such reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and, if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

D. Any person other than those specified in subsection A who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline.

E. Any person who makes a report or provides records or information pursuant to subsection A, C or D, or who testifies in any judicial proceeding arising from such report, records or information, or who takes or causes to be taken with the adult's or the adult's legal representative's informed consent photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report shall be immune from any civil or criminal

liability on account of such report, records, information, photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in bad faith or with a malicious purpose.

F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly to the local department or to the adult protective services hotline. Employers whose employees are mandated reporters shall notify employees upon hiring of the requirement to report.

G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse, neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any subsequent conviction of this provision shall be a Class 2 misdemeanor.

H. Any person who fails to make a required report or notification pursuant to subsection A shall be subject to a civil penalty of not more than $500 for the first failure and not less than $100 nor more than $1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be determined by the Commissioner *for Aging and Rehabilitative Services* or his designee. The ~~Board~~ *Commissioner for Aging and Rehabilitative Services* shall establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse or neglect shall immediately report such suspicion to the appropriate medical examiner and to the appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a licensed physician. The medical examiner and the law-enforcement agency shall receive the report and determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the local department or to the adult protective services hotline.

J. No person or entity shall be obligated to report any matter if the person or entity has actual knowledge that the same matter has already been reported to the local department or to the adult protective services hotline.

K. All law-enforcement departments and other state and local departments, agencies, authorities and institutions shall cooperate with each adult protective services worker of a local department in the detection, investigation and prevention of adult abuse, neglect and exploitation.

60. That Chapter 7 (§§ 2.2-700 through 2.2-720) and Article 9 (§§ 2.2-2626 and 2.2-2627) of Chapter 26 of Title 2.2, § 51.5-2, and Chapters 2 (§§ 51.5-3 through 51.5-5.01), 3 (§§ 51.5-8 through 51.5-10.1), 3.1 (§§ 51.5-12.1 through 51.5-12.4), 4 (§§ 51.5-13 through 51.5-14.1), 5 (§§ 51.5-15 through 51.5-22), and 6 (§§ 51.5-23 through 51.5-30) of Title 51.5 of the Code of Virginia are repealed.

61. That §§ 63.2-800, 63.2-1602.1, and 63.2-1604 of the Code of Virginia are repealed effective July 1, 2013.

62. That the provisions of this act amending §§ 63.2-100, 63.2-313, 63.2-315, 63.2-405, 63.2-1600, 63.2-1601, 63.2-1602, 63.2-1605, and 63.2-1606 of the Code of Virginia shall become effective on July 1, 2013.

63. That the provisions of this act creating in Title 51.5 of the Code of Virginia an article numbered 4, consisting of sections numbered 51.5-144 through 51.5-147, an article numbered 5, consisting of a section numbered 51.5-148, and an article numbered 9, consisting of sections numbered 51.5-159 and 51.5-160, shall become effective on July 1, 2013.

64. That the regulations of the Department for the Aging and the Commissioner of Rehabilitative Services shall be administered by the Department for Aging and Rehabilitative Services and shall remain in full force and effect until the Commissioner for Aging and Rehabilitative Services promulgates regulations pursuant to this act.

65. That effective July 1, 2013, the regulations of the Board of Social Services promulgated pursuant to § 63.2-217, related to administration of auxiliary grants pursuant to § 63.2-800, and adult services provided pursuant to Article 1 (§ 63.2-1600 et seq.) and adult protective services provided pursuant to Article 2 (§ 63.2-1603) of Chapter 16 of Title 63.2 shall be administered by the Commissioner for Aging and Rehabilitative Services and shall remain in full force and effect until the Commissioner for Aging and Rehabilitative Services promulgates regulations pursuant to this act.

66. That on or after July 1, 2012, the Department for Aging and Rehabilitative Services shall be the successor in interest to all rights, duties, or obligations created by a contract, memorandum of understanding, or other agreement of the Department for the Aging or the Department of Rehabilitative Services abolished pursuant to this act.

67. That as of the effective date of this act, the Department for Aging and Rehabilitative Services shall be deemed successor in interest to the Department for the Aging and the Department of Rehabilitative

Services to the extent that this act transfers powers and duties. All right, title, and interest in and to any tangible personal property vested in the Department for the Aging and the Department of Rehabilitative Services to the extent that this act transfers powers and duties as of the effective date of this act shall be transferred to and taken as standing in the name of the Department for Aging and Rehabilitative Services.

68. That the Governor shall appoint a Commissioner for Aging and Rehabilitative Services in accordance with the provisions of this act effective July 1, 2012.

69. That the Commissioner for Aging and Rehabilitative Services may enter into any contract, memorandum of understanding, or other agreement as may be necessary to effectuate the provisions of this act.

70. That the Governor may transfer any employee within a state agency established, abolished, or otherwise affected by the provisions of this act, or from one such agency to another, to support the changes in organization or responsibility resulting from or required by the provisions of this act.

71. That, notwithstanding the provisions of Chapter 122 and Item 75 B 1 of Chapter 890 of the Acts of Assembly of 2011, the Department for Aging and Rehabilitative Services shall be exempt from the Payroll Services Bureau operated by the Department of Accounts and the Human Service Center operated by the Department of Human Resource Management.*

72. That §§ 63.2-2100 and 63.2-2102 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-2100. Creation of fund.

There is hereby created a Family and Children's Trust Fund. The purpose of the fund shall be to provide for the support and development of services for the prevention and treatment of *child abuse and neglect and* violence within families. This goal shall be achieved through public and private collaboration.

§ 63.2-2102. Powers and duties of the Board of Trustees.

The Board of Trustees shall have the authority to:

1. Encourage, approve and accept gifts, contributions, bequests, or grants in cash or otherwise from any source, public or private, to carry out the purposes of the Family and Children's Trust Fund;

2. Administer and disburse any funds available to the Family and Children's Trust Fund;

3. Engage in fund-raising activities to expand and perpetuate the Family and Children's Trust Fund;

4. Monitor the use of funds to ensure the accountability of the recipients of funds;

5. ~~Coordinate~~ *Advise the Department, the Board of Social Services, and the Governor on matters concerning programs for the prevention of child abuse and neglect and family violence, the treatment of abused and neglected children and their families, and such other issues related to child abuse and neglect and family violence as identified by the Commissioner;*

6. Communicate to the Departments of Behavioral Health and Developmental Services, Corrections, Criminal Justice Services, Education, Health, and Juvenile Justice, other state agencies as appropriate, and the Attorney General activities ~~with other state~~ *of the Board of Trustees related to* efforts to prevent and treat *child abuse and neglect and* violence within families;

~~6.~~ *7.* Encourage public awareness activities concerning *child abuse and neglect and* violence within families;

~~7.~~ *8.* Adopt bylaws and other internal rules for the efficient management of the Family and Children's Trust Fund; and

~~8.~~ *9.* Administer all matters necessary and convenient to carry out the powers and duties expressly given ~~herein~~ *in this chapter*.

73. That § 63.2-1528 of the Code of Virginia is repealed.*

74. That § 32.1-89 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-89. Health services for persons suffering from hemophilia and related diseases.

A. The State Board of Health shall establish a program for the care and treatment of persons suffering from hemophilia and other related bleeding diseases who are unable to pay for the entire cost of such services on a continuing basis despite the existence of various types of hospital and medical insurance. The program may include (i) payments on behalf of such persons for obtaining blood, blood derivatives and concentrates, for necessary medical, surgical, dental, hospital and outpatient clinic services and for rehabilitation; (ii) the establishment of, or contracts for, hospital and clinic facilities for the diagnosis and treatment of such persons; (iii) participation in the cost of blood processing to the extent that such participation will facilitate the supplying of blood, blood derivatives and concentrates and other efficacious agents to such persons; and (iv) development of, or participation in the cost of developing, programs for the care and treatment of such persons, including self-

administration, prevention and home care and medical and dental procedures and techniques designed to provide maximum control over bleeding episodes typical in such persons.

B. The State Board of Health may provide home and clinic health services for persons suffering from hemophilia or other related bleeding diseases who are not eligible under subsection A ~~of this section~~. The State Board of Health may provide such services through cooperative agreements with medical facilities or other appropriate means. Charges for persons receiving care or treatment under this subsection shall be determined by the State Board of Health. Funds received in payment for such services are hereby appropriated to the State Board of Health for the purpose of carrying out the provisions of this section.

C. ~~The Hemophilia Advisory Committee appointed by the Governor is continued and shall hereafter be known as the Hemophilia Advisory Board. The Hemophilia Advisory Board shall consult with the State Board of Health in the administration of this section. The Hemophilia Advisory Board shall be composed of seven persons, one representative each from hospitals, medical schools, blood banks or licensed pharmacists, voluntary agencies interested in hemophilia, local public health agencies, medical specialists in hemophilia, and the general public. Each member shall hold office for a term of four years and until his successor is appointed and qualified. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Hemophilia Advisory Board shall meet as frequently as the Commissioner deems necessary but not less than once each year.~~ *The State Board of Health shall provide for the development, implementation, and sustainability of a process for the receipt and consideration of advice and policy recommendations at least annually from, and on behalf of, persons suffering from hemophilia and other related bleeding diseases, for the purpose of informing programs and services established under this section.*

~~**75. That §§ 32.1-163, 32.1-163.3, 32.1-164.1, 32.1-164.1:01, 32.1-164.1:2, and 32.1-165 of the Code of Virginia are amended and reenacted as follows:**~~

~~§ 32.1-163. Definitions.~~

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

~~"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.~~

~~"Alternative onsite sewage system" or "alternative onsite system" means a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge.~~

~~"Betterment loan" means a loan to be provided by private lenders either directly or through a state agency, authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair, replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of reducing threats to public health and ground and surface waters, which loan is secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements under § 15.2-2411.~~

~~"Conduit lender" means a state agency, authority or instrumentality or a locality, local or regional authority or an instrumentality thereof serving as a conduit lender of betterment loans.~~

~~"Conventional onsite sewage system" means a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield.~~

~~"Licensed onsite soil evaluator" means a person who is licensed under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as an onsite soil evaluator. A licensed onsite soil evaluator is authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for onsite sewage systems.~~

~~"Maintenance" means performing adjustments to equipment and controls and in-kind replacement of normal wear and tear parts such as light bulbs, fuses, filters, pumps, motors, or other like components. Maintenance includes pumping the tanks or cleaning the building sewer on a periodic basis. Maintenance shall not include replacement of tanks, drainfield piping, distribution boxes, or work requiring a construction permit and installer.~~

~~"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process at a treatment works.~~

~~"Operation" means the biological, chemical, and mechanical processes of transforming sewage or wastewater to compounds or elements and water that no longer possess an adverse environmental or health impact.~~

~~"Operator" means any individual employed or contracted by any owner, who is licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, monitor, and maintain an alternative onsite sewage system.~~

~~"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.~~

~~"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.~~

~~"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.~~

~~"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.~~

~~"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.~~

~~"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.~~

~~"Transportation" means the vehicular conveyance of sewage.~~

~~"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.~~

~~§ 32.1-163.3. Identities of persons making certain reports to remain confidential.~~

~~The identity of any person making a report of an alleged violation of any provision of this article or any regulation of the Board of Health relating to sewage disposal shall be confidential. However, the identity of such person may be disclosed (i) to the Commissioner, the members of the Board and personnel of the Department in the performance of their duties; (ii) when the identity is included in materials which are the subject of a request for information pursuant to the Virginia Freedom of Information Act, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2; (iii) when the matter reported is the subject of a hearing conducted by the State Health Department Sewage Handling and Disposal Appeal Review Board *Commissioner or a district health director*; or (iv) when the matter reported is the subject of litigation.~~

~~§ 32.1-164.1. Appeals from denials of septic tank permits.~~

~~A. Whenever administrative action is taken to deny a septic tank permit or to grant a septic tank permit with conditions or to refuse to issue, or grant with conditions, a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing an onsite sewage system permit, the applicant shall be advised in writing of the administrative remedies that are available to obtain a reversal of the denial or refusal or a modification or elimination of the conditions, or, if no further administrative remedies are available, of the right of appeal provided for hereinafter. After exhausting his administrative remedies, as set forth in § 32.1-164.1:1 et seq., any person aggrieved by a case decision of the Review Board *Commissioner* shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).~~

~~The decision may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic system is located so as to be binding notice to the public, including subsequent purchases of the land in question.~~

~~B. The holder of any permit for a septic tank issued with conditions shall have the permit recorded in the land records of the clerk of the circuit court having jurisdiction over the site of the septic system. The holder of the permit and any subsequent holders of the permit through land purchase or transfer shall be bound by the conditions stated in the permit unless the holder or subsequent holder obtains an additional permit for modification or alteration of the septic system to meet any new use conditions.~~

~~C. In adopting regulations prescribing criteria for the granting or denial of permits for septic tanks, the Board shall consider varying circumstances such as population density, extent of use of the septic tank and such other circumstances as may affect the stringency of the criteria necessary to protect the public health and promote the general welfare and may provide for the issuance of permits for septic tanks subject to such conditions as may be necessary to protect the public health.~~

~~D. Upon receipt of an application for a septic tank permit or a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits, the local health department shall notify the governing body of the county or city where the septic tank will be located or the official designated by the governing body for the purpose and shall provide such information concerning the application and the actions taken on the application as the governing body or officer may request.~~

~~§ 32.1-164.1:01. Onsite Sewage Indemnification fund.~~

~~A. There is hereby created the Onsite Sewage Indemnification fund whose purpose is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant to subsections C and E of § 32.1-164 and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of authorized onsite soil evaluators.~~

~~B. Ten dollars of each fee collected by the Department of Health pursuant to subsections C and E of § 32.1-164 shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department of Health by the General Assembly as it deems necessary.~~

~~C. The owner of an onsite sewage system that has been permitted by the Department of Health may cause, by filing a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner to review the circumstances of the onsite sewage system failure, if the onsite sewage system has failed within three years of construction. Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof failed within three years of construction; (ii) that specific actions of the Department were negligent and that those actions caused the failure; and (iii) that the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof.~~

~~D. Prior to receiving payment from the fund, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof.~~

~~E. The total amount an owner may receive in payment from the fund shall not exceed $30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund.~~

~~F. If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction or other private party error, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party.~~

~~G. Every request for payment from the fund shall be forever barred unless the owner has filed a complete application as required by the Department. The request shall be filed with the Commissioner within one year from the date that the onsite sewage system or components thereof first failed. However, if the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply. The owner shall mail the request for payment from the fund via the United States Postal Service by certified mail, return receipt requested, addressed to the Commissioner.~~

~~In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the fund under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.~~

~~Notwithstanding any provision of this article, the liability for any payment from the fund shall be conditioned upon the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.~~

~~H. The Commissioner and the Attorney General shall cooperatively develop an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the fund.~~

~~I. If the *The* Commissioner*'s* refuses *decision regarding* the request for payment from the fund *shall be the final administrative decision*, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board. *Any person aggrieved by a final decision of the Commissioner shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*~~

~~The Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter.~~

~~In the event the fund is insufficient to meet requests for payment from the fund, this section and the creation of the fund shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.~~

~~§ 32.1-164.1:2. Eligibility for betterment loans to repair or replace failing onsite sewage systems.~~

~~A. The Board shall establish a betterment loan eligibility program to assist owners with the repair, replacement, or upgrade of failing or noncompliant onsite sewage systems, and the Board may identify sources for betterment loans to be provided by private lenders, directly or through conduit lenders. In addition, owners may also apply to the Department for betterment loan eligibility to upgrade an onsite or alternative discharging sewage system that is not failing, provided such upgrade is for the purposes of reducing threats to public health, and ground and surface waters, including the reduction of nitrogen discharges.~~

~~B. Upon determination by the Department that the owner has one or more onsite sewage systems that are out of compliance with those regulations promulgated pursuant to this chapter, or in need of repair or replacement, the owner shall follow the requirements in the Board's regulations to initiate the repair or replacement of such systems. If the owner desires to be qualified by the Department to receive a betterment loan, at any time before the repair or replacement is completed, he shall provide the Department with an estimate of the approximate cost of such remedial work, which the Department shall accept. The issuance of a permit by the Department to repair or replace an onsite sewage system, combined with an estimate provided by the owner to the Department, shall demonstrate eligibility for a betterment loan. Upon a determination of eligibility, the Department shall notify the owner in writing. If the Department refuses the request for an eligibility letter, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board *Commissioner*. It shall be the sole responsibility of the owner to secure the betterment loan from or through a private lender. Local health departments may provide a list of lenders available for this purpose. Nothing in this section shall be construed as allowing construction or modification of an onsite or alternative discharging sewage system without a permit issued by the Department.~~

~~C. Betterment loans made pursuant to this section shall be recorded in the deed book of the circuit court clerk's office for the locality in which the land is located and an abstract of the loan and betterment loan eligibility letter issued by the Department shall be indexed in the name of the owner. Betterment loans made pursuant to this section may be recorded in increments by the private lender as the repair or replacement of the onsite sewage system is completed, provided that in no event shall the total amount recorded exceed the estimate provided to the Department, without the Department approving an amendment to the repair permit, and issuing a revised betterment loan eligibility letter. The Department may, subject to appropriate waivers for economic hardship, charge the owner a fee not to exceed $50 for each betterment loan eligibility letter request made by an owner. The Department may require that the owner or private lender provide the Department with proof that any betterment loan has been recorded in the deed book of the circuit court clerk's office for the locality in which the land is located.~~

~~The incurrence of a betterment loan pursuant to this section shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in the owner's property.~~

~~D. Where agreeable to the private lender and the conduit lender, if any, a locality may act as the collection agent for the payments made by the owner on a betterment loan. Any such payments collected by the locality shall be deemed to be held in trust by the locality for benefit of the private lender and conduit issuer, if any. The locality may receive a fee payable by the private lender or conduit loan provider, if any, for such service not to exceed one-eighth of one percent of the payments collected.~~

~~§ 32.1-165. Prior approval required before issuance of building permit.~~

~~No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Review Board *Commissioner*.~~

~~**76. That Article 1.1 (§§ 32.1-166.1 through 32.1-166.10) of Chapter 6 of Title 32.1 of the Code of Virginia is repealed.***~~

77. That §§ 2.2-212, 22.1-19, 54.1-3005, 54.1-3408, 63.2-215, 63.2-1700, 63.2-1706, 63.2-1734, and 63.2-1810 of the Code of Virginia are amended and reenacted as follows:

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

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

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

§ 22.1-19. Accreditation of elementary, middle, and high schools; nursery schools; recognition of certain organizations; child day center regulation.

The Board shall provide for the accreditation of public elementary, middle, and high schools in accordance with standards prescribed by it. The Board may provide for the accreditation of private elementary, middle, and high schools in accordance with standards prescribed by it, taking reasonably into account the special circumstances and factors affecting such private schools. The Board in its discretion may recommend provisions for standards for private nursery schools. Any such accreditation shall be at the request of the private school only.

For the purposes of facilitating the transfer of academic credits for students who have attended private schools and are enrolling in public schools, and to meet the requirements of § 63.2-1717, the Board of Education shall authorize, in a manner it deems appropriate, the Virginia Council for Private Education to accredit private nursery, preschool, elementary, and secondary schools.

The Board shall promulgate accreditation regulations that incorporate, but may exceed, the regulations for child day centers promulgated by the ~~Child Day Care Council~~ *State Board of Social Services*, for those child day centers described in subdivision A 7 of § 63.2-1715.

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;

2. To approve programs that meet the requirements of this chapter and of the Board;

3. To provide consultation service for educational programs as requested;

4. To provide for periodic surveys of educational programs;

5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;

6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;

7. To keep a record of all its proceedings;

8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;

9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;

10. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;

11. To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;

12. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;

13. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;

14. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation;

15. To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;

16. To expedite application processing, to the extent possible, for an applicant for licensure or certification by the Board upon submission of evidence that the applicant, who is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official military orders;

17. To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides;

18. To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation;

19. To set guidelines for the collection of data by all approved nursing education programs and to compile this data in an annual report. The data shall include but not be limited to enrollment, graduation rate, attrition rate, and number of qualified applicants who are denied admission;

20. To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees of child day programs as defined in § 63.2-100 and regulated by the State Board of Social Services ~~or the Child Day Care Council~~ in the administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400 et seq.). Such training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist;

21. In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies; and

22. To revise, as may be necessary, guidelines for seizure management, in coordination with the Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure disorders in the public schools. The revised guidelines shall be finalized and made available to the Board of Education by August 1, 2010. The guidelines shall then be posted on the Department of Education's website.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 ~~of this title~~ shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the Department of Behavioral

Health and Developmental Services by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a licensed respiratory care practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs, or to possess and administer epinephrine for use in emergency cases of anaphylactic shock.

G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist, nurse, certified emergency medical technician-intermediate, or emergency medical technician-paramedic under the

direction of an operational medical director when the prescriber is not physically present. Emergency medical services personnel shall provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

L. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) an individual receiving services in a program licensed by the Department of Behavioral Health and Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services; (vi) a resident of a private children's residential facility, as defined in § 63.2-100 and licensed by the Department of Social Services, Department of Education, or Department of Behavioral Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education.

M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

N. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

O. In addition, this section shall not prevent the administration of drugs by a person to a child in a child day program as defined in § 63.2-100 and regulated by the State Board of Social Services~~, the Child Day Care Council,~~ or a local government pursuant to § 15.2-914, provided such person (i) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; (ii) has obtained written authorization from a parent or guardian; (iii) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (iv) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be administered by a parent or guardian to the child.

P. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the State Health Commissioner.

Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence.

R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) ~~of this title~~, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) ~~of this title~~.

T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

V. A nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry that conforms to standards adopted by the Virginia Department of Health.

W. A prescriber, acting in accordance with guidelines developed pursuant to § 32.1-46.02, may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, licensed practical nurse under the direction and immediate supervision of a registered nurse, certified emergency medical technician-intermediate, or emergency medical technician-paramedic when the prescriber is not physically present.

§ 63.2-215. State Board of Social Services.

There shall be a State Board of Social Services consisting of ~~nine~~ *11* members appointed by the Governor. In making appointments, the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various problems that the Board may be required to consider and act upon. The Board shall include a member from each of the social services regions of the state established by the Commissioner ~~and~~. *At least* one member *of the Board* shall be a licensed health care professional*, one member shall be a representative of stand-alone licensed child care centers that meet the accountability standards of state recognized accreditation pursuant to § 22.1-19, and one member shall be a representative of religiously exempt child care centers*. The appointments shall be subject to confirmation by the General Assembly if in session and, if not, then at its next succeeding session.

The members of the Board shall be appointed for four-year terms, except that appointments to fill vacancies shall be for the unexpired term.

No person shall be eligible to serve for or during more than two successive terms; however, any person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.

The Board shall select a chairman from its membership, and under rules adopted by itself 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~~;~~, provided~~, however,~~ that the Board ~~shall~~ meet at least six times each calendar year.

A majority of the current membership of the Board shall constitute a quorum for all purposes.

The main office of the Board shall be in the City of Richmond.

~~No director, officer or employee of an institution subject to the provisions of this title shall be a member of the Board.~~

§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt.

The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers and child welfare agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers and agencies. Fees shall be used for the development and delivery of training for operators and staff of facilities, centers and agencies. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers or agencies operated by federal entities.

The Board~~, in consultation with the Child Day Care Council,~~ shall develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations and licensed child care providers. Training provided to operators and staffs of licensed child day programs shall include training and information regarding shaken baby syndrome, its effects, and resources for help and support for caretakers. To the maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference.

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.

B. For any adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two, or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board ~~or Child Day-Care Council, whichever is applicable~~.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1734. Regulations for child welfare agencies.

A. The Board~~, or in the case of child day centers, the Child Day-Care Council,~~ shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.

Such regulations shall not prohibit child day programs providing care for school-age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school year from permitting school-age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

B. The Board shall adopt or amend regulations, policies and procedures related to child day care in collaboration with the Virginia Recreation and Park Society. The Board shall adopt or amend regulations related to therapeutic recreation programs in collaboration with the Virginia Park and Recreation Society and the Department of Behavioral Health and Developmental Services.

§ 63.2-1810. Dual licenses for certain child day centers.

Any facility licensed as a child day center which also meets the requirements for a license as a summer camp by the Department of Health under the provisions of § 35.1-18 shall be entitled to a summer camp license. Such a facility shall comply with all of the regulations adopted by the Board ~~or Child Day-Care Council, whichever is applicable,~~ and the State Board of Health for each such license.

78. That § 63.2-1735 of the Code of Virginia is repealed.

79. That the regulations of the Child Day-Care Council promulgated pursuant to §§ 63.2-1734 and 63.2-1735 of the Code of Virginia shall be administered by the State Board of Social Services and shall remain in full force and effect until the State Board of Social Services promulgates regulations pursuant to this act.

80. That at least two individuals appointed to the State Board of Social Services pursuant to § 63.2-215 for terms beginning July 1, 2012 shall be representatives of child care centers.*

81. That §§ 10.1-104, 10.1-1183, and 10.1-1186 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-104. Powers of the Department.

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

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

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

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

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

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

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

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

~~7~~ *8*. To assess civil penalties for violations of § 10.1-200.3.

B. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), the Department may promulgate regulations necessary to carry out the purposes and provisions of this subtitle. A violation of any regulation shall constitute a Class 1 misdemeanor, unless a different penalty is prescribed by the Code of Virginia. However, a violation of the Virginia State Park Regulations (4 VAC 5-30~~-10 et seq.~~) shall constitute a Class 3 misdemeanor.

§ 10.1-1183. Creation of Department of Environmental Quality; statement of policy.

There is hereby created a Department of Environmental Quality by the consolidation of the programs, functions, staff, facilities, assets and obligations of the following agencies: the State Water Control Board, the Department of Air Pollution Control, the Department of Waste Management, and the Council on the Environment. Wherever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality.

It shall be the policy of the Department of Environmental Quality to protect the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens. The purposes of the Department are:

1. To assist in the effective implementation of the Constitution of Virginia by carrying out state policies aimed at conserving the Commonwealth's natural resources and protecting its atmosphere, land and waters from pollution.

2. To coordinate permit review and issuance procedures to protect all aspects of Virginia's environment.

3. To enhance public participation in the regulatory and permitting processes.

4. To establish and effectively implement a pollution prevention program to reduce the impact of pollutants on Virginia's natural resources.

5. To establish procedures for, and undertake, long-range environmental program planning and policy analysis.

6. To conduct comprehensive evaluations of the Commonwealth's environmental protection programs.

7. ~~To provide increased opportunities for public education programs on environmental issues.~~

~~8.~~ To develop uniform administrative systems to ensure coherent environmental policies.

~~9~~ *8*. To coordinate state reviews with federal agencies on environmental issues, such as environmental impact statements.

~~10~~ *9*. To promote environmental quality through public hearings and expeditious and comprehensive permitting, inspection, monitoring and enforcement programs, and provide effective service delivery to the regulated community.

~~11~~ *10*. To advise the Governor and General Assembly, and, on request, assist other officers, employees, and public bodies of the Commonwealth, on matters relating to environmental quality and the effectiveness of actions and programs designed to enhance that quality.

~~12~~ *11*. To ensure that there is consistency in the enforcement of the laws, regulations and policies as they apply to holders of permits or certificates issued by the Department, whether the owners or operators of such regulated facilities are public sector or private sector entities.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

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

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;

7. ~~Initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions, population and its relation to environmental problems, and other matters concerning environmental quality;~~

~~8.~~ Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;

~~9~~ *8*. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Game and Inland Fisheries intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

~~10~~ *9*. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board; and

~~11~~ *10*. Perform all acts necessary or convenient to carry out the purposes of this chapter.*

82. That §§ 10.1-603.2, 10.1-603.2:1, 10.1-603.2:2, 10.1-603.4, 10.1-603.8:1, 10.1-603.12, 10.1-603.12:1, 10.1-603.14, 62.1-44.5, and 62.1-229.4 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-603.2. Definitions.

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

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

"CWA" means the federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Department" means the Department of Conservation and Recreation.

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

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

"Land disturbance" or ~~"land-disturbing~~ *"land-disturbing* activity" means a man-made change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act.

"Linear development project" means a land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from ~~land-disturbing~~ *land-disturbing* activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with this article.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

~~"Municipal Separate Storm Sewer System Management Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.~~

"Nonpoint source pollution" means pollution whose sources cannot be pinpointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permit" means an approval issued by the permit issuing authority for the initiation of a land-disturbing activity~~, or for stormwater discharges from an MS4~~.

"Permit issuing authority" means the Board, the Department, or a locality that is delegated authority by the Board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of this article.

"Permittee" means the person or locality to which the permit is issued.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

"Runoff volume" means the volume of water that runs off the land development project from a prescribed storm event.

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include storm water runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater management program" means a program established by a locality that is consistent with the requirements of this article and associated regulations and guidance documents.

"Subdivision" means the same as defined in § 15.2-2201.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act and this article.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

§ 10.1-603.2:1. Powers and duties of the Virginia Soil and Water Conservation Board.

In addition to other powers and duties conferred upon the Board, it shall permit, regulate, and control stormwater runoff in the Commonwealth. In accordance with the VSMP, the Board may issue, deny, revoke, terminate, or amend stormwater permits; adopt regulations; approve and periodically review local stormwater management programs ~~and management programs developed in conjunction with a municipal separate storm sewer permit~~; enforce the provisions of this article; and otherwise act to ensure the general health, safety and welfare of the citizens of the Commonwealth as well as protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. The Board may:

1. Issue, deny, amend, revoke, terminate, and enforce permits for the control of stormwater discharges from ~~Municipal Separate Storm Sewer Systems and~~ ~~land disturbing~~ *land-disturbing* activities.

2. Delegate to the Department or to an approved locality any of the powers and duties vested in it by this article except the adoption and promulgation of regulations. Delegation shall not remove from the Board authority to enforce the provisions of this article.

3. Take administrative and legal actions to ensure compliance by permittees, any person subject to permit requirements under this article, and those localities with an approved local stormwater management program ~~and management programs developed in conjunction with a municipal separate storm sewer system permit~~ with the provisions of this article including the proper enforcement and implementation of, and continual compliance with, this article.

4. After notice and opportunity for a hearing by the Board, amend or revoke any permit issued by the permit issuing authority under this article on the following grounds or for good cause as may be provided by the regulations of the Board:

a. The permittee or any person subject to permit requirements under this article has violated any order or regulation of the Board, any condition of a permit, any provision of this article, any order of a court, or any order of the permit issuing authority, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations including the disregard for or inability to comply with applicable laws, regulations, permit conditions, orders, rules, or requirements;

b. The permittee or any person subject to permit requirements under this article has failed to disclose fully all relevant material facts or has misrepresented a material fact in applying for a permit, or in any other report or document required under this law or under the regulations of the Board;

c. The activity for which the permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources; or

d. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or ~~land disturbing~~ *land-disturbing* activity controlled by the permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

5. Cause investigations and inspections, or delegate authority to do so, to ensure compliance with any permits, conditions, policies, rules, regulations, rulings and orders which it may adopt, issue or establish and to furnish advice, recommendations, or instructions for the purpose of obtaining such compliance.

6. Adopt rules governing the procedure of the permit issuing authority with respect to: (i) hearings; (ii) the filing of reports; (iii) the issuance of permits and special orders; and (iv) all other matters relating to procedure; and to amend or cancel any rule adopted. Public notice of every rule adopted under this section shall be by such means as the permit issuing authority may prescribe but must be consistent with the Administrative Process Act (§ 2.2-4000 et seq.).

7. Issue special orders to a permittee or any person subject to permit requirements under this article (i) who is permitting or causing the unreasonable degradation of properties, water quality, stream channels, and other natural resources to cease and desist from such activities, (ii) who has failed to construct facilities in accordance with final approved plans and specifications to construct such facilities, (iii) who has violated the terms and provisions of a permit issued by the permit issuing authority; to comply with the provisions of the permit, this article and any decision of the permit issuing authority, the Department, or the Board, or (iv) who has violated the terms of an order issued by the court, the permit issuing authority, the Department, or the Board: to comply with the terms of such order, and also to issue orders to require any permittee or any person subject to permit requirements under this article to comply with the provisions of this article and any decision of the Board.

Such special orders are to be issued only after a hearing with at least 30 days' notice to the affected permittee or any person subject to permit requirements under this article, of the time, place, and purpose thereof, and they shall become effective not less than 15 days after the date of mailing by certified mail of the notice to the last known address of the permittee or any person subject to permit requirements under this article; provided that if the Board finds that any such permittee or any person subject to permit requirements under this article is grossly affecting or presents an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, it may issue, without advance notice or hearing, an emergency special order directing the permittee or any person subject to permit requirements under this article to cease such pollution or discharge immediately, and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the permittee or any person subject to permit requirements under this article, to affirm, modify, amend, or cancel such emergency special order. If the permittee or any person subject to permit requirements under this article who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with § 10.1-603.14, and where the order is based on a finding of an

imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires cessation of a discharge, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

The provisions of this section notwithstanding, the Board may proceed directly under § 10.1-603.14 for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

With the consent of any permittee or any person subject to permit requirements under this article who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any condition of a permit or any provision of this article, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for violations in specific sums not to exceed the limit specified in subsection A of § 10.1-603.14. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to subsection A of § 10.1-603.14 and shall not be subject to the provisions of § 2.2-514. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1.

§ 10.1-603.2:2. Permits.

A. It ~~shall be~~ *is* unlawful to cause a stormwater discharge from ~~an MS4 or~~ a ~~land disturbing~~ *land-disturbing* activity except in compliance with a permit issued by a permit issuing authority.

B. All permits issued by the permit issuing authority under this article shall have fixed terms. The term of a permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years. The term of a permit issued by the permit issuing authority shall not be extended by modification beyond the maximum duration and the permit shall expire at the end of the term unless an application for a new permit has been filed in a timely manner as required by the regulations of the Board, and the permit issuing authority is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.

§ 10.1-603.4. Development of regulations.

The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for stormwater management programs in Virginia. The regulations shall:

1. Establish standards and procedures for delegating the authority for administering a stormwater management program to localities;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in local programs of certain administrative procedures which include, but are not limited to, specifying the time period within which a local government that has adopted a stormwater management program must grant permit approval, the conditions under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approved permit may be changed and requirements for inspection of approved projects;

5. Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to ~~land disturbing~~ *land-disturbing* activities of one acre or greater. The fee schedule shall also include a provision for a reduced fee for ~~land disturbing~~ *land-disturbing* activities between 2,500 square feet and up to ~~1~~ *one* acre in Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) localities. The regulations shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected and remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1. However, whenever the Board has delegated a stormwater management program to a locality or is required to do so under this article, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected within the locality shall be remitted to the State Treasurer, for deposit in the Virginia Stormwater Management Fund.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department; however, the fees shall be set at a level sufficient for the Department to carry out its responsibilities under this article;

6. Establish statewide standards for stormwater management from ~~land disturbing~~ *land-disturbing* activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 10.1-560 et seq.) and this article. However, such standards shall also apply to ~~land disturbing~~ *land-disturbing* activity exceeding an area of 2500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 ~~et seq.~~) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.);

7. Require that stormwater management programs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section, or any ordinances adopted pursuant to § 10.1-603.3 or 10.1-603.7;

8. Encourage low impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

9. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

10. ~~Establish, with the concurrence of the Director, a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits; and~~

~~11.~~ Provide for the evaluation and potential inclusion of emerging or innovative stormwater control technologies that may prove effective in reducing nonpoint source pollution.

§ 10.1-603.8:1. Stormwater nonpoint nutrient offsets.

A. As used in this section:

"Nonpoint nutrient offset" means nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program (§ 62.1-44.19:12 et seq.).

"Permit issuing authority" has the same meaning as in § 10.1-603.2 and includes any locality that has adopted a local stormwater management program.

"Tributary" has the same meaning as in § 62.1-44.19:13.

B. Permit issuing authorities are authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 10.1-603.4, in whole or in part, through the use of the permittee's acquisition of nonpoint nutrient offsets in the same tributary.

C. No permit issuing authority shall allow the use of nonpoint nutrient offsets to address water quantity control requirements. No permit issuing authority shall allow the use of nonpoint nutrient offsets or other off-site options in contravention of local water quality-based limitations: (i) consistent with determinations made pursuant to subsection B of § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the Department *of Environmental Quality*, or (iii) as otherwise may be established or approved by the Board.

D. A permit issuing authority shall allow off-site options in accordance with subsection I when:

1. The permit applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs have been considered that may accommodate ~~on-site~~ *onsite* best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site. For purposes of this subdivision, if an applicant demonstrates ~~on-site~~ *onsite* control of at least 75 percent of the

required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv);

2. Less than five acres of land will be disturbed; or

3. The postconstruction phosphorous control requirement is less than 10 pounds per year.

E. Documentation of the permittee's acquisition of nonpoint nutrient offsets shall be provided to the permit issuing authority in a certification from an offset broker documenting the number of phosphorus nonpoint nutrient offsets acquired and the associated ratio of nitrogen nonpoint nutrient offsets at the offset generating facility. The offset broker shall pay the permit issuing authority a water quality enhancement fee equal to six percent of the amount paid by the permittee for the nonpoint nutrient offsets. If a locality is not the permit issuing authority, such fee shall be deposited into the Virginia Stormwater Management Fund established by § 10.1-603.4:1. If the permit issuing authority is a locality, such fees shall be used solely in the locality where the associated stormwater permit applies for inspection and maintenance of stormwater best management practices, stormwater educational programs, or programs designed to protect or improve local water quality.

F. Nonpoint nutrient offsets used pursuant to subsection B shall be generated in the same or adjacent eight digit hydrologic unit code as defined by the United States Geological Survey as the permitted site. Nonpoint nutrient offsets outside the same or adjacent eight digit hydrologic unit code may only be used if it is determined by the permit issuing authority that no nonpoint nutrient offsets are available within the same or adjacent eight digit hydrologic unit code when the permit issuing authority accepts the final site design. In such cases, and subject to other limitations imposed in this section, nonpoint nutrient offsets generated within the same tributary may be used. In no case shall nonpoint nutrient offsets from another tributary be used.

G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality criteria being obtained through nonpoint nutrient offsets, a permit issuing authority shall (i) use a 1:1 ratio of the nonpoint nutrient offsets to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement and (ii) assure that the nonpoint nutrient offsets are secured in perpetuity.

H. No permit issuing authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient runoff compliance requirements unless off-site options have been considered and found not available.

I. The permit issuing authority shall require that nonpoint nutrient offsets and other off-site options approved by the Department or applicable state board, including locality pollutant loading pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the permittee's land-disturbing activity. A pollutant loading pro rata share program established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending June 30, 2014. The permittee shall have the right to select between the use of nonpoint nutrient offsets or other off-site options, except during the transition period in those localities to which the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the land-disturbing activity or for the acquisition of nonpoint nutrient offsets. In the case of a phased project, the permittee may acquire or achieve the off-site nutrient reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such phase.

J. The Board may establish by regulation a stormwater nutrient program for portions of the Commonwealth that do not drain into the Chesapeake Bay.

K. Nutrient reductions obtained through nonpoint nutrient offsets shall be credited toward compliance with any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater Management Program Permit or Total Maximum Daily Load applicable to the location where the activity for which the nonpoint nutrient offsets are used takes place. If the activity for which the nonpoint nutrient offsets are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited toward compliance with the applicable nutrient allocation.

L. A permit issuing authority shall allow the full or partial substitution of nonpoint nutrient offsets for existing on-site nutrient controls when (i) the nonpoint nutrient offsets will compensate for 10 or fewer pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing on-site controls are not functioning as anticipated after reasonable attempts to comply with applicable maintenance agreements or requirements and the use of nonpoint nutrient offsets will account for the deficiency. The party responsible for maintenance shall be released from maintenance obligations related to the on-site phosphorous controls for which the nonpoint nutrient offsets are substituted.

M. To the extent available, with the consent of the permittee, the permit issuing authority may include the use of nonpoint nutrient offsets or other off-site measures in resolving enforcement actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

N. This section shall not be construed as limiting the authority established under § 15.2-2243; however, under any pollutant loading pro rata share program established thereunder, the subdivider or developer shall be given appropriate credit for nutrient reductions achieved through nonpoint nutrient offsets or other off-site options.

§ 10.1-603.12. Department to review local and state agency programs.

A. The Department shall develop and implement a review and evaluation schedule so that the effectiveness of each local government's and state agency's stormwater management program~~, Municipal Separate Storm Sewer Management Program, and other MS4 permit requirements~~ is evaluated no less *often* than every five years. The review shall include an assessment of the extent to which the program has reduced nonpoint source pollution and mitigated the detrimental effects of localized flooding.

B. If, after such a review and evaluation, a local government is found to have a program that does not comply with the provisions of this article or regulations adopted thereunder, the Board may issue an order requiring that necessary corrective action be taken within a reasonably prescribed time. If the local government has not implemented the corrective action identified by the Board within 30 days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall take administrative and legal actions to ensure compliance with the provisions of this article. If the program is delegated to the locality by the Board, the Board may revoke such delegation and have the Department administer the program.

§ 10.1-603.12:1. Right of entry.

The Department, the permit issuing authority, any duly authorized agent of the Department or permit issuing authority, or any locality that is the operator of a ~~regulated municipal separate storm sewer system~~ *stormwater management program* may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article. ~~For operators of municipal separate storm sewer systems, this authority shall apply only to those properties from which a discharge enters their municipal separate storm sewer systems.~~

§ 10.1-603.14. Penalties, injunctions, and other legal actions.

A. Any person who violates any provision of this article, or of any regulations or ordinances adopted hereunder, ~~including those adopted pursuant to the conditions of an MS4 permit~~ or who fails, neglects or refuses to comply with any order of the permit issuing authority, the Department, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the permit issuing authority in enforcing the provisions of this article. The Board, Department, or permit issuing authority for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than $2,500 nor more than $32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this

article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than $10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the permit issuing authority may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance, any condition of a permit, any regulation or order of the Board, any order of the permit issuing authority or the Department, or any provision of this article, the Board, Department, or permit issuing authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

§ 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.

A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or ~~land-disturbing~~ *land-disturbing* activities unless in compliance with a permit issued *by the Board pursuant to § 62.1-44.15 or issued by the Virginia Soil and Water Conservation Board* pursuant to Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1*, respectively*.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

§ 62.1-229.4. Loans for stormwater runoff control best management practices.

Loans may be made from the Fund, in the Board's discretion, to a local government for the purpose of constructing facilities or structures or implementing other best management practices that reduce or prevent pollution of state waters caused by stormwater runoff from impervious surfaces. The Board, in consultation with

the Department of Conservation and Recreation, shall develop guidelines for the administration of such loans and shall determine the terms and conditions of any loan from the Fund. Unless otherwise required by law, loans for such facilities, structures, and other best management practices may be made only when loan requests for eligible wastewater treatment facilities designed to meet the water quality standards established pursuant to § 62.1-44.15 have first been satisfied. The Board shall give priority (i) first to local governments that have adopted a stormwater control program in accordance with § 15.2-2114, (ii) second to projects designed to reduce or prevent a pollutant in a water body where the water body is in violation of water quality standards established pursuant to § 62.1-44.15, (iii) third to local governments subject to an MS4 discharge permit *issued by the State Water Control Board* in accordance with ~~§ 10.1-603.2:2~~ *§ 62.1-44.15*, (iv) fourth to local governments that have adopted a stormwater management program in accordance with Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1, and (v) fifth to all others.

83. That § 10.1-603.14:1 of the Code of Virginia is repealed.

84. That the provisions of the 82nd enactment of this act, including the provisions that remove the authority of the Virginia Soil and Water Conservation Board from administering the Municipal Separate Storm Sewer System Management Program (MS4) and the transfer of the responsibility for administering the issuance of national pollutant discharge elimination system permits for control of stormwater discharges from MS4 shall become effective on January 1, 2014, or upon the U.S. Environmental Protection Agency's authorization for delegation of program authority to the State Water Control Board, whichever is later.

85. That the Department of Environmental Quality shall on and after July 1, 2013, seek authorization for delegation of program authority for the State Water Control Board for the issuance of national pollutant discharge elimination system permits for the control of stormwater discharges from MS4 from the U.S. Environmental Protection Agency under the federal Clean Water Act. Such permits issued by the Virginia Soil and Water Conservation Board that have not expired or been revoked or terminated before or on the program transfer date shall continue to remain in effect until their specified expiration dates.

86. That the regulations adopted by the Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of the Code of Virginia that are specific to the Municipal Separate Storm Sewer System (MS4) program shall be transferred from the Virginia Soil and Water Conservation Board to the State Water Control Board as set forth in the 90th enactment clause, and the State Water Control Board may amend, modify, or delete provisions in these regulations in order to implement this act relating to the Municipal Separate Storm Sewer System (MS4) program. Such regulations shall remain in full force and effect until altered, amended, or rescinded by the State Water Control Board. Those amendments to the regulations necessitated by this act shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Any future amendments shall be adopted in accordance with the Administrative Process Act.

87. That on or after July 1, 2013, the Virginia Soil and Water Conservation Board may amend, modify, or delete provisions in the existing Virginia Stormwater Management Act regulations to reflect the Board's revised authorities pursuant to this act. Those amendments to the regulations necessitated by this act shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Any future amendments shall be adopted in accordance with the Administrative Process Act. Any such amendments shall be effective no earlier than the effective date as set forth in the 84th enactment of this act.

88. That up to two full-time employees (FTE) may be transferred from the Department of Conservation and Recreation to the Department of Environmental Quality for the administration of the MS4 permit program. The Department of Conservation and Recreation is directed to transfer to the Department of Environmental Quality nongeneral funds in an amount sufficient to cover the salary costs of the transferred staff for the balance of the first fiscal year after enactment of this act. The Department of Environmental Quality is authorized to hire additional staff to operate the MS4 program.

89. That any regulatory action initiated by the Virginia Soil and Water Conservation Board to amend the MS4 general permit may be continued by the State Water Control Board at the time of program transfer.

90. That the Secretary of Natural Resources, working with the Directors of the Department of Environmental Quality and the Department of Conservation and Recreation, shall assess the organization of water quality programs in the Commonwealth and report his findings to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources by no later than November 1, 2012. As part of this assessment the

Secretary of Natural Resources shall consider organizational measures that may streamline water quality permitting in the Commonwealth as well as changes that may provide for improved long-term and strategic planning for water quality improvements.

91. That the provisions of the 90th enactment of this act shall become effective on July 1, 2012; however, the provisions of the 82nd through the 89th enactments of this act shall not become effective unless reenacted by the 2013 Session of the General Assembly.*

92. That §§ 2.2-215 and 2.2-4343 of the Code of Virginia are amended and reenacted as follows:

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

The position of Secretary of Natural Resources (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, ~~Chippokes Plantation Farm Foundation,~~ Virginia Museum of Natural History, Council on Indians, 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.

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

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

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners 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, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.) as required by §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 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 $50,000 in the aggregate or for the sum of all phases of a contract or project. For procurements where the cost of the professional service is not expected to exceed $50,000 in the aggregate or for the sum of all phases of a contract or project, subsection H of § 2.2-4303 shall apply. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of $10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. ~~The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.~~

~~19.~~ The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

~~20~~ *19*. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a

remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

~~21~~ *20*. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

~~22~~ *21*. (Contingent expiration date, see note.) Procurement of any construction or planning and design services and contracts with or assigned to George Mason University by the corporation or other legal entity created by the board of visitors of George Mason University for the establishment and operation of the branch campus of George Mason University in the Republic of Korea, pursuant to § 23-91.29:1.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

93. That Article 4 (§§ 10.1-217.1 through 10.1-217.6) of Chapter 2 of Title 10.1 of the Code of Virginia is repealed.

94. That, on and after July 1, 2012, the Department of Conservation and Recreation shall be the successor in interest in matters related to the duties, responsibilities, and functions of the Chippokes Plantation Farm Foundation. All right, title, and interest in and to any real or tangible personal property vested in the Chippokes Plantation Farm Foundation shall be transferred to and taken as standing in the name of the Department of Conservation and Recreation.*

95. That §§ 10.1-107 and 10.1-400 of the Code of Virginia are amended and reenacted as follows:

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

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

The Board shall formulate recommendations to the Director concerning:

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

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

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

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

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

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

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

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

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

E. The Board shall advise the Governor and the Director concerning the protection or management of the Virginia Scenic Rivers System as defined in § 10.-400. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations. The Board shall have general powers and duties to (i) advise the Director on the appointment of Scenic River Advisory Committees or other local or regional committees pursuant to 10.1-401; (ii) formulate recommendations concerning designations for proposed scenic rivers or extensions of existing scenic rivers; (iii) consider and comment to the Director on any federal, state or local governmental plans to approve, license, fund or construct facilities that would alter any of the assets that qualified the river for scenic designation; (iv) assist the Director in reviewing and making recommendations regarding all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channels, locks, canals, or other uses that change the character of a stream or waterway or destroy its scenic assets, so that full consideration and evaluation of the

river as a scenic resource will be given before alternative plans for use and development are approved; (v) assist the Director in preserving and protecting the natural beauty of the scenic rivers, assuring the use and enjoyment of scenic rivers for fish and wildlife, scenic, recreational, geologic, historic, cultural or other assets, and encouraging the continuance of existing agricultural, horticultural, forestal and open space land and water uses; (vi) advise the Director and the affected local jurisdiction on the impacts of proposed uses of each scenic river and its related land resources; and (vii) assist local governments in solving problems associated with the Virginia Scenic Rivers System, in consultation with the Director.

§ 10.1-400. Definitions.

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

"Board" means the ~~Virginia Scenic River Board~~ *Board of Conservation and Recreation*.

"Department" means the Department of Conservation and Recreation.

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

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

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

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

96. That § 10.1-406 of the Code of Virginia is repealed.*

97. That Article 4 (§ 2.2-2711) of Chapter 27 of Title 2.2 of the Code of Virginia is repealed.*

98. That § 2.2-215 of the Code of Virginia is amended and reenacted as follows:

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

The position of Secretary of Natural Resources (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, Chippokes Plantation Farm Foundation, Virginia Museum of Natural History, ~~Council on Indians,~~ 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~~ *in this section* to another Secretary.

99. That Article 10 (§§ 2.2-2628 through 2.2-2629.2) of Chapter 26 of Title 2.2 of the Code of Virginia is repealed.*

100. That Chapter 21.2 (§§ 10.1-2135 through 10.1-2140) of Title 10.1 of the Code of Virginia is repealed.*

101. That §§ 2.2-221, 2.2-435.8, 2.2-2674.01, 9.1-108, 16.1-287, 16.1-293, 22.1-17.1, 22.1-209.1:2, 22.1-289, 30-198, 53.1-5, 53.1-10, 53.1-32, 53.1-32.1, 53.1-41, 53.1-63.1, 66-3, 66-10, 66-13, 66-25.1, 66-25.1:2, and 66-25.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 66-13.1 as follows:

§ 2.2-221. Position established; agencies for which responsible.

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

§ 2.2-435.8. Workforce program evaluations; sharing of certain data.

A. Notwithstanding any provision of law to the contrary, the agencies specified in subsection D may share data from within their respective databases solely to (i) provide the workforce program evaluation and policy analysis required by subdivision A 8 of § 2.2-435.7 and clause (i) of subdivision A 10 of § 2.2-435.7 and (ii) conduct education program evaluations that require employment outcomes data to meet state and federal reporting requirements.

B. Data shared pursuant to subsection A shall not include any personal identifying information, shall be encrypted, and shall be transmitted to the Governor or his designee. Upon receipt of such data, the Governor or his designee shall re-encrypt the data to prevent any participating agency from connecting shared data sets with existing agency files. For the purposes of this section:

1. "Identifying information" means the same as that term is defined in § 18.2-186.3, and

2. "Encrypted" means the same as that term is defined in § 18.2-186.6.

C. The Governor or his designee and all agencies authorized under this section shall destroy or erase all shared data upon completion of all required evaluations and analyses. The Governor or his designee may retain a third-party entity to assist with the evaluation and analysis.

D. The databases from the following agencies relating to the specific programs identified in this subsection may be shared solely to achieve the purposes specified in subsection A:

1. Virginia Employment Commission: Unemployment Insurance, Job Service, Trade Act, and Veterans Employment Training Programs;

2. Virginia Community College System: Postsecondary Career and Technical Education, Workforce Investment Act Adult, Youth and Dislocated Worker Programs;

3. Department of Rehabilitative Services: Vocational Rehabilitation;

4. Department for the Blind and Vision Impaired: Vocational Rehabilitation;

5. Department of Education: Adult Education and Family Literacy, Special Education, and Career and Technical Education;

6. Department for the Aging: Senior Community Services Employment Program;

7. Department of Labor and Industry: Apprenticeship;

8. Department of Social Services: Supplemental Nutrition Assistance Program and Virginia Initiative for Employment Not Welfare;

9. Department of Business Assistance: Virginia Jobs Investment Program;

10. ~~Department of Correctional Education: Career and Technical Education Programs;~~

~~11.~~ Department of Juvenile Justice: Youth Industries and Institutional Work Programs *and Career and Technical Education Programs*; ~~and~~

~~12~~ *11. Department of Corrections: Career and Technical Education Programs; and*

12. The State Council of Higher Education for Virginia.

§ 2.2-2674.01. Virginia Career Readiness Certificate Program.

A. There is created the Virginia Career Readiness Certificate Program (the Program) to certify the workplace and college readiness skills of Virginians, in order to better prepare them for continued education and workforce training, successful employment, and career advancement.

B. The Program may be offered through public high schools, community colleges, one-stop centers, technical centers, vocation rehabilitation centers, the Department of ~~Correctional Education~~ *Corrections, the Department of Juvenile Justice*, institutions of higher education, and any other appropriate institutions as determined by the Virginia Workforce Council.

C. The Program shall include, but not be limited to, the following:

1. A nationally recognized multilevel Career Readiness Certificate and related pre-instructional assessment tool to quantify an individual's level of proficiency in the following measurable work-ready skills: (i) reading, (ii) applied math, (iii) locating information, and (iv) any additional skills necessary to meet business and industry skill demand;

2. Targeted instruction and remediation skills training to address those work-ready skills in which the individual is not proficient as measured by the pre-instructional assessment tool designed to meet identified specific skill needs of local employers;

3. A Career Readiness Certificate awarded to individuals upon successful attainment of work-ready skills as documented by the assessment tool; and

4. A statewide online data system to serve as the repository for Career Readiness Certificate attainment data. The system shall (i) serve as the administrative tool to administer and help promote the Program; (ii) incorporate online services that enable employers to search individual Career Readiness Certificate data to determine skill levels and locate certified individuals in the state or a region; and (iii) incorporate online services that offer individuals tools for career exploration, continued education opportunities, job-readiness practice, and job search capabilities. The Virginia Workforce Council shall seek to ensure the confidentiality of individual Career Readiness Certificate recipients. This shall include provisions for individuals, except for employer-sponsored individuals, to opt-in and opt-out of the statewide online data system at any test occurrence. Additionally, the provisions of §§ 2.2-3800 through 2.2-3803 shall be considered in individual confidentiality protections adopted by the Virginia Workforce Council.

D. The Council, in consultation with the Secretary of Education, shall develop policies and guidelines necessary to implement and administer the Program.

E. The Council shall report Program outcomes to the Governor, the Senate Commerce and Labor Committee, Senate Education and Health Committee, House Commerce and Labor Committee, and House Education Committee of the General Assembly by December 1 of each year. The report shall make recommendations for improving the program, including funding recommendations.

§ 9.1-108. Criminal Justice Services Board membership; terms; vacancies; members not disqualified from holding other offices; designation of chairmen; meetings; compensation.

A. The Criminal Justice Services Board is established as a policy board within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall consist of ~~29~~ *28* members as follows: the Chief Justice of the Supreme Court of Virginia, or his designee; the Attorney General 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; the Executive Director of the Virginia Indigent Defense Commission or his designee; 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 absent from a Board meeting, he may appoint a member of his staff to represent him at the meeting.

Sixteen members shall be appointed by the Governor from among citizens of the Commonwealth. At least one shall be a representative of a crime victims' organization or a victim of crime as defined in subsection B of § 19.2-11.01. The remainder shall be representative of the broad categories of state and local governments, 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 Sheriffs' Association selected from among names submitted by the Association; one member who is an active duty law-enforcement officer appointed after consideration of the names, if any, submitted by police or fraternal associations that have memberships of at least 1,000; two representatives of the Virginia Association of Chiefs of Police appointed after consideration of the names submitted by the Association, if any; one attorney for the Commonwealth appointed after consideration of the names submitted by the Virginia Association of Commonwealth's Attorneys, if any; one person who is a mayor, city or town manager, or member of a city or town council representing the Virginia Municipal League appointed after consideration of the names submitted by the League, if any; one person who is a county executive, manager, or member of a county board of supervisors representing the Virginia Association of Counties appointed after consideration of the names submitted by the Association, if any; one member representing the Virginia Crime Prevention Association appointed after consideration of the names submitted by the Association, if any; one member of the Private Security Services Advisory Board; and one representative of the Virginia Association of Regional Jails appointed after consideration of the names submitted by the Association, if any.

Four members of the Board shall be members of the General Assembly appointed as follows: one member of the House Committee on Appropriations appointed by the Speaker of House of Delegates after consideration of the recommendation by the committee's chairman; one member of the House Committee for Courts of Justice appointed by the Speaker of the House of Delegates after consideration of the recommendation by the committee's chairman; one member of the Senate Committee on Finance appointed by the Senate Committee on Rules after consideration of the recommendation of the chairman of the Senate Committee on Finance; and one member of the Senate Committee for Courts of Justice appointed by the Senate Committee on Rules after consideration of the recommendation of the chairman of the Senate Committee for Courts of Justice. The legislative members shall serve for terms coincident with their terms of office and shall serve as ex officio, nonvoting members. Legislative members may be reappointed for successive terms.

B. The members of the Board 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. Gubernatorial appointed members of the Board 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 Board shall be filled in the same manner as the original appointment, but for the unexpired term.

C. The Governor shall appoint a chairman of the Board for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman. The Board shall designate one or more vice-chairmen from among its members, who shall serve at the pleasure of the Board.

D. 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.

E. The Board 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 Board.

F. The Board may adopt bylaws for its operation.

G. Legislative members of the Board shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Criminal Justice Services.

§ 16.1-287. Transfer of information upon commitment; information to be furnished by and to local school boards.

Whenever the court commits a child to the Department of Juvenile Justice, or to any other institution or agency, it shall transmit with the order of commitment copies of the clinical reports, predisposition study and other information it has pertinent to the care and treatment of the child. The Department shall not be responsible for any such committed child until it has received the court order and the information concerning the child. All local school boards shall be required to furnish the Department promptly with any information from their files that the Department deems to be necessary in the classification, evaluation, placement or treatment of any child committed to the Department. The Department of ~~Correctional Education~~ *Juvenile Justice's Education Division*, pursuant to §~~§~~ 22.1-289 ~~and 22.1-344, in cooperation with the Department of Juvenile Justice~~, shall likewise be required to furnish local school boards academic, and career and technical education and related achievement information promptly from its files that the local school board may deem necessary when children are returned to the community from the Department's care. The Department and other institutions or agencies shall give to the court such information concerning the child as the court at any time requires. All such information shall be treated as confidential.

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the person was enrolled of his commitment to a facility. The court services unit shall, in consultation with the ~~Department of Correctional Education, the~~ local school division~~,~~ and the juvenile correctional counselor, develop a reenrollment plan if the person is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the person's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a person who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least 14 days prior to the person's scheduled release, the Department shall notify the school division superintendent in the locality where the person will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services

shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall consult with the local department of social services concerning return of the person to the locality and the placement of the person and (ii) the local department of social services and the court services unit shall collaborate to develop a plan that prepares the person for successful transition from the Department's commitment to the custody of the local department of social services or to an alternative custody arrangement if applicable. The plan shall identify the services necessary for such transition and how the services are to be provided. The court services unit will be responsible for supervising the person's terms and conditions of parole.

§ 22.1-17.1. Regulations for reenrollment.

The Board of Education, in cooperation with the Board of ~~Correctional Education~~ *Juvenile Justice*, shall promulgate regulations for the reenrollment in the public schools of children who have been in the custody of the Department of Juvenile Justice. Such regulations shall include the components required in a reenrollment plan and shall provide for consistency in the curricula, standards and policies between the educational programs required by this title, and those of the Board of ~~Correctional Education~~ *Juvenile Justice*.

§ 22.1-209.1:2. Regional alternative education programs for certain students.

A. With such funds as may be appropriated for this purpose, the Board of Education shall establish a program consisting of regional alternative education options for elementary, middle, and high school students in compliance with subdivision D 7 of § 22.1-253.13:1 who (i) have committed an offense in violation of school board policies relating to weapons, alcohol or drugs, or intentional injury to another person, or against whom a petition or warrant has been filed alleging such acts or school board charges alleging such policy violations are pending; (ii) have been expelled from school attendance or have received one suspension for an entire semester, or have received two or more long-term suspensions within one school year; or (iii) have been released from a juvenile correctional center and have been identified by the Superintendent of *Public Instruction with* the Department of ~~Correctional Education~~ *Juvenile Justice* and the relevant division superintendent as requiring a regional alternative education program. Based on available space, a student may also be administratively assigned to a regional alternative education program either at the request of the parent and with the consent of the division superintendent or by the division superintendent after written notice to the student and his parent. Such notice of the opportunity for the student and/or his parent to participate in a hearing conducted by the division superintendent or his designee regarding such placement shall be issued and the assignment shall be final unless altered by the school board, upon timely written petition, in accordance with regulations of the school board, by the student or his parent, for a review of the record by the school board. However, no child shall be assigned to any regional alternative education program described in this section for more than one school year without an annual assessment of the placement to determine the appropriateness of transitioning the child into the school division's regular program.

B. Applications for grants shall include the following components:

1. An agreement executed by two or more school divisions and approval of their respective governing bodies to offer a regional alternative education option as provided in subsection A, and a plan for the apportionment of responsibilities for the administration, management, and support of the program, including, but not limited to, the facilities and location for the program, daily operation and oversight, staffing, instructional materials and resources, transportation, funding and in-kind services, and the program of instruction.

2. A procedure for obtaining the participation in or support for the program, as may be determined, of the parents, guardian or other person having charge or control of a child placed in the program.

3. An interagency agreement for cooperation executed by the local departments of health and social services or welfare; the juvenile and domestic relations district court; law-enforcement agencies; institutions of higher education and other postsecondary training programs; professional and community organizations; the business and religious communities; dropout prevention and substance abuse prevention programs; community services boards located in the applicants' respective jurisdictions; and the Department of ~~Correctional Education~~ *Juvenile Justice*.

4. A curriculum developed for intensive, accelerated instruction designed to establish high standards and academic achievement for participating students.

5. An emphasis on building self-esteem and the promotion of personal and social responsibility.

6. A low pupil/teacher ratio to promote a high level of interaction between the students and the teacher.

7. An extended day program, where appropriate, to facilitate remediation; tutoring; counseling; organized, age-appropriate, developmental education for elementary and middle school children; and opportunities that enhance acculturation and permit students to improve their social and interpersonal relationship skills.

8. Community outreach to build strong school, business, and community partnerships, and to promote parental involvement in the educational process of participating children.

9. Specific, measurable goals and objectives and an evaluation component to determine the program's effectiveness in reducing acts of crime and violence by students, the dropout rate, the number of youth committed to juvenile correctional centers, and recidivism; and in increasing the academic achievement levels and rehabilitative success of participating students, admission to institutions of higher education and other postsecondary education and training programs, and improving staff retention rates.

10. The number of children who may be assigned to the regional alternative education program during the school year.

11. A plan for transitioning the enrolled students into the relevant school division's regular program.

12. A current program of staff development and training.

C. Beginning with the first year of program implementation, the Department of Education shall be entitled to deduct annually from the locality's share for the education of its students a sum equal to the actual local expenditure per pupil for the support of those students placed by the relevant school division in any such program. The amount of the actual transfers shall be based on data accumulated during the prior school year.

D. A school board shall require written notification to the pupil's parent, guardian, or other person having charge or control, when a pupil commits an offense in violation of school board policies, which school officials determine was committed without the willful intent to violate such policies, or when the offense did not endanger the health and safety of the individual or other persons, of the nature of the offense no later than two school days following its occurrence. A school board shall require the principal of the school where the child is in attendance or other appropriate school personnel to develop appropriate measures, in conjunction with the pupil's parent or guardian, for correcting such behavior.

E. For the purposes of this section, "regional alternative education program" means a program supported and implemented by two or more school divisions which are either geographically contiguous or have a community of interest.

F. For the purposes of this section, "one school year" means no more than 180 teaching days.

§ 22.1-289. Transfer and management of scholastic records; disclosure of information in court notices; penalty.

A. As used in this section:

"Scholastic record" means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. These include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health records, reports of assessments for eligibility for special education services, and Individualized Education Programs. Such records may be recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

A notice of adjudication or conviction received by a superintendent relating to an incident which did not occur on school property or during a school-sponsored activity shall not be a part of a student's scholastic record.

The term "scholastic record" also shall not include records of instructional, supervisory, administrative, and ancillary educational personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

B. Whenever a pupil transfers from one school division to another, the scholastic record or a copy of the scholastic record shall be transferred to the school division to which the pupil transfers upon request from such school division. Permission of the parent, guardian, or other person having control or charge of the student shall not be required for transfer of such scholastic record to another school or school division within or outside the Commonwealth.

C. Any notice of disposition received pursuant to § 16.1-305.1 shall not be retained after the student has been awarded a diploma or a certificate as provided in § 22.1-253.13:4.

D. Every student's scholastic record shall be available to the student and his parent, guardian, or other person having control or charge of the student for inspection during the regular school day. Permission of the parent, guardian, or other person having control or charge of the student, or of a student who is 18 years of age or older,

shall not be required for transfer of such scholastic record to another school or school division within or without this Commonwealth.

Consistent with federal law and regulation, each school shall annually notify parents of students currently enrolled and in attendance of their rights under the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations.

A school responding to a request for the transfer of the scholastic record from another school division need not provide written notice of the transfer of the record, including the identity of the requester, to the parent, guardian, or other person having control or charge of the student, or to a student who is 18 years of age or older, if the school has previously included in the annual notice required by this subsection a statement that it forwards such records to such requesting school divisions.

E. Whenever the division superintendent is notified by the Department of Juvenile Justice, pursuant to § 16.1-287, ~~the Department of Correctional Education, pursuant to § 22.1-344 of this title,~~ or by a school division employee responsible for education programs in a local jail or a detention center, that a pupil who last attended a school within the school division is a pupil in a school of a juvenile correctional center of the Department of Juvenile Justice, or a pupil in an educational program in a local jail or detention center, the school division superintendent or his designee shall transfer the scholastic record of such pupil to the designated juvenile correctional center or local jail or a detention center, as the case may be, within five work days. The Department of ~~Correctional Education~~ *Juvenile Justice* shall transfer the scholastic record of a student who has been discharged from a juvenile correctional center ~~of the Department of Juvenile Justice~~ to the relevant school division within five work days of the student's discharge.

The Board of Education shall adopt regulations concerning the transfer and management of scholastic records from one school division to another, to the learning centers of the Department of Juvenile Justice, and to educational programs in local jails and detention centers.

Upon receiving notice of a foster care placement of a student across jurisdictional lines, the sending school division and the receiving school division, as such school divisions are defined in subsection D of § 22.1-3.4, shall expedite the transfer of the scholastic record of the student.

F. The division superintendent or his designee shall notify the local police or sheriff's department for investigation as a possible missing child of any enrolled pupil whose scholastic record he is unable to obtain within 60 days or sooner, if the division superintendent or his designee has reason to suspect that the pupil is a missing child.

G. Superintendents and their designees shall be immune from any civil or criminal liability in connection with any notice to a police or sheriff's department of a pupil lacking a scholastic record or failure to give such notice as required by this section.

H. Except as provided in §§ 16.1-309 and 22.1-287 and this section, a superintendent or his designee, or other school personnel who unlawfully discloses information obtained pursuant to § 16.1-305.1 shall be guilty of a Class 3 misdemeanor.

§ 30-198. (Expires July 1, 2012) Advisory Council on Career and Technical Education; purpose; membership; compensation and expenses; quorum.

A. The Advisory Council on Career and Technical Education (Council) is established as an advisory council in the legislative branch of state government to recommend an integrated and coordinated multiagency approach for the delivery of quality career and technical education programs and services in the public schools.

B. The Council shall consist of ~~18~~ *17* members, to be appointed as follows: one member each of the House Committees on Finance, Education, and Appropriations, and two members of the House of Delegates at-large, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one each of the Senate Committees on Finance and Education and Health, and one member of the Senate at-large, to be appointed by the Senate Committee on Rules; four representatives of business and industry from companies of varying size, geographically distributed from among the eight superintendents' regions of the Commonwealth, to be appointed by the Governor; and the President of the Board of Education, the Chancellor of the Virginia Community College System, ~~the Chairman of the Board of Correctional Education,~~ the Secretary of Commerce and Trade, the Secretary of Education, and the Secretary of Technology or their designees shall serve as ex officio members with full voting privileges. Members appointed by the Governor shall be citizens of the Commonwealth.

C. Legislative members and state government officials shall serve terms coincident with their terms of office. All appointments of nonlegislative citizen members shall be for four-year terms, following the initial staggering

of terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Legislative and citizen members may be reappointed; however, no citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's term limit. Vacancies shall be filled in the same manner as the original appointments.

Legislative members of the Council shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. However, all such compensation and expense payments shall be paid from existing appropriations to the Council.

D. The Council shall elect a chairman and vice-chairman annually from among its legislative members. A majority of the members of the Council shall constitute a quorum. The Council shall meet no more than four times a year, upon the call of the chairman or the majority of the members.

E. No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 53.1-5. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish operational and fiscal standards governing the operation of local, regional and community correctional facilities;

2. To advise the Governor and Director on matters relating to corrections;

3. To make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth pertaining to local, regional and community correctional facilities; ~~and~~

4. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department*; and*

5. To establish and promulgate regulations regarding the provision of educational and vocational programs within the Department.

§ 53.1-10. Powers and duties of Director.

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

1. To supervise and manage the Department and its system of state correctional facilities;

2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;

3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within the limits of appropriations made therefor by the General Assembly;

4. *To establish and maintain a general system of schools for persons committed to the institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8. Such system shall include, as applicable, elementary, secondary, post-secondary, career and technical education, adult, and special education schools.*

a. The Director shall employ a Superintendant who will oversee the operation of educational and vocational programs in all institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

b. When the Department employs a teacher licensed by the Board of Education to provide instruction in the schools of the correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the correctional center is located.

c. The Superintendent shall develop a functional literacy program for inmates testing below a selected grade level, which shall be at least at the twelfth grade or GED level. The program shall include guidelines for implementation and test administration, participation requirements, criteria for satisfactory completion, and a strategic plan for encouraging enrollment in college or an accredited vocational training program or other accredited continuing education program.

d. For the purposes of this section, the term "functional literacy" shall mean those educational skills necessary to function independently in society, including, but not limited to, reading, writing, comprehension, and arithmetic computation.

e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the Superintendent shall create a system for identifying prisoners with learning disabilities.

5. a. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of this Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion or construction of correctional facilities, consistent with applicable standards and goals of the Board;

b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, upon determining that it shall be desirable to contract with a public or private entity for the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the Director shall notify the local governing body of the jurisdiction in which the facility is to be located of the proposal and of the facility's proposed location and provide notice, where requested, to the chief law-enforcement officer for such locality when an offender is placed in the facility at issue;

~~5~~ *6.* To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Director shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with applicable standards and goals of the Board;

~~6~~ *7.* To collect data pertaining to the demographic characteristics of adults, and juveniles who are adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the types of and extent to which health-related problems are prevalent among such persons. Beginning July 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor and the General Assembly at each regular session of the General Assembly thereafter. The report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports;

~~7~~ *8.* To make application to the appropriate state and federal entities so as to provide any prisoner who is committed to the custody of the state a Department of Motor Vehicles approved identification card that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the Commonwealth, and a social security card from the Social Security Administration;

~~8~~ *9.* To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list of all identified criminal gang members incarcerated in state correctional institutions. The list shall contain identifying information for each criminal gang member, as well as his criminal record; and

~~9~~ *10.* To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that occurred in a state correctional facility, of that defendant's known gang membership. The notice shall contain identifying information for each criminal gang member as well as his criminal record.

§ 53.1-32. Treatment and control of prisoners; recreation; religious services.

A. It shall be the general purpose of the state correctional facilities to provide proper employment, training and education in accordance with ~~Chapter 18 (§ 22.1-339 et seq.) of Title 22.1 and § 53.1-32.1~~ *this title*, medical and mental health care and treatment, discipline and control of prisoners committed or transferred thereto. The health service program established to provide medical services to prisoners shall provide for appropriate means by which prisoners receiving nonemergency medical services may pay fees based upon a portion of the cost of such services. In no event shall any prisoner be denied medically necessary service due to his inability to pay. The Board shall promulgate regulations governing such a program.

B. The Department of Corrections shall establish and maintain a treatment program for prisoners convicted pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to its custody. The program shall include a clinical assessment of all such prisoners upon receipt into the custody of the Department of Corrections and the development of appropriate treatment plans, if indicated. A licensed psychiatrist or licensed clinical psychologist who is experienced in the diagnosis, treatment, and risk assessment of sex offenders shall oversee the program and the program shall be administered by a licensed psychiatrist, licensed clinical

psychologist, or a licensed mental health professional who is a certified sex offender treatment provider as defined in § 54.1-3600.

C. The Director shall provide a program of recreation for prisoners. The Director may establish, with consultation from the Department of Behavioral Health and Developmental Services, a comprehensive substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and may make such program available to any prisoner requiring the services provided by the program.

D. The Director or his designee who shall be a state employee is authorized to make arrangements for religious services for prisoners at times as he may deem appropriate. When such arrangements are made pursuant to a contract or memorandum of understanding, the final authority for such arrangements shall reside with the Director or his designee.

§ 53.1-32.1. Classification system; program assignments; mandatory participation.

A. The Director shall maintain a system of classification which (i) evaluates all prisoners according to background, aptitude, education, and risk and (ii) based on an assessment of needs, determines appropriate program assignments including career and technical education, work activities and employment, academic activities which at a minimum meet the requirements of § ~~22.1-344.1~~ *66-13.1*, counseling, alcohol and substance abuse treatment, and such related activities as may be necessary to assist prisoners in the successful transition to free society and gainful employment.

B. The Director shall, subject to the availability of resources and sufficient program assignments, place prisoners in appropriate full-time program assignments or a combination thereof to satisfy the objectives of a treatment plan based on an assessment and evaluation of each prisoner's needs. Compliance with specified program requirements and attainment of specific treatment goals shall be required as a condition of placement and continuation in such program assignments. The Director may suspend programs in the event of an institutional emergency.

C. For the purposes of implementing the requirements of subsection B, prisoners shall be required to participate in such programs according to the following schedule:

1. From July 1, 1994, through June 30, 1995, an average of ~~twenty-four~~ *24* hours per week.
2. From July 1, 1995, through June 30, 1996, an average of ~~twenty-eight~~ *28* hours per week.
3. From July 1, 1996, through June 30, 1997, an average of ~~thirty~~ *30* hours per week.
4. From July 1, 1997, through June 30, 1998, an average of ~~thirty-six~~ *36* hours per week.
5. From July 1, 1998, and thereafter, an average of ~~forty~~ *40* hours per week.

D. Notwithstanding any other provision of law, prisoners refusing to accept a program assignment shall not be eligible for good conduct allowances or earned sentence credits authorized pursuant to Chapter 6 (§ 53.1-186 et seq.) of Title 53.1. Such refusal shall also constitute a violation of the rules authorized pursuant to § 53.1-25 and the Director shall prescribe appropriate disciplinary action.

E. The Director shall maintain a master program listing, by facility and program location, of all available permanent and temporary positions. The Director may, consistent with § 53.1-43 and subject to the approval of the Board, establish a system of pay incentives for such assignments based upon difficulty and level of effort required.

F. Inmates employed pursuant to Article 2 (§ 53.1-32 et seq.) of Chapter 2 of this title shall not be deemed employees of the Commonwealth of Virginia or its agencies and shall be ineligible for benefits under Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, Chapter 6 (§ 60.2-600 et seq.) of Title 60.2, Chapter 5 (§ 65.2-500 et seq.) of Title 65.2 or any other provisions of the Code pertaining to the rights of state employees.

§ 53.1-41. Opportunities for work and career and technical education.

A. To the extent feasible, it shall be the duty of the Director to provide persons sentenced to the Department with opportunities to work and to participate in career and technical education programs ~~as operated by the Department of Correctional Education in accordance with § 22.1-339 et seq~~. Such work opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in this article. In addition, prisoners may be employed to improve, repair, work on or cultivate public property or buildings.

In addition to meeting the qualifications for work performance and security compatibility, preference for placement in work programs shall be given to any prisoner who requests a work assignment and assigns a minimum of 50% of his earnings to his child support obligation.

B. When a person committed to the Department owes any court imposed fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work program to either make full payment or

make payments in accordance with an agreed upon installment or deferred payment plan while participating in such work program. If, after the person enters into an installment or deferred payment agreement, the person fails to pay as agreed, his participation in the work program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director shall withhold such payments from any amounts due to such person.

§ 53.1-63.1. Department to establish facilities for juveniles sentenced as adults.

The Department shall establish, staff and maintain, at any state correctional facilities designated by the Board, programs and housing for the rehabilitation, training, and confinement of juveniles sentenced by the circuit courts as adults and committed to the Department pursuant to § 16.1-272. The Department ~~of Correctional Education~~ shall establish, staff, and maintain education for such juveniles in accordance with ~~Chapter 18 (§ 22.1-339 et seq.) of Title 22.1~~ *standards established by the Department of Juvenile Justice*.

§ 66-3. Powers of the Director.

A. The Director of the Department shall have the following general powers:

1. To employ such personnel as may be required to carry out the purposes of this title.

2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers under this title, including, but not limited to, contracts and agreements with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.

3. With the prior approval of the Governor, to enter into agreements with a public or private entity to operate a work program for children committed to the Department.

4. With the prior approval of the Governor, to acquire real property, by purchase or gift, needed for new or existing state juvenile correctional facilities and for administrative and other facilities necessary to the operations of the Department, pursuant to regulations promulgated by the Board to ensure adequate public notice and local hearing.

5. *To establish and maintain schools of the appropriate grades, levels, and types in the institutions for persons committed to juvenile correctional centers.*

6. To enter into such agreements with private entities, nonprofit civic organizations, school divisions, and public and private two-year and four-year institutions of higher education as it may deem necessary to provide age-appropriate educational programs and training, including career and technical education; career development opportunities; public service projects; restricted Internet access to online courses of institutions of higher education and approved or accredited online secondary education or adult education and literacy programs leading to a diploma or the General Education Development (GED) program and testing; access to postsecondary education that includes college credit, certification through an accredited vocational training program, or other accredited continuing education program using videoconferencing technology; and other learning experiences in the furtherance of its duties and responsibilities under this chapter for persons committed to the institutions comprising the Department.

7. To do all acts necessary or convenient to carry out the purposes of this title.

B. The Director shall comply with and require all school facilities within the Department to comply with applicable regulations and statutes, both state and federal.

§ 66-10. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible under this law.

2. To ensure the development and implementation of a long-range youth services policy.

3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds.

4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board.

5. To advise the Governor, Director and the General Assembly on matters relating to youth services.

6. To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department. The Board of Juvenile Justice may adopt such Board of Corrections' regulations and standards as it may deem appropriate. If regulations and standards so adopted are not amended substantively by the Board of Juvenile Justice, such Board need not comply with the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2.

7. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department.

8. To establish length-of-stay guidelines for juveniles indeterminately committed to the Department and to make such guidelines available for public comment.

9. To adopt all necessary regulations for the management and operation of the schools in the Department except that the regulations adopted hereunder shall not conflict with regulations relating to security of the institutions in which the juveniles are committed.

§ 66-13. Authority of Department as to juveniles committed to it; establishment of facilities; arrangements for temporary care.

A. The Department is authorized and empowered to receive juveniles committed to it by the courts of the Commonwealth. The Department shall establish, staff and maintain facilities for the rehabilitation, *education*, training and confinement of such juveniles. The Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or counties maintaining places of detention for juveniles, for the temporary care of such juveniles.

B. In accordance with the Juvenile Corrections Private Management Act, Chapter 2.1 (§ 66-25.3 et seq.) ~~of this title~~, the Department may establish, or contract with private entities, political subdivisions or commissions to establish, juvenile boot camps. The Board shall prescribe standards for the development, implementation and operation of the boot camps with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline and no less than six months of intensive aftercare. The Department *of Juvenile Justice's Division* of ~~Correctional~~ Education shall establish, staff, and maintain educational programs for such juveniles in accordance with ~~Chapter 18 (§ 22.1-339 et seq.) of Title 22.1~~ *§ 66-13*. A contract to expend state funds to establish a facility for a juvenile boot camp shall not be executed by the Department unless an appropriation has been expressly approved as is otherwise provided by law.

C. The Department may by mutual agreement with a locality or localities and, pursuant to standards promulgated pursuant to § 16.1-309.9, establish detention homes for use by a locality or localities for pre-trial and post-dispositional detention pursuant to §§ 16.1-248.1 and 16.1-284.1. The Department may collect by mutual agreement with a locality or localities and from any locality of this Commonwealth from which a juvenile is placed in such a detention home, the reasonable cost of maintaining such juvenile in such facility and a portion of the cost of construction of such facility. Such agreements shall be subject to approval by the General Assembly in the general appropriation act.

D. The Department shall collect data pertaining to the demographic characteristics of juveniles incarcerated in state juvenile correctional institutions, including, but not limited to, the race or ethnicity, age, and gender of such persons, and the types of and extent to which health-related problems are prevalent among such persons. Beginning July 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor and the General Assembly at each regular session of the General Assembly thereafter.

§ 66-13.1. Division of Education; appointment of Superintendent; powers and duties.

A. To assist in the performance of the duties imposed by § 66-13 the Department shall develop and maintain a Division of Education (Division), which shall be composed of all the educational facilities of all institutions operated by the Department. The Division shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

B. The Department shall employ a Superintendent of the Division, who shall meet the minimum standards for division superintendents set by the Board of Education. The Superintendent shall supervise the administration of the Division. The Department shall employ teachers and place them in appropriate schools. Other powers and duties of the Superintendent shall be fixed by the Board of Education in accordance with law.

C. When the Department employs a teacher licensed by the Board of Education to provide instruction in the schools of the juvenile correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the correctional center is located.

§ 66-25.1. (Effective July 1, 2012) Work programs.

A. Any agreement with a public or private entity for the operation of a work program for juveniles committed to the Department shall be submitted for review to a committee appointed by the Governor for that purpose. The committee shall include representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, a business that employs, has employed or has expressed interest in employing juvenile offenders, a local workforce investment board, the Department *of Juvenile Justice's Division* of Correctional Education, the Office of the Secretary of Commerce and Trade, the Office of the Secretary of

Education, the Office of the Secretary of Public Safety, the Virginia Community College System, and the Virginia Workforce Council.

B. The primary purpose of such work program shall be the training of such juveniles, not the production of goods or the rendering of service by juveniles committed to the Department. Such work programs also shall not interfere with or impact a juvenile's education program where the goal is achieving a high school diploma or its equivalent. The Board shall promulgate regulations governing the form and review process for proposed agreements.

C. Articles produced or manufactured and services provided by juveniles participating in such a work program may be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations. Such articles and services may also be bought, sold or acquired by exchange on the open market through the participating public or private entity.

D. Revenues received from the sale of articles, as provided in subsection C, shall be deposited into a special fund established in the state treasury. Such funds shall be expended to support work programs for juveniles committed to the Department.

§ 66-25.1:2. Career training and technical education programs.

A. With such funds as are made available for this purpose, the Department shall provide juveniles committed to the Department with opportunities to work and to participate in career training or technical education programs operated by the Department ~~or by the Department of Correctional Education in accordance with § 22.1-339 et seq~~.

B. The Department may develop appropriate interagency linkages with state and local agencies, public and private institutions of education and of higher education, labor and industry councils, the business community, rehabilitative services providers, and employment and guidance services to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs. In providing career-related programs, training, and services, the Department~~, in conjunction with the Department of Correctional Education,~~ may consult and cooperate with the Virginia Employment Commission and the Department of Labor and Industry. Work training opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in this article. In addition, juveniles may be employed to improve, repair, work on, or cultivate public property or buildings.

§ 66-25.4. State juvenile correctional facilities; private contracts.

The Director, subject to any applicable regulations which may be promulgated by the Board pursuant to § 66-10, is hereby authorized to enter into contracts for the financing, site selection, design, acquisition, construction, maintenance, leasing, leasing/purchasing, management or operation of juvenile correctional facilities or any combination of those services subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for juvenile correctional facilities or correctional services may be entered into unless the private contractor demonstrates to the satisfaction of the Director that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from the management of juvenile correctional projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and juvenile correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of juvenile correctional services, the construction of juvenile correctional facilities, or for the lease, lease/purchase or use of public or private lands or buildings for use in the operation of facilities, may be entered into for a period of up to ~~thirty~~ *30* years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

a. Provide for appropriate security to protect the public, employees and committed juveniles;

b. Provide juveniles with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of committed juveniles;

c. Impose discipline on committed juveniles only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for juveniles.

4. No contract for juvenile correctional facilities or juvenile correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

5. No contract for juvenile correctional facilities or correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:

a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § 66-10 ~~and by the Board of Correctional Education pursuant to § 22.1-343~~;

b. An appropriation for the facilities or the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The juvenile correctional facilities or the correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of committed juveniles;

d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the facilities or the services through governmental agencies;

e. If a contract for acquiring facilities requires or otherwise contemplates that the Commonwealth, whether subject to appropriation or not, will make payments beyond the current biennium that are expected to pay debt service on any bonds or other obligations issued to finance such facilities, regardless of the issuer thereof, then (i) the Treasury Board shall approve the terms and structure of such bonds or other obligations and (ii) the appropriation for such facilities acknowledges that payments for the acquisition of such facilities are expected to be made beyond the current biennium under a capital lease, lease/purchase, or similar arrangement. Any contract that is for two years or less, or is cancelable by the Commonwealth without cause after such a period, shall not be deemed a contract as described herein; and

f. Nothing herein shall be construed to constitute a waiver for the Department or contractor from complying with the provisions of subdivision 4 of § 66-3.

102. That Chapter 18 (§§ 22.1-339 through 22.1-345.1) of Title 22.1 of the Code of Virginia is repealed.*

103. That § 66-25.1 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted as follows:

§ 66-25.1. (Effective until July 1, 2012) Work programs.

A. ~~Any~~ *The Director or his designee may enter into an* agreement with a public or private entity for the operation of a work program for juveniles committed to the Department ~~shall be submitted for review to a committee appointed by the Governor for that purpose. The committee shall include representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, the Office of the Secretary of Commerce and Trade, and the Office of the Secretary of Public Safety~~.

B. The primary purpose of such work program shall be the training of such juveniles, not the production of goods or the rendering of service by juveniles committed to the Department. Such work programs also shall not interfere with or impact a juvenile's education program where the goal is achieving a high school diploma or its equivalent. The Board shall promulgate regulations governing the form and review process for proposed agreements.

C. Articles produced or manufactured and services provided by juveniles participating in such a work program may be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations. Such articles and services may also be bought, sold or acquired by exchange on the open market through the participating public or private entity.

D. Revenues received from the sale of articles, as provided in subsection C, shall be deposited into a special fund established in the state treasury. Such funds shall be expended to support work programs for juveniles committed to the Department.

§ 66-25.1. (Effective July 1, 2012) Work programs.

A. ~~Any~~ *The Director or his designee may enter into an* agreement with a public or private entity for the operation of a work program for juveniles committed to the Department ~~shall be submitted for review to a committee appointed by the Governor for that purpose. The committee shall include representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, a business that employs, has employed or has expressed interest in employing juvenile offenders, a local workforce investment board, the Department of Correctional Education, the Office of the Secretary of Commerce and Trade, the Office of the Secretary of Education, the Office of the Secretary of Public Safety, the Virginia Community College System, and the Virginia Workforce Council~~.

B. The primary purpose of such work program shall be the training of such juveniles, not the production of goods or the rendering of service by juveniles committed to the Department. Such work programs also shall not interfere with or impact a juvenile's education program where the goal is achieving a high school diploma or its equivalent. The Board shall promulgate regulations governing the form and review process for proposed agreements.

C. Articles produced or manufactured and services provided by juveniles participating in such a work program may be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations. Such articles and services may also be bought, sold or acquired by exchange on the open market through the participating public or private entity.

D. Revenues received from the sale of articles, as provided in subsection C, shall be deposited into a special fund established in the state treasury. Such funds shall be expended to support work programs for juveniles committed to the Department.

104. That the second enactment of Chapter 551 of the Acts of Assembly of 2011 is repealed.*

105. That § 2.2-2696 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 4.1-103.02 as follows:

§ 2.2-2696. Substance Abuse Services Council.

A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.

B. The Council shall consist of ~~30~~ *29* members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Operating Officer of the Department of Alcoholic Beverage Control; ~~the Executive Director of the Governor's Office for Substance Abuse Prevention or his designee;~~ the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's appointments of the seven nonlegislative citizen members shall be staggered as follows: two members for a term of one year, three members for a term of two years, and two members for a term of three years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Behavioral Health and Developmental Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services;

2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Behavioral Health and Developmental Services.

§ 4.1-103.02. Additional powers; substance abuse prevention.

It shall be the responsibility of the Board to administer a substance abuse prevention program within the Commonwealth and to (i) coordinate substance abuse prevention activities of agencies of the Commonwealth in such program, (ii) review substance abuse prevention program expenditures by agencies of the Commonwealth, and (iii) determine the direction and appropriateness of such expenditures. The Board shall cooperate with federal, state, and local agencies, private and public agencies, interested organizations, and individuals in order to prevent substance abuse within the Commonwealth. The Board shall report annually by December 1 of each year to the Governor and the General Assembly on the substance abuse prevention activities of the Commonwealth.

106. That § 2.2-118 of the Code of Virginia is repealed.*

107. That § 46.2-224 of the Code of Virginia is repealed.*

108. That §§ 2.2-4024, 46.2-649.1, and 46.2-1217 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 46.2 a section numbered 46.2-116, as follows:

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;

2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer 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~~ *10* 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~~ *90* days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ~~ninety~~ *90* days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within ~~thirty~~ *30* days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, *or* the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2~~, or the Board of Towing and Recovery Operators under Chapter 28 (§ 46.2-2800 et seq.) of Title 46.2~~; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

§ 46.2-116. License from Department of Criminal Justice Services required for tow truck drivers; penalty.

A. On and after January 1, 2013, no person shall drive any tow truck as defined in § 46.2-100 without having obtained from the Department of Criminal Justice Services a tow truck driver's license, provided that this requirement shall not apply to any holder of a tow truck driver authorization document issued pursuant to § 46.2-2814, until the expiration date of such document. Every applicant for an initial and renewal pursuant to this section shall submit his license application, fingerprints, and personal descriptive information to the Department of Criminal Justice Services and a non-refundable application fee of $100. The Department of Criminal Justice Services shall forward the personal descriptive information along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. The cost of the fingerprinting and criminal history records check shall be paid by the applicant. No such license shall be issued to any person who (i) is required to register as a sex offender as provided in § 9.1-901 or in a substantially similar law of any other state, the United States, or any foreign jurisdiction; (ii) has been convicted of a violent crime as defined in subsection C of § 17.1-805; or (iii) has been convicted of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions. Any person licensed pursuant to this section shall report to the Department of Criminal Justice Services within 10 days of conviction convictions for felonies or misdemeanors that occur while he is licensed as provide in this section.

B. Driving of a tow truck by any person to whom no license shall have been issued as provided in this section shall constitute a Class 3 misdemeanor. The driver of any tow truck to whom a license shall have been issued by the Department of Criminal Justice Services as provided in this section shall have such license in his possession whenever driving a tow truck on the highways.

C. Licenses issued by the Department of Criminal Justice Services pursuant to this section shall be valid for a period not to exceed 24 months unless such license is revoked or suspended by the Department of Criminal Justice Services.

§ 46.2-649.1. Registration of tow trucks; fees.

A. No tow truck registered under this section shall be subject to registration under the international registration plan or subject to any other state registration requirements under this chapter. Registration under this section shall not prohibit the use of "rollbacks" to transport storage sheds, similar structures, or other cargoes.

B. Vehicles registered under this section shall be subject to the following annual fees, based upon their manufacturer's gross vehicle weight ratings:

less than 15,000 pounds	$100
15,000 to 22,999 pounds	$200
23,000 to 29,499 pounds	$300
more than 29,499 pounds	$400

C. No vehicle shall be registered under this section unless there is in force as to such vehicle at the time of its registration commercial liability insurance coverage for those classes of insurance defined in §§ 38.2-117 and 38.2-118 in the amount of at least $750,000.

D. All license plates issued by the Department for display on any vehicle used to perform towing and recovery services subject to the provisions of § 46.2-116, whether such vehicle is subject to the foregoing provisions of this section or not, shall be of a distinctive design.

§ 46.2-1217. Local governing body may regulate certain towing.

The governing body of any county, city, or town by ordinance may regulate services rendered pursuant to police towing requests by any business engaged in the towing or storage of unattended, abandoned, or immobile vehicles. The ordinance may include delineation of service areas for towing services, the limitation of the number of persons engaged in towing services in any area, including the creation of one or more exclusive service areas, and the specification of equipment to be used for providing towing service. The governing body of any county, city, or town may contract for services rendered pursuant to a police towing request with one or more businesses engaged in the towing or storage of unattended, abandoned, or immobile vehicles. The contract may specify the fees or charges to be paid by the owner or operator of a towed vehicle to the person undertaking its towing or storage and may prescribe the geographical area to be served by each person providing towing services. The county, city, or town may establish criteria for eligibility of persons to enter into towing services contracts and, in its discretion, may itself provide exclusive towing and storage service for police-requested towing of unattended, abandoned, or immobile vehicles. ~~Such criteria shall, for drivers of tow trucks and towing and recovery operators, be no less restrictive than those established pursuant to Chapter 28 (§ 46.2-2800 et seq.) of this title and regulations adopted pursuant thereto.~~

Prior to adopting an ordinance or entering into a contract pursuant to this section, the local governing body shall appoint an advisory board to advise the governing body with regard to the appropriate provisions of the ordinance or terms of the contract. The advisory board shall include representatives of local law-enforcement agencies, towing and recovery operators, and the general public.

"Police-requested towing" or "police towing request," as used in this section, includes all requests made by a law-enforcement officer of the county, city, or town or by a State Police officer within the county, city, or town pursuant to this article or Article 2 (§ 46.2-1209 et seq.) ~~of this chapter~~ and towing requests made by a law-enforcement officer at the request of the owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator.

If an unattended, abandoned, or immobile vehicle is located so as to impede the free flow of traffic on a highway declared by resolution of the Commonwealth Transportation Board to be a portion of the interstate highway system and a law-enforcement officer determines, in his discretion, that the business or businesses authorized to undertake the towing or storage of the vehicle pursuant to an ordinance or contract adopted pursuant to this section cannot respond in a timely manner, the law-enforcement officer may request towing or storage service from a towing or storage business other than those authorized by such ordinance or contract.

If an unattended, abandoned, or immobile vehicle is towed as the result of a police-towing request, the owner or person having control of the business or property to which the vehicle is towed shall allow the owner of the vehicle or any other towing and recovery business, upon presentation of a written request therefor from the owner of the vehicle, to have access to the vehicle for the purpose of inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal. For the purpose of this section, "owner of the vehicle" means a person who (i) has vested ownership, dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); or (iii) is an employee, agent, or representative of an insurance company representing any party involved in a collision that resulted in a police-requested tow who represents in writing that the insurance company has obtained the oral or written consent of the title owner or his agent or the lessee of the vehicle to obtain possession of the vehicle. It shall be unlawful for any towing and recovery business to refuse to release a vehicle to the owner as defined in this section upon tender of full payment for all lawful charges by cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the *Commonwealth Transportation* Board. Thereafter, if a towing and recovery business refuses to release the vehicle, future charges related to storage or handling of the vehicle by such towing and recovery business shall be suspended and no longer payable.

The vehicle owner who has vested ownership, dominion, or title to the vehicle shall indemnify and hold harmless the towing and recovery operator from any and all liability for releasing the vehicle to any vehicle owner as defined in this section for inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal.

109. That Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2 of the Code of Virginia is repealed.

110. That any regulations adopted by the Board of Towing and Recovery Operators being abolished by this act that are in effect before January 1, 2013, are hereby repealed as of that date. The Registrar of Regulations shall take appropriate administrative action to effect the repeal of the regulations in the Virginia Administrative Code.

111. That the Board of Towing and Recovery Operators shall pay off its treasury notes and pay off or satisfy all of its other financial obligations prior to July 1, 2012.

112. That the provisions of the 108th through the 110th enactments of this act shall become effective on January 1, 2013.*

113. That §§ 2.2-230, 2.2-2001, 2.2-2004, 2.2-4002, and 58.1-344.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 24 of Title 2.2 an article numbered 23, consisting of sections numbered 2.2-2465 through 2.2-2469, as follows:

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

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

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

§ 2.2-2001. Administrative responsibilities of the Department.

A. The Department shall be responsible for the establishment, operation, administration, and maintenance of offices and programs related to services for Virginia-domiciled veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents. Such services shall include, but not be limited to, benefits claims processing and all medical care centers and cemeteries for veterans owned and operated by the Commonwealth. *The Department shall include the Virginia War Memorial as a division within the Department. The mission of the Virginia War Memorial shall be to honor patriotic Virginians who rendered faithful service and sacrifice in the cause of freedom and liberty for the Commonwealth and the nation in time of war, honor all of Virginia's veterans, preserve their history, educate the public, and inspire patriotism in all Virginians.*

Subject to the availability of sufficient nongeneral fund revenues, including, but not limited to, private donations and federal funds, the Department shall work in concert with applicable State and Federal agencies to develop and deploy an automated system for the electronic preparation of veterans' disability claims that ensures the collection of the necessary information to expedite processing of Virginia veterans' disability claims. The Department's development and deployment work shall be appropriately phased to minimize risk and shall include

an initial replacement of the Department's existing case management technology, which replacement is required to support highly sophisticated electronic claims preparation. The Commissioner shall ensure that the system is efficient and statutorily compliant.

B. From such funds as may be appropriated or otherwise received for such purpose, the Department shall provide burial vaults at cost to eligible veterans and their family members interred at state-operated veterans cemeteries.

C. The Department shall establish guidelines for the determination of eligibility for Virginia-domiciled veterans and their spouses, orphans, and dependents for participation in programs and benefits administered by the Department. Such guidelines shall meet the intent of the federal statutes and regulations pertaining to the administration of federal programs supporting U.S. Armed Forces veterans and their spouses, orphans, and dependents.

D. The Department shall adopt reasonable regulations to implement a program to certify, upon request of the small business owner, that he holds a "service disabled veteran" status.

E. As used in this chapter, unless the context requires otherwise:

"Active military, naval, or air service members" means military service members who perform full-time duty in the armed forces of the United States, or a reserve component thereof, including the National Guard.

"Service-connected" means, with respect to disability that such disability was incurred or aggravated in the line of duty in the active military, naval, or air service.

"Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business concern that is at least 51~~%~~ *percent* owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51~~%~~ *percent* of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Veteran" means an individual who has served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable.

§ 2.2-2004. Additional powers and duties of Commissioner.

The Commissioner shall have the following powers and duties related to veterans services:

1. Perform cost-benefit and value analysis of (i) existing programs and services and (ii) new programs and services before establishing and implementing them;

2. Seek alternative funding sources for the Department's veterans service programs;

3. Cooperate with all relevant entities of the federal government, including, but not limited to, the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, and the United States Department of Labor in matters concerning veterans benefits and services;

4. Appoint a full-time coordinator to collaborate with the Joint Leadership Council of Veterans Service Organizations created in § 2.2-2681 on ways to provide both direct and indirect support of ongoing veterans programs, and to determine and address future veterans needs and concerns;

5. Initiate, conduct, and issue special studies on matters pertaining to veterans needs and priorities, as determined necessary by the Commissioner;

6. Evaluate veterans service efforts, practices, and programs of the agencies, political subdivisions or other entities and organizations of the government of the Commonwealth and make recommendations to the Secretary of Veterans Affairs and Homeland Security, the Governor, and the General Assembly on ways to increase awareness of the services available to veterans or improve veterans services;

7. Assist entities of state government and political subdivisions of the Commonwealth in enhancing their efforts to provide services to veterans, those members of the Virginia National Guard, Virginia residents in the Armed Forces Reserves who qualify for veteran status, and their immediate family members, including the dissemination of relevant materials and the rendering of technical or other advice;

8. Assist counties, cities, and towns of the Commonwealth in the development, implementation, and review of local veterans services programs as part of the state program and establish as necessary, in consultation with the Board of Veterans Services and the Joint Leadership Council of Veterans Service Organizations, volunteer local and regional advisory committees to assist and support veterans service efforts;

9. Review the activities, roles, and contributions of various entities and organizations to the Commonwealth's veterans services programs and report on or before December 1 of each year in writing to the Governor and General Assembly on the status, progress, and prospects of veterans services in the Commonwealth, including performance measures and outcomes of veterans services programs;

10. Recommend to the Secretary of Veterans Affairs and Homeland Security, the Governor, and the General Assembly any corrective measures, policies, procedures, plans, and programs to make service to Virginia-domiciled veterans and their eligible spouses, orphans, and dependents as efficient and effective as practicable;

11. Design, implement, administer, and review special programs or projects needed to promote veterans services in the Commonwealth;

12. Integrate veterans services activities into the framework of economic development activities in general;

13. Manage operational funds using accepted accounting principles and practices in order to provide for a sum sufficient to ensure continued, uninterrupted operations;

14. Engage Department personnel in training and educational activities aimed at enhancing veterans services;

15. Develop a strategic plan to ensure efficient and effective utilization of resources, programs, and services;

16. Certify eligibility for the Virginia Military Survivors and Dependents Education Program and perform other duties related to such Program as outlined in § 23-7.4:1; ~~and~~

17. Establish and implement a compact with Virginia's veterans, which shall have a goal of making Virginia America's most veteran-friendly state. The compact shall be established in conjunction with the Board of Veterans Services and supported by the Joint Leadership Council of Veterans Service Organizations and shall (i) include specific provisions for technology advances, workforce development, outreach, quality of life enhancement, and other services for veterans and (ii) provide service standards and goals to be attained for each specific provision in clause (i). The provisions of the compact shall be reviewed and updated annually. The Commissioner shall include in the annual report required by this section the progress of veterans services established in the compact*; and*

18. Maintain administrative and financial control of the Virginia War Memorial and its subsidiaries, including adopting regulations for the use of and visitation to the Memorial. Regulations of the Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Article 23.

Virginia War Memorial Board.

§ 2.2-2465. Virginia War Memorial Board; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary.

A. The Virginia War Memorial Board (the Board) is established as a division within the Department of Veterans Services as an advisory board within the meaning of § 2.2-2100 for the purpose of supporting the Virginia War Memorial.

B. The Board shall have a total membership of 24 members that shall consist of 10 legislative members, 10 nonlegislative citizen members, and four ex officio members as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; four members of the Senate to be appointed by the Senate Committee on Rules; 10 nonlegislative citizen members appointed by the Governor, subject to confirmation by the General Assembly; and the Commissioner of Veterans Services, the Chairman of the Board of Veterans Services, the Chairman of the Joint Leadership Council of Veterans Service Organizations, and the Chairman of the Virginia War Memorial Education Foundation, or their designees, who shall serve ex officio with voting privileges. A majority of the Board shall be members or veterans of the armed forces of the United States or the Virginia National Guard. Members appointed should include representatives of some or all of the various veterans organizations active in Virginia, as the Governor deems appropriate.

C. Except for initial appointments, all nonlegislative citizen member appointments shall be for terms of three years. Legislative members, the Commissioner of Veterans Services, the Chairman of the Board of Veterans Services, the Chairman of the Joint Leadership Council of Veterans Service Organizations, and the Chairman of the Virginia War Memorial Education Foundation shall serve terms coincident with their terms of office. All members may be reappointed. However, no nonlegislative citizen member shall be eligible to serve for more than four successive three-year terms. No Senate member shall be eligible to serve more than three successive four-year terms and no member of the House of Delegates shall be eligible to serve more than six successive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of

a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. Members appointed by the Governor shall serve at his pleasure.

D. Legislative members of the Board shall receive such compensation as is set forth in § 30-19.12. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation of legislative members shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates, as appropriate. Funding for the costs of expenses of all members shall be provided by the Virginia War Memorial Division of the Department of Veterans Services.

E. The Department of Veterans Services shall provide the Board with administrative and other services.

F. The Board shall adopt bylaws governing their organization and procedures and may amend the same. The Board shall elect from their number a chairman, vice-chairman, and such other officers as their bylaws may provide. They shall also appoint an executive committee, composed of not fewer than five members, which committee shall exercise the powers and duties imposed on the Board by this section to the extent permitted by the Board in their bylaws. The Board shall meet at least four times a year. Meetings of the Board and the executive committee shall be held at the call of the Commissioner of the Department of Veterans Services, the chairman of the Board, or whenever a majority of the members so request. A majority of members shall constitute a quorum.

G. The chairman of the Board shall submit such reports electronically as required by the Commissioner of Veterans Services.

§ 2.2-2466. Authority of Board.

The Board shall have the power and duty to:

1. Advise and make recommendations to the Commissioner of the Department of Veterans Services concerning the management, control, maintenance, and operation of the Virginia War Memorial, including the contents, furnishings, grounds, funds, property, and endowments thereof;

2. Recommend fees for the use of the Memorial;

3. 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;

4. Determine what programs and activities may and should be carried out at the Memorial;

5. Provide direct supervision of any nonprofit corporation established as an instrumentality to provide fundraising for the Memorial and assist in the details of administering the affairs of the Memorial; and

6. Recommend regulations to the Commissioner for the use of and visitation to the Memorial.

§ 2.2-2467. Form of accounts and records; annual audit.

The accounts and records of the Virginia War Memorial 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 representatives shall annually audit the accounts of the Memorial. The cost of such audits services shall be borne by the Memorial.

§ 2.2-2468. 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 military operations against terrorism as a result of a terrorist act or in any armed conflict after December 6, 1941, 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.

§ 2.2-2469. Possession of certain military medals.

To preserve the dignity of military medals authorized to be worn by the United States Department of Defense and the memory of those who have rendered faithful service and sacrifice in the cause of freedom and liberty, the Virginia War Memorial Division of the Department of Veterans Services shall be vested with the full authority to take possession of military medals, ribbons, or certificates that come into the possession of the Commonwealth for which the ownership is unknown until such time as the true owner is able to take possession. The Virginia War Memorial Division of the Department of Veterans Services shall take reasonable efforts, based on available resources, to determine the true owner and return any military medal, ribbon, or certificate that comes into its possession pursuant to this section.

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030 and 2.2-4031:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The ~~Virginia War Memorial Foundation~~ *Commissioner of the Department of Veterans Services in adopting regulation pursuant to subdivision 18 of § 2.2-2004*.

~~16.~~ The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

~~17~~ *16*. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

~~18~~ *17*. The Virginia Small Business Financing Authority.

~~19~~ *18*. The Virginia Economic Development Partnership Authority.

~~20~~ *19*. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

~~21~~ *20*. The Insurance Continuing Education Board pursuant to § 38.2-1867.

~~22~~ *21*. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

~~23~~ *22*. (Expires January 1, 2014) The Secretary of Natural Resources in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.

~~24~~ *23*. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, militia, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) ~~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 Team pursuant to § 32.1-283.1.

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

§ 58.1-344.3. Voluntary contributions of refunds requirements.

A. 1. For taxable years beginning on and after January 1, 2005, all entities entitled to voluntary contributions of tax refunds listed in subsections B and C must have received at least $10,000 in contributions in each of the three previous taxable years for which there is complete data and in which such entity was listed on the individual income tax return.

2. In the event that an entity listed in subsections B and C does not satisfy the requirement in subdivision 1 ~~of this subsection~~, such entity shall no longer be listed on the individual income tax return.

3. a. The entities listed in subdivisions B 21 and B 22 as well as any other entities in subsections B and C added subsequent to the 2004 Session of the General Assembly shall not appear on the individual income tax return until their addition to the individual income tax return results in a maximum of 25 contributions listed on the return. Such contributions shall be added in the order that they are listed in subsections B and C.

b. Each entity added to the income tax return shall appear on the return for at least three consecutive taxable years before the requirement in subdivision 1 ~~of this subsection~~ is applied to such entity.

4. The Department of Taxation shall report annually by the first day of each General Assembly Regular Session to the chairmen of the House and Senate Finance Committees the amounts collected for each entity listed under subsections B and C for the three most recent taxable years for which there is complete data. Such report shall also identify the entities, if any, that will be removed from the individual income tax return because they have failed the requirements in subdivision 1 ~~of this subsection~~, the entities that will remain on the individual income tax return, and the entities, if any, that will be added to the individual income tax return.

B. Subject to the provisions of subsection A, the following entities entitled to voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions of not less than $1:

1. Nongame wildlife voluntary contribution.

a. All moneys contributed shall be used for the conservation and management of endangered species and other nongame wildlife. "Nongame wildlife" includes protected wildlife, endangered and threatened wildlife, aquatic wildlife, specialized habitat wildlife both terrestrial and aquatic, and mollusks, crustaceans, and other invertebrates under the jurisdiction of the Board of Game and Inland Fisheries.

b. All moneys shall be deposited into a special fund known as the Game Protection Fund and which shall be accounted for as a separate part thereof to be designated as the Nongame Cash Fund. All moneys so deposited in the Nongame Cash Fund shall be used by the Commission of Game and Inland Fisheries for the purposes set forth herein.

2. Open space recreation and conservation voluntary contribution.

a. All moneys contributed shall be used by the Department of Conservation and Recreation to acquire land for recreational purposes and preserve natural areas; to develop, maintain, and improve state park sites and facilities; and to provide funds to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

b. All moneys shall be deposited into a special fund known as the Open Space Recreation and Conservation Fund. The moneys in the fund shall be allocated one-half to the Department of Conservation and Recreation for the purposes stated in subdivision 2 a ~~of this subsection~~ and one-half to local public bodies pursuant to the Virginia Outdoor Fund Grants Program.

3. Voluntary contribution to political party.

All moneys contributed shall be paid to the State Central Committee of any party that meets the definition of a political party under § 24.2-101 as of July 1 of the previous taxable year. The maximum contribution allowable under this subdivision shall be $25. In the case of a joint return of husband and wife, each spouse may designate that the maximum contribution allowable be paid.

4. United States Olympic Committee voluntary contribution.

All moneys contributed shall be paid to the United States Olympic Committee.

5. Housing program voluntary contribution.

a. All moneys contributed shall be used by the Department of Housing and Community Development to provide assistance for emergency, transitional, and permanent housing for the homeless; and to provide assistance to housing for the low-income elderly for the physically or mentally disabled.

b. All moneys shall be deposited into a special fund known as the Virginia Tax Check-off for Housing Fund. All moneys deposited in the fund shall be used by the Department of Housing and Community Development for the purposes set forth in this subdivision. Funds made available to the Virginia Tax Check-off for Housing Fund may supplement but shall not supplant activities of the Virginia Housing Partnership Revolving Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36 or those of the Virginia Housing Development Authority.

6. Voluntary contributions to the Department for the Aging.

a. All moneys contributed shall be used by the Department for the Aging for the enhancement of transportation services for the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Transportation Services for the Elderly and Disabled Fund. All moneys so deposited in the fund shall be used by the Department for the Aging for the enhancement of transportation services for the elderly and disabled. The Department for the Aging shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to this subdivision annually to the Secretary of Health and Human Resources.

7. Voluntary contribution to the Community Policing Fund.

a. All moneys contributed shall be used to provide grants to local law-enforcement agencies for the purchase of equipment or the support of services, as approved by the Criminal Justice Services Board, relating to community policing.

b. All moneys shall be deposited into a special fund known as the Community Policing Fund. All moneys deposited in such fund shall be used by the Department of Criminal Justices Services for the purposes set forth herein.

8. Voluntary contribution to promote the arts.

All moneys contributed shall be used by the Virginia Arts Foundation to assist the Virginia Commission for the Arts in its statutory responsibility of promoting the arts in the Commonwealth. All moneys shall be deposited into a special fund known as the Virginia Arts Foundation Fund.

9. Voluntary contribution to the Historic Resources Fund.

All moneys contributed shall be deposited in the Historic Resources Fund established pursuant to § 10.1-2202.1.

10. Voluntary contribution to the Virginia Foundation for the Humanities and Public Policy.

All moneys contributed shall be paid to the Virginia Foundation for the Humanities and Public Policy. All moneys shall be deposited into a special fund known as the Virginia Humanities Fund.

11. Voluntary contribution to the Center for Governmental Studies.

All moneys contributed shall be paid to the Center for Governmental Studies, a public service and research center of the University of Virginia. All moneys shall be deposited into a special fund known as the Governmental Studies Fund.

12. Voluntary contribution to the Law and Economics Center.

All moneys contributed shall be paid to the Law and Economics Center, a public service and research center of George Mason University. All moneys shall be deposited into a special fund known as the Law and Economics Fund.

13. Voluntary contribution to Children of America Finding Hope.

All moneys contributed shall be used by Children of America Finding Hope (CAFH) in its programs which are designed to reach children with emotional and physical needs.

14. Voluntary contribution to 4-H Educational Centers.

All moneys contributed shall be used by the 4-H Educational Centers throughout the Commonwealth for their (i) educational, leadership, and camping programs and (ii) operational and capital costs. The State Treasurer shall pay the moneys to the Virginia 4-H Foundation in Blacksburg, Virginia.

15. Voluntary contribution to promote organ and tissue donation.

a. All moneys contributed shall be used by the Virginia Transplant Council to assist in its statutory responsibility of promoting and coordinating educational and informational activities as related to the organ, tissue, and eye donation process and transplantation in the Commonwealth of Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Donor Registry and Public Awareness Fund. All moneys deposited in such fund shall be used by the Virginia Transplant Council for the purposes set forth herein.

16. Voluntary contributions to the Virginia War Memorial ~~Foundation~~ *Board* and the National D-Day Memorial Foundation.

All moneys contributed shall be used by the Virginia War Memorial ~~Foundation~~ *Board* and the National D-Day Memorial Foundation in their work through each of their respective memorials. The State Treasurer shall divide the moneys into two equal portions and pay one portion to the Virginia War Memorial ~~Foundation~~ *Board* and the other portion to the National D-Day Memorial Foundation.

17. Voluntary contribution to the Virginia Federation of Humane Societies.

All moneys contributed shall be paid to the Virginia Federation of Humane Societies to assist in its mission of saving, caring for, and finding homes for homeless animals.

18. Voluntary contribution to the Tuition Assistance Grant Fund.

a. All moneys contributed shall be paid to the Tuition Assistance Grant Fund for use in providing monetary assistance to residents of the Commonwealth who are enrolled in undergraduate or graduate programs in private Virginia colleges.

b. All moneys shall be deposited into a special fund known as the Tuition Assistance Grant Fund. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education for Virginia in accordance with and for the purposes provided under the Tuition Assistance Grant Act (§ 23-38.11 et seq.).

19. Voluntary contribution to the Spay and Neuter Fund.

All moneys contributed shall be paid to the Spay and Neuter Fund for use by localities in the Commonwealth for providing low-cost spay and neuter surgeries through direct provision or contract or each locality may make the funds available to any private, nonprofit sterilization program for dogs and cats in such locality. The Tax Commissioner shall determine annually the total amounts designated on all returns from each locality in the Commonwealth, based upon the locality that each filer who makes a voluntary contribution to the Fund lists as his permanent address. The State Treasurer shall pay the appropriate amount to each respective locality.

20. Voluntary contribution to the Virginia Commission for the Arts.

All moneys contributed shall be paid to the Virginia Commission for the Arts.

21. Voluntary contribution for the Office of Commonwealth Preparedness.

All moneys contributed shall be paid to the Department of Emergency Management for the Office of Commonwealth Preparedness.

22. Voluntary contribution for the cancer centers in the Commonwealth.

All moneys contributed shall be paid equally to all entities in the Commonwealth that officially have been designated as cancer centers by the National Cancer Institute.

23. Voluntary contribution to the Brown v. Board of Education Scholarship Program Fund.

a. All moneys contributed shall be paid to the Brown v. Board of Education Scholarship Program Fund to support the work of and generate nonstate funds to maintain the Brown v. Board of Education Scholarship Program.

b. All moneys shall be deposited into the Brown v. Board of Education Scholarship Program Fund as established in § 30-231.4.

c. All moneys so deposited in the Fund shall be administered by the State Council of Higher Education in accordance with and for the purposes provided in Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

24. Voluntary contribution to the Martin Luther King, Jr. Living History and Public Policy Center.

All moneys contributed shall be paid to the Board of Trustees of the Martin Luther King, Jr. Living History and Public Policy Center.

25. Voluntary contribution to the Virginia Caregivers Grant Fund.

All moneys contributed shall be paid to the Virginia Caregivers Grant Fund established pursuant to § 63.2-2202.

26. Voluntary contribution to public library foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public library foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public library foundation.

27. Voluntary contribution to Celebrating Special Children, Inc.

All moneys contributed shall be paid to Celebrating Special Children, Inc. and shall be deposited into a special fund known as the Celebrating Special Children, Inc. Fund.

28. Voluntary contributions to the Department for the Aging.

a. All moneys contributed shall be used by the Department for the Aging for providing Medicare Part D counseling to the elderly and disabled.

b. All moneys shall be deposited into a special fund known as the Medicare Part D Counseling Fund. All moneys so deposited shall be used by the Department for the Aging to provide counseling for the elderly and disabled concerning Medicare Part D. The Department for the Aging shall conduct an annual audit of the moneys received pursuant to this subdivision and shall provide an evaluation of all programs funded pursuant to the subdivision to the Secretary of Health and Human Resources.

29. Voluntary contribution to community foundations.

All moneys contributed pursuant to this subdivision shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each community foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective community foundation. A "community foundation" shall be defined as any institution that meets the membership requirements for a community foundation established by the Council on Foundations.

30. Voluntary contribution to the Virginia Foundation for Community College Education.

a. All moneys contributed shall be paid to the Virginia Foundation for Community College Education for use in providing monetary assistance to Virginia residents who are enrolled in comprehensive community colleges in Virginia.

b. All moneys shall be deposited into a special fund known as the Virginia Foundation for Community College Education Fund. All moneys so deposited in the Fund shall be administered by the Virginia Foundation for Community College Education in accordance with and for the purposes provided under the Community College Incentive Scholarship Program (§ 23-220.2 et seq.).

31. Voluntary contribution to the Middle Peninsula Chesapeake Bay Public Access Authority.

All moneys contributed shall be paid to the Middle Peninsula Chesapeake Bay Public Access Authority to be used for the purposes described in § 15.2-6601.

32. Voluntary contribution to the Breast and Cervical Cancer Prevention and Treatment Fund.

All moneys contributed shall be paid to the Breast and Cervical Cancer Prevention and Treatment Fund established pursuant to § 32.1-368.

33. Voluntary contribution to the Virginia Aquarium and Marine Science Center.

All moneys contributed shall be paid to the Virginia Aquarium and Marine Science Center for use in its mission to increase the public's knowledge and appreciation of Virginia's marine environment and inspire commitment to preserve its existence.

34. Voluntary contribution to the Virginia Capitol Preservation Foundation.

All moneys contributed shall be paid to the Virginia Capitol Preservation Foundation for use in its mission in supporting the ongoing restoration, preservation, and interpretation of the Virginia Capitol and Capitol Square.

35. Voluntary contribution for the Secretary of Veterans Affairs and Homeland Security.

All moneys contributed shall be paid to the Office of the Secretary of Veterans Affairs and Homeland Security for related programs and services.

C. Subject to the provisions of subsection A, the following voluntary contributions shall appear on the individual income tax return and are eligible to receive tax refund contributions or by making payment to the Department if the individual is not eligible to receive a tax refund pursuant to § 58.1-309 or if the amount of such tax refund is less than the amount of the voluntary contribution:

1. Voluntary contribution to the Family and Children's Trust Fund of Virginia.

All moneys contributed shall be paid to the Family and Children's Trust Fund of Virginia.

2. Voluntary Chesapeake Bay Restoration Contribution.

a. All moneys contributed shall be used to help fund Chesapeake Bay and its tributaries restoration activities in accordance with tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

b. The Tax Commissioner shall annually determine the total amount of voluntary contributions and shall report the same to the State Treasurer, who shall credit that amount to a special nonreverting fund to be administered by the Office of the Secretary of Natural Resources. All moneys so deposited shall be used for the purposes of providing grants for the implementation of tributary plans developed pursuant to Article 7 (§ 2.2-215 et seq.) of Chapter 2 of Title 2.2.

3. Voluntary Jamestown-Yorktown Foundation Contribution.

All moneys contributed shall be used by the Jamestown-Yorktown Foundation for the Jamestown 2007 quadricentennial celebration. All moneys shall be deposited into a special fund known as the Jamestown Quadricentennial Fund. This subdivision shall be effective for taxable years beginning before January 1, 2008.

4. State forests voluntary contribution.

a. All moneys contributed shall be used for the development and implementation of conservation and education initiatives in the state forests system.

b. All moneys shall be deposited into a special fund known as the State Forests System Fund, established pursuant to § 10.1-1119.1. All moneys so deposited in such fund shall be used by the State Forester for the purposes set forth herein.

5. Voluntary contributions to Uninsured Medical Catastrophe Fund.

All moneys contributed shall be paid to the Uninsured Medical Catastrophe Fund established pursuant to § 32.1-324.2, such funds to be used for the treatment of Virginians sustaining uninsured medical catastrophes.

6. Voluntary contribution to local school divisions.

a. All moneys contributed shall be used by a specified local public school foundation as created by and for the purposes stated in § 22.1-212.2:2.

b. All moneys collected pursuant to subdivision 6 a ~~of this subsection~~ or through voluntary payments by taxpayers designated for a local public school foundation over refundable amounts shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amounts designated on all returns for each public school foundation and shall report the same to the State Treasurer. The State Treasurer shall pay the appropriate amount to the respective public school foundation.

c. In order for a public school foundation to be eligible to receive contributions under this section, school boards must notify the Department during the taxable year in which they want to participate prior to the deadlines and according to procedures established by the Tax Commissioner.

7. Voluntary contribution to Home Energy Assistance Fund.

All moneys contributed shall be paid to the Home Energy Assistance Fund established pursuant to § 63.2-805, such funds to be used to assist low-income Virginians in meeting seasonal residential energy needs.

8. Voluntary contribution to the Virginia Military Family Relief Fund.

a. All moneys contributed shall be paid to the Virginia Military Family Relief Fund for use in providing assistance to military service personnel on active duty and their families for living expenses including, but not limited to, food, housing, utilities, and medical services.

b. All moneys shall be deposited into a special fund known as the Virginia Military Family Relief Fund, established and administered pursuant to § 44-102.2.

D. Unless otherwise specified and subject to the requirements in § 58.1-344.2, all moneys collected for each entity in subsections B and C shall be deposited into the state treasury. The Tax Commissioner shall determine annually the total amount designated for each entity in subsections B and C on all individual income tax returns and shall report the same to the State Treasurer, who shall credit that amount to each entity's respective special fund.

114. That Article 2 (§§ 2.2-2705 through 2.2-2708.1) of Chapter 27 of Title 2.2 of the Code of Virginia is repealed.*