

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 594

An Act to amend and reenact §§ 2.2-4303, 2.2-4308, 2.2-4323, 3.2-2800, 3.2-2805, 3.2-2806, 9.1-108, 9.1-112, 10.1-419, 33.1-221.1:1.1, 44-146.35, 44-146.38, 44-146.40, 60.2-113, and 62.1-44.34:26 of the Code of Virginia, and to repeal § 2.2-1134, Articles 3 (§§ 2.2-2404 through 2.2-2406) and 4 (§§ 2.2-2407 and 2.2-2408) of Chapter 24, Article 24 (§§ 2.2-2667 and 2.2-2668) of Chapter 26, and Article 9 (§§ 2.2-2732 and 2.2-2733) of Chapter 27 of Title 2.2, §§ 3.2-2801 through 3.2-2804, 3.2-2807, 9.1-802, and 9.1-803, Chapter 65 (§§ 15.2-6500 through 15.2-6504) of Title 15.2, and §§ 33.1-391.3:1, 44-146.39, and 62.1-132.11:2 of the Code of Virginia, relating to the elimination of certain advisory boards, councils, and other advisory collegial bodies.

[H 2520]

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4303, 2.2-4308, 2.2-4323, 3.2-2800, 3.2-2805, 3.2-2806, 9.1-108, 9.1-112, 10.1-419, 33.1-221.1:1.1, 44-146.35, 44-146.38, 44-146.40, 60.2-113, and 62.1-44.34:26 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4303. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. ~~By any (a) public body for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than \$1.5 million and (b) local governing body on a fixed price design-build basis or construction management basis under § 2.2-4308 when the contract is not expected to cost more than \$1.5 million;~~

3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;

4. ~~3. By any governing body of a locality with a population in excess of 100,000 that the Design-Build/Construction Management Review Board has made a one-time determination, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided that projects undertaken by the local governing body shall be exempt only from approval of the Design-Build/Construction Management Review Board and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or~~

~~5. 4. As otherwise provided in § 2.2-4308.~~

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably

available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors.

H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to § 2.2-2406. ~~Provided, however, that projects undertaken pursuant to subdivision D 2 or D 4 of § 2.2-4303 shall be exempt from approval of the Review Board and has implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.~~

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. ~~Except as may otherwise be approved by the Review Board, such~~ Such procedures for:

- a. Design-build construction projects shall include a two-step competitive negotiation process

consistent with the ~~Review Board's regulations~~ *standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.*

b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the ~~Review Board's regulations~~ *procedures as adopted by the Secretary of Administration.*

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. ~~Once approved by the Review Board in accordance with § 2.2-2406, the public body may procure a design-build or construction management contract for the specific construction project presented to the Review Board. Unless otherwise specified in the Request for Proposal, the~~ *The* contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

C. ~~The public body shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.~~

§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities.

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, 2.2-4324, and 2.2-4326.

B. ~~The Department of Environmental Quality, with advice from the Virginia Recycling Markets Development Council,~~ shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.

2. Promote the Commonwealth's interest in the use of recycled products to vendors.

3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia-based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

§ 3.2-2800. Definitions.

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

"Beekeeper" means any person who keeps and manages bees for profit, and shall include those growers who keep bees for pollinating crops.

"Cross pollination" means the transfer of pollen from the anthers of blossoms to the stigmas of other blossoms of the same crops or a variety of the same crop.

"Pollination contractor" means any person who contracts to supply a means of cross pollinating the blossoms of any specified plant.

"Producer" means any person engaged in the business of raising crops that benefit from cross pollination by honeybees or other pollinating insects.

~~"Regular meeting" means a meeting of not less than six members of the Plant Pollination Advisory Board held annually.~~

~~"Special meeting" means a meeting of at least six members of the Plant Pollination Advisory Board called by the chairman between regular meetings.~~

§ 3.2-2805. Powers and duties of Commissioner.

The Commissioner shall have the following powers and duties:

1. To receive and dispense funds;

2. To develop and administer, ~~in consultation with the Plant Pollination Advisory Board,~~ a beekeeper assistance program that is designed to assist Virginia beekeepers in maintaining healthy, productive colonies;

3. To enter into contracts for the purpose of developing new or improved markets or marketing methods for bees and bee products and pollination services;

4. To contract for scientific research services and to contract to develop improved pollinating behavior in honeybees and other pollinating insects;

5. To contract for rearing numbers of improved queen bees sufficient for distribution or sale to beekeepers;

6. To enter into agreements with any local, state or national organization or agency engaged in education for the purpose of disseminating information on pollinators and pollination of crops;

7. To rent or purchase office and laboratory space and land as necessary to carry out its duties;

8. To appoint employees, full- or part-time, and to fix their compensation, if any, in accord with the provisions of the Virginia Personnel Act, (§ 2.2-2900 et seq.); ~~and~~

9. *To encourage research, education, methods of improvement in apicultural practices, and promotion projects and the award of funds for such projects as deemed necessary or advisable to accomplish the objectives set forth in this chapter; and*

10. To report to the Board in the manner and at such times as the Board may prescribe, regarding the receipt and expenditure of funds ~~and the Plant Pollination Advisory Board's policies, programs, and activities.~~ The ~~Plant Pollination Advisory Board~~ Commissioner shall ensure that funds made available to the Plant Pollination Fund are expended only for the purposes authorized by this chapter.

§ 3.2-2806. Plant Pollination Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Plant Pollination Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys derived from appropriations from the general fund of the state treasury, grants of private or government money designated for specified activities authorized pursuant to this chapter; fees for services rendered pursuant to this chapter; payment for products, equipment, or material or any other thing supplied by the Commissioner; payment for educational publications, materials or supplies provided by the Commissioner; and grants, bequests and donations shall be paid into the state treasury and credited to the Fund. All funds collected for or received by the Commissioner 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. The Commissioner is further authorized to accept materials, supplies, property, land and personal services contributed from any source. Moneys in the Fund shall be used solely for the administration of this chapter. Expenditures and disbursements from the Fund shall be made by the Commissioner on warrants issued by the Comptroller ~~upon written request signed by a duly authorized officer of the Plant Pollination Advisory Board.~~

§ 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 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 Chiefs of Police Association 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 Association for 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 Jail ~~Superintendents~~ 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, and 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.

§ 9.1-112. Committee on Training; membership.

There is created a permanent Committee on Training under the Board that shall be the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 16 of § 9.1-102. The Committee on Training shall be composed of 14 members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; a member of the Private Security Services Advisory Board; the Executive Secretary of the Supreme Court of Virginia; two sheriffs representing the Virginia State Sheriffs Association; two representatives of the Chiefs of Police Association; the active-duty law-enforcement officer representing police and fraternal associations; the attorney for the Commonwealth representing the Association ~~for~~ of *Commonwealth's* Attorneys for the Commonwealth; a representative of the Virginia Municipal League; a representative of the Virginia Association of Counties; a regional jail superintendent representing the Virginia Association of Regional Jails; and one member designated by the chairman of the Board from among the other appointments made by the Governor.

The Committee on Training shall annually elect its chairman from among its members.

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

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

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

C. ~~The Counties of Charles City, James City and Surry and the Governor shall appoint a seven-member advisory committee of area residents and other qualified persons. The governing bodies of the Counties of James City and Surry shall each appoint two persons to the Lower James River Advisory Committee. The governing body of Charles City County shall appoint one person to the Advisory Committee. The Governor shall appoint two persons to the Advisory Committee. Committee members will serve four-year terms, without compensation.~~

~~The Advisory Committee shall assist and advise the Department of Conservation and Recreation, the political subdivisions through which the Lower James River passes, and other public bodies concerning the protection and management of this portion of the River. The Advisory Committee shall have no regulatory authority.~~

D. C. The General Assembly hereby designates the Department of Conservation and Recreation as the agency of the Commonwealth responsible for assuring that the purposes of this chapter are achieved.

Nothing in this designation shall impair the powers and duties of the local jurisdictions listed above or the Virginia Department of Transportation.

§ 33.1-221.1:1.1. Rail Enhancement Fund.

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement and development of freight and passenger railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Fund, hereafter referred to as "the Fund."

B. The Fund shall be established on the books of the Comptroller, and shall consist of dedications pursuant to § 58.1-2425 and such funds from other sources as may be set forth in the appropriation act and 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 as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. ~~Prior to recommending an allocation of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation shall consult with and obtain the advice and recommendations of the Rail Advisory Board established pursuant to § 33.1-391.3:1.~~

D. Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such public benefits shall include, but not be limited to, the impact of the project on traffic congestion, environmental quality, and whenever possible, give due consideration to passenger rail capacity on corridors identified by the Commonwealth Transportation Board that have existing or proposed passenger rail service. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources.

§ 44-146.35. Powers and duties of the Department of Emergency Management.

In carrying out the purposes set forth in this chapter the Department shall have the authority to:

1. Coordinate the development of hazardous materials training programs and hazardous materials emergency response programs and plans with state and local government agencies and related groups. Those state agencies and local government agencies shall retain the statutory responsibilities assigned elsewhere in this Code.

2. Administer the implementation of the Virginia Hazardous Materials Emergency Response Program. ~~The Department shall consider the recommendations of the Hazardous Materials Emergency Response Advisory Council in implementing the Program.~~

§ 44-146.38. Political subdivisions to appoint hazardous materials coordinator.

Each political subdivision shall appoint a hazardous materials coordinator. In appointing the hazardous materials coordinator, political subdivisions shall consider the requisite qualifications for hazardous materials coordinators as established by the Coordinator ~~upon recommendation of the State Hazardous Materials Emergency Response Advisory Council.~~ The hazardous materials coordinator shall coordinate the hazardous materials emergency response program within the political subdivision.

§ 44-146.40. Virginia Emergency Response Council created; membership; responsibilities; immunity for local councils.

A. There is hereby created the Virginia Emergency Response Council to carry out the provisions of Title 3, Public Law 99-499.

B. The Virginia Emergency Response Council shall consist of such state agency heads or designated representatives with technical expertise in the emergency response field as the Governor shall appoint. The Governor shall designate a chairman from among its members.

C. The Virginia Emergency Response Council, known as the "Virginia Council," shall designate an appropriate state agency to receive funds provided under Title 3, Public Law 99-499.

D. ~~The Virginia Emergency Response Council shall seek advice on policy and programmatic matters~~

from the Hazardous Materials Emergency Response Advisory Council.

~~E.~~ The Virginia Council shall adopt rules and procedures in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) ~~of Title 2.2~~ for the conduct of its business.

~~F.~~ *E.* Any person appointed by the Virginia Emergency Response Council as a member of a local emergency planning committee shall be immune from civil liability for any official act, decision or omission done or made in performance of his duties as a member of such local council, provided that the act, decision or omission was not done or made in bad faith or with malicious intent or does not constitute gross negligence. No member of any emergency planning committee nor any state agency on behalf of such member need make a payment into the state insurance trust fund under § 2.2-1835 for this purpose.

~~G.~~ *F.* Any joint emergency planning committee serving Fairfax County and the City of Fairfax shall have the authority to require any facility within its emergency planning district to submit the information required and participate in the emergency planning provided for in Subtitle A of Title 3 of Public Law 99-499. For the purposes of this subsection, "facility" shall include any development or installation having an aggregate storage capacity of at least one million gallons of oil as defined in § 62.1-44.34:10, or the potential for a sudden release of 10,000 pounds or more of any other flammable liquid or gas not exempt from the provisions of § 327 of Title 3 of Public Law 99-499. This requirement shall not occur until after public notice and the opportunity to comment. The committee shall notify the facility owner or operator of any requirement to comply with this subsection.

§ 60.2-113. Employment stabilization.

The Commission shall take all necessary steps through its appropriate divisions and with the advice of such advisory boards and committees as it may have to:

1. Establish a viable labor exchange system to promote maximum employment for the Commonwealth of Virginia with priority given to those workers drawing unemployment benefits;
2. Provide Virginia State Job Service services, as described in this title, according to the provisions of the Wagner-Peyser Act (29 U.S.C. 49f), as amended by the Workforce Investment Act;
3. Maintain a solvent trust fund financed through equitable employer taxes that provide temporary partial income replacement to involuntarily unemployed covered workers;
4. Coordinate and conduct labor market information research studies, programs and operations, including the development, storage, retrieval and dissemination of information on the social and economic aspects of the Commonwealth and publish data needed by employers, economic development, education and training entities, government and other users in the public and private sectors;
5. Determine and publish a list of jobs, trades, and professions for which a high demand of qualified workers exists or is projected by the Commission. The Commission shall consult with the Virginia Workforce Council in making such determination. Such information shall be published biennially and disseminated to employers; education and training entities, including public two-year and four-year institutions of higher education; government agencies, including the Department of Education and public libraries; and other users in the public and private sectors;
6. Prepare official short and long-range population projections for the Commonwealth for use by the General Assembly and state agencies with programs which involve or necessitate population projections;
7. Encourage and assist in the adoption of practical methods of vocational guidance, training and retraining; and
8. Establish the Interagency Migrant Worker Policy Committee, comprised of representatives from appropriate state agencies, including the Virginia Workers' Compensation Commission, whose services and jurisdictions involve migrant and seasonal farmworkers and their employees. ~~The Committee shall coordinate its activities with the Migrant and Seasonal Farmworkers Board established in § 2.2-2407.~~ All agencies of the Commonwealth shall be required to cooperate with the Committee upon request.

§ 62.1-44.34:26. Responsibilities of the Council.

The Council shall have the following responsibilities:

1. To foster the exchange of information between the federal, state, and local government;
2. To enhance Virginia's participation in the United States Environmental Protection Agency's Region III Response Team;
3. To review and evaluate the response to emergency situations and recommend changes to the Commonwealth of Virginia's Oil and Hazardous Materials Emergency Response Plan;
4. To provide ongoing analysis of the most recent technical developments for the remediation of discharges; and
5. To coordinate its activities with the ~~State Hazardous Materials Emergency Response Advisory Council~~ and the Virginia Emergency Response Council.

2. That § 2.2-1134, Articles 3 (§§ 2.2-2404 through 2.2-2406) and 4 (§§ 2.2-2407 and 2.2-2408) of Chapter 24, Article 24 (§§ 2.2-2667 and 2.2-2668) of Chapter 26, and Article 9 (§§ 2.2-2732 and 2.2-2733) of Chapter 27 of Title 2.2, §§ 3.2-2801 through 3.2-2804, 3.2-2807, 9.1-802, and 9.1-803, Chapter 65 (§§ 15.2-6500 through 15.2-6504) of Title 15.2, and §§ 33.1-391.3:1, 44-146.39, and 62.1-132.11:2 of the Code of Virginia are repealed.