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## SENATE BILL NO. 1350

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations  
on February 15, 2013)

(Patron Prior to Substitute—Senator McWaters)

A *BILL to amend and reenact §§ 2.2-204, 2.2-205.1, 2.2-435.8, 2.2-2238.1, 2.2-2282, 2.2-2284, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 3.2-201, 10.1-1425.7, 11-7.1, 15.2-965.1, 15.2-4904, 18.2-213.1, 23-9.6:1.01, 23-38.88, 23-135.7:7, 33.1-221, 36-139.6, 46.2-749.69:1, 58.1-439.6, 59.1-284.22, 63.2-601, and 63.2-610 of the Code of Virginia; to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 16.1, containing articles numbered 1, 2, and 3, consisting of sections numbered 2.2-1603 through 2.2-1617; and to repeal Chapters 9 (§§ 2.2-900 through 2.2-904.1) and 14 (§§ 2.2-1400 through 2.2-1405) of Title 2.2 of the Code of Virginia, relating to the creation of the Department of Small Business and Supplier Diversity by consolidating the powers and duties of the Department of Business Assistance and the Department of Minority Business Enterprise.*

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.2-204, 2.2-205.1, 2.2-435.8, 2.2-2238.1, 2.2-2282, 2.2-2284, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 3.2-201, 10.1-1425.7, 11-7.1, 15.2-965.1, 15.2-4904, 18.2-213.1, 23-9.6:1.01, 23-38.88, 23-135.7:7, 33.1-221, 36-139.6, 46.2-749.69:1, 58.1-439.6, 59.1-284.22, 63.2-601, and 63.2-610 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 16.1, containing articles numbered 1, 2, and 3, consisting of sections numbered 2.2-1603 through 2.2-1617, as follows:

**§ 2.2-204. Position established; agencies for which responsible; additional duties.**

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: ~~Department of Business Assistance~~, Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, ~~Department of Minority Business Enterprise~~ *Department of Small Business and Supplier Diversity*, Virginia Housing Development Authority, Virginia Resources Authority, Virginia Racing Commission, Tobacco Indemnification and Community Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

**§ 2.2-205.1. Economic Crisis Strike Force.**

A. There is hereby established the Economic Crisis Strike Force (Strike Force) for the purpose of serving as a working group to respond as needed to economic disasters in Virginia communities by (i) immediately providing a single point of contact for citizens in affected communities to assist with accessing available government and private sector services and resources, (ii) assisting localities in developing short-term and long-term strategies for addressing the economic crisis, and (iii) identifying opportunities for workforce retraining, job creation, and new investment.

B. The Strike Force shall be chaired by the Secretary of Commerce and Trade and be deployed at the direction of the Governor. Membership shall include high level representatives designated by the Secretaries of Education and Health and Human Resources and by the respective heads of the following agencies: the Department of Agriculture and Consumer Services, ~~the Department of Business Assistance~~, the Department of Education, the Department of Housing and Community Development, the Department of Labor and Industry, the Department of Medical Assistance Services, ~~the Department of Minority Business Enterprise~~ *the Department of Small Business and Supplier Diversity*, the Department of Social Services, the Virginia Community College System, the Virginia Employment Commission, the Virginia Economic Development Partnership, and the Virginia Tourism Authority. The Strike Force shall also include representatives from such other agencies as may be designated by the Governor to meet the needs of a particular affected community. In addition, the Governor may designate such citizens as he deems appropriate to advise the Strike Force.

C. Staff support for the Strike Force shall be provided by the Office of the Governor and the Secretary of Commerce and Trade. All agencies of the Commonwealth shall assist the Strike Force upon request.

D. On or before December 1 of each year, the Strike Force shall report to the Governor and the General Assembly on its activities.

E. For the purposes of this section, "economic disaster" means an employment loss of at least 5%

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50 *five percent* during the immediately preceding six-month period, the closure or downsizing of a major  
51 regional employer in an economically distressed area, a natural disaster or act of terrorism for which the  
52 Governor has declared a state of emergency, or other economic crisis situations, which in the opinion of  
53 the Governor adversely affect the welfare of the citizens of the Commonwealth.

54 **§ 2.2-435.8. Workforce program evaluations; sharing of certain data.**

55 A. Notwithstanding any provision of law to the contrary, the agencies specified in subsection D may  
56 share data from within their respective databases solely to (i) provide the workforce program evaluation  
57 and policy analysis required by subdivision A 8 of § 2.2-435.7 and clause (i) of subdivision A 10 of  
58 § 2.2-435.7 and (ii) conduct education program evaluations that require employment outcomes data to  
59 meet state and federal reporting requirements.

60 B. Data shared pursuant to subsection A shall not include any personal identifying information, shall  
61 be encrypted, and shall be transmitted to the Governor or his designee. Upon receipt of such data, the  
62 Governor or his designee shall re-encrypt the data to prevent any participating agency from connecting  
63 shared data sets with existing agency files. For the purposes of this section:

64 1. "Identifying information" means the same as that term is defined in § 18.2-186.3, and

65 2. "Encrypted" means the same as that term is defined in § 18.2-186.6.

66 C. The Governor or his designee and all agencies authorized under this section shall destroy or erase  
67 all shared data upon completion of all required evaluations and analyses. The Governor or his designee  
68 may retain a third-party entity to assist with the evaluation and analysis.

69 D. The databases from the following agencies relating to the specific programs identified in this  
70 subsection may be shared solely to achieve the purposes specified in subsection A:

71 1. Virginia Employment Commission: Unemployment Insurance, Job Service, Trade Act, and  
72 Veterans Employment Training Programs;

73 2. Virginia Community College System: Postsecondary Career and Technical Education, Workforce  
74 Investment Act Adult, Youth and Dislocated Worker Programs;

75 3. Department for Aging and Rehabilitative Services: Vocational Rehabilitation and Senior  
76 Community Services Employment Program;

77 4. Department for the Blind and Vision Impaired: Vocational Rehabilitation;

78 5. Department of Education: Adult Education and Family Literacy, Special Education, and Career  
79 and Technical Education;

80 6. Department of Labor and Industry: Apprenticeship;

81 7. Department of Social Services: Supplemental Nutrition Assistance Program and Virginia Initiative  
82 for Employment Not Welfare;

83 8. Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*: Virginia Jobs  
84 Investment Program;

85 9. Department of Juvenile Justice: Youth Industries and Institutional Work Programs and Career and  
86 Technical Education Programs;

87 10. Department of Corrections: Career and Technical Education Programs; and

88 11. The State Council of Higher Education for Virginia.

89 **CHAPTER 16.1.**

90 **DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY.**

91 **Article 1.**

92 **General Provisions.**

93 **§ 2.2-1603. Department of Small Business and Supplier Diversity created; appointment of Director;**  
94 **offices; personnel.**

95 A. *There is hereby created a Department of Small Business and Supplier Diversity (the Department),*  
96 *which shall be headed by a Director appointed by the Governor to serve at his pleasure. The Director*  
97 *shall also serve as a special assistant to the Governor for small, women-owned, and minority-owned*  
98 *business development.*

99 B. *The Director of the Department shall, under the direction and control of the Governor, exercise*  
100 *the powers and perform the duties conferred or imposed upon him by law and perform such other duties*  
101 *as may be required by the Governor.*

102 C. *The Department shall have its main office in Richmond and may have branch offices as may be*  
103 *necessary, as determined by the Director subject to the approval of the Secretary of Commerce and*  
104 *Trade.*

105 **§ 2.2-1604. Definitions.**

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

107 *"Certification" means the process by which a business is determined to be a small, women-owned, or*  
108 *minority-owned business for the purpose of reporting small, women-owned, and minority-owned business*  
109 *participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.*

110 *"Department" means the Department of Small Business and Supplier Diversity or any division of the*  
111 *Department to which the Director has delegated or assigned duties and responsibilities.*

*"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.*

*"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:*

*1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.*

*2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of which this person claims to be a part.*

*3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.*

*4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.*

*"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, 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 minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.*

*"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.*

*"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.*

*"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.*

**§ 2.2-1605. Powers and duties of Department.**

*A. The Department shall have the following powers and duties:*

*1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;*

*2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;*

*3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;*

*4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;*

*5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund; and*

*6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law.*

183 *B. In addition, the Department shall serve as the liaison between the Commonwealth's existing*  
184 *businesses and state government in order to promote the development of Virginia's economy. To that*  
185 *end, the Department shall:*

186 *1. Provide for training or retraining of individuals for specific employment opportunities at new or*  
187 *expanding business facilities in the Commonwealth;*

188 *2. Develop and implement programs to assist small businesses in the Commonwealth in order to*  
189 *promote their growth and the creation and retention of jobs for Virginians;*

190 *3. Establish an industry program that is the principal point of communication between basic*  
191 *employers in the Commonwealth and the state government that will address issues of significance to*  
192 *business;*

193 *4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of*  
194 *commerce, and other public and private groups, basic information and pertinent factors of interest and*  
195 *concern to such businesses;*

196 *5. Develop statistical reports on job creation and the general economic conditions in the*  
197 *Commonwealth; and*

198 *6. Administer any programs established under the Virginia Jobs Investment Program described in*  
199 *Article 2 (§ 2.2-1611 et seq.) of this chapter.*

200 *C. All agencies of the Commonwealth shall assist the Department upon request and furnish such*  
201 *information and assistance as the Department may require in the discharge of its duties.*

202 **§ 2.2-1606. Powers of Director.**

203 *As deemed necessary or appropriate to better fulfill the duties of the Department, the Director may:*

204 *1. With the participation of other state departments and agencies, develop comprehensive plans and*  
205 *specific program goals for small, women-owned, and minority-owned business programs; establish*  
206 *regular performance monitoring and reporting systems to assure that goals of state agencies and*  
207 *institutions are being achieved; and evaluate the impact of federal and state support in achieving*  
208 *objectives.*

209 *2. Employ the necessary personnel or subcontract, according to his discretion, with localities to*  
210 *supplement the functions of business development organizations.*

211 *3. Assure the coordinated review of all proposed state training and technical assistance activities in*  
212 *direct support of small, women-owned, and minority-owned business programs to ensure consistency*  
213 *with program goals and to avoid duplication.*

214 *4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or*  
215 *their designees, whose programs and activities may affect or contribute to the purposes of this chapter.*

216 *5. Convene business leaders, educators, and other representatives of the private sector who are*  
217 *engaged in assisting the development of small, women-owned, and minority-owned business programs or*  
218 *who could contribute to their development for the purpose of proposing, evaluating, or coordinating*  
219 *governmental and private activities in furtherance of the objectives of this chapter.*

220 *6. Provide the managerial and organizational framework through which joint undertakings with state*  
221 *departments or agencies or private organizations can be planned and implemented.*

222 *7. Recommend appropriate legislative or executive actions.*

223 *8. Adopt regulations to implement certification programs for small, women-owned, and*  
224 *minority-owned businesses and employment services organizations, which regulations shall be exempt*  
225 *from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such*  
226 *certification programs shall allow applications for certification to be submitted by electronic means as*  
227 *authorized by § 59.1-496 and the applicant to affix thereto his electronic signature, as defined in*  
228 *§ 59.1-480. Such certification programs shall deny certification to vendors from states that deny like*  
229 *certifications to Virginia-based small, women-owned, or minority-owned businesses and employment*  
230 *services organizations or that provide a preference for small, women-owned, or minority-owned*  
231 *businesses and employment services organizations based in that state that is not available to*  
232 *Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of*  
233 *small, women-owned, and minority-owned businesses and employment services organizations; (ii)*  
234 *provide a process for evaluating existing local, state, private sector, and federal certification programs*  
235 *that meet the minimum requirements; and (iii) mandate certification, without any additional paperwork,*  
236 *of any prospective state vendor that has obtained certification under any certification program that is*  
237 *determined to meet the minimum requirements established in the regulations and of any employment*  
238 *services organization that has been approved by the Department for Aging and Rehabilitative Services.*

239 *9. Establish an interdepartmental board in accordance with § 2.2-1608 to supply the Director with*  
240 *information useful in promoting minority business activity.*

241 **§ 2.2-1607. Nonstock corporation to assist small businesses.**

242 *The Department may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title*  
243 *13.1 as an instrumentality to assist the Department in providing support to the small business segment*  
244 *of the economy of the Commonwealth. The Department may do all things necessary to qualify such*

corporation as a certified development company under Subchapter V of the Small Business Investment Act of 1958 (15 U.S.C. § 695 et seq.), or any amendment or successor statute thereto, as well as regulations adopted thereunder by the U.S. Small Business Administration. Any action by the Department to establish such a corporation prior to July 1, 1986, is ratified and approved.

**§ 2.2-1608. Interdepartmental Board; cooperation with Department.**

A. The Interdepartmental Board established by the Director shall be composed of heads of the several departments and agencies of state government, or their respective designees, whose functions affect small, women-owned, and minority-owned businesses. The participating departments and agencies shall be determined by the Director of the Department. The Interdepartmental Board shall meet at the call of the Director and shall supply the Director with information useful in promoting small, women-owned, and minority-owned business development.

B. The head of each participating state department and agency or his designee shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Director in the performance of his duties as needed.

C. The head of each participating state department or agency shall, when so requested by the Director, designate an assistant or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning small, women-owned, and minority-owned businesses.

D. Each participating state department or agency shall, within constraints of law and availability of funding, continue all current efforts to foster and promote small, women-owned, and minority-owned businesses and to support small, women-owned, and minority-owned business programs, and shall cooperate with the Director in increasing the total state effort.

**§ 2.2-1609. Use of vendors identified by public institutions of higher education as small, women-owned, and minority-owned businesses.**

For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the conditions prescribed in subsection B of § 23-38.88 may procure goods, services, and construction from vendors identified by such public institutions of higher education as small, women-owned, or minority-owned businesses that the institution has certified as such based on criteria approved by the Department. An institution exercising the authority granted by this section shall establish and follow internal procedures and processes designed to verify whether or not a vendor qualifies to be certified as a small, women-owned, or minority-owned business under the Department-approved criteria and the certification requirements. The institution shall notify the Department promptly of the certification and shall provide the Department with a copy of its written certification identifying the vendor as a small, women-owned, or minority-owned business and all application materials submitted by the vendor to the institution. Such certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements.

**§ 2.2-1610. Reports and recommendations; collection of data.**

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter.

The Director shall report, on or before November 1 of each year, to the Governor and the General Assembly the identity of the state departments and agencies failing to submit annual progress reports on small, women-owned, and minority-owned business procurement required by § 2.2-4310 and the nature and extent of such lack of compliance. The annual report shall include recommendations on the ways to improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems appropriate.

The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection process that will provide information for a report to the Governor and General Assembly on state expenditures to small, women-owned, and minority-owned businesses during the previous fiscal year.

An institution exercising authority granted under this section shall promptly make available to the Department, upon request, copies of its procurement records, receipts, and transactions in regard to procurement from small, women-owned, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

**Article 2.**

**Virginia Jobs Investment Program.**

**§ 2.2-1611. Virginia Jobs Investment Program; composition; general qualifications.**

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

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing

306 facility, results in the utilization of a more advanced technology than is in use immediately prior to such  
307 investment, or both.

308 "Full-time employee" means a natural person employed for indefinite duration in a position requiring  
309 a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which  
310 "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary  
311 employees shall not qualify as new full-time employees under this article.

312 B. There is hereby created the Virginia Jobs Investment Program (the Program) to support private  
313 sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new  
314 business operations in Virginia. The Program shall support existing businesses and economic  
315 development prospects by offering funding to offset recruiting and training and retraining costs incurred  
316 by companies that are either creating new jobs or implementing technological upgrades and by  
317 providing assistance with workforce-related challenges and organizational development workshops.

318 C. The Program shall consist of the following component programs:

- 319 1. The Virginia New Jobs Program;
- 320 2. The Workforce Retraining Program;
- 321 3. The Small Business New Jobs and Retraining Programs; and
- 322 4. The Small Business Jobs Grant Fund Program.

323 D. To be eligible for assistance under any of the component programs of the Program, a company  
324 shall:

325 1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which  
326 would include businesses or functions that directly or indirectly derive more than 50 percent of their  
327 revenues from out-of-state sources, as determined by the Department;

328 2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage.  
329 In areas that have an unemployment rate of one and one-half times the statewide average unemployment  
330 rate, the wage rate minimum may be waived by the Department. Only full-time positions that qualify for  
331 benefits shall be eligible for assistance; and

332 3. Meet such additional criteria as may be set forth by the Department.

333 E. There is hereby established in the state treasury a special nonreverting fund to be known as the  
334 Virginia Jobs Investment Program Fund. The Fund shall consist of any moneys appropriated thereto by  
335 the General Assembly from time to time and designated for the Fund. Any moneys deposited to or  
336 remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon,  
337 shall not revert to the general fund but shall remain in the Fund and be available for allocation under  
338 this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible  
339 businesses as provided in this article, except for assistance under the Small Business Jobs Grant Fund  
340 Program. The total amount of funds provided to eligible businesses under this article for any year,  
341 except for assistance under the Small Business Jobs Grant Fund Program, shall not exceed the amount  
342 appropriated by the General Assembly to the Fund for such year plus any carryover from previous  
343 years. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants  
344 issued by the Comptroller upon written request signed by the Director or his designee. The Fund shall  
345 be administered by the Director.

346 **§ 2.2-1612. Virginia New Jobs Program.**

347 A. The Department shall develop as a component of the Virginia Jobs Investment Program the  
348 Virginia New Jobs Program to support the expansion of existing Virginia companies and new facility  
349 locations involving competition with other states or countries.

350 B. In addition to the requirements of subsection D of § 2.2-1611 regarding company eligibility, to be  
351 eligible for assistance, an expansion of an existing company or a new company location shall (i) create  
352 a minimum of 25 net new jobs for full-time employees, (ii) make a capital investment of at least \$1  
353 million, and (iii) include Virginia in a current competition for the location of the project with at least  
354 one other state or country.

355 The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide  
356 written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations  
357 Committees, which notice shall include a justification for any waiver of these requirements.

358 **§ 2.2-1613. Workforce Retraining Program.**

359 A. The Department shall develop as a component of the Virginia Jobs Investment Program the  
360 Workforce Retraining Program to provide consulting services and funding to assist companies and  
361 businesses with retraining their existing workforces to increase productivity.

362 B. In addition to the requirements of subsection D of § 2.2-1611 regarding company eligibility, to be  
363 eligible for assistance a company shall demonstrate (i) that it is undergoing integration of new  
364 technology into its production process, a change of product line in keeping with marketplace demands,  
365 or substantial change to its service delivery process that would require assimilation of new skills and  
366 technological capabilities by the firm's existing labor force and (ii) that, for each such integration of  
367 new technology, change of product, or substantial change to its service delivery process, (a) no less

than 10 full-time employees are involved and (b) a minimum capital investment of \$500,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

**§ 2.2-1614. Small Business New Jobs and Retraining Programs.**

A. The Department shall develop as a component of the Virginia Jobs Investment Program the Small Business New Jobs and Retraining Programs to support the establishment or expansion of Virginia's small businesses or to improve their efficiency through retraining.

B. In addition to the requirements of subsection D of § 2.2-1611 regarding company eligibility, to be eligible for assistance for new job creation a company shall create a minimum of five net new jobs for full-time employees and make a capital investment of at least \$100,000. In addition to the requirements of subsection D of § 2.2-1611 regarding company eligibility, to be eligible for assistance for retraining a company shall demonstrate (i) that it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force and (ii) that, for each such integration of new technology, change of product, or substantial change to its service delivery process, (a) no less than five full-time employees are involved and (b) a minimum capital investment of \$50,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

**§ 2.2-1615. Small Business Jobs Grant Fund Program.**

A. As used in this section:

"Base year" means the calendar year immediately preceding the 24-month period in which a small business creates new full-time positions making it eligible for grants under this section.

"New full-time position" means employment of a resident of the Commonwealth for an indefinite duration in the Commonwealth at a small business requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the small business's operation, which "normal year" shall consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. Seasonal, temporary, or contract positions or positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a new full-time position.

"Small business" means an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has 250 or fewer employees in its base year.

B. The Department shall develop as a component of the Virginia Jobs Investment Program the Small Business Jobs Grant Fund Program to assist Virginia small businesses job creation.

C. In addition to the requirements of subsection D of § 2.2-1611 regarding company eligibility, to be eligible for assistance under the Program a company shall (i) create a minimum of five net new full-time positions and (ii) make a new capital investment of at least \$100,000.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

D. There is hereby created in the state treasury a permanent nonreverting fund to be known as the Small Business Jobs Grant Fund (the Fund). The Fund shall consist of (i) transfers from the Virginia Jobs Investment Program funded in the general appropriation act currently in effect and (ii) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be managed and administered as a part of the Virginia Jobs Investment Program established within the Department.

E. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses that create at least five new full-time positions within any 24-month period. A small business meeting the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to \$2,000 per each new full-time position that has been created based on criteria established by the Department pursuant to subsection G.

In awarding grants, priority shall be given to small businesses creating new full-time positions in areas with an annual average unemployment rate of more than 125 percent of the statewide average unemployment rate.

F. Grant payments under this section shall be conditional upon the small business substantially retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time



positions for which grants are to be paid. In no case shall the retention period, as determined by the Department, for any new full-time position for which a grant is to be paid be less than 12 months.

No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No grant shall be awarded or paid for any new full-time position created solely as a result of a merger, acquisition, or similar business combination or a change in business form unless such new full-time position is moved into the Commonwealth from outside of the Commonwealth.

G. The Department shall establish criteria for determining the amount of the grant to be awarded for each eligible new full-time position created by a small business that will be based on the level of education, training, and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving more than one grant under this section for the same position and (ii) require the employee to be employed in the new full-time position for at least 90 days prior to the award of the grant.

H. The Department shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, or legal opinion or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department.

**§ 2.2-1616. Creation, administration, and management of the Small Business Investment Grant Fund.**

A. As used in this section:

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320. The term shall not include an individual who engages in the business of making debt or equity investments in private businesses, or to any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Fund" means the Small Business Investment Grant Fund.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt. However, an investment shall not be qualified if the taxpayer who holds such investment, or any of the taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor, or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year; (ii) has its principal office or facility in the Commonwealth; (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (v) has no more than 50 employees who are employed within the Commonwealth; and (vi) has been designated as such by the Department pursuant to the provisions of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Small Business Investment Grant Fund, to be administered by the Department. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the Director. Grants from the Fund shall only be made to applications pursuant to this section.

C. An eligible investor that makes a qualified investment in a small business on or after July 1, 2012, but prior to January 1, 2015, that has been certified by the Department pursuant to subsection D shall be eligible for a grant in an amount equal to 10 percent of the qualified investment. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses.

D. A small business shall apply with the Department to be certified as a small business in order to



receive qualified investments eligible for the grant pursuant to this section and shall provide to the Department such information as the Department deems necessary to demonstrate that it meets the qualifications set forth in subsection A. A small business shall apply each year in order to be certified as a small business. No grant application shall be approved for an otherwise qualified investment in a small business not first certified by the Department.

E. Any eligible investor applying for a grant pursuant to this section shall submit an application to the Department. Alternatively, a small business may apply to the Department on behalf of an eligible investor. The Department shall determine the amount of the grant allowable to the eligible investor for the year.

F. Unless the eligible investor transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the small business issuing such equity; (ii) the merger, consolidation, or other acquisition of such business with or by a party not affiliated with such business; or (iii) the death of the eligible investor, any eligible investor that fails to hold such equity for at least two years shall forfeit the grant and shall pay the Department interest on the total allowed grant at the rate of one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer. The Department shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Grants shall be issued in the order that each completed eligible application is received by the Department. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.

I. The Department shall establish policies and procedures relating to (i) the certification of small businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with interest in the event that the qualified investment is not held for the requisite period set forth in subsection F. Such policies and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

### Article 3.

#### Small Business Permitting.

#### **§ 2.2-1617. One-stop small business permitting program.**

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

"Business Permitting Center" or "Center" means the business registration and permitting center established by this section and located in and under the administrative control of the Department.

"Comprehensive application" means a document incorporating pertinent data from existing applications for permits covered under this section.

"Comprehensive permit" means the single document designed for public display issued by the Business Permitting Center that certifies state agency permit approval and that incorporates the endorsements for individual permits included in the comprehensive permitting program.

"Comprehensive permitting program" or "Program" means the mechanism by which comprehensive permits are issued and renewed, permit and regulatory information is disseminated, and account data is exchanged by state agencies.

"Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, to engage in activity associated with or involving the establishment of a small business in the Commonwealth.

"Permit information packet" means a collection of information about permitting requirements and application procedures custom assembled for each request.

"Regulatory" means all permitting and other governmental or statutory requirements establishing a small business or professional activities associated with establishing a small business.

"Regulatory agency" means any state agency, board, commission, or division that regulates one or more professions, occupations, industries, businesses, or activities.

"Renewal application" means a document used to collect pertinent data for renewal of permits covered under this section.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

"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.

B. There is created within the Department the comprehensive permitting program (the Program). The Program is established to serve as a single access point to aid entrepreneurs in filling out the various permit applications associated with establishing a small business in Virginia. The Program in no way supersedes or supplants any regulatory authority granted to any state agency with permits covered by this section. As part of the Program, the Department shall coordinate with the regulatory agency, and

552 the regulatory agency shall determine, consistent with applicable law, what types of permits are  
553 appropriate for inclusion in the Program as well as the rules governing the submission of and payment  
554 for those permits. The website of the Department shall provide access to information regarding the  
555 Program. The Department shall have the power and duty to:

556 1. Create a comprehensive application that will allow an entrepreneur, or an agent thereof, seeking  
557 to establish a small business, to create accounts that will allow them to acquire the appropriate permits  
558 required in the Commonwealth. The comprehensive application shall:

559 a. Allow the business owner to choose a business type and to provide common information, such as  
560 name, address, and telephone number, on the front page, eliminating the need to repeatedly provide  
561 common information on each permit application;

562 b. Allow the business owner to preview and answer questions related to the operation of the  
563 business;

564 c. Provide business owners with a customized to-do agency checklist, which checklist shall provide  
565 the permit applications pertinent to each business type and provide the rules, regulations, and general  
566 laws applicable to each business type as well as local licensing information;

567 d. Allow the business owner to submit permit applications by electronic means as authorized by  
568 § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

569 e. Allow the business owner to check on the status of applications online and to receive information  
570 from the permitting agencies electronically; and

571 f. Allow a business owner to submit electronic payment of application or permitting fees for  
572 applications that have been accepted by the permitting agency.

573 2. Develop and administer a computerized system program capable of storing, retrieving, and  
574 exchanging permit information while protecting the confidentiality of information submitted to the  
575 Department to the extent allowable by law. Information submitted to the Department shall be subject to  
576 the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply  
577 were the information submitted directly to the Department or to any permitting agency.

578 3. Issue and renew comprehensive permits in an efficient manner.

579 4. Identify the types of permits appropriate for inclusion in the Program. The Department shall  
580 coordinate with the regulatory agency, and the regulatory agency shall determine, consistent with  
581 applicable law, what types of permits are appropriate for inclusion in the Program.

582 5. Incorporate permits into the Program.

583 6. Do all acts necessary or convenient to carry out the purposes of this chapter.

584 C. The Business Permitting Center shall compile information regarding the regulatory programs  
585 associated with each of the permits obtainable under the Program. This information shall include, at a  
586 minimum, a listing of the statutes and administrative rules requiring the permits and pertaining to the  
587 regulatory programs that are directly related to the permit. The Center shall provide information  
588 governed by this section to any person requesting it. Materials used by the Center to describe the  
589 services provided by the Center shall indicate that this information is available upon request.

590 D. Each state agency shall cooperate and provide reasonable assistance to the Department in the  
591 implementation of this section.

592 E. Any person requiring permits that have been incorporated into the Program may submit a  
593 comprehensive application to the Department requesting the issuance of the permits. The comprehensive  
594 application form shall contain in consolidated form information necessary for the issuance of the  
595 permits.

596 F. The applicant, if not a veteran, shall include with the application the handling fee established by  
597 the Department. An applicant who is a veteran shall be exempt from payment of the handling fee  
598 prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set  
599 by the Department at a level necessary to cover the costs of administering the comprehensive permitting  
600 program.

601 G. The authority for approving the issuance and renewal of any requested permit that requires  
602 investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally  
603 authorized to issue the permit shall remain with that agency. The Center may issue those permits for  
604 which proper fee payment and a completed application form have been received and for which no  
605 approval action is required by the regulatory agency.

606 H. Upon receipt of the application, and proper fee payment for any permit for which issuance is  
607 subject to regulatory agency action under subsection G, the Department shall immediately notify the  
608 regulatory agency with authority to approve the permit issuance or renewal requested by the applicant.  
609 Each regulatory agency shall advise the Department within a reasonable time after receiving the notice  
610 of one of the following:

611 1. That the regulatory agency approves the issuance of the requested permit and will advise the  
612 applicant of any specific conditions required for issuing the permit;

613 2. That the regulatory agency denies the issuance of the permit and gives the applicant reasons for

the denial;

3. That the application is pending; or

4. That the application is incomplete and further information from or action by the applicant is necessary.

I. The Department shall issue a comprehensive permit endorsed for all the approved permits to the applicant and advise the applicant of the status of other requested permits. The applicant shall be responsible for contesting any decision regarding conditions imposed or permits denied through the normal process established by statute or by the regulatory agency with the authority for approving the issuance of the permit.

J. Regulatory agencies shall be provided information from the comprehensive application for their permitting and regulatory functions.

K. The Department shall be responsible for directing the applicant to make all payments for applicable fees established by the regulatory agency directly to the proper agency.

L. There is hereby created in the state treasury a special nonreverting fund to be known as the Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee established by the Department pursuant to subsection F and such other funds as may be appropriated by the General Assembly. 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 to administer the Program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by Director of the Department.

M. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a comprehensive permit to any person under any of the following circumstances:

1. The person does not have a valid tax registration, if required;

2. The person is a corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected by the State Corporation Commission pursuant to the business entity statutes it administers, (ii) does not exist, or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business entity statutes administered by the State Corporation Commission; or

3. The person has not submitted the sum of all fees and deposits required for the requested individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees and penalties to be collected through the comprehensive permitting program.

N. The Department may adopt regulations in accordance with § 2.2-1606 as may be necessary to carry out the purposes of this section.

#### **§ 2.2-2238.1. Special economic development services in rural communities; strategic plan.**

A. In order to assist the rural communities of the Commonwealth, the Authority shall develop a program for reviewing existing economic development programs of rural communities, upon request. The program shall include (i) a review and evaluation of existing industrial sites and infrastructure, including existing streets, water and sewer systems, electricity, natural gas and communications facilities that will provide high-speed or broadband Internet access to rural and underserved areas of the Commonwealth; (ii) an assessment of the existing workforce and the provision of information on state and federal programs such as tax incentives that may be available to local or prospective employers to assist in hiring and training in areas of high unemployment; (iii) assistance in identifying community resources and the type of industries that may benefit from locating in a community with such resources; and (iv) marketing assistance to help rural communities improve their visibility to expanding industries looking for new facilities.

B. The Authority, the Center for Rural Virginia, the Virginia Department of Housing and Community Development, the Virginia Resources Authority, the ~~Virginia~~ Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*, the Virginia Tobacco Indemnification and Community Revitalization Commission, the Virginia Employment Commission, the Virginia Tourism Corporation, the Virginia Community College System, institutions of higher education within rural regions of the Commonwealth, and the Department of Agriculture and Consumer Services shall jointly develop and implement a rural economic development strategic plan that at a minimum addresses: (i) education, including pre-kindergarten, primary, secondary and post-graduate resources, and comprehensive workforce development programs, as they may pertain to the Workforce Investment Act; (ii) infrastructure, including capital for water and sewer upgrading, waste management, law enforcement, housing, primary and secondary roads, and telecommunications; (iii) traditional industrial development and industry retention programs, including assistance in financing and in workforce training; (iv) recreational and cultural enhancement and related quality of life measures, including parks, civic centers, and theaters; (v)

675 agribusiness incentives to promote the use of new technologies, and the exploration of new market  
676 opportunities; and (vi) a revolving loan fund or loan guarantee program to help start or expand  
677 entrepreneurial activities, especially small business activities in rural communities.

678 **§ 2.2-2282. Board of directors; membership; terms, compensation and expenses; chairman,**  
679 **vice-chairman, secretary and treasurer; quorum; staff.**

680 A. The Board shall consist of the State Treasurer or his designee, the Director of the Department of  
681 ~~Business Assistance~~ *Small Business and Supplier Diversity*, and nine members who are not employees of  
682 the Commonwealth or of any political subdivision thereof who shall be appointed by the Governor and  
683 who shall have such small business experience as he deems necessary or desirable. The appointment of  
684 members of the Board by the Governor shall be subject to confirmation by the General Assembly. All  
685 members of the Board shall be residents of the Commonwealth and shall have full voting privileges.  
686 Appointments shall be for terms of four years, except that appointments to fill vacancies shall be made  
687 for the unexpired terms. No member appointed by the Governor shall serve more than two complete  
688 terms in succession. The members of the Board shall receive no salaries but shall be paid travel and  
689 other expenses incurred to attend meetings or while otherwise engaged in the discharge of their duties,  
690 all as may be deemed appropriate by the Board.

691 B. The Governor shall appoint one member as chairman for a two-year term. No member shall be  
692 eligible to serve more than two consecutive terms as chairman. Five members of the Board shall  
693 constitute a quorum for the transaction of all business of the Authority. The Board shall elect one  
694 member from the group of nine members appointed by the Governor as vice-chairman who shall  
695 exercise the powers of the chairman in the absence of the chairman. The Board shall elect a secretary  
696 and a treasurer, or a secretary-treasurer, who need not be members of the Board and who shall continue  
697 to hold such office until their respective successors are elected. The Department of ~~Business Assistance~~  
698 *Small Business and Supplier Diversity* of the Commonwealth shall serve as staff to the Authority.

699 **§ 2.2-2284. Executive Director; appointment; duties.**

700 The Director of the Department of ~~Business Assistance~~ *Small Business and Supplier Diversity* shall  
701 appoint the Executive Director of the Authority. The Executive Director shall administer, manage and  
702 direct the affairs and activities of the Authority in accordance with the policies and under the control  
703 and the direction of the Board and the Director of the Department of ~~Business Assistance~~ *Small*  
704 *Business and Supplier Diversity*. Except as otherwise stated in this article, the Executive Director shall  
705 approve all accounts for allowable expenses for the Authority or of any employee or consultant or other  
706 person providing services to the Board, and for expenses incidental to the operation of the Authority  
707 subject to approval of the Director of the Department of ~~Business Assistance~~ *Small Business and*  
708 *Supplier Diversity*. The Executive Director shall maintain and be custodian of all books, documents and  
709 papers of or filed with the Authority, including but not limited to the minute book or journal of the  
710 Authority, and of its official seal. The Executive Director may cause copies to be made of all minutes  
711 and other records and documents of the Authority and may in the place and stead of the Secretary of the  
712 Authority give certificates under seal of the Authority to the effect that such copies are true copies, and  
713 all persons dealing with the Authority may rely on such certificates. The Executive Director also shall  
714 perform such other duties as prescribed by the Board in carrying out the purposes of this article.

715 **§ 2.2-2311. Creation, administration, and management of the Capital Access Fund for**  
716 **Disadvantaged Businesses.**

717 A. For the purposes of this section:

718 "Disadvantaged business" means a for-profit small business concern that is majority-owned by one or  
719 more economically disadvantaged individuals. In the case of a corporation, a majority of the stock shall  
720 be owned by one or more such individuals and the management and daily business operations shall be  
721 controlled by one or more of the economically disadvantaged individuals who own it.

722 "Economically disadvantaged individual" means an individual whose ability to compete in the free  
723 market has been impaired due to diminished capital and credit opportunities as compared to others in the  
724 same or similar line of business and competitive market area.

725 B. There is created in the state treasury a permanent nonreverting fund to be known as the Capital  
726 Access Fund for Disadvantaged Businesses (the Fund). The Fund shall be comprised of (i) moneys  
727 appropriated to the Fund by the General Assembly, (ii) all income from the investment of moneys held  
728 by the Fund, and (iii) any other moneys designated for deposit to the Fund from any source, public or  
729 private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any  
730 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert  
731 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used to provide loan  
732 guarantees, loan loss reserves, and interest rate write downs. The Fund shall be managed by the  
733 Department of ~~Minority Business Enterprise~~ *Small Business and Supplier Diversity* (the Department) and  
734 administered by the Virginia Small Business Financing Authority (the Authority).

735 C. The operation of the Fund shall be as follows:

736 1. The Fund may be used as a special reserve fund to cover potential future losses from the loan

portfolios of participating banks and lending institutions. The Authority shall (i) establish with one or more banks and lending institutions one or more accounts or pools for the Capital Access Fund for Disadvantaged Businesses and (ii) deposit into such accounts or pools moneys from the Fund in an amount at least equal to the total of the sum of the bank or lending institutions and the individual borrower's deposits, cash equivalents or other acceptable securities, including but not limited to letters of credit, for each loan sought to be covered for future losses. Such matching sum by the Authority shall not exceed ~~fourteen~~ 14 percent of the principal amount of the loan. The Authority may require up to a ~~one hundred~~ 100 percent match by the individual borrowers pursuant to established guidelines.

2. The Fund may also be used to guarantee up to ~~ninety~~ 90 percent of the principal amount of any loan to cover potential future losses from the loan portfolios of participating banks and lending institutions to cover specific loans on such terms and conditions as set forth in established guidelines. Such guarantees shall not exceed a term of five years.

3. The Fund may also be used to provide interest rate write downs or other payments to achieve a concessionary rate of interest that shall be limited to seven percent of the balance of the Fund that is unencumbered by any special reserves or guarantees or the income earned by the Fund from all sources including fees, interest, or other investment income. No interest rate write down or payment to achieve a concessionary rate shall extend for more than five years and such rates shall include provisions for an increase in such rates to a near market rate but not more than the prime rate.

4. Provisions may be made for a borrower to use a combination of subdivisions C 1, C 2, and C 3 pursuant to established guidelines.

D. The determination of economic disadvantage shall be made by the Director of the Department of ~~Minority Business Enterprise~~ *Small Business and Supplier Diversity* pursuant to the guidelines developed in accordance with subsections B and C.

E. The Department and the Authority, or their designated agents, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department and the Authority.

**§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.**

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. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation

798 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is  
799 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other  
800 laws administered by the Surface Transportation Board or the Federal Railroad Administration with  
801 respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad  
802 Administration. However, the exemption provided by this subdivision shall not apply to any wholly  
803 owned subsidiary of a public body.

804 10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or  
805 proprietary information by any person who has submitted to a public body an application for  
806 prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

807 11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its  
808 staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed  
809 under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education  
810 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public  
811 prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17  
812 notwithstanding, the financial interest or bargaining position of the public entity would be adversely  
813 affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the  
814 responsible public entity; and

815 b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or  
816 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or  
817 the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records  
818 contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et  
819 seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that  
820 are not generally available to the public through regulatory disclosure or otherwise; or (iii) other  
821 information submitted by the private entity, where, if the records were made public prior to the  
822 execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining  
823 position of the public or private entity would be adversely affected. In order for the records specified in  
824 clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make  
825 a written request to the responsible public entity:

826 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
827 disclosure is sought;

828 2. Identifying with specificity the data or other materials for which protection is sought; and

829 3. Stating the reasons why protection is necessary.

830 The responsible public entity shall determine whether the requested exclusion from disclosure is  
831 necessary to protect the trade secrets or financial records of the private entity. To protect other records  
832 submitted by the private entity from disclosure, the responsible public entity shall determine whether  
833 public disclosure prior to the execution of an interim agreement or a comprehensive agreement would  
834 adversely affect the financial interest or bargaining position of the public or private entity. The  
835 responsible public entity shall make a written determination of the nature and scope of the protection to  
836 be afforded by the responsible public entity under this subdivision. Once a written determination is made  
837 by the responsible public entity, the records afforded protection under this subdivision shall continue to  
838 be protected from disclosure when in the possession of any affected jurisdiction or affected local  
839 jurisdiction.

840 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to  
841 authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b)  
842 information concerning the terms and conditions of any interim or comprehensive agreement, service  
843 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity  
844 and the private entity; (c) information concerning the terms and conditions of any financing arrangement  
845 that involves the use of any public funds; or (d) information concerning the performance of any private  
846 entity developing or operating a qualifying transportation facility or a qualifying project.

847 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"  
848 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation  
849 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined  
850 in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and  
851 Infrastructure Act of 2002.

852 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private  
853 person or entity to the Virginia Resources Authority or to a fund administered in connection with  
854 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such  
855 information were made public, the financial interest of the private person or entity would be adversely  
856 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of  
857 confidentiality.

858 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential  
859 proprietary records that are not generally available to the public through regulatory disclosure or

otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain 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, technological, 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.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of ~~Minority Business Enterprise~~ *Small Business and Supplier Diversity* as part of an application for (i) certification as a small, women-owned, or minority-owned business in accordance with Chapter ~~14~~ *16.1* (§ 2.2-1400 § 2.2-1603 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally



921 available to the public through regulatory disclosure or otherwise, and revenue and cost projections  
922 supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an  
923 audit, special investigation, or any study requested by the Office of the State Inspector General in  
924 accordance with law.

925 In order for the records specified in this subdivision to be excluded from the provisions of this  
926 chapter, the private or nongovernmental entity shall make a written request to the State Inspector  
927 General:

928 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
929 disclosure is sought;

930 2. Identifying with specificity the data or other materials for which protection is sought; and

931 3. Stating the reasons why protection is necessary.

932 The State Inspector General shall determine whether the requested exclusion from disclosure is  
933 necessary to protect the trade secrets or financial records of the private entity. The State Inspector  
934 General shall make a written determination of the nature and scope of the protection to be afforded by it  
935 under this subdivision.

936 23. Records submitted as a grant application, or accompanying a grant application, to the Virginia  
937 Tobacco Indemnification and Community Revitalization Commission to the extent such records contain  
938 (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records  
939 of a grant applicant that is not a public body, including balance sheets and financial statements, that are  
940 not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related  
941 information produced or collected by the applicant in the conduct of or as a result of study or research  
942 on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information  
943 has not been publicly released, published, copyrighted, or patented, if the disclosure of such information  
944 would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or  
945 other records prepared by the Commission or its staff exclusively for the evaluation of grant  
946 applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the  
947 powers of and in furtherance of the performance of the duties of the Commission pursuant to  
948 § 3.2-3103.

949 In order for the records specified in this subdivision to be excluded from the provisions of this  
950 chapter, the applicant shall make a written request to the Commission:

951 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
952 disclosure is sought;

953 2. Identifying with specificity the data, records or other materials for which protection is sought; and

954 3. Stating the reasons why protection is necessary.

955 The Commission shall determine whether the requested exclusion from disclosure is necessary to  
956 protect the trade secrets, financial records or research-related information of the applicant. The  
957 Commission shall make a written determination of the nature and scope of the protection to be afforded  
958 by it under this subdivision.

959 24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the  
960 use of projects of, the sale of products of, or services rendered by the Authority if public disclosure  
961 would adversely affect the financial interest or bargaining position of the Authority or a private entity  
962 providing records to the Authority; or

963 b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that  
964 such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
965 (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial  
966 statements, that are not generally available to the public through regulatory disclosure or otherwise; or  
967 (iii) other information submitted by the private entity, where, if the records were made public, the  
968 financial interest or bargaining position of the Authority or private entity would be adversely affected.

969 In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from  
970 the provisions of this chapter, the private entity shall make a written request to the Authority:

971 1. Invoking such exclusion upon submission of the data or other materials for which protection from  
972 disclosure is sought;

973 2. Identifying with specificity the data or other materials for which protection is sought; and

974 3. Stating the reasons why protection is necessary.

975 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect  
976 the trade secrets or financial records of the private entity. To protect other records submitted by the  
977 private entity from disclosure, the Authority shall determine whether public disclosure would adversely  
978 affect the financial interest or bargaining position of the Authority or private entity. The Authority shall  
979 make a written determination of the nature and scope of the protection to be afforded by it under this  
980 subdivision.

981 25. Documents and other information of a proprietary nature furnished by an agricultural landowner  
982 or operator to the Department of Conservation and Recreation, the Department of Environmental

Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

**§ 2.2-4301. Definitions.**

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the

Commissioner of Highways may be renewable for four additional one-year terms at the option of the public body. For local public bodies, including metropolitan planning organizations or planning district commissions, such contract may be renewable for four additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, except that in any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, the sum of all such projects shall not exceed \$5 million; and (c) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commissioner of Highways or for architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$1 million. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Notwithstanding any other provision in this section, for contracts for environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year term shall not exceed \$5 million. For architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body, including metropolitan planning organizations and planning district commissions, for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been

qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of ~~Minority Business Enterprise~~ *Small Business and Supplier Diversity*.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified

1167 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
1168 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
1169 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
1170 established for bid opening.

1171 "Services" means any work performed by an independent contractor wherein the service rendered  
1172 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
1173 and supplies.

1174 **§ 2.2-4310. Discrimination prohibited; participation of small, women-, minority- and service**  
1175 **disabled veteran-owned business.**

1176 A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or  
1177 offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled  
1178 veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever  
1179 solicitations are made, each public body shall include businesses selected from a list made available by  
1180 the Department of ~~Minority Business Enterprise~~ *Small Business and Supplier Diversity*.

1181 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation  
1182 of small businesses and businesses owned by women, minorities, and service disabled veterans in  
1183 procurement transactions. The programs established shall be in writing and shall comply with the  
1184 provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection  
1185 C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and  
1186 shall include specific plans to achieve any goals established therein. State agencies shall submit annual  
1187 progress reports on small, ~~women-~~ *women-owned*, and minority-owned business procurement and on  
1188 service disabled veteran-owned business procurement to the Department of ~~Minority Business Enterprise~~  
1189 *Small Business and Supplier Diversity* in a form specified by the Department of ~~Minority Business~~  
1190 *Enterprise Small Business and Supplier Diversity*. The Department of ~~Minority Business Enterprise~~ *Small*  
1191 *Business and Supplier Diversity* shall make information on service disabled veteran-owned procurement  
1192 available to the Department of Veterans Services upon request.

1193 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive  
1194 analysis that documents a statistically significant disparity between the availability and utilization of  
1195 ~~women-~~ *women-owned* and minority-owned businesses, the Governor is authorized and encouraged to  
1196 require state agencies to implement appropriate enhancement or remedial measures consistent with  
1197 prevailing law.

1198 D. In the solicitation or awarding of contracts, no state agency, department or institution shall  
1199 discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the  
1200 state agency, department or institution has made a written determination that employing ex-offenders on  
1201 the specific contract is not in its best interest.

1202 E. As used in this section:

1203 "Minority individual" means an individual who is a citizen of the United States or a legal resident  
1204 alien and who satisfies one or more of the following definitions:

1205 1. "African American" means a person having origins in any of the original peoples of Africa and  
1206 who is regarded as such by the community of which this person claims to be a part.

1207 2. "Asian American" means a person having origins in any of the original peoples of the Far East,  
1208 Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China,  
1209 Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana *Islands*, the Philippines, a U.S. territory of  
1210 the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of  
1211 which this person claims to be a part.

1212 3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of  
1213 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and  
1214 who is regarded as such by the community of which this person claims to be a part.

1215 4. "Native American" means a person having origins in any of the original peoples of North America  
1216 and who is regarded as such by the community of which this person claims to be a part or who is  
1217 recognized by a tribal organization.

1218 "Minority-owned business" means a business that is at least 51% *percent* owned by one or more  
1219 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,  
1220 partnership, or limited liability company or other entity, at least 51% *percent* of the equity ownership  
1221 interest in the corporation, partnership, or limited liability company or other entity is owned by one or  
1222 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and  
1223 daily business operations are controlled by one or more minority individuals.

1224 "Service disabled veteran" means a veteran who (i) served on active duty in the United States  
1225 military ground, naval, or air service, (ii) was discharged or released under conditions other than  
1226 dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of  
1227 Veterans Affairs.

1228 "Service disabled veteran business" means a business 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.

"Small business" means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business that is at least 51% *percent* owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% *percent* of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**§ 3.2-201. Powers and duties of Office of Farmland Preservation.**

A. The Office of Farmland Preservation shall have the following powers and duties:

1. To develop, in cooperation with the Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*, the Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension: (i) model policies and practices that may be used as a guide to establish local purchase of development rights programs; (ii) criteria for the certification of local purchase of development rights programs as eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements;

2. To create programs to educate the public about the importance of farmland preservation to the quality of life in the Commonwealth;

3. To provide technical, professional, and other assistance to farmers on matters related to farmland preservation;

4. To provide technical, professional, and other assistance to local governments interested in developing additional farmland preservation policies and programs. Such policies and programs shall include (i) use value assessment and taxation pursuant to §§ 58.1-3230 and 58.1-3231; (ii) transfer of development rights pursuant to Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2; (iii) agricultural and forestal districts pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2; and (iv) establishment of local lease of development rights; and

5. To administer the Virginia Farm Link program established pursuant to § 3.2-202.

B. State grants shall be distributed to local purchase of development rights programs under policies, procedures, and guidelines developed by the Office of Farmland Preservation. In general, for each \$1 in grant moneys awarded by the Office, the applicable local purchase of development rights program of the county or city shall be required to provide a \$1 match. However, as part of these policies, procedures, and guidelines developed by the Office, the Office shall include incentives that recognize and encourage counties and cities participating in use value taxation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1.

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Farmland Preservation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys appropriated to it by the General Assembly and such moneys as may be made available from any other source, public or private. All moneys shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the provisions of this chapter. 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 Commissioner.

**§ 10.1-1425.7. Duty of the Department of Supplier Diversity and Entrepreneurial Advocacy.**

The Department of ~~Business Assistance~~ *Small Business and Supplier Diversity* shall assist the Department by encouraging and promoting the establishment of appropriate recycling industries in the Commonwealth.

**§ 11-7.1. Certain entities' authority to extend performance agreements.**

A. The Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*, the Virginia

1290 Economic Development Partnership Authority, the Virginia Tourism Authority, the Tobacco  
1291 Indemnification and Community Revitalization Commission, a nonprofit, nonstock corporation created  
1292 pursuant to § 2.2-2240.1, any county, city, or town, or local or regional industrial or economic  
1293 development authorities created in accordance with law have the authority, upon the agreement of the  
1294 parties, to extend the performance period for any performance agreement.

1295 B. For the purposes of this section, "performance agreement" means any agreement, contract, or  
1296 memorandum of understanding that imposes an obligation for minimum private investment or the  
1297 creation of new jobs in exchange for grants or other funds, or loans of money from an entity specified  
1298 in subsection A.

1299 C. Nothing in this section shall be construed or interpreted to authorize or allow for any payment or  
1300 appropriation of funds except as provided in the general appropriation act.

1301 **§ 15.2-965.1. Participation of small, women-owned, and minority-owned businesses.**

1302 A. Any locality may enact an ordinance providing that whenever there exists (i) a rational basis for  
1303 small business enhancement, or (ii) a persuasive analysis that documents a statistically significant  
1304 disparity between the availability and utilization of ~~women-~~ women-owned and minority-owned  
1305 businesses, the chief executive of the local governing entity shall be authorized and encouraged to  
1306 require implementation of appropriate enhancement and remedial measures consistent with prevailing  
1307 law.

1308 B. A small, women-owned, or minority-owned business that is certified by the Department of  
1309 ~~Minority Business Enterprises~~ *Small Business and Supplier Diversity* pursuant to ~~§ 2.2-1403~~ § 2.2-1606  
1310 shall not be required by any locality to obtain any additional certification to participate in any program  
1311 designed to enhance the participation of such businesses as vendors or to remedy any documented  
1312 disparity.

1313 **§ 15.2-4904. Directors; qualifications; terms; vacancies; compensation and expenses; quorum;**  
1314 **records; certification and distribution of report concerning bond issuance.**

1315 A. The authority shall be governed by a board of directors in which all powers of the authority shall  
1316 be vested and which board shall be composed of seven directors, appointed by the governing body of  
1317 the locality. The seven directors shall be appointed initially for terms of one, two, three and four years;  
1318 two being appointed for one-year terms; two being appointed for two-year terms; two being appointed  
1319 for three-year terms and one being appointed for a four-year term. Subsequent appointments shall be for  
1320 terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. All  
1321 terms of office shall be deemed to commence upon the date of the initial appointment to the authority,  
1322 and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of  
1323 any term of office of any director a successor thereto has not been appointed, then the director whose  
1324 term of office has expired shall continue to hold office until his successor is appointed and qualified.

1325 Notwithstanding the provisions of this subsection, the board of supervisors of Wise County may  
1326 appoint eight members to serve on the board of the authority, with terms staggered as agreed upon by  
1327 the board of supervisors, the board of supervisors of Henrico County may appoint 10 members to serve  
1328 on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by  
1329 the board of supervisors, the board of supervisors of Roanoke County may appoint 10 members to serve  
1330 on the board of the authority, two from each magisterial district, with terms staggered as agreed upon by  
1331 the board of supervisors, the town council of the Town of Saint Paul may appoint 10 members to serve  
1332 on the board of the authority, with terms staggered as agreed upon by the town council, however, the  
1333 town council may at its option return to a seven member board by removing the last three members  
1334 appointed, the board of supervisors of Russell County may appoint nine members, two of whom shall  
1335 come from a town that has used its borrowing capacity to borrow \$2 million or more for industrial  
1336 development, with terms staggered as agreed upon by the board of supervisors and the town council of  
1337 the Town of South Boston shall appoint two at-large members, Page County may appoint nine members,  
1338 with one member from each incorporated town, one member from each magisterial district, and one  
1339 at-large, with terms staggered as agreed upon by the board of supervisors, Halifax County shall appoint  
1340 five at-large members to serve on the board of the authority jointly created by the Town of South  
1341 Boston and Halifax County pursuant to § 15.2-4916, with terms staggered as agreed upon by the  
1342 governing bodies of the Town of South Boston and Halifax County in the concurrent resolutions  
1343 creating such authority, the town council of the Town of Coeburn may appoint five members to serve  
1344 on the board of the authority, with terms staggered as agreed upon by the town council, the city council  
1345 of Suffolk may appoint eight members to serve on the board of the authority, with one member from  
1346 each of the boroughs, and one at-large member, with terms staggered as agreed upon by the city  
1347 council, the City of Chesapeake may appoint nine members, with terms staggered as agreed upon by the  
1348 city council, and the city council of the City of Norfolk may appoint 11 members, with terms staggered  
1349 as agreed upon by the city council.

1350 A member of the board of directors of the authority may be removed from office by the local  
1351 governing body without limitation in the event that the board member is absent from any three



consecutive meetings of the authority, or is absent from any four meetings of the authority within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § 49-1.

C. No director shall be an officer or employee of the locality except in towns under 3,500 people where members of the town governing body may serve as directors provided they do not comprise a majority of the board and except in Buchanan County where a constitutional officer who has previously served on the board of directors may serve as a director provided the governing body of such county approves. Every director shall, at the time of his appointment and thereafter, reside in a locality within which the authority operates or in an adjoining locality. When a director ceases to be a resident of such locality, the director's office shall be vacant and a new director may be appointed for the remainder of the term.

D. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, who shall continue to hold such office until their respective successors are elected. The directors shall receive no salary but may be compensated such amount per regular, special, or committee meeting or per each official representation as may be approved by the appointing authority, not to exceed \$200 per meeting or official representation, and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties.

E. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

F. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § 30-140, it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Business Assistance *Small Business and Supplier Diversity*.

**§ 18.2-213.1. Obtaining certification as small, women-owned, or minority-owned business, or disadvantaged business by deception; penalty.**

A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor if, in the course of business, he:

1. Fraudulently obtains or retains certification as a small, women-owned, or minority-owned business or disadvantaged business;

2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other representation, to an official or employee of a public body for the purpose of influencing the certification or denial of certification of any business entity as a small, women-owned, or minority-owned business, or disadvantaged business;

3. Willfully obstructs or impedes any agency official or employee who is investigating the qualifications of a business entity which has requested certification as a small, women-owned, or minority-owned business, or disadvantaged business; or

4. Fraudulently obtains public moneys reserved for or allocated or available to small, women-, or minority-owned businesses or disadvantaged business.

B. For the purposes of this section, "minority-owned business," and "small business" and "women-owned business" shall have the same meaning as those terms are defined in § 2.2-1401 § 2.2-1604 and "disadvantaged business" shall mean the same as that term is defined in § 2.2-2311.

**§ 23-9.6:1.01. Assessments of institutional performance.**

A. 1. The State Council shall develop and revise from time to time, in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, objective measures of educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 of § 23-38.88.

The State Council shall develop the initial objective measures and performance benchmarks for

consideration by the Governor and the General Assembly no later than October 1, 2005.

2. The Governor shall develop and revise from time to time objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11 of § 23-38.88. The Governor shall develop the initial measures and performance benchmarks and report his recommendations to the General Assembly prior to November 15, 2005.

B. The Governor shall include objective measures of financial and administrative management and educational-related performance and related institutional performance benchmarks as described in subsection A in "The Budget Bill" submitted as required by subsection A of § 2.2-1509 or in his proposed gubernatorial amendments to the general appropriation act pursuant to subsection E of § 2.2-1509.

C. The State Council shall annually assess the degree to which each individual public institution of higher education has met the financial and administrative management and educational-related performance benchmarks set forth in the appropriation act in effect. Such annual assessment shall be based upon the objective measures and institutional performance benchmarks included in the annual appropriation act in effect. The State Council shall request assistance from the Secretaries of Finance and Administration, who shall provide such assistance, for purposes of assessing whether or not public institutions of higher education have met the financial and administrative management performance benchmarks.

No later than June 1 of every fiscal year beginning with the fiscal year that immediately follows the fiscal year of implementation as defined in § 2.2-5005, the State Council shall provide a certified written report of the results of such annual assessment to the Governor and the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health.

Those institutions that are certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be entitled to the financial benefits set forth in § 2.2-5005. Such benefits shall first be provided as determined under such section.

D. Notwithstanding any other provision of this section, no institution shall be required to submit documentation that it has met the financial and administrative management and educational-related performance benchmarks set forth in the general appropriations act for the fiscal years 2011-2012 and 2012-2013. If an institution is certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks for the fiscal year 2010-2011, then such institution shall be entitled to the financial benefits set forth in subdivision B 14 of § 2.2-1124, subsection C of § 2.2-1132, subdivisions 4 and 5 of § 2.2-1149, subsection C of § 2.2-1150, subdivision C 2 of § 2.2-1153, § 2.2-1404.1 2.2-1609, subdivision A 4 of § 2.2-2007, subsection E of § 2.2-2901, § 2.2-5005, subdivisions 1 and 3 of § 23-38.90, and subsection C of § 36-98.1 for the fiscal years 2011-2012 and 2012-2013.

**§ 23-38.88. Eligibility for restructured financial and administrative operational authority.**

A. Public institutions of higher education shall be eligible for the following restructured financial and operational authority:

1. To dispose of their surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;

2. To have the option, as provided in subsection C of § 2.2-1132 and pursuant to the conditions and provisions under such subsection, to contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;

3. For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132, to enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General;

4. To acquire easements as provided in subdivision 4 of § 2.2-1149;

5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions provided in subdivision 5 of § 2.2-1149;

6. To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;

7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus

real property valued at less than \$5 million, which is possessed and controlled by the institution;

8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has certified as a small, women-, and minority-owned business enterprise pursuant to the conditions and provisions provided in § ~~2.2-1404.1~~ 2.2-1609;

9. To be exempt from review of their budget request for information technology by the CIO as provided in subdivision A 4 of § 2.2-2007;

10. To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions provided in subsection E of § 2.2-2901;

11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and provisions of such section;

12. To be exempt from reporting its purchases to the Secretary of Education, provided that all purchases, including sole source purchases, are placed through the Commonwealth's electronic procurement system using proper system codes for the methods of procurement;

13. To utilize as methods of procurement a fixed price, design-build or construction management contract notwithstanding the provisions of § 2.2-4306; and

14. The restructured financial and operational authority set forth in ~~Subchapter Article 2~~ (§ 23-38.90) and ~~Subchapter Article 3~~ (§ 23-38.91 et seq.) of this chapter.

No such authority shall be granted unless the institution meets the conditions set forth in this chapter.

B. The Board of Visitors of a public institution of higher education shall commit to the Governor and the General Assembly by August 1, 2005, through formal resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § 23-38.87:17, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;

4. Ensure that the institution's academic programs and course offerings maintain high academic standards, by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in ~~Subchapter Article 3~~ (§ 23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with § 23-38.87:17;

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole, and meets the financial and administrative management standards as specified by the Governor

1536 pursuant to § 2.2-5004 and included in the appropriation act that is in effect, which shall include best  
1537 practices for electronic procurement and leveraged purchasing, information technology, real estate  
1538 portfolio management, and diversity of suppliers through fair and reasonable consideration of small,  
1539 ~~women-~~ women-owned, and minority-owned business enterprises; and

1540 12. Seek to ensure the safety and security of the Commonwealth's students on college and university  
1541 campuses.

1542 Upon making such commitments to the Governor and the General Assembly by August 1, 2005, the  
1543 public institution of higher education shall be allowed to exercise the restructured financial and  
1544 operational authority set forth in subdivisions A 1 through A 13, subject to such conditions as may be  
1545 provided under the enabling statutes granting the additional authority.

1546 C. As provided in § 23-9.6:1.01, the State Council of Higher Education shall in consultation with the  
1547 respective chairmen of the House Committees on Education and Appropriations and the Senate  
1548 Committees on Finance and Education and Health or their designees, representatives of public  
1549 institutions of higher education, and such other state officials as may be designated by the Governor,  
1550 develop objective measures of educational-related performance and institutional performance benchmarks  
1551 for such objective measures. At a minimum, the State Council shall develop such objective measures  
1552 and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1  
1553 through B 10 and B 12. In addition, the Governor shall develop objective measures of financial and  
1554 administrative management performance and related institutional performance benchmarks for the goals  
1555 and objectives set forth in subdivision B 11.

1556 As provided in subsection C of § 23-9.6:1.01, any public institution of higher education that has been  
1557 certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the  
1558 institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation  
1559 act shall be provided the financial benefits under § 2.2-5005. Such benefits shall first be provided as  
1560 determined under such section. Objective criteria for measuring performance with regard to the state  
1561 goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or  
1562 not meeting those goals and objectives, shall be developed as provided in subdivision B 5 of  
1563 § 23-38.87:20.

1564 D. 1. The restructured financial and operational authority set forth in ~~Subchapter Article 3~~  
1565 (~~§ 23-38.91 et seq.~~) of ~~this chapter~~ shall only be granted in accordance with the expressed terms of a  
1566 management agreement between the public institution of higher education and the Commonwealth.

1567 No restructured financial or operational authority set forth in ~~Subchapter Article 3~~ (~~§ 23-38.91 et~~  
1568 ~~seq.~~) of ~~this chapter~~ shall be granted to a public institution of higher education unless such authority is  
1569 expressly included in the management agreement. In addition, the only implied authority that shall be  
1570 granted from entering into a management agreement is that implied authority that is actually necessary  
1571 to carry out the expressed grant of restructured financial or operational authority. As a matter of law, the  
1572 initial presumption shall be that any restructured financial or operational authority set forth in  
1573 ~~Subchapter Article 3~~ (~~§ 23-38.91 et seq.~~) is not included in the management agreement. These  
1574 requirements shall also apply to any other provision included in ~~Subchapter Article 3~~ (~~§ 23-38.91 et~~  
1575 ~~seq.~~).

1576 2. No public institution of higher education shall enter into a management agreement unless:

1577 a. (i) Its most current and unenhanced bond rating received from (a) Moody's Investors Service, Inc.,  
1578 (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. is at least AA- (i.e., AA minus) or its  
1579 equivalent, provided that such bond rating has been received within the last three years of the date that  
1580 the initial agreement is entered into or (ii) the institution has (a) participated in decentralization pilot  
1581 programs in the areas of finance and capital outlay, (b) demonstrated management competency in those  
1582 two areas as evidenced by a written certification from the Cabinet Secretary or Secretaries designated by  
1583 the Governor, (c) received additional operational authority under a memorandum of understanding  
1584 pursuant to § 23-38.90 in at least one functional area, and (d) demonstrated management competency in  
1585 that area for a period of at least two years. In submitting "The Budget Bill" for calendar year 2005  
1586 pursuant to subsection A of § 2.2-1509, the Governor shall include criteria for determining whether or  
1587 not an institution has demonstrated the management competency required by clause (ii) of ~~this~~  
1588 ~~subdivision~~;

1589 b. An absolute two-thirds, or more, of the institution's governing body shall have voted in the  
1590 affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and  
1591 should be, governed by the provisions of ~~Subchapter Article 3~~ (~~§ 23-38.91 et seq.~~) of ~~this chapter~~, which  
1592 resolution shall be included in the initial management agreement;

1593 c. The institution agrees to reimburse the Commonwealth for any additional costs to the  
1594 Commonwealth in providing health or other group insurance benefits to employees, and in undertaking  
1595 any risk management program, that are attributable to the institution's exercise of any restructured  
1596 financial or operational authority set forth in ~~Subchapter Article 3~~ (~~§ 23-38.91 et seq.~~). The institution's  
1597 agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each

management agreement with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with the Virginia Retirement System and the affected institutions, shall establish procedures for determining any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

In developing management agreements, public institutions of higher education shall give consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75) and shall discuss such potential impacts with parties participating in development of such agreements. The chief executive officer of the Virginia College Savings Plan shall provide to the institution and such parties the Plan's assumptions underlying the contract pricing of the program; and

d. Before executing a management agreement with the Commonwealth that affects insurance or benefit programs administered by the Virginia Retirement System, the Governor shall transmit a draft of the relevant provisions to the Board of Trustees of the Virginia Retirement System, which shall review the relevant provisions in order to ensure compliance with the applicable provisions of Title 51.1, administrative policies and procedures and federal regulations governing retirement plans. The Board shall advise the Governor and appropriate Cabinet Secretaries of any conflicts.

3. Each initial management agreement with an institution shall remain in effect for a period of three years. Subsequent management agreements with the institution shall remain in effect for a period of five years.

If an existing agreement is not renewed or a new agreement executed prior to the expiration of the three-year or five-year term, as applicable, the existing agreement shall remain in effect on a provisional basis for a period not to exceed one year. If, after the expiration of the provisional one-year period, the management agreement has not been renewed or a new agreement executed, the institution shall no longer be granted any of the financial or operational authority set forth in ~~Subchapter Article 3~~ (§ 23-38.91 et seq.) of this chapter, unless and until such time as a new management agreement is entered into between the institution and the Commonwealth.

The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public Accounts, shall conduct a review relating to the initial management agreement with each public institution of higher education. The review shall cover a period of at least the first 24 months from the effective date of the management agreement. The review shall include, but shall not be limited to, the degree of compliance with the expressed terms of the management agreement, the degree to which the institution has demonstrated its ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution, the degree to which the institution is meeting the objectives described in subsection B, and any related impact on students and employees of the institution from execution of the management agreement. The Joint Legislative Audit and Review Commission shall make a written report of its review no later than June 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission is authorized, but not required, to conduct a similar review of any management agreement entered into subsequent to the initial agreement.

4. The right and power by the Governor to void a management agreement shall be expressly included in each management agreement. The management agreement shall provide that if the Governor makes a written determination that a public institution of higher education that has entered into a management agreement with the Commonwealth is not in substantial compliance with the terms of the agreement or with the requirements of this chapter in general, (i) the Governor shall provide a copy of that written determination to the chairmen of the Board of Visitors or other governing body of the public institution of higher education and to the members of the General Assembly, and (ii) the institution shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of the management agreement and with the requirements of this chapter, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the institution, the Governor determines that the institution is not yet in substantial compliance with the management agreement or the requirements of this chapter, the Governor may void the management agreement. Upon the Governor voiding a management agreement, the affected public institution of higher education shall not be allowed to exercise any restructured financial or operational authority pursuant to the provisions of ~~Subchapter Article 3~~ (§ 23-38.91 et seq.) unless and until the institution enters into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the void management agreement is reinstated by the General Assembly.

5. A management agreement with a public institution of higher education shall not grant any of the restructured financial or operational authority set forth in ~~Subchapter Article 3~~ (§ 23-38.91 et seq.) of this chapter to the Virginia Cooperative Extension and Agricultural Experiment Station, the University of Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity of the institution unless such intent, as well as the degree of the restructured financial or operational authority

to be granted, is expressly included in the management agreement.

6. Following the execution of each management agreement with a public institution of higher education and submission of that management agreement to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management agreement to such Committees. Following the General Assembly's consideration of whether to approve or disapprove the management agreement as recommended, if the management agreement is approved as part of the general appropriation act, it shall become effective on the effective date of such general appropriation act. However, no management agreement shall be entered into by a public institution of higher education and the Secretary or Secretaries designated by the Governor after November 15 of a calendar year.

E. A covered institution and the members of its governing body, officers, directors, employees, and agents shall be entitled to the same sovereign immunity to which they would be entitled if the institution were not governed by this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable with respect to institutions governed by this chapter.

**§ 23-135.7:7. Advisory Committee continued as Advisory Board.**

The Virginia Coal Research and Development Advisory Committee is continued and shall hereafter be known as the Virginia Coal Research and Development Advisory Board. The Advisory Board shall serve in an advisory capacity to the Executive Director of the Virginia Center for Coal and Energy Research.

1. The Advisory Board shall be authorized to advise on those matters set forth in § 23-135.7:2.

2. Representatives to the Advisory Board shall be appointed by the Board of Visitors of Virginia Polytechnic Institute and State University.

3. The Board of Visitors of Virginia Polytechnic Institute and State University shall also appoint such other individuals as they deem necessary to the work of the Advisory Board.

4. Representatives from the Department of Conservation and Historic Resources, the Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*, the Department of Mines, Minerals and Energy, the Department of Labor and Industry, the Virginia Port Authority, the institutions of higher education, excluding Virginia Polytechnic Institute and State University, and the Community College System shall serve as the Advisory Board.

**§ 33.1-221. Funds for access roads to economic development sites and airports; construction, maintenance, etc., of such roads.**

A. Notwithstanding any other provision of law, there shall be appropriated to the Commonwealth Transportation Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of ~~Business Assistance~~ *Small Business and Supplier Diversity* will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited. The time limits of the bond shall be based on regular review and consideration by the Board. Towns which receive highway maintenance payments under § 33.1-41.1 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the economic development site. Within any economic development site or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned economic development site.

C. Any access road constructed or improved under this section shall constitute a part of the

secondary system of state highways or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such system.

**§ 36-139.6. Additional powers and duties of Director; oversight of planning district commissions.**

The Director of the Department of Housing and Community Development shall have the following powers and duties relating to oversight of planning district commissions:

1. To recommend to the Governor the level of state general appropriation funding for each planning district commission, taking into consideration the minimum funding level necessary for operation, the population of each district, and other factors considered appropriate;

2. To distribute state general appropriation funding to planning district commissions consistent with the provisions of this chapter and Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2;

3. To administer the Regional Cooperation Incentive Fund in accordance with § 15.2-4217;

4. To provide technical assistance to planning district commissions regarding regional approaches to area-wide problems. Assistance may be initiated by the Department, individual local governments, or planning district commissions;

5. To require the submission of annual programmatic and financial information by each planning district commission in a format prescribed by the Director;

6. To prepare a biennial report to the Governor and the General Assembly which identifies the activities and other information deemed appropriate by the Director concerning planning district commissions, including findings as to planning district commissions which are not complying with Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2. Copies of the biennial report shall also be sent to the Commission on Local Government, Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*, Department of Conservation and Recreation, Department of Environmental Quality, Department of Planning and Budget, Department of Transportation, Virginia Economic Development Partnership, and others upon request; and

7. To establish the Virginia Planning District Commission Council made up of the chairman or designated representative from each planning district commission to advise Department staff on programs, rules and regulations for the planning district commissions. Technical committees of planning district commission staff, state and local agency staff, and private sector individuals as needed, may be created.

**§ 46.2-749.69:1. Special license plates bearing the names, numbers, and color schemes used by professional stock car drivers; fees.**

A. On receipt of an application and payment of the fee prescribed by this section, the Commissioner shall issue special license plates to supporters of the Virginia Motor Sports Initiative.

B. The Commissioner may enter into agreements for the purchase of distinctive license plates bearing the name of a specific professional stock car driver and the race car number and color scheme used by that driver, or for distinctive general motor sports-themed license plates, for issuance as provided in this section. The design of such license plates shall be as mutually agreed by the Commissioner and the supplier of such license plates. The purchase price of such plates shall be as agreed between the Commissioner and the supplier or other entity, but shall in no case exceed a total, one-time cost of \$15 for each set of license plates. In the event that a race car number, color scheme, or both, change for a driver with a currently issued series, a new series for that driver may be issued subject to the requirements of this section.

The provisions of subdivision B 1 of § 46.2-725 shall not apply to license plates issued under this section.

C. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid into the state treasury and credited to the special nonreverting fund known as the Virginia Motor Sports Initiative Fund established within the Department of Accounts and paid annually in equal amounts to the Virginia Economic Development Partnership Authority and the Virginia Department of ~~Business Assistance~~ *Small Business and Supplier Diversity* and used to support their programs related to the Virginia Motor Sports Initiative.

In calculating the amount to be paid into such fund each year, however, there shall be deducted an amount equal to the amount paid in that year by the Department for the purchase of license plates for which the additional \$25 fees have been collected for that year.

**§ 58.1-439.6. Worker retraining tax credit.**

A. As used in this section, unless the context clearly requires otherwise:

"Eligible worker retraining" means retraining of a qualified employee that promotes economic development in the form of (i) noncredit courses at any of the Commonwealth's community colleges or a private school or (ii) worker retraining programs undertaken through an apprenticeship agreement approved by the Virginia Apprenticeship Council.



1782 "Qualified employee" means an employee of an employer eligible for a credit under this section in a  
1783 full-time position requiring a minimum of 1,680 hours in the entire normal year of the employer's  
1784 operations if the standard fringe benefits are paid by the employer for the employee. Employees in  
1785 seasonal or temporary positions shall not qualify as qualified employees. A qualified employee (i) shall  
1786 not be a relative of any owner or the employer claiming the credit and (ii) shall not own, directly or  
1787 indirectly, more than five percent in value of the outstanding stock of a corporation claiming the credit.  
1788 As used herein, "relative" means a spouse, child, grandchild, parent or sibling of an owner or employer,  
1789 and "owner" means, in the case of a corporation, any person who owns five percent or more of the  
1790 corporation's stock.

1791 B. For taxable years beginning on and after January 1, 1999, an employer shall be allowed a credit  
1792 against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400  
1793 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or  
1794 Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title in an amount equal to ~~thirty~~ 30 percent of all  
1795 expenditures paid or incurred by the employer during the taxable year for eligible worker retraining.  
1796 However, if the eligible worker retraining consists of courses conducted at a private school, the credit  
1797 shall be in an amount equal to the cost per qualified employee, but the amount of the credit shall not  
1798 exceed \$100 per qualified employee annually. The total amount of tax credits granted to employers  
1799 under this section for each fiscal year shall not exceed \$2,500,000.

1800 C. For purposes of this section, the amount of any credit attributable to a partnership, electing small  
1801 business corporation (S corporation), or limited liability company shall be allocated to the individual  
1802 partners, shareholders, or members, respectively, in proportion to their ownership or interest in such  
1803 business entities.

1804 D. An employer shall be entitled to the credit granted under this section only for those courses at a  
1805 community college or a private school which courses have been certified as eligible worker retraining to  
1806 the Department of Taxation by the Department of ~~Business Assistance~~ *Small Business and Supplier*  
1807 *Diversity*. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative  
1808 Process Act (§ 2.2-4000 et seq.), (i) establishing procedures for claiming the credit provided by this  
1809 section, (ii) defining eligible worker retraining, which shall include only those courses and programs that  
1810 are substantially related to the duties of a qualified employee or that enhance the qualified employee's  
1811 job-related skills, and that promote economic development, and (iii) providing for the allocation of  
1812 credits among employers requesting credits in the event that the amount of credits for which requests are  
1813 made exceeds the available amount of credits in any year. The Department of ~~Business Assistance~~ *Small*  
1814 *Business and Supplier Diversity* shall review requests for certification submitted by employers and shall  
1815 advise the Tax Commissioner whether a course or program qualifies as eligible worker retraining.

1816 E. Any credit not usable for the taxable year may be carried over for the next three taxable years.  
1817 The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable  
1818 year. No credit shall be carried back to a preceding taxable year. If an employer that is subject to the  
1819 tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section  
1820 of this Code, or has a credit carryover from a preceding taxable year, such employer shall be considered  
1821 to have first utilized any credit allowed which does not have a carryover provision, and then any credit  
1822 which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed  
1823 pursuant to this section.

1824 F. No employer shall be eligible to claim a credit under this section for worker retraining undertaken  
1825 by any program operated, administered, or paid for by the Commonwealth.

1826 G. The Director of the Department of ~~Business Assistance~~ *Small Business and Supplier Diversity*  
1827 shall report annually to the chairmen of the House Finance and Senate Finance Committees on the status  
1828 and implementation of the credit established by this section, including certifications for eligible worker  
1829 retraining.

1830 **§ 59.1-284.22. Aerospace Engine Manufacturer Workforce Training Grant Fund; eligible**  
1831 **county.**

1832 A. As used in this section:

1833 "Affiliate" means the same as that term is defined in § 59.1-284.20.

1834 "Capital investment" means the same as that term is defined in § 59.1-284.20.

1835 "Eligible county" means Prince George County.

1836 "Full-time" means employment of an indefinite duration for which the standard fringe benefits are  
1837 paid, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal  
1838 year of the employer's operations, which "normal year" ~~must~~ shall consist of at least 48 weeks, or (ii)  
1839 1,680 hours per year. The term "full-time" shall not include seasonal or temporary positions or positions  
1840 created when a job function is shifted from an existing location in the Commonwealth.

1841 "Grant" means the special training grant or supplemental training grant as described in this section.

1842 "Qualified employee" means an individual hired in the Commonwealth on or after November 20,  
1843 2007, by an entity that is a qualified manufacturer or by an affiliate thereof, who (i) is employed by the

qualified manufacturer or by an affiliate for at least 90 days, and (ii) works on a full-time basis for the qualified manufacturer or for an affiliate for at least such 90-day period.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

"Secretary" means the Secretary of Commerce and Trade or his designee.

"Special training grant" means a \$9,000 allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund per new qualified employee, as described in this section. The aggregate amount of special training grants under this section shall not exceed \$5,778,000.

"Supplemental training grant" means a one-time \$3 million allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund, as described in this section.

B. Grants paid to the qualified manufacturer pursuant to this section are intended to be used for workforce development, instructional, or training purposes so as to enhance the skill sets of qualified employees.

C. Any qualified manufacturer that is eligible to receive a special training grant shall (i) report to the Secretary quarterly the number of new qualified employees hired and trained who have been employed for at least 90 days and for whom a special training grant has not been previously paid pursuant to this section, and (ii) provide evidence of the hiring and training of the new qualified employees described in clause (i). The application and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 30 days after such evidence has been provided by the qualified manufacturer, the Secretary shall certify to (a) the Comptroller and (b) each qualified manufacturer the amount of the special training grant to which such qualified manufacturer is entitled under this section for payment within 60 days after such certification. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The special training grants under this section (1) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturer Workforce Training Grant Fund, which Fund is hereby established on the books of the Comptroller, (2) shall not exceed \$5,778,000 in the aggregate, and (3) shall be paid to or for the benefit of the qualified manufacturer on a quarterly basis.

D. A supplemental training grant shall be paid to any qualified manufacturer that has made an aggregate capital investment of at least \$153.9 million in the eligible county and has hired at least 176 new qualified employees, excluding any qualified employee who has been rehired by the qualified manufacturer or an affiliate thereof or who is employed in a different position with the qualified manufacturer or an affiliate thereof. On or before June 30, 2010, and on or before each June 30 thereafter until the supplemental training grant has been paid, the qualified manufacturer shall provide written notification to the Secretary whether it has met or expects to meet the aggregate capital investment and employee requirements by the end of the current calendar year. If it has met or expects to meet such requirements by the end of the calendar year, the qualified manufacturer shall provide evidence of the same, satisfactory to the Secretary, with the written notification. The written notification and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 10 days after such notification and evidence have been provided by the qualified manufacturer, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the supplemental training grant to which such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The supplemental training grant shall not be paid prior to July 1, 2010. The supplemental training grant (a) shall be paid, subject to appropriation by the General Assembly, from the Aerospace Engine Manufacturer Workforce Training Grant Fund, (b) shall be equal to \$3 million, and (c) shall, subject to appropriation by the General Assembly, be paid to the qualified manufacturer by the end of the applicable fiscal year, as described herein. No more than \$3 million in supplemental training grants shall be paid pursuant to this section.

E. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the aggregate amount available in the Aerospace Engine Manufacturer Workforce Training Grant Fund for that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the fraction shall equal the aggregate amount available for payment from the Aerospace Engine Manufacturer Workforce Training Grant Fund for that fiscal year, and the denominator shall equal the aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

F. Notwithstanding any other provision of this section, in lieu of payment of special training grants by check to qualified manufacturers, the Secretary may determine that such special training grants shall be administered in a manner similar to existing training grant programs such as those permitted by §

1905 ~~2.2-902~~ 2.2-1605.

1906 G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the  
1907 Secretary or his designee for inspection upon his request all relevant and applicable documents to  
1908 determine the aggregate number of new qualified employees hired and the aggregate amount of capital  
1909 investment. The Comptroller shall not draw any warrants to issue checks for a special training grant or a  
1910 supplemental training grant under this section without a specific appropriation for the same. All such  
1911 documents appropriately identified by the qualified manufacturer shall be considered confidential and  
1912 proprietary.

1913 **§ 63.2-601. Virginia Temporary Assistance for Needy Families Program; goals.**

1914 The goals of the Temporary Assistance for Needy Families Program are to:

1915 1. Offer Virginians living in poverty the opportunity to achieve economic independence by removing  
1916 barriers and disincentives to work and providing positive incentives to work;

1917 2. Provide families living in poverty with the opportunities and work skills necessary for  
1918 self-sufficiency;

1919 3. Allow families living in poverty to contribute materially to their own self-sufficiency;

1920 4. Set out the responsibilities of and expectations for recipients of public assistance and the  
1921 government; and

1922 5. Provide families living in poverty with the opportunity to obtain work experience through the  
1923 Virginia Initiative for Employment Not Welfare (VIEW).

1924 None of the provisions of this chapter shall be construed or interpreted to create any rights, causes of  
1925 action, administrative claims or exemptions to the provisions of the Program, except as specifically  
1926 provided in §§ 63.2-609, 63.2-613 and 63.2-618.

1927 The Department of ~~Business Assistance~~ *Small Business and Supplier Diversity* and the Virginia  
1928 Employment Commission shall assist the Department in the administration of the Program.

1929 **§ 63.2-610. Participation in VIEW; coordinated services.**

1930 A. In administering VIEW, the Department shall ensure that local departments provide delivery and  
1931 coordination of all services through intensive case management. VIEW participants shall be referred to a  
1932 case manager. The case manager shall fully explain VIEW to the participant and shall provide the  
1933 participant with written materials explaining VIEW.

1934 B. The Department shall assist local departments in improving the delivery of services, including  
1935 intensive case management, through the utilization of public, private and nonprofit organizations, to the  
1936 extent permissible under federal law.

1937 C. The Department shall be responsible for the coordination of the intensive case management. Job  
1938 finding and job matching leading to independent employment shall be facilitated by the Virginia  
1939 Employment Commission and the Department of ~~Business Assistance~~ *Small Business and Supplier*  
1940 *Diversity*.

1941 D. The Secretary of Health and Human Resources, assisted by the Secretary of Commerce and Trade,  
1942 shall prepare and maintain an annual plan for coordinating and integrating all appropriate services in  
1943 order to promote successful outcomes. The plan shall encourage the use of local and regional service  
1944 providers and permit a variety of methods of providing services. Emphasis shall be placed on  
1945 coordinating and integrating career counseling, job development, job training and skills, job placement,  
1946 and academic and technical education. Public and private institutions of higher education and other  
1947 agencies which offer similar or related services shall be invited to participate as fully as possible in  
1948 developing, implementing and updating the annual coordination plan.

1949 E. The Secretary of Health and Human Resources shall:

1950 1. Increase public awareness of the federal earned income credit and encourage families who may be  
1951 eligible to apply for this tax credit;

1952 2. Pursue aggressive child-support initiatives as established by the General Assembly;

1953 3. Work with community providers to develop adoption, education, family planning, marriage,  
1954 parenting, and training options for Program participants;

1955 4. Increase public awareness of the tax advantages of relocating one's residence in order to secure  
1956 employment;

1957 5. Provide leadership for the development of community work experience opportunities in VIEW;

1958 6. Develop strategies to educate, assist and stimulate employers to hire participants and to provide  
1959 community work experience opportunities, in consultation with representatives of employers and relevant  
1960 public and private agencies on the state and local level; and

1961 7. Provide technical assistance to local departments to assist them in working with employers in the  
1962 community to develop job and community work experience opportunities for participants.

1963 2. That Chapters 9 (§§ 2.2-900 through 2.2-904.1) and 14 (§§ 2.2-1400 through 2.2-1405) of Title  
1964 2.2 of the Code of Virginia are repealed.

1965 3. That as of January 1, 2014, the Department of Small Business and Supplier Diversity shall be  
1966 deemed successor in interest to the Department of Business Assistance and the Department of

1967 Minority Business Enterprise to the extent that this act transfers powers and duties. All rights,  
1968 title, and interest in and to any real or tangible personal property vested in the Department of  
1969 Business Assistance or the Department of Minority Business Enterprise shall be transferred to and  
1970 taken as standing in the name of the Department of Small Business and Supplier Diversity.  
1971 4. That the Governor may transfer an appropriation or any portion thereof within a state agency  
1972 established, abolished, or otherwise affected by the provisions of this act, or from one such agency  
1973 to another, to support the changes in organization or responsibility resulting from or required by  
1974 the provisions of this act.  
1975 5. That the Governor may transfer any employee within a state agency established, abolished, or  
1976 otherwise affected by the provisions of this act or from one such agency to another to support the  
1977 changes in organization or responsibility resulting from or required by the provisions of this act.  
1978 6. That all rules and regulations adopted by the Department of Business Assistance or the Director  
1979 of the Department of Minority Business Enterprise that are in effect as of July 1, 2013, and that  
1980 pertain to the subject of this act shall remain in full force and effect until altered, amended, or  
1981 rescinded by the Director of the Department of Small Business and Supplier Diversity.  
1982 7. That the provisions of this act shall become effective on January 1, 2014.