

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 279

*An Act to amend and reenact §§ 9-6.14:4.1 and 15.1-1232 of the Code of Virginia, relating to procedures used by park authorities to adopt regulations.*

[H 48]

Approved March 20, 1996

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

**1. That §§ 9-6.14:4.1 and 15.1-1232 of the Code of Virginia are amended and reenacted as follows:**

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities; ~~except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.~~

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.
15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.
2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
4. Regulations which:
  - (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;
  - (b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
  - (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.
5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations with the prior approval of the Governor. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to

subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties under the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The award or denial of individual student loans by the Virginia Education Loan Authority.
7. The determination of applications for guaranty of individual student loans or the determination of default claims by the State Education Assistance Authority.

E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

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

G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

H. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

#### § 15.1-1232. Powers of authority.

Each authority created hereunder shall be deemed to be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is hereby authorized and empowered:

- (a) To have existence for such term of years as specified by the participating political subdivisions;
- (b) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (c) To adopt an official seal and alter the same at pleasure;
- (d) To maintain an office at such place or places as it may designate;
- (e) To sue and be sued;
- (f) To acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain parks within or partly within and partly without one or more of the political subdivisions by action of whose governing body or governing bodies the authority was created; and to acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith; and to sell, lease as lessor, transfer or dispose of any property or interest therein acquired by it, at any time; provided, however, that the power of eminent domain shall not extend beyond the geographical limits of the political subdivision or subdivisions composing the authority;
- (g) To regulate the uses of all lands and facilities under control of the authority;
- (h) To issue revenue bonds and revenue refunding bonds of the authority, such bonds to be payable solely from revenues derived from the use of the facilities or the furnishing to any political subdivision of park services;
- (i) To accept grants and gifts from the political subdivision forming the authority, the Commonwealth of Virginia, the federal government or any other governmental bodies or political subdivisions, and from any unit, private corporation, copartnership, association or individual;
- (j) To enter into contracts with the federal government, the Commonwealth of Virginia, any political subdivision, or any agency or instrumentality thereof, or with any unit, private corporation, copartnership, association, or individual providing for or relating to the furnishing of park services or facilities;
- (k) To contract with any municipality, county, corporation, individual or any public authority or unit of this or any adjoining state, on such terms as the said authority shall deem proper, for the construction, operation and maintenance of any park which is partly in this Commonwealth and partly in

such adjoining state;

(l) To exercise the same rights of acquiring property for the construction or improvement, maintenance or operation of a park as the county or city or counties or cities by which such authority is created may exercise. The governing body of any unit, notwithstanding any contrary provision of law, is hereby authorized and empowered to transfer jurisdiction over, to lease, lend, grant or convey to the authority upon the request of the authority, upon such terms and conditions as the governing body of such unit may agree with the authority as reasonable and fair, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a park, including public roads and other property already devoted to public use. Agreements may be entered into by the authority with the Commonwealth of Virginia, or any agency acting on behalf of the Commonwealth of Virginia, for the acquisition of any lands or property, owned and/or controlled by the Commonwealth of Virginia, for the purposes of construction or improvement, maintenance or operation of a park;

(m) In the event of annexation by a municipality not a member of the authority of lands, areas, or territory served by the authority, then such authority may continue to do business, exercise its jurisdiction over properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force;

(n) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including a trust agreement or trust agreements securing any revenue bonds or revenue refunding bonds issued hereunder;

(o) To do all acts and things necessary or convenient to carry out the powers granted by this chapter;

(p) To borrow at such rates of interest as the law authorizes from the federal government or any agency thereof, individuals, partnerships, or private or municipal corporations, for the purpose of acquiring parklands and improvements thereon, to issue its notes, bonds or other obligations, to secure such obligations by mortgage or pledge of the property and improvements being acquired and the income derived therefrom, and to use any revenues and other income of the authority for payment of interest and retirement of principal of such obligations; provided that prior approval of the governing body of the county or city shall be obtained by an authority created by a single political subdivision. Any county, city or town which has formed or joined an authority may lend money to such authority. The power to borrow set forth in this subdivision shall be in addition to the power to issue revenue bonds and revenue refunding bonds set forth in subdivision (h) of this section and § 15.1-1237. Notes, bonds or other obligations issued under this subdivision shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision of the Commonwealth or a pledge of the faith and credit of the Commonwealth or of any political subdivision of the Commonwealth; and

(q) To adopt such rules and regulations from time to time, not in conflict with the laws of ~~this~~ the Commonwealth, concerning the use of properties under its control as will tend to the protection of such property and the public thereon. ~~All such rules and regulations shall be subject to Chapter 1-1-1 (§ 9-6.14:1 et seq.) of Title 9. No such rule or regulation shall be adopted until after descriptive notice of an intention to propose such rule or regulation for passage has been published in accordance with the procedures required for the adoption of general county ordinances and emergency county ordinances as set forth in § 15.1-504, mutatis mutandis. The full text of any proposed rule or regulation shall be available for public inspection and copying during regular office hours of the authority at a place designated in the published notice.~~

**2. That the provisions of this act shall not affect the validity of any rule or regulation adopted by any authority created pursuant to the Park Authorities Act (§ 15.1-1228 et seq.) prior to July 1, 1996.**