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SENATE BILL NO. 1134

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 2.2-4002 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-272, relating to the maintenance and preservation of Capitol Square; creation of The Council on Capitol Square.

Patron—Norment

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4002 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 30 a chapter numbered 40, consisting of sections numbered 30-266 through 30-272 as follows:

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030 and 2.2-4031:

1. The General Assembly.

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

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

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

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

8. The Virginia Resources Authority.

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

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

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

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

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, §§ 3.1-271.1, 3.1-530.1, and 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The Virginia War Memorial Foundation.

16. The 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.

17. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

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59 18. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or
60 in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual
61 live horse racing at race meetings licensed by the Commission.

62 19. The Virginia Small Business Financing Authority.

63 20. The Virginia Economic Development Partnership Authority.

64 21. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations
65 pursuant to subsection A (ii) of § 59.1-156.

66 22. The Insurance Continuing Education Board pursuant to § 38.2-1867.

67 23. The Board of Health in promulgating the list of diseases that shall be reported to the Department
68 of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to
69 subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to
70 restaurants or food service.

71 24. *The Council on Capitol Square.*

72 B. Agency action relating to the following subjects shall be exempted from the provisions of this
73 chapter:

74 1. Money or damage claims against the Commonwealth or agencies thereof.

75 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

76 3. The location, design, specifications or construction of public buildings or other facilities.

77 4. Grants of state or federal funds or property.

78 5. The chartering of corporations.

79 6. Customary military, naval or police functions.

80 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
81 the Commonwealth.

82 8. The conduct of elections or eligibility to vote.

83 9. Inmates of prisons or other such facilities or parolees therefrom.

84 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
85 well as the treatment, supervision, or discharge of such persons.

86 11. Traffic signs, markers or control devices.

87 12. Instructions for application or renewal of a license, certificate, or registration required by law.

88 13. Content of, or rules for the conduct of, any examination required by law.

89 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) of this title.

90 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
91 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
92 published and posted.

93 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
94 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

95 17. Any operating procedures for review of child deaths developed by the State Child Fatality
96 Review Team pursuant to § 32.1-283.1.

97 18. The regulations for the implementation of the Health Practitioners' Intervention Program and the
98 activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title
99 54.1.

100 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
101 Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.

102 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
103 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

104 21. The Virginia Breeders Fund created pursuant to § 59.1-372.

105 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

106 23. The administration of medication or other substances foreign to the natural horse.

107 C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia
108 Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission
109 pursuant to § 30-150, shall be exempt from the provisions of this chapter.

110 CHAPTER 40.

111 THE COUNCIL ON CAPITOL SQUARE.

112 § 30-266. *The Council on Capitol Square; purpose.*

113 *The Council on Capitol Square (the Council) is established in the legislative branch of state*
114 *government. The purpose of the Council is to operate, maintain, and preserve Capitol Square for the*
115 *safeguard of essential government functions and for the appreciation of the citizens of and visitors to the*
116 *Commonwealth. For purposes of this chapter, "Capitol Square" means the Virginia State Capitol*
117 *building, all structures built prior to 1825 that are state and national landmarks, and the area*
118 *surrounding the Capitol and enclosed by the iron fence installed in 1818 or its extension.*

119 § 30-267. *Membership; terms.*

120 *The Council shall have a total membership of 14 members that shall consist of four legislative*

members, eight nonlegislative citizen members, and three ex officio members as follows: the Chairman of the Senate Committee on Rules and one member of the Senate appointed by the Senate Committee on Rules; the Speaker of the House of Delegates and one member of the House of Delegates appointed by the Speaker of the House of Delegates; one former member of the Senate appointed by the Senate Committee on Rules; one former member of the House of Delegates appointed by the Speaker of the House of Delegates; one nonlegislative citizen member representing The Garden Club of Virginia appointed by the Senate Committee on Rules upon consideration of the list of nominations submitted by The Garden Club of Virginia, if any; one nonlegislative citizen member representing the Virginia Historical Society appointed by the Speaker of the House of Delegates upon consideration of the list of nominations submitted by the Virginia Historical Society, if any; one nonlegislative citizen member representing the Association for the Preservation of Virginia Antiquities appointed by the Governor upon consideration of the list of nominations submitted by the Association for the Preservation of Virginia Antiquities, if any; one nonlegislative citizen member, who shall have expertise in Jeffersonian architecture, appointed by the Governor; the Vice-Chair of the Virginia Capitol Preservation Foundation, who may be a nonresident; and the Clerk of the Senate, the Clerk of the House of Delegates and the Secretary of Administration, who shall serve as ex officio members with voting privileges.

Legislative members, the Vice-Chair of the Virginia Capitol Preservation Foundation, and ex officio members of the Commission shall serve terms coincident with their terms of office. Former members of the Senate and the House of Delegates shall serve terms of two years and may be reappointed. After the initial staggering of terms, all other nonlegislative citizen members shall be appointed for a term of two years and shall serve no more than two consecutive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. The Council shall elect a chairman and vice-chairman from among its membership, who shall be current members of the General Assembly. The chairmanship shall rotate every two years between the membership of the Senate and the House of Delegates.

§ 30-268. Quorum; meetings.

Six members shall constitute a quorum. The Council shall meet at least quarterly. The meetings of the Council shall be held at the call of the chairman or whenever the majority of the members so request.

§ 30-269. Compensation; expenses.

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

§ 30-270. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Operate, maintain, and regulate the uses of Capitol Square. The Council shall have the sole authority to regulate all uses of Capitol Square, including the casual and recreational use of Capitol Square.

2. Perform repair, construction, contracting, purchasing, maintenance, supervisory, and operating activities the Council determines are necessary for the operation and maintenance of Capitol Square.

3. Preserve Capitol Square, in accordance with guidelines issued by the United States Secretary of the Interior for application of the Secretary's standards for rehabilitation adopted in 26 C.F.R. part 67.

4. Establish and maintain the capitol collection trust that shall consist of furniture, antiques, and other items of personal property that the Council shall store in suitable facilities until they are ready to be placed in Capitol Square.

5. Coordinate and approve improvements, additions, and renovations that are made to Capitol Square. The Council shall have the sole authority in coordinating and approving improvements, additions, and renovations, including the placement of monuments and sculptures on Capitol Square.

6. Purchase art, antiques, and artifacts for display at Capitol Square.

7. Manage funds appropriated for the maintenance of Capitol Square and appropriated to the Capitol Square Fund established pursuant to § 30-272.

8. Hold public hearings at times and places as determined by the Council that shall be, notwithstanding § 2.2-3707.01, governed by the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.).

9. Adopt, amend, or rescind rules necessary to accomplish the responsibilities and duties of the

182 Council as set forth in this chapter.

183 § 30-271. Staffing.

184 The Council may appoint, employ, and remove an executive director and such other persons as it
185 deems necessary for the performance of its powers and duties as set forth in this chapter. The Council
186 may determine the duties of such staff and fix their salaries and compensation within the amounts
187 appropriated thereof.

188 § 30-272. Capitol Square Fund.

189 There is hereby created in the state treasury a special nonreverting fund to be known as the Capitol
190 Square Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the
191 Comptroller and administered by the Council. The Fund shall include such moneys as shall be
192 appropriated by the General Assembly and designated for the Fund. Interest earned on moneys in the
193 Fund shall remain in the Fund and be credited to it. Any moneys remaining the Fund, including interest
194 thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.
195 Moneys in the Fund shall be used solely for the purposes of construction, renovation, maintenance, and
196 other costs related to Capitol Square.

197 **2. The following members shall serve an initial two-year term followed by a one-year term for the**
198 **purpose of staggering terms: one nonlegislative citizen member representing The Garden Club of**
199 **Virginia appointed by the Senate Committee on Rules upon consideration of the list of**
200 **nominations by The Garden Club of Virginia, if any; one nonlegislative citizen member**
201 **representing the Virginia Historical Society appointed by the Speaker of the House of Delegates**
202 **upon consideration of the list of nominations of the Virginia Historical Society, if any; one**
203 **nonlegislative citizen member representing the Association for the Preservation of Virginia**
204 **Antiquities appointed by the Governor upon consideration of the list of nominations of the**
205 **Association for the Preservation of Virginia Antiquities, if any. Members may be reappointed.**
206 **However, any member who serves a one-year term shall not be eligible to serve more than one**
207 **consecutive two-term immediately before or after the one-year term. During this staggering period,**
208 **appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired**
209 **terms. Vacancies shall be filled in the same manner as the original appointments.**