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HOUSE BILL NO. 2026

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 2.2-2101, as it is currently effective and as it shall become effective, 2.2-2905, 2.2-3711, and 2.2-4343 of the Code of Virginia and to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 15, consisting of sections numbered 51.1-1500 through 51.1-1514, relating to the establishment of the Virginia Employee Voluntary Accounts Program.

Patrons—Marshall, D.W. and Janis

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2101, as it is currently effective and as it shall become effective, 2.2-2905, 2.2-3711, and 2.2-4343 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 51.1 a chapter numbered 15, consisting of sections numbered 51.1-1500 through 51.1-1514 as follows:

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

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

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be appointed as provided for in § 2.2-2669; to members of the Commission on Civics Education, who shall be appointed as provided for in § 22.1-212.18; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; ~~or~~ to members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided in § 2.2-2533; *or to members of the board of directors of the Virginia Employee Voluntary Accounts Program, who shall be appointed as provided in § 51.1-1503.*

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

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the

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59 appointment of any member of the General Assembly to a board, commission, or council in the
60 executive branch of state government that is responsible for administering programs established by the
61 General Assembly, such portion of such law shall be void, and the Governor shall appoint another
62 person from the Commonwealth at large to fill such a position.

63 The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall
64 be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest
65 Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of
66 the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as
67 provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who
68 shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating
69 Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans
70 Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of
71 Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the
72 Commonwealth Competition Commission, who shall be appointed as provided for in § 2.2-2621; to
73 members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as
74 provided for in § 2.2-2423; to members of the Advisory Commission on the Virginia Schools for the
75 Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.1; to members of the
76 Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of
77 the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the
78 State Executive Council for Comprehensive Services for At-Risk Youth and Families, who shall be
79 appointed as provided in § 2.2-2648; to members of the Virginia Workforce Council, who shall be
80 appointed as provided for in § 2.2-2669; to members of the Commission on Civics Education, who shall
81 be appointed as provided for in § 22.1-212.18; to members of the Volunteer Firefighters' and Rescue
82 Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to
83 members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-306; to
84 members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; ~~or~~ to
85 members of the Southwest Virginia Cultural Heritage Commission, who shall be appointed as provided
86 in § 2.2-2533; *or to members of the board of directors of the Virginia Employee Voluntary Accounts*
87 *Program, who shall be appointed as provided in § 51.1-1503.*

88 § 2.2-2905. Certain officers and employees exempt from chapter.

89 The provisions of this chapter shall not apply to:

- 90 1. Officers and employees for whom the Constitution specifically directs the manner of selection;
- 91 2. Officers and employees of the Supreme Court and the Court of Appeals;
- 92 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either
93 house thereof is required or not;
- 94 4. Officers elected by popular vote or by the General Assembly or either house thereof;
- 95 5. Members of boards and commissions however selected;
- 96 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of
97 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and
98 notaries public;
- 99 7. Officers and employees of the General Assembly and persons employed to conduct temporary or
100 special inquiries, investigations, or examinations on its behalf;
- 101 8. The presidents, and teaching and research staffs of state educational institutions;
- 102 9. Commissioned officers and enlisted personnel of the National Guard and the naval militia;
- 103 10. Student employees in institutions of learning, and patient or inmate help in other state
104 institutions;
- 105 11. Upon general or special authorization of the Governor, laborers, temporary employees and
106 employees compensated on an hourly or daily basis;
- 107 12. County, city, town and district officers, deputies, assistants and employees;
- 108 13. The employees of the Virginia Workers' Compensation Commission;
- 109 14. The officers and employees of the Virginia Retirement System;
- 110 15. Employees whose positions are identified by the State Council of Higher Education and the
111 boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the
112 Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of
113 Natural History and The Library of Virginia, and approved by the Director of the Department of Human
114 Resource Management as requiring specialized and professional training;
- 115 16. Employees of the State Lottery Department;
- 116 17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs;
- 117 18. Employees of the Virginia Commonwealth University Health System Authority;
- 118 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for
119 such employees shall be subject to the review and approval of the Board of Visitors of the University of
120 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia

Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;

21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

22. Officers and employees of the Virginia Port Authority;

23. Employees of the Virginia College Savings Plan;

24. Directors of state facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

25. The Director of the Virginia Office for Protection and Advocacy;

26. Employees of the Virginia Tobacco Settlement Foundation. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees; and

27. Employees of the Virginia Indigent Defense Commission; and

28. *Employees of the Virginia Employee Voluntary Accounts Program.*

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign

182 person and accepted by a public institution of higher education in Virginia shall be subject to public
183 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
184 (i) "foreign government" means any government other than the United States government or the
185 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
186 created under the laws of the United States or of any state thereof if a majority of the ownership of the
187 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
188 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
189 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
190 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

191 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
192 of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating
193 to specific gifts, bequests, and grants.

194 10. Discussion or consideration of honorary degrees or special awards.

195 11. Discussion or consideration of tests, examinations, or other records excluded from this chapter
196 pursuant to subdivision 4 of § 2.2-3705.1.

197 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
198 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
199 filed by the member, provided the member may request in writing that the committee meeting not be
200 conducted in a closed meeting.

201 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
202 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
203 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
204 position of the governing body or the establishment of the terms, conditions and provisions of the siting
205 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
206 closed meeting.

207 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
208 activity and estimating general and nongeneral fund revenues.

209 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
210 subdivision 1 of § 2.2-3705.5.

211 16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to
212 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
213 discussion, consideration or review of State Lottery Department matters related to proprietary lottery
214 game information and studies or investigations exempted from disclosure under subdivision 6 of
215 § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

216 17. Those portions of meetings by local government crime commissions where the identity of, or
217 information tending to identify, individuals providing information about crimes or criminal activities
218 under a promise of anonymity is discussed or disclosed.

219 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
220 of, or information tending to identify, any prisoner who (i) provides information about crimes or
221 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
222 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
223 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

224 19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff
225 members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to
226 respond to such activity or a related threat to public safety; or discussion of reports or plans related to
227 the security of any governmental facility, building or structure, or the safety of persons using such
228 facility, building or structure.

229 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
230 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
231 University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition of
232 a security or other ownership interest in an entity, where such security or ownership interest is not
233 traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns
234 confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the
235 retirement system or provided to the retirement system under a promise of confidentiality, of the future
236 value of such ownership interest or the future financial performance of the entity, and (ii) would have an
237 adverse effect on the value of the investment to be acquired, held or disposed of by the retirement
238 system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be
239 construed to prevent the disclosure of information relating to the identity of any investment held, the
240 amount invested or the present value of such investment.

241 21. Those portions of meetings in which individual child death cases are discussed by the State Child
242 Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which
243 individual child death cases are discussed by a regional or local child fatality review team established

pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.

24. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

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

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovative Technology Authority or a grant allocation committee appointed to advise the Innovative Technology Authority on the grant applications.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. —Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

305 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting
306 security matters made confidential pursuant to § 24.2-625.1.

307 36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee
308 created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from
309 this chapter pursuant to subdivision F 1 of § 2.2-3706.

310 37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards
311 Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of
312 § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship
313 award, review and consider scholarship applications and requests for scholarship award renewal, and
314 cancel, rescind, or recover scholarship awards.

315 38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter
316 pursuant to subdivision 1 of § 2.2-3705.6.

317 39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting
318 pursuant to § 51.1-124.30, or the Investment Advisory Committee appointed pursuant to § 51.1-124.26,
319 or by any local retirement system, acting pursuant to § 51.1-803 of records excluded from this chapter
320 pursuant to subdivision 25 of § 2.2-3705.7.

321 40. Discussion or consideration by the Department of Business Assistance, the Virginia Economic
322 Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community
323 Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, or local
324 or regional industrial or economic development authorities or organizations of records excluded from
325 this chapter pursuant to subdivision 3 of § 2.2-3705.6.

326 41. Discussion or consideration by the Board of Education of records relating to the denial,
327 suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of
328 § 2.2-3705.3.

329 42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National
330 Defense Industrial Authority, or a local or regional military affairs organization appointed by a local
331 governing body, during which there is discussion of records excluded from this chapter pursuant to
332 subdivision 12 of § 2.2-3705.2.

333 43. *Meetings or portions of meetings of the Board of the Virginia Employee Voluntary Accounts*
334 *Program wherein personal information, as defined in § 2.2-3801, which has been provided to the Board*
335 *or its employees by or on behalf of individuals or qualified small employers who have requested*
336 *information about, applied for, or entered into plans or accounts pursuant to Chapter 15 (§ 51.1-1500 et*
337 *seq.) of Title 51.1 is discussed.*

338 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
339 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
340 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
341 motion that shall have its substance reasonably identified in the open meeting.

342 C. Public officers improperly selected due to the failure of the public body to comply with the other
343 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
344 obtain notice of the legal defect in their election.

345 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
346 more public bodies, or their representatives, but these conferences shall be subject to the same
347 procedures for holding closed meetings as are applicable to any other public body.

348 E. This section shall not be construed to (i) require the disclosure of any contract between the
349 Intervention Program Committee within the Department of Health Professions and an impaired
350 practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the
351 board of directors of any authority created pursuant to the Industrial Development and Revenue Bond
352 Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or
353 special law, to identify a business or industry to which subdivision A 5 applies. However, such business
354 or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the
355 board's authorization of the sale or issuance of such bonds.

356 § 2.2-4343. Exemption from operation of chapter for certain transactions.

357 A. The provisions of this chapter shall not apply to:

358 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
359 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
360 the Board of Commissioners and approved by the Department of General Services, procedures to ensure
361 fairness and competitiveness in the procurement of goods and services and in the administration of its
362 capital outlay program. This exemption shall be applicable only so long as such policies and procedures
363 meeting the requirements remain in effect.

364 2. The Virginia Retirement System for selection of services related to the management, purchase or
365 sale of authorized investments, actuarial services, and disability determination services. Selection of these
366 services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The University of Virginia in the selection of services related to the management and investment of its endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the University pursuant to § 23-76.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.) as required by § 23-76.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$30,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is

428 awarded based on competitive principles.

429 14. Procurement of any construction or planning and design services for construction by a Virginia
430 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design
431 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit
432 corporation or organization is obligated to conform to procurement procedures that are established by
433 federal statutes or regulations, whether those federal procedures are in conformance with the provisions
434 of this chapter.

435 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and
436 Interpreting the Executive Mansion.

437 16. The Eastern Virginia Medical School in the selection of services related to the management and
438 investment of its endowment and other institutional funds. The selection of these services shall, however,
439 be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.).

440 17. The Department of Corrections in the selection of pre-release and post-incarceration services.

441 18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with
442 persons for the construction, operation, and maintenance of projects consistent with the Chippokes
443 Plantation State Park Master Plan approved by the Director of the Department of Conservation and
444 Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural
445 living and the contributions of the agricultural, forestry, and natural resource based industries of the
446 Commonwealth, provided such projects are supported solely by private or nonstate funding.

447 19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of
448 § 23-77.4.

449 20. The purchase of goods and services by a local governing body or any authority, board,
450 department, instrumentality, institution, agency or other unit of state government when such purchases
451 are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or
452 by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

453 21. The contract by community services boards or behavioral health authorities with an administrator
454 or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

455 22. *The Board of the Virginia Employee Voluntary Accounts Program for the selection of services*
456 *related to the operation and administration of the Program, including, but not limited to, contracts or*
457 *agreements for the management, purchase, or administration of investments, accounts, or funds or*
458 *related services as provided in subsection B of § 51.1-1505.*

459 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,
460 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or
461 regulations not in conformance with the provisions of this chapter, a public body may comply with such
462 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination
463 of the Governor, in the case of state agencies, or the governing body, in the case of political
464 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the
465 public interest. Such determination shall state the specific provision of this chapter in conflict with the
466 conditions of the grant or contract.

467 CHAPTER 15.

468 VIRGINIA EMPLOYEE VOLUNTARY ACCOUNTS PROGRAM.

469 § 51.1-1500. *Program established.*

470 *In order to enhance the accessibility and affordability of payroll savings deduction plans whereby*
471 *qualified small employers may voluntarily enter a program whereby such employers and their employees*
472 *may contribute funds for the purpose of saving money for retirement, there is hereby established the*
473 *Virginia Employee Voluntary Accounts Program.*

474 § 51.1-1501. *Definitions.*

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

476 "Board" means the board of directors of the Virginia Employee Voluntary Accounts Program
477 established pursuant to § 51.1-1503.

478 "Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise,
479 association, trust, foundation, individual, or other entity carrying on a business or profession, whether
480 or not for profit.

481 "Compensation" means remuneration paid to a participant for services rendered to his employers, as
482 stated in the plan document.

483 "Designated beneficiary" means an individual nominated by a participant to receive a distribution of
484 the participant's account balance in the event of the death of the participant.

485 "Director" means the director of the Program employed as provided in § 51.1-1504.

486 "Employee" means an individual resident of the Commonwealth, who performs or performed any
487 service in the Commonwealth for a qualified small employer, for wages, and who (i) is not enrolled in
488 another state or privately run multiperson retirement plan and (ii) works at least 30 hours per week for
489 the qualified small employer.

"Employer" means any business operating in the Commonwealth, for whom an individual performs or performed any service as an employee.

"Enrollee" means any employee who is enrolled in the Program.

"Financial institution" includes banks, savings institutions, trust subsidiary companies, investment banking companies, brokerage companies, insurance companies, and credit unions.

"Fund" means the Virginia Employee Voluntary Accounts Program Fund established pursuant to § 51.1-1502.

"IRA" means an individual retirement account under § 408 or 408A of the Internal Revenue Code.

"Participating employer" means any qualified small employer with employees that have enrolled in the Program.

"Program" means the Virginia Employee Voluntary Accounts Program established pursuant to this chapter.

"Qualified small employer" means an employer located in the Commonwealth that (i) employed at least one but not more than 50 employees on business days during the preceding calendar year, (ii) did not offer payroll savings deduction plans to employees for one year prior to applying for participation in the Program, and (iii) meets the requirements to establish or participate in (a) a plan qualified under § 401(a) of the Internal Revenue Code, including a plan that contains a cash or deferred arrangement under § 401(k) of the Internal Revenue Code, a savings incentive match plan under § 408(p) of the Internal Revenue Code, or a payroll deduction IRA.

"Wages" means wages as defined under § 3401 (a) of the Internal Revenue Code, as well as any other amounts from which federal income tax is withheld under the provisions of §§ 3402 and 3405 of the Internal Revenue Code; however, such term shall not include amounts paid pursuant to individual retirement plans and simplified employee pension plans as defined in §§ 7701 (a) (37) and 408 (c) of the Internal Revenue Code.

§ 51.1-1502. Virginia Employee Voluntary Accounts Program Fund.

A. There is established the Virginia Employee Voluntary Accounts Program Fund to finance the Program created by this chapter. The assets of the Fund shall be administered by the Board as trust funds and shall be used exclusively for the purposes of administering the Program, including for the design and qualification of the Program, supporting the administrative cost of enrolling individuals, and providing information about the Program. Only the director or his designee may authorize expenditures from the Fund. Such expenditures may be made without an appropriation.

B. The Fund shall include the individual accounts of enrollees, which shall be accounted for as individual accounts. The Fund shall also include separate accounts for administrative fees, donations, and any other grants made to the Program.

C. Moneys of the Fund shall consist of moneys received from enrollees and participating employers pursuant to voluntary payroll deductions and contributions to savings made under this chapter, bequests, endowments, or grants from the United States government, its agencies and instrumentalities, and any other available sources of funds, public or private. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

§ 51.1-1503. Board of directors; membership; discharge of duties.

A. The Program shall be governed by a board of 15 directors, each of whom shall reside in the Commonwealth. Following the initial terms specified in subsection B, all appointments of citizen members shall be for terms of four years or until their successors are appointed and have qualified, except that appointments to fill vacancies shall be for the unexpired terms.

B. The directors shall be appointed as follows:

1. Ten directors appointed by the Governor. Of these, four members shall be at-large citizen members; two members shall have a minimum of five years of professional investment experience; one member shall be a representative of insurance brokers and agents; and three members shall be representatives of the business community. The Governor may select the representative of the insurance brokers and agents from a list of at least three names recommended by the Virginia Association of Insurance Agents. The Governor may select the representatives of the business community from lists of at least three names each to be recommended by the Virginia Chamber of Commerce, the Virginia Chapter of the National Federation of Independent Businesses, and the Virginia Retail Merchants Association. Nothing contained herein shall preclude qualified applicants for any position on the Board from submitting an application to the Governor to serve as a member of the Board. In no case shall the Governor be bound to make any appointment from among the nominees of the respective associations. Of the 10 citizen members to be appointed initially by the Governor, four shall be appointed for four-year terms, three shall be appointed for three year terms, and three shall be appointed for two-year terms;

2. Three directors appointed by the Speaker of the House of Delegates, including one member of the House of Delegates, and one member who represents small business who shall be appointed for a term

551 of four years; and

552 3. Two directors appointed by the Senate Committee on Rules, including one member of the Senate
553 of Virginia and one member representing small businesses who shall be appointed for a term of four
554 years.

555 C. The Governor shall promptly notify the appropriate association, which may make nominations, of
556 any vacancy other than by expiration among the members of the board representing a particular interest
557 and like nominations may be made for the filling of the vacancy.

558 D. Should a noncitizen member cease to hold his public office, the vacancy shall be filled for the
559 remainder of the term by his successor.

560 E. The Board shall elect from its membership a chairman, vice-chairman, and a treasurer for each
561 calendar year.

562 F. The Board shall meet as necessary and at such time and location as agreed by the Board. The
563 directors shall act by majority vote with eight directors constituting a quorum for the transaction of any
564 business or the exercise of any power. Directors shall serve without salary, but each director shall be
565 reimbursed for actual and necessary expenses incurred in the performance of his official duties as a
566 director of the Program.

567 G. The Board shall discharge its duties with respect to the Fund solely in the interest of the
568 enrollees and participating employers and shall invest the assets of the Fund with the care, skill,
569 prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like
570 capacity and familiar with such matters would use in the conduct of an enterprise of a like character
571 and with like aims.

572 H. Members of the Board shall not be subject to any personal liability for any act or omission with
573 respect to the Program or their responsibilities or authorities under this chapter.

574 § 51.1-1504. Director; plan of operation.

575 A. The Board shall employ a director, who shall be authorized to employ such staff as necessary to
576 enable the Board to perform its duties as set forth in this chapter.

577 B. Prior to accepting any enrollees or funds, the director shall design a plan of operation for the
578 Program, which plan of operation shall be subject to approval of the Board, and obtain approval from
579 the Internal Revenue Service to offer the plan to enrollees on a tax-qualified basis. The Program shall
580 include an option for enrollees to roll pretax contributions into an individual retirement account or
581 other eligible retirement plan after ceasing participation in the Program.

582 C. In designing a plan of operation, the director shall consult with employers, workers, private
583 sector retirement plan administrators and providers, and any other persons that the director or the
584 Board determines relevant to the development of an effective and efficient method of operating the
585 Program.

586 D. The plan of operation for the Program shall include, at a minimum, the following elements:

587 1. A qualifying small employer shall be permitted to contribute an amount equal to a percent of
588 employee participation, as set by the regulation of the Board, or an amount equal to a percent of an
589 individual enrollee's compensation or contribution to the Fund;

590 2. Each enrollee shall direct investment of the individual's accumulated employer and employee
591 contributions and shall make investment choices within available categories of investments provided by
592 the Program;

593 3. Each enrollee shall periodically elect to contribute up to a set percentage of his compensation or
594 a dollar amount to the Fund;

595 4. Qualified small employers shall not automatically enroll their employees in the Program, and
596 enrollment shall be voluntary on the part of the employee;

597 5. Pursuant to requirements of applicable provisions of the Internal Revenue Code, each enrollee
598 shall nominate one or more individuals as designated beneficiary by filing a notice of nomination.
599 Moneys available in the Fund shall be available for collection by the designated beneficiary in the event
600 of the death of the enrollee, and if no such designated beneficiary is listed, the moneys shall remain in
601 the Funds;

602 6. Each retirement plan or account shall pay a proportionate share of the expenses incurred to
603 implement, maintain, and administer the Program and the retirement plans or accounts; and

604 7. Neither the Board, the director, the managing Agent, nor any other employee or agent of the
605 Program shall insure, guarantee, or have any other responsibility or any liability with respect to
606 investment returns under any retirement plan.

607 E. In addition to the elements enumerated in subsection D, the plan of operation for the Program
608 may include:

609 1. One or more qualified § 401(a) or 401(k) plans and trusts or savings incentive match plans under
610 § 408(p) of the Internal Revenue Code, or payroll deduction IRA arrangements for the employees of
611 qualified small employers, that may include salary reduction arrangements;

612 2. Administrative service arrangements that allow participating employers to achieve economies of

scale for pension or retirement savings arrangements relating to accounting, investment, payroll processing, employee communication, or investor education;

3. Group investment vehicles or the retirement plans or payroll deduction IRA arrangements of participating employees; and

4. Custodial or trust arrangements for payroll deduction IRAs for employees of participating employers.

§ 51.1-1505. Powers and duties of Board.

A. The Board shall establish a tax-qualified defined contribution retirement program to provide retirement investment plans, including, but not limited to, those created under § 401 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, to qualified small employers. Any such program implemented by the Board shall be consistent with a plan of operation prepared in accordance with § 51.1-1504 that has been approved by the Internal Revenue Service. In administering such plan, the Comptroller shall seek to minimize costs by helping qualified small employers purchase retirement savings plans, arrangements, and investments through economies of scale, standardization, and other measures.

B. In carrying out the provisions of this section, the Board shall contract, subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), with a financial institution chartered or located in Virginia to serve as third-party administrator for the management of the Fund and any other assets of the Program. The financial institution or institutions shall be known as the Fund's managing agent. The contract shall be open for bid to all appropriate entities, public or private. The managing agent shall be responsible for all administrative costs of managing the Fund. The managing agent shall recover from program assets expenses incurred to initiate, operate, and administer the Program. The Managing Agent may subcontract with such investment managers and servicing agents as necessary for the prudent and efficient operation of the Fund, provided that any such investment advisor shall be registered pursuant to the provisions of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 or shall be a federal covered advisor as defined in § 13.1-501 who has filed such documents and paid such fees as may be necessary to transact business in the Commonwealth pursuant to § 13.1-504.

C. The Board shall have the power to:

1. Administer the Program;

2. Administer the Fund, which shall include the authority to invest moneys in the Fund in any instruments, obligations, securities, or property deemed appropriate by the Board and to purchase, hold, sell or transfer real or personal property;

3. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

4. Obtain and maintain insurance against any loss in connection with the Program's property, assets, or activities and indemnifying Board members from personal loss or accountability from liability arising from any action or inaction as a Board member, and directors' and officers' liability insurance;

5. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services;

6. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any Board member, officer, or employee of the Program upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer, or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties that alleges a violation of state or federal securities laws. The Board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the Board;

7. Apply for and accept grants of funds, including funds authorized by the federal government; receive gifts or bequests from any private person or other organization; and deposit such funds into the Fund; and

8. Determine the duties and fix the salaries and compensation of the Director and such staff from such funds as may be appropriated or received.

D. The Board shall develop strategies to inform the public of the availability and desirability of the Program. In developing this information, the Board shall seek the assistance of the Treasury and such other agencies as may be designated by the Governor. This information shall be designed to inform qualified small employers and employees of the need to accumulate financial resources for retirement and the available options for financing their retirement.

§ 51.1-1506. Duties of employers.

Qualified small employers shall provide employees with the opportunity to enroll in the Program, including providing for payroll deductions for enrollees. Employers with employees enrolled in the

674 Program are authorized to contract with the enrolled employees to defer or contribute a portion of the
675 enrolled employees' compensation, in accordance with requirements of the Program.

676 § 51.1-1507. Enrollment limits.

677 Enrollment in the Program is not an entitlement and shall not result in expenditures that exceed the
678 amount that has been appropriated for the Program in the operating budget or is available in the Fund.
679 If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a
680 particular fiscal year, the director may freeze new enrollments in the program and establish a waiting
681 list of eligible workers, or reduce enrollments.

682 § 51.1-1508. Regulations.

683 The Board shall adopt such regulations and procedures as may be necessary to implement the
684 Program in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). As part of the
685 regulation development process, the Board shall consult with employers, workers, private sector
686 retirement plan administrators and providers, and any other individuals or entities that it determines
687 relevant to the development of an effective and efficient method for operating the Program. Regulations
688 shall be adopted to specify the requirements of enrollment, establish incentives for enrollment, specify
689 contribution requirements, specify requirements with regard to individual cost sharing, approve any
690 outside contracts, oversee the process and status of the Program, and include any other requirements or
691 incentives the Board deems appropriate.

692 § 51.1-1509. Board actions not a debt of Commonwealth.

693 No act or undertaking of the Board shall be deemed to constitute a debt of the Commonwealth or
694 any political subdivision thereof, or a pledge of the full faith and credit of the Commonwealth or of any
695 political subdivision, but shall be payable solely from the Program. Debts and obligations of any
696 retirement plan or the Fund shall not be considered debts or obligations of the Commonwealth. Money
697 or other assets of retirement plans or the Fund shall not be considered moneys or assets of the
698 Commonwealth.

699 § 51.1-1510. Provisions applicable to accounts and agreements.

700 A. All agreements shall specifically provide that, if after a specified period of time the agreement has
701 not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable
702 effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report
703 such unclaimed moneys to the State Treasurer pursuant to § 55-210.12.

704 B. Notwithstanding any provision of law to the contrary, money in the Program shall be exempt from
705 creditor process and shall not be liable to attachment, garnishment, or other process, nor shall it be
706 seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any
707 debt or liability of any enrollee or participating employer.

708 C. No account shall be assigned for the benefit of creditors, used as security or collateral for any
709 loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

710 D. The Board's decision on any dispute, claim, or action arising out of or related to an agreement
711 made or entered into pursuant to this chapter or benefits thereunder shall be considered a case decision
712 as defined in § 2.2-4001 and all proceedings related thereto shall be conducted pursuant to Article 3
713 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be exclusively provided
714 pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

715 § 51.1-1511. Program assets tax exempt.

716 The assets of the Program and its income shall be exempt from state and local taxation.

717 § 51.1-1512. Forms of accounts and records; audit.

718 A. The accounts and records of the Board showing the receipt and disbursement of funds from
719 whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided
720 that such accounts shall correspond as nearly as possible to the accounts and records for such matters
721 maintained by corporate enterprises.

722 B. An independent certified public accountant selected by the Board shall annually audit the
723 accounts of the Fund, and the cost of such audit services shall be borne by the Program and be paid
724 from moneys designated for such purposes in the Fund. The audit shall be performed at least each fiscal
725 year, in accordance with generally accepted auditing standards and, accordingly, include such tests of
726 the accounting records and such auditing procedures as considered necessary under the circumstances.
727 The Board shall furnish copies of the audit to the same persons who are entitled to receive copies of the
728 board's report on investment of the Fund's assets.

729 § 51.1-1513. Liability of Commonwealth.

730 Neither the Commonwealth nor any state board, commission, or agency, or any officer, employee, or
731 member shall be liable for any loss or deficiency resulting from investments selected by any enrollee.

732 § 51.1-1514. Reports.

733 The Board shall issue an annual report on the status of the Program, prior to December 1 of each
734 year commencing in 2010, to the Governor and the chairmen of the House Appropriations and Senate
735 Finance Committees no later than May 1 of each year. The report shall include information on the

736 operation and administration of the Program including, but not limited to, (i) the number of
737 participating employers, (ii) the number of enrollees, (iii) the retirement savings levels of enrollees, (iv)
738 the financial status of the Program and the Fund, and (v) any other relevant issues related to the
739 Program.

740 2. That any funds appropriated for the costs of establishing the Virginia Employee Voluntary
741 Accounts Program may be recovered by the Commonwealth by the assessment of an
742 administrative fee to enrollees. Such fee shall be a set percentage of the contribution made by
743 enrollees, as determined by the board of directors of the Program, provided that the period for
744 recovery of such expenses shall not be less than five years. Any fees collected hereunder shall be
745 remitted annually to the General Fund.