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**SENATE BILL NO. 968**

Offered January 12, 2011

Prefiled January 11, 2011

*A BILL to amend and reenact §§ 10.1-113, 10.1-1022.1, 28.2-1104, and 29.1-100 of the Code of Virginia; to amend the Code of Virginia by adding in Title 29.1 a chapter numbered 9, containing articles numbered 1 through 4, consisting of sections numbered 29.1-900 through 29.1-937; and to repeal Chapter 10 (§§ 3.2-1000 through 3.2-1011) of Title 3.2, Article 3 (§§ 10.1-209 through 10.1-217) of Chapter 2 of Title 10.1, and Article 6 (§§ 29.1-563 through 29.1-570) of Chapter 5 of Title 29.1 of the Code of Virginia, relating to consolidation of endangered species authorities.*

Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

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

**1. That §§ 10.1-113, 10.1-1022.1, 28.2-1104 and 29.1-100 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding in Title 29.1 a chapter numbered 9, containing articles numbered 1 through 4, consisting of sections numbered 29.1-900 through 29.1-937, as follows:**

§ 10.1-113. Sale of trees.

For the purpose of managing Departmental lands or maintaining the production of forest products in Departmental lands, the Director, upon the recommendation of the State Forester, may designate and appraise trees to be cut under the principles of scientific forest management, and may sell them for not less than their appraised value. When the appraised value of the trees to be sold is more than \$50,000, the Director, before selling them, shall receive bids, after notice by publication once a week for two weeks in two newspapers of general circulation; but the Director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from the sale of the timber and trees from state park lands shall be paid into the State Park Conservation Resources Fund established in subsection A of § 10.1-202. The proceeds arising from the sale of the timber and trees from natural area preserves owned by the Department in fee simple shall be paid into the Natural Area Preservation Fund established in ~~§ 10.1-215~~ § 29.1-925.

§ 10.1-1022.1. Expenditure of funds for natural area protection.

A. No matching grant shall be made from the Fund to any holder or public body for purchasing an interest in land for the protection of a natural area unless:

1. The holder or public body has demonstrated the necessary commitment and financial capability to manage the property; and

2. The Department has, after reviewing the grant application as provided in subsection B, recommended that the grant be made.

B. Natural area grant applications shall be submitted to the Foundation, which shall forward the application to the Department. The application shall include a budget for the proposed purchase and for the management of the property. The Department shall consider the following in making its recommendation on whether the grant should be made:

1. Whether the project will make a significant contribution to the protection of habitats for rare, threatened, or endangered plant or animal species, rare or state-significant natural communities, other ecological resources, or natural areas of Virginia;

2. Whether the area addresses a protection need identified in the Virginia Natural Heritage Plan;

3. The rarity of the elements targeted for conservation;

4. The size and viability of the site; and

5. Whether the holder or public body has the capability to protect the site from short-term and long-term stresses to the area.

C. Matching grant funds provided pursuant to this section shall be expended by the holder or public body within two years of receiving the funds, except that the Department may grant an extension of up to one year.

D. All property for which a matching grant is made pursuant to this section shall be dedicated as a natural area preserve as provided in ~~§ 10.1-213~~ § 29.1-923. Any such preserve that was purchased in fee simple by the holder or public body shall be open for public access for a reasonable amount of time each year, except as is necessary to protect sensitive resources or for management purposes, as determined by the holder or public body pursuant to an agreement with the Department.

§ 28.2-1104. Coordination.

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59 A. To the extent feasible, this system shall be carried out in coordination with the National Estuarine  
60 Research Reserve System established by 16 U.S.C. § 1461.

61 B. To the extent feasible, lands within the Virginia Estuarine and Coastal Research Reserve System  
62 shall be dedicated as part of the Commonwealth's natural area preserves components pursuant to  
63 ~~§ 10.1-213~~ § 29.1-923.

64 § 29.1-100. Definitions.

65 As used in and for the purposes of this title only, or in any of the regulations of the Board, unless  
66 the context clearly requires a different meaning:

67 "Bag or creel limit" means the quantity of game, fish or fur-bearing animals that may be taken,  
68 caught, or possessed during a period fixed by the Board.

69 "Board" means the Board of Game and Inland Fisheries.

70 "Closed season" means that period of time fixed by the Board during which wild animals, birds or  
71 fish may not be taken, captured, killed, pursued, hunted, trapped or possessed.

72 "Conservation police officers" means supervising officers, and regular and special conservation police  
73 officers.

74 "Department" means the Department of Game and Inland Fisheries.

75 "Director" means the Director of the Department of Game and Inland Fisheries.

76 "Firearm" means any weapon that will or is designed to or may readily be converted to expel single  
77 or multiple projectiles by the action of an explosion of a combustible material.

78 "Fishing" means taking, capturing, killing, or attempting to take, capture or kill any fish in and upon  
79 the inland waters of this Commonwealth.

80 "Fur-bearing animals" includes beaver, bobcat, fox, mink, muskrat, opossum, otter, raccoon, skunk,  
81 and weasel.

82 "Game" means wild animals and wild birds that are commonly hunted for sport or food.

83 "Game animals" means deer, bear, rabbit, fox, squirrel, bobcat and raccoon.

84 "Game fish" means trout (including all Salmonidae), all of the sunfish family (including largemouth  
85 bass, smallmouth bass and spotted bass, rock bass, bream, bluegill and crappie), walleye or pike perch,  
86 white bass, chain pickerel or jackfish, muskellunge, and northern pike, wherever such fish are found in  
87 the waters of this Commonwealth and rockfish or striped bass where found above tidewaters or in  
88 streams which are blocked from access from tidewaters by dams.

89 "Hunting and trapping" includes the act of or the attempted act of taking, hunting, trapping, pursuing,  
90 chasing, shooting, snaring or netting birds or animals, and assisting any person who is hunting, trapping  
91 or attempting to do so regardless of whether birds or animals are actually taken; however, when hunting  
92 and trapping are allowed, reference is made to such acts as being conducted by lawful means and in a  
93 lawful manner. The Board of Game and Inland Fisheries may authorize by regulation the pursuing or  
94 chasing of wild birds or wild animals during any closed hunting season where persons have no intent to  
95 take such birds or animals.

96 "Lawful," "by law," or "law" means the statutes of this Commonwealth or regulations adopted by the  
97 Board which the Director is empowered to enforce.

98 "Migratory game birds" means doves, ducks, brant, geese, swan, coot, gallinules, sora and other rails,  
99 snipe, woodcock and other species of birds on which open hunting seasons are set by federal  
100 regulations.

101 "Muzzleloading pistol" means a firearm originally designed, made or intended to fire a projectile  
102 (bullet) from one or more barrels when held in one hand and that is loaded from the muzzle or forward  
103 end of the cylinder.

104 "Muzzleloading rifle" means a firearm firing a single projectile that is loaded along with the  
105 propellant from the muzzle of the gun.

106 "Muzzleloading shotgun" means a firearm with a smooth bore firing multiple projectiles that are  
107 loaded along with the propellant from the muzzle of the gun.

108 "Nonmigratory game birds" means grouse, bobwhite quail, turkey and all species of birds introduced  
109 into the Commonwealth by the Board.

110 "Nuisance species" means blackbirds, crows, cowbirds, grackles, English sparrows, starlings, or those  
111 species designated as such by regulations of the Board, and those species found committing or about to  
112 commit depredation upon ornamental or shade trees, agricultural crops, wildlife, livestock or other  
113 property or when concentrated in numbers and manners as to constitute a health hazard or other  
114 nuisance. However, the term nuisance does not include (i) animals designated as endangered or  
115 threatened pursuant to §§ ~~29.1-563, 29.1-564, and 29.1-566~~ §§ 29.1-900, 29.1-901, and 29.1-902, (ii)  
116 animals classified as game or fur-bearing animals, and (iii) those species protected by state or federal  
117 law.

118 "Open season" means that period of time fixed by the Board during which wild animals, wild birds  
119 and fish may be taken, captured, killed, pursued, trapped or possessed.

120 "Pistol" means a weapon originally designed, made, and intended to fire a projectile (bullet) from

one or more barrels when held in one hand, and having one or more chambers as an integral part of or permanently aligned with the bore and a short stock at an angle to and extending below the line of the bore that is designed to be gripped by one hand.

"Possession" means the exercise of control of any wild animal, wild bird, fish or fur-bearing animal, or any part of the carcass thereof.

"Properly licensed person" means a person who, while engaged in hunting, fishing or trapping, or in any other activity permitted under this title, in and upon the lands and inland waters of this Commonwealth, has upon his person all the licenses, permits and stamps required by law.

"Regulation" means a regulation duly adopted by the Board pursuant to the authority vested by the provisions of this title.

"Revolver" means a projectile weapon of the pistol type, having a breechloading chambered cylinder arranged so that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

"Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

"Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore or rifled shotgun barrel either a number of ball shot or a single projectile for each single pull of the trigger.

"Transportation" means the transportation, either upon the person or by any other means, of any wild animal or wild bird or fish.

"Wildlife" means all species of wild animals, wild birds and freshwater fish in the public waters of this Commonwealth.

#### CHAPTER 9.

#### ENDANGERED SPECIES.

##### Article 1.

##### *Endangered Fish and Wildlife Species.*

##### *§ 29.1-900. Definitions.*

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

*"Endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range.*

*"Fish or wildlife" means any member of the animal kingdom, vertebrate or invertebrate, except for the class Insecta, and includes any part, products, egg, or the dead body or parts thereof.*

*"Person" means any individual, firm, corporation, association, or partnership.*

*"Threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.*

##### *§ 29.1-901. Taking, transportation, sale, etc., of endangered species prohibited.*

*The taking, transportation, possession, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the U.S. Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-904.*

##### *§ 29.1-902. Regulations.*

*The Board is authorized to adopt the federal list, as well as modifications and amendments thereto by regulations; to declare by regulation, after consideration of recommendations from the Director of the Department of Conservation and Recreation and from other reliable data sources, that species not appearing on the federal lists are endangered or threatened species in Virginia; and to prohibit by regulation the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any threatened or endangered species of fish or wildlife.*

*§ 29.1-903. Penalties; authority of conservation police officers and police officers; disposition of property seized.*

*A. Any person who violates the provisions of § 29.1-901 or 29.1-902, or any regulations issued pursuant to those sections, or whoever violates any regulation or permit issued under § 29.1-904 is guilty of a Class 1 misdemeanor; however, the sale, offering for sale, purchasing, or offering to purchase within the Commonwealth of any fish or wildlife appearing on a list of threatened or endangered species as prohibited by § 29.1-901 shall be punishable as provided in § 29.1-553.*

*B. Any judicial officer or other officer authorized to issue criminal warrants shall have authority to issue a warrant for the search and seizure of any goods, business records, merchandise, or fish or wildlife taken, employed, or used in connection with a violation of any provision of this article. All such search warrants shall be issued and executed pursuant to Chapter 5 (§ 19.2-52 et seq.) of Title 19.2.*

*C. Goods, merchandise, fish or wildlife, or records seized under the provisions of subsection B shall*

182 *be held by an officer or agent of the Department at the direction of the judge or court pending*  
183 *disposition of court proceedings, and thereafter be forfeited to the Commonwealth for destruction or*  
184 *disposition as the Director may deem appropriate. However, prior to forfeiture, the Director may direct*  
185 *the transfer of fish or wildlife so seized to a qualified zoological, educational, or scientific institution for*  
186 *safekeeping, with costs assessable to the defendant. The Board is authorized to issue regulations to*  
187 *implement this section.*

188 *§ 29.1-904. When Board may permit taking, etc., of endangered species.*

189 *The Board may permit the taking, exportation, transportation, or possession of any fish or wildlife*  
190 *which is listed by the provisions of this article, for zoological, educational, or scientific purposes and*  
191 *for propagation of such fish or wildlife in captivity for preservation purposes.*

192 *§ 29.1-905. Keeping of reptiles generally; penalty.*

193 *It is unlawful for the owner or keeper of any exotic reptile or type of reptile not native to the*  
194 *Virginia, including but not limited to the American alligator, to keep the reptile in any manner that will*  
195 *permit its escape or to knowingly permit the reptile to run at large. Any violation of this section shall*  
196 *constitute a Class 2 misdemeanor.*

197 *§ 29.1-906. Cooperation of state agencies.*

198 *All departments, commissions, boards, authorities, agencies, offices, and institutions within any*  
199 *branch of the state government shall cooperate with the Board in carrying out the purposes of this*  
200 *article.*

201 *Article 2.*

202 *Endangered Plant and Insect Species.*

203 *§ 29.1-907. Definitions.*

204 *As used in this article, unless the context requires a different meaning:*

205 *"Candidate species" means those species formally recommended by the Director or other reliable*  
206 *data sources in writing for presentation to the Board for listing under this article.*

207 *"Endangered species" means any species or variety of plant life or insect life determined by the*  
208 *Board to be in danger of extinction throughout all or a significant part of its range other than a species*  
209 *determined by the Director not to be in the best interest of the welfare of man.*

210 *"Insect" or "insect life" means any species of the class Insecta.*

211 *"Plant" or "plant life" means any member of the plant kingdom, including spores, leaves, stems,*  
212 *branches, flowers, seeds, roots, and other parts or products thereof.*

213 *"Proposed species" means any candidate species authorized by the Board for consideration for*  
214 *listing as threatened or endangered under the provisions of this article.*

215 *"Species" includes any species or variety of plant life or insects.*

216 *"Take" means, in reference to plants and insects, to collect, pick, cut, or dig up for the purpose of*  
217 *resale.*

218 *"Threatened species" means any species determined by the Board to be likely to become an*  
219 *endangered species within the foreseeable future throughout all or a significant portion of its native*  
220 *range.*

221 *§ 29.1-908. Powers and duties of Director.*

222 *For the purpose of effectively administering this article, the Director may:*

223 *1. Establish programs as are deemed necessary for the management of threatened or endangered*  
224 *species;*

225 *2. Accept funds for a special account or other gifts or grants from any source for use in the*  
226 *furtherance of this article. Funds collected for services on articles determined by the Director to be*  
227 *beyond the scope of this article shall revert to the fund from which expended;*

228 *3. Enter into reciprocal agreements with responsible officers of other states under which any part of*  
229 *this article would benefit;*

230 *4. Issue a permit authorizing the removal, taking, or destruction of threatened or endangered species*  
231 *on the state list upon good cause shown and where necessary to alleviate damage to property or the*  
232 *impact on progressive development, or protect human health, provided that such action does not violate*  
233 *federal laws or regulations;*

234 *5. Stop sale, seize, or return to point of origin at the owner's expense, any threatened or endangered*  
235 *species or part thereof if the Director determines the owner has violated any of the provisions of this*  
236 *article or the regulations adopted hereunder. Any threatened or endangered species or part thereof*  
237 *seized may be disposed of at the discretion of the Director; and*

238 *6. Seek, in those situations where permission to enter property is denied by the owner or occupant,*  
239 *an administrative inspection warrant signed by any judge of any circuit court whose territorial*  
240 *jurisdiction encompasses the property to be inspected, authorizing the Director to make inspections or*  
241 *develop other biological data for the proper management of any threatened or endangered species. The*  
242 *issuance of an administrative inspection warrant pursuant hereto shall conform, insofar as is*  
243 *practicable, to the requirements and guidelines set forth in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2*

relating to the issuance of inspection warrants in connection with the manufacturing or emitting of a toxic substance.

§ 29.1-909. Listing of threatened and endangered species; powers of Board; further powers of Director.

A. The Board may adopt regulations including the listing of threatened or endangered species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of this article.

B. The Director may conduct investigations of species of plants and insects to develop information relating to the population, distribution, habitat needs, limiting factors, and other biological and ecological data in order to determine management measures necessary to assure their continued ability to sustain themselves successfully. As a result of this investigation and from other reliable data, the Board shall approve proposed species to be added to or deleted from the list of threatened species or the list of endangered species, or to be transferred from one list to the other.

§ 29.1-910. Threatened and endangered species; prohibitions.

A. It is unlawful for any person to dig, take, cut, process, or otherwise collect, remove, transport, possess, sell, offer for sale, or give away any species native to or occurring in the wild in the Commonwealth that is listed in this article or the regulations adopted hereunder as threatened or endangered, other than from such person's own land, except in accordance with the provisions of this article or the regulations adopted hereunder.

B. The Director may require any person possessing endangered species or parts thereof to present such species or parts thereof for inspection and to give full information as to their origin.

§ 29.1-911. When Director may permit taking of threatened or endangered species.

The Director may issue a permit under certain circumstances for the taking, possessing, buying, selling, transporting, exporting, or shipping of any threatened or endangered species that appears on the state list of threatened or endangered species for scientific, biological, or educational purposes or for propagation to ensure its survival, provided that such action does not violate federal laws or regulations.

§ 29.1-912. Harvesting of threatened species; further powers of Board and Director.

A. The Board may adopt regulations to permit and control the commercial harvest of certain threatened species that would prevent that species from becoming endangered or extinct.

B. The Director may permit the taking of a threatened species when the Board has determined that its abundance in the Commonwealth justifies a controlled harvest that is not in violation of federal laws or regulations. The Director shall take the necessary action to conserve, protect, restore, or propagate threatened and endangered species.

§ 29.1-913. License required to buy threatened species; records of purchases.

A. It is unlawful for any person to buy any threatened species or part thereof, which is listed in this article or regulations adopted hereunder, without first obtaining a license to do so from the Director. This section shall not apply to the purchase or sale of real property upon which such threatened species or part thereof may be located. Application forms shall be provided by the Director and shall be completed and returned with a fee of \$10 made payable to the Treasurer of Virginia. Licenses shall expire on December 31 annually and there shall be no abatement in the annual fee. Licenses may be revoked at any time by the Director for good cause.

B. The buyer of any threatened species or part thereof shall maintain and keep records of all purchases for the preceding 12 months on forms prescribed by the Director. Records shall be sent or otherwise provided to the Director within 30 days following the expiration of the license. Records shall be made available to the Director during normal business hours for examination or information.

§ 29.1-914. Wild ginseng declared threatened plant species.

The indigenous plant, *Panax quinquefolius* L., of the Araliaceae family, commonly referred to as ginseng, is hereby declared a threatened plant species when it occurs in the wild. All persons buying wild ginseng or otherwise accepting this plant or part thereof for resale shall be licensed to do so and shall acquire wild ginseng or part thereof in accordance with the provisions of this article and the regulations adopted hereunder. The wild ginseng harvest season shall be set by the Board. If any person takes wild ginseng, other than from his own land, on any other date it shall be deemed a violation of this article.

§ 29.1-915. Export certificate required for export of ginseng.

All persons who have ginseng either wild or artificially propagated in any quantity and who wish to export any amount out of the Commonwealth shall obtain an export certificate from the Department. This section shall not apply to persons exporting ginseng for personal or individual use in quantities not exceeding eight ounces in any calendar year. To obtain an export certificate, an individual shall keep accurate records of the year of harvest and the county of origin of the ginseng. In the case of dealers, a person shall keep accurate records of purchases, quantity purchased, whether the ginseng was wild or

305 cultivated, county of origin, and the name of the seller. Such records shall be presented to the Director  
306 for inspection.

307 § 29.1-916. Virginia birch declared endangered species.

308 Virginia birch or round-leaf birch, *Betula uber* of the *Betulaceae* family, is hereby declared an  
309 endangered species as defined herein and is subject to the provisions of this article to preserve those  
310 specimens known to occur in the Commonwealth.

311 § 29.1-917. Enforcement of article; summons.

312 Any person designated by the Director or any conservation police officer or law-enforcement officer  
313 as defined in § 9.1-101, excluding certain Alcoholic Beverage Control Board members, may enforce the  
314 provisions of this article and the regulations adopted hereunder. Those designated by the Director may  
315 issue a summons to any person who violates any provision of this article to appear at a time and place  
316 to be specified in such summons.

317 § 29.1-918. Penalty.

318 Any person who violates any provision of this article or the regulations adopted hereunder is guilty  
319 of a Class 1 misdemeanor.

320 Article 3.

321 Virginia Natural Area Preserves Act.

322 § 29.1-919. Definitions.

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

324 "Dedication" means the transfer to the Commonwealth of an estate, interest, or right in a natural  
325 area by any manner authorized in § 29.1-923.

326 "Fund" means the Natural Area Preservation Fund.

327 "Instrument of dedication" means any written document by which an estate, interest, or right in a  
328 natural area conveys formal dedication as a natural area preserve pursuant to the provisions of  
329 § 29.1-923.

330 "Natural area" means any area of land, water, or both land and water, whether publicly or privately  
331 owned, that retains or has reestablished its natural character, though it need not be completely natural  
332 and undisturbed; or which is important in preserving rare or vanishing flora, fauna, native ecological  
333 systems, geological, natural historical, scenic or similar features of scientific or educational value  
334 benefiting the citizens of the Commonwealth.

335 "Natural area preserve" means a natural area that has been dedicated pursuant to § 29.1-923.

336 "Natural heritage resources" means the habitat of rare, threatened, or endangered plant and animal  
337 species, rare or state significant natural communities or geologic sites, and similar features of scientific  
338 interest benefiting the welfare of the citizens of the Commonwealth.

339 "Owner" means any individual, corporation, partnership, trust, or association, and all governmental  
340 units except the state, its department, agencies, or institutions.

341 "Program" means the Virginia Natural Heritage Program.

342 "Registry" means an agreement between the Director and the owner of a natural area to protect and  
343 manage the natural area for its specified natural heritage resource values.

344 "System" means the state system of natural area preserves established under § 29.1-924.

345 § 29.1-920. Additional powers of the Board.

346 In addition to other powers conferred by law and subject to the provisions of this article, the Board  
347 shall have the power, which may be delegated by the Director:

348 1. To establish criteria for the selection, registration, and dedication of natural areas and natural  
349 area preserves.

350 2. To purchase, lease, or otherwise acquire in the name of the Commonwealth, using moneys from  
351 the Fund, lands suitable for natural area preserves.

352 3. To acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless  
353 otherwise restricted by the terms of a gift or devise, to encumber, convey, or otherwise dispose of, any  
354 real property, any estate or interests therein, or products on or derived from such real property, as may  
355 be necessary and proper in carrying into effect the provisions of this article.

356 4. To accept, hold, and administer gifts and bequests of money, securities, or other property,  
357 absolutely or in trust, made for purposes of this article. Unless otherwise restricted by the terms of the  
358 gift or bequest, the Board may sell, exchange, or otherwise dispose of such money, securities, or other  
359 property given or bequeathed to the Board. The principal of such funds, together with the income and  
360 all revenues derived therefrom, shall be placed in the Fund.

361 § 29.1-921. Additional duties of the Board.

362 In addition to other duties conferred by law, the Board or the Director, if delegated by the Board  
363 shall:

364 1. Preserve the natural diversity of biological resources of the Commonwealth;

365 2. Maintain the Program to select and nominate areas containing natural heritage resources for  
366 registration, acquisition, and dedication of natural areas and natural area preserves;

3. Develop and implement a Natural Heritage Plan that shall govern the Program in the creation of a system of registered and dedicated natural area preserves;

4. Publish and disseminate information pertaining to natural areas and natural area preserves;

5. Grant permits to qualified persons for the conduct of scientific research and investigations within natural area preserves;

6. Cooperate with other local, state, and federal agencies in developing management plans for real property under their stewardship that will identify, maintain, and preserve the natural diversity of biological resources of the Commonwealth; and

7. Provide for management, development, and utilization of any lands purchased, leased, or otherwise acquired and enforce the provisions of this article governing natural area preserves, the stewardship thereof, the prevention of trespassing thereon, or other actions deemed necessary to carry out the provisions of this article.

§ 29.1-922. Virginia Natural Heritage Program.

A. The Virginia Natural Heritage Program is hereby continued and shall be administered by the Board.

B. The Board shall:

1. Produce an inventory of the Commonwealth's natural heritage resources, including their location and ecological status;

2. Maintain a natural heritage data bank of inventory data and other relevant information for ecologically significant sites supporting natural heritage resources. Information from this data bank will be made available to public agencies and may be made available to private institutions or individuals for environmental assessment and land management purposes; and

3. Develop a Natural Heritage Plan which establishes priorities for the protection, acquisition, and management of registered and dedicated natural areas and natural area preserves.

C. The Program shall include other functions as may be assigned by the Director for the registration, dedication, protection, and stewardship of natural areas and natural area preserves.

§ 29.1-923. Dedication of natural area preserves.

A. The Board may, in the name of the Department, accept the dedication of natural areas on lands deemed by the Board to qualify as natural area preserves under the provisions of this article. Natural area preserves may be dedicated by voluntary act of the owner. The owner of a qualified natural area may transfer fee simple title or other interest in land to the Commonwealth. Natural area preserves may be acquired by gift, grant, or purchase.

B. Dedication of a natural preserve shall become effective only upon acceptance of the instrument of dedication by the Board.

C. The instrument of dedication may:

1. Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this article;

2. Define, consistently with the purposes of this article, the respective rights and duties of the owner and of the Commonwealth and provide procedures to be followed in case of violations of the restrictions;

3. Recognize and create reversionary rights, transfers upon conditions or with limitations, and gifts over; and

4. Vary in provisions from one natural area preserve to another in accordance with differences in the characteristics and conditions of the several areas.

D. Public departments, commissions, boards, counties, municipalities, corporations, colleges, universities, and all other agencies and instrumentalities of the Commonwealth and its political subdivisions are empowered to dedicate suitable areas within their jurisdiction as natural area preserves.

E. Subject to the approval of the Governor, the Commonwealth may enter into amendments to the instrument of dedication upon finding that the amendment will not permit an impairment, disturbance, use, or development of the area inconsistent with the provisions of this article. If the fee simple estate in the natural area preserve is not held by the Board under this article, no amendment may be made without the written consent of the owner of the other interests therein.

§ 29.1-924. Virginia natural area preserves system continued.

A state system of natural area preserves is hereby continued and shall be called the Virginia Natural Area Preserves System. The system shall consist of natural area preserves dedicated as provided in § 29.1-923. Once dedicated, a natural area preserve shall be managed in a manner consistent with continued preservation of the natural heritage resources it supports.

§ 29.1-925. Natural Area Preservation Fund continued.

A. A fund consisting of general fund appropriations, gifts, bequests, devises, fees, lease proceeds, and

428 funds accruing from, or attributable to, the use or management of state natural area preserves acquired  
429 or held by the Department known as the Natural Area Preservation Fund is hereby continued.

430 B. Any funds remaining in such fund at the end of the biennium, including all appropriations, gifts,  
431 bequests, devises, fees, lease proceeds, and funds accruing from, or attributable to, the use or  
432 management of state natural area preserves acquired or held by the Department, and interest accruing  
433 thereon, shall not revert to the general fund but shall remain in the Fund.

434 § 29.1-926. Natural area registry.

435 A. The Department shall maintain a state registry of voluntarily protected natural areas to be called  
436 the Virginia Registry of Natural Areas. Registration of natural areas shall be accomplished through  
437 voluntary agreement between the owner of the natural area and the Director. State-owned lands may be  
438 registered by agreement with the agency to which the land is allocated. Registry agreements may be  
439 terminated by either party at any time, and upon such termination the area shall be removed from the  
440 registry.

441 B. A natural area shall be registered when an agreement to protect and manage the natural area for  
442 its specified natural heritage resource has been signed by the owner and the Director. The owner of a  
443 registered natural area shall be given a certificate signifying the inclusion of the area in the registry.

444 § 29.1-927. Gifts, devises and bequests.

445 Gifts, devises, or bequests, whether personal or real property, and the income derived therefrom,  
446 accepted by the Board, shall be deemed as gifts to the Commonwealth, which shall be exempt from all  
447 state and local taxes, and shall be regarded as the property of the Commonwealth for the purposes of  
448 all tax laws.

449 § 29.1-928. Cooperation of state agencies.

450 All departments, commissions, boards, authorities, agencies, offices, and institutions within any  
451 branch of state government shall cooperate with the Board in carrying out the purposes of this article.

452 Article 4.

453 Cave Advisory Council.

454 § 29.1-929. Definitions.

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

456 "Cave" means any naturally occurring void, cavity, recess, or system of interconnecting passages  
457 beneath the surface of the earth or within a cliff or ledge including natural subsurface water and  
458 drainage systems, but not including any mine, tunnel, aqueduct, or other man-made excavation, which is  
459 large enough to permit a person to enter. "Cave" includes or is synonymous with cavern, sinkhole,  
460 natural pit, grotto, and rock shelter.

461 "Cave life" means any rare or endangered animal or other life form which normally occurs in, uses,  
462 visits, or inhabits any cave or subterranean water system.

463 "Commercial cave" means any cave utilized by the owner for the purposes of exhibition to the  
464 general public as a profit or nonprofit enterprise, wherein a fee is collected for entry.

465 "Council" means the Cave Advisory Council.

466 "Gate" means any structure or device located to limit or prohibit access or entry to any cave.

467 "Material" means all or any part of any archaeological, paleontological, biological, or historical  
468 item, including any petroglyph, pictograph, basketry, human remains, tool, beads, pottery, projectile  
469 point, or remains of historical mining activity or any other occupation found in any cave.

470 "Owner" means a person who owns title to land where a cave is located, including a person who  
471 owns title to a leasehold estate in such land, and including the Commonwealth and any of its agencies,  
472 departments, boards, bureaus, commissions, or authorities, as well as counties, municipalities, and other  
473 political subdivisions of the Commonwealth.

474 "Person" means any individual, partnership, firm, association, trust, or corporation or other legal  
475 entity.

476 "Sinkhole" means a closed topographic depression or basin, generally draining underground,  
477 including, but not restricted to, a doline, uvala, blind valley, or sink.

478 "Speleogen" means an erosional feature of the cave boundary and includes or is synonymous with  
479 anastomoses, scallops, rills, flutes, spongework, and pendants.

480 "Speleothem" means a natural mineral formation or deposit occurring in a cave. This includes or is  
481 synonymous with stalagmite, stalactite, helictite, shield, anthodite, gypsum flower and needle, angel's  
482 hair, soda straw, drapery, bacon, cave pearl, popcorn (coral), rimstone dam, column, palette, and  
483 flowstone, (et cetera). Speleothems are commonly composed of calcite, epsomite, gypsum, aragonite,  
484 celestite, and other similar minerals.

485 § 29.1-930. Cave Advisory Council; qualifications; officers.

486 A. The Cave Advisory Council is established within the Department of Game and Inland Fisheries  
487 and shall consist of the Director of the Department of Historic Resources, or his designee, serving in an  
488 ex officio capacity and 11 citizens of Virginia appointed by the Governor for four-year terms.  
489 Appointments shall be made on the basis of activity and knowledge in the conservation, exploration,



study, and management of caves.

B. The Council shall meet at least three times a year. Six members shall constitute a quorum for the transaction of business. The Council shall annually elect a chairman, vice-chairman, and recording secretary and such other officers as the Council deems necessary.

§ 29.1-931. Powers and duties of the Council.

A. The Council is established within the Department and may perform the following:

1. Serve as an advisory council to any requesting state agency on matters relating to caves and karst;

2. Conduct and maintain an inventory of publicly owned caves in Virginia;

3. Provide cave management expertise and service to requesting public agencies and cave owners;

4. Maintain a current list of all significant caves in Virginia and report any real and present danger to such caves;

5. Provide cave data for use by state and other governmental agencies;

6. Publish or assist in publishing articles, pamphlets, brochures, or books on caves and cave-related concerns;

7. Facilitate data gathering and research efforts on caves;

8. Advise civil defense authorities on the present and future use of Virginia caves in civil defense;

9. Advise on the need for and desirability of a state cave recreation plan; and

10. Inform the public about the value of cave resources and the importance of preserving them for the citizens of the Commonwealth.

B. The Council shall have the duty to:

1. Protect the rare, unique, and irreplaceable minerals and archaeological resources found in caves.

2. Protect and maintain cave life.

3. Protect from water pollution the ground water flow which naturally occurs in caves .

4. Protect the integrity of caves that have unique characteristics or are exemplary natural community types.

5. Inform interested state agencies concerning any proposed rule, regulation, or administrative policy that directly affects the use and conservation of caves in the Commonwealth.

6. Study any matters of special concern relating to caves and karst.

§ 29.1-932. Permits for excavation and scientific investigation; how obtained; penalties.

A. In addition to the written permission of the owner required by § 29.1-933, a permit shall be obtained from the Department prior to excavating or removing any archaeological, paleontological, prehistoric, or historic feature of any cave. The Department shall issue a permit to excavate or remove such a feature if it finds with the concurrence of the Director of the Department of Historic Resources that it is in the best interest of the Commonwealth and that the applicant meets the criteria of this section. The permit shall be issued for a period of two years and may be renewed upon expiration. Such permit shall not be transferable; however, the provisions of this section shall not preclude any person from working under the direct supervision of the permittee.

B. All field investigations, explorations, or recovery operations undertaken under this section shall be carried out under the general supervision of the Department and in a manner to ensure that the maximum amount of historic, scientific, archaeologic, and educational information may be recovered and preserved in addition to the physical recovery of objects.

C. A person applying for a permit pursuant to this section shall:

1. Be a historic, scientific, or educational institution, or a professional or amateur historian, biologist, archaeologist, or paleontologist, who is qualified and recognized in these areas of field investigations;

2. Provide a detailed statement to the Department giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

3. Provide data and results of any completed excavation, study, or collection at the first of each calendar year;

4. Obtain the prior written permission of the owner if the site of the proposed excavation is on privately owned land; and

5. Carry the permit while exercising the privileges granted.

D. Any person who fails to obtain a permit required by subsection A is be guilty of a Class 1 misdemeanor. Any violation of subsection C is a Class 3 misdemeanor, and the permit shall be revoked.

E. The provisions of this section shall not apply to any person in any cave located on his own property.

§ 29.1-933. Permission of owner, vandalism; penalties.

A. It is unlawful for any person, without express prior written permission of the owner, to:

1. Break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural material which

551 *may be found therein, whether attached or broken, including speleothems, speleogens, and sedimentary*  
552 *deposits. The provisions of this section shall not prohibit minimal disturbance for scientific exploration.*

553 *2. Break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to*  
554 *control or prevent access to any cave, even though entrance thereto may not be gained.*

555 *3. Remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this*  
556 *article.*

557 *4. Excavate, remove, destroy, injure, deface, or in any manner disturb any burial grounds, historic*  
558 *or prehistoric resources, archaeological or paleontological site or any part thereof, including relics,*  
559 *inscriptions, saltpeter workings, fossils, bones, remains of historical human activity, or any other such*  
560 *features that may be found in any cave, except those caves owned by the Commonwealth or designated*  
561 *as Commonwealth archaeological sites or zones, and which are subject to the provisions of the Virginia*  
562 *Antiquities Act (§ 10.1-2300 et seq.).*

563 *B. Entering or remaining in a cave which has not been posted by the owner shall not by itself*  
564 *constitute a violation of this section.*

565 *C. Any violation of this section is a Class 1 misdemeanor.*

566 *D. The provisions of this section shall not apply to an owner of a cave on his own property.*

567 *§ 29.1-934. Pollution; penalties.*

568 *A. It is unlawful for any person, without express prior written permission of the owner, to store,*  
569 *dump, litter, dispose of, or otherwise place any refuse, garbage, dead animals, sewage, or toxic*  
570 *substances harmful to cave life or humans, in any cave or sinkhole. It shall also be unlawful to burn*  
571 *within a cave or sinkhole any material which produces any smoke or gas that is harmful to any*  
572 *naturally occurring organism in any cave.*

573 *B. Any violation of this section is a Class 1 misdemeanor.*

574 *§ 29.1-935. Disturbance of naturally occurring organisms; scientific collecting permits; penalties.*

575 *A. It is unlawful to remove, kill, harm, or otherwise disturb any naturally occurring organisms within*  
576 *any cave, except for safety or health reasons; however, scientific collecting permits may be obtained*  
577 *from the Department.*

578 *B. Any violation of this section is a Class 3 misdemeanor.*

579 *§ 29.1-936. Sale of speleothems; penalties.*

580 *It is unlawful for any person to sell or offer for sale any speleothems in the Commonwealth, or to*  
581 *export them for sale outside the Commonwealth. Any violation of this section is a Class 1 misdemeanor.*

582 *§ 29.1-937. Liability of owners and agents limited; sovereign immunity of Commonwealth not waived.*

583 *Neither the owner of a cave nor his authorized agents acting within the scope of their authority are*  
584 *liable for injuries sustained by any person using the cave for recreational or scientific purposes if no*  
585 *charge has been made for the use of the cave, notwithstanding that an inquiry as to the experience or*  
586 *expertise of the individual seeking consent may have been made.*

587 *Nothing in this section shall be construed to constitute a waiver of the sovereign immunity of the*  
588 *Commonwealth or any of its boards, departments, bureaus, or agencies.*

589 **2. That Chapter 10 (§§ 3.2-1000 through 3.2-1011) of Title 3.2, Article 3 (§§ 10.1-209 through**  
590 **10.1-217) of Chapter 2 of Title 10.1, and Article 6 (§§ 29.1-563 through 29.1-570) of Chapter 5 of**  
591 **Title 29.1 of the Code of Virginia are repealed.**

592 **3. That the Endangered and Threatened Plant and Insect Species Regulation (2 VAC 5-320-10)**  
593 **previously adopted by the Board of Agriculture and Consumer Services shall be transferred from**  
594 **the Board of Agriculture and Consumer Services to the Board of Game and Inland Fisheries on**  
595 **July 1, 2011, and the Board of Game and Inland Fisheries may amend, modify, or delete**  
596 **provisions in the these regulations in order to implement this Act. Such regulations that are in**  
597 **effect shall remain in full force and effect until altered, amended, or rescinded by Board of Game**  
598 **and Inland Fisheries.**

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