

LD3184202

HOUSE BILL NO. 2040

Offered January 23, 1995

A BILL to amend and reenact §§ 2.1-1.5, 10.1-1402, and 10.1-1405 of the Code of Virginia and to amend the Code of Virginia by adding in Title 9 a chapter numbered 29.1, consisting of sections numbered 9-266.1 through 9-266.28, relating to the establishment of the Virginia Abandoned Waste Site Authority and Abandoned Waste Site Fund.

Patrons—Deeds; Senator: Trumbo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.5, 10.1-1402, and 10.1-1405 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 9 a chapter numbered 29.1, consisting of sections numbered 9-266.1 through 9-266.28, as follows:

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or enabling legislation of the entities:

Authorities

Richmond Eye and Ear Hospital Authority.
Small Business Financing Authority.
State Education Assistance Authority.
Virginia Abandoned Waste Site Authority.
Virginia Agriculture Development Authority.
Virginia College Building Authority.
Virginia Education Loan Authority.
Virginia Housing Development Authority.
Virginia Innovative Technology Authority.
Virginia Port Authority.
Virginia Public Building Authority.
Virginia Public School Authority.
Virginia Resources Authority.
Virginia Student Assistance Authorities.

Boards

Board of Commissioners, Virginia Agriculture Development Authority.
Board of Commissioners, Virginia Port Authority.
Board of Directors, Richmond Eye and Ear Hospital Authority.
Board of Directors, Small Business Financing Authority.
Board of Directors, Virginia Abandoned Waste Site Authority.
Board of Directors, Virginia Student Assistance Authorities.
Board of Directors, Virginia Innovative Technology Authority.
Board of Directors, Virginia Resources Authority.
Board of Regents, Gunston Hall Plantation.
Board of Regents, James Monroe Memorial Law Office and Library.
Board of Trustees, Family and Children's Trust Fund.
Board of Trustees, Frontier Culture Museum of Virginia.
Board of Trustees, Jamestown-Yorktown Foundation.
Board of Trustees, Miller School of Albemarle.
Board of Trustees, Rural Virginia Development Foundation.
Board of Trustees, The Science Museum of Virginia.
Board of Trustees, Virginia Museum of Fine Arts.
Board of Trustees, Virginia Museum of Natural History.
Board of Trustees, Virginia Outdoor Foundation.
(Effective July 1, 1996) Board of the Virginia Higher Education Tuition Trust Fund.
Board of Visitors, Christopher Newport University.
Board of Visitors, The College of William and Mary in Virginia.
Board of Visitors, George Mason University.
Board of Visitors, Gunston Hall Plantation.
Board of Visitors, James Madison University.

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- 60 Board of Visitors, Longwood College.
 61 Board of Visitors, Mary Washington College.
 62 Board of Visitors to Mount Vernon.
 63 Board of Visitors, Norfolk State University.
 64 Board of Visitors, Old Dominion University.
 65 Board of Visitors, Radford University.
 66 Board of Visitors, University of Virginia.
 67 Board of Visitors, Virginia Commonwealth University.
 68 Board of Visitors, Virginia Military Institute.
 69 Board of Visitors, Virginia Polytechnic Institute and State University.
 70 Board of Visitors, Virginia State University.
 71 Governing Board, Virginia College Building Authority.
 72 Governing Board, Virginia Public School Authority.
 73 Library Board, The Library of Virginia.
 74 State Board for Community Colleges, Virginia Community College System.
 75 Commissions
 76 Alexandria Historical Restoration and Preservation Commission.
 77 Chesapeake Bay Bridge and Tunnel Commission.
 78 Hampton Roads Sanitation District Commission.
 79 Districts
 80 Chesapeake Bay Bridge and Tunnel District.
 81 Hampton Roads Sanitation District.
 82 Educational Institutions
 83 Christopher Newport University.
 84 College of William and Mary in Virginia.
 85 Frontier Culture Museum of Virginia.
 86 George Mason University.
 87 James Madison University.
 88 Jamestown-Yorktown Foundation.
 89 Longwood College.
 90 Mary Washington College.
 91 Miller School of Albemarle.
 92 Norfolk State University.
 93 Old Dominion University.
 94 Radford University.
 95 The Science Museum of Virginia.
 96 University of Virginia.
 97 Virginia Commonwealth University.
 98 Virginia Community College System.
 99 Virginia Military Institute.
 100 Virginia Museum of Fine Arts.
 101 Virginia Polytechnic Institute and State University.
 102 The Library of Virginia.
 103 Virginia State University.
 104 Foundations
 105 Chippokes Plantation Farm Foundation.
 106 Rural Virginia Development Foundation.
 107 Virginia Conservation and Recreation Foundation.
 108 Virginia Historic Preservation Foundation.
 109 Virginia Outdoor Foundation.
 110 Museum
 111 Virginia Museum of Natural History.
 112 Plantation
 113 Gunston Hall Plantation.
 114 System
 115 Virginia Retirement System.
 116 *CHAPTER 29.1.*
 117 *ABANDONED WASTE SITE AUTHORITY ACT.*
 118 *§ 9-266.1. Title of chapter.*
 119 *This chapter may be cited as the "Abandoned Waste Site Authority Act."*
 120 *§ 9-266.2. Definitions.*
 121 *The following terms, whenever used or referred to in this chapter, shall have the following meanings,*

except in those instances where the context clearly indicates otherwise:

"Abandoned waste site" means a waste site for which there has been no adequate remediation or closure and for which (i) adequate financial assurance as required by § 10.1-1410 or § 10.1-1428 is not provided and (ii) the owner, operator, or other person financially responsible under provisions of state or federal law for the cost of cleanup or remediation of the waste site is unable to pay the cost of the cleanup or remediation. Waste sites included on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), and waste sites owned by the Commonwealth or any county, city, or town shall not constitute abandoned waste sites.

"Authority" means the Virginia Abandoned Waste Site Authority created by this chapter.

"Board" means the Board of Directors of the Authority.

"Bonds" means and includes the notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.

"Federal agency" means and includes the United States of America, the President of the United States of America, and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

"Fund" means the Abandoned Waste Site Fund established pursuant to this chapter.

"Person" means natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures and public bodies, including, but not limited to, the Commonwealth or any state and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.

"Project" means the cleanup, containment, remediation, abatement, improvement, maintenance, acquisition or operation of any abandoned waste site located in the Commonwealth or the provision for or funding of any activity that will further the purposes described in § 9-266.3.

"Waste site" means a parcel of real estate within the Commonwealth on which solid or hazardous waste, as defined in § 10.1-1400, has been spilled or disposed of (i) in violation of the terms of permit issued by the Waste Management Board, (ii) in violation of any state or federal law or regulation, or (iii) in a manner that poses substantial risk to public health and safety, as determined by the Board.

§ 9-266.3. Declaration of public purpose; Authority created.

A. It is hereby found and determined by the General Assembly that there exists in the Commonwealth a need to (i) clean up abandoned waste sites throughout the Commonwealth; (ii) ensure that the resources of the Commonwealth, federal agencies, and other persons provided for the cleanup of abandoned waste sites are allocated in an orderly and rational manner; and (iii) maximize the financial resources available for the cleanup of abandoned waste sites in Virginia.

B. To achieve the objectives of subsection A, there is hereby created and constituted a political subdivision of the Commonwealth to be known as the Virginia Abandoned Waste Site Authority. The exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function.

§ 9-266.4. Board of Directors.

A. The Authority shall be governed by a Board of Directors consisting of eleven members. The Secretary of Finance, the Secretary of Natural Resources, and the Secretary of Commerce and Trade shall serve on the Board for terms coincident with their terms of office. The Governor shall appoint four of the directors, the Speaker of the House of Delegates shall appoint two of the directors, and the Senate Committee on Privileges and Elections shall appoint two of the directors. The eight citizen appointees shall include representatives of local governments, businesses that manage solid or hazardous wastes, and natural resource protection organizations. The members of the Board appointed by the Governor shall be confirmed by the General Assembly. One of the directors appointed by the Governor and one of the directors appointed by the Speaker of the House shall be appointed for terms of three years. Two of the directors appointed by the Governor and one of the directors appointed by the Senate Committee on Privileges and Elections shall be appointed for terms of four years. One of the directors appointed by the Governor, one of the directors appointed by the Speaker of the House, and one of the directors appointed by the Senate Committee on Privileges and Elections shall be appointed for terms of five years. Thereafter the members of the Board shall be appointed for terms of five years. Vacancies in the membership of the Board shall be filled by appointment of the entity initially making the appointment for the unexpired portion of the term. No director shall be eligible to serve for more than two successive five-year terms; however, after the expiration of a term of four years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Immediately after such appointment, the directors shall enter upon the performance of their duties.

B. The members of the Board shall annually elect one of the members of the Board to be chairman, and one to be vice-chairman. The Board shall also elect annually a secretary, who may or may not be a

183 member of the Board, and may also elect such other subordinate officers, who may or may not be
184 members of the board, as it may deem proper. The chairman, or in his absence, the vice-chairman, shall
185 preside at all meetings of the Board. The day-to-day operations and activities of the Authority shall be
186 conducted by the Director of the Department of Environmental Quality, who shall carry out such of the
187 powers and duties as may be delegated to him by the Board.

188 § 9-266.5. Powers of Authority.

189 The Authority is granted all powers necessary or appropriate to carry out and to effectuate its
190 purposes, including the following:

191 1. To have perpetual succession as a public body corporate and as a political subdivision of the
192 Commonwealth;

193 2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter
194 for the administration and regulation of its affairs and to carry into effect the powers and purposes of
195 the Authority and the conduct of its business;

196 3. To sue and be sued in its own name;

197 4. To have an official seal and alter it at will although the failure to affix this seal shall not affect
198 the validity of any instrument executed on behalf of the Authority;

199 5. To maintain an office at any place within the Commonwealth which it designates;

200 6. To make and execute contracts and all other instruments and agreements necessary or convenient
201 for the performance of its duties and the exercise of its powers and functions under this chapter;

202 7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any
203 part of its properties and assets;

204 8. To employ officers, employees, agents, advisers and consultants, including without limitations,
205 attorneys, financial advisers, engineers and other technical advisers and public accountants and, the
206 provisions of any other law to the contrary notwithstanding, to determine their duties and compensation
207 without the approval of any other agency or instrumentality;

208 9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance,
209 against any loss, cost, or expense in connection with its property, assets or activities, including
210 insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents
211 and for the indemnification of the members of its Board of Directors and its employees and agents;

212 10. To procure insurance, guarantees, letters of credit and other forms of collateral or security from
213 any public or private entities, including any federal agency or the Commonwealth, for the payment of
214 any bonds issued by the Authority, including the power to pay premiums or fees on any such insurance,
215 guarantees, letters of credit and other forms of collateral or security;

216 11. To receive and accept from any source aid, grants and contributions of money, property, labor
217 or other things of value to be held, used and applied to carry out the purposes of this chapter subject to
218 the conditions upon which the aid, grants or contributions are made;

219 12. To enter into agreements with any federal agency or other person for the purpose of
220 implementing and providing for the financing of any projects;

221 13. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

222 14. To establish and revise, amend and repeal, and to charge and collect, fees and charges in
223 connection with any activities or services of the Authority; and

224 15. To do any act necessary or convenient to the exercise of the powers granted or reasonably
225 implied by this chapter.

226 § 9-266.6. Power to borrow money and issue bonds.

227 The Authority shall have the power to borrow money and issue its bonds in amounts the Authority
228 determines to be necessary or convenient to provide funds to carry out its purposes and powers and to
229 pay all costs and expenses incurred in connection with the issuance of bonds. The total principal
230 amount of bonds outstanding at any one time, issued by the Authority, shall not exceed the sum of \$25
231 million without prior approval of the General Assembly.

232 § 9-266.7. Power to issue refunding bonds.

233 The Authority shall have the power: (i) to issue bonds to renew or to pay bonds, including the
234 interest, (ii) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds,
235 whether the bonds to be refunded have or have not matured, and (iii) to issue bonds partly to refund
236 bonds then outstanding and partly for its corporate purposes. The refunding bonds may be exchanged
237 for the bonds to be refunded or they may be sold and the proceeds applied to the purchase, redemption
238 or payment of the bonds to be refunded. The amount of the bonds issued by the Authority and refunded
239 with proceeds of refunding bonds issued hereunder shall not be included in the total of outstanding
240 bonds for purposes of the limit on the amount of bonds issued by the Authority as provided in § 9-266.6.

241 § 9-266.8. Sources of payment and security for bonds.

242 The Authority shall have the power to pledge any revenue or funds of or under the control of the
243 Authority, including all or any portion of moneys in the Fund, to the payment of its bonds, subject only
244 to any prior agreements with the holders of particular bonds pledging money or revenue. Bonds may be

secured by a pledge of any grant, contribution or guaranty from the Commonwealth, any federal agency, or any person, any other property or assets of or under the control of the Authority, or a pledge of any money, income or revenue of the Authority from any source.

§ 9-266.9. Liability of Commonwealth, political subdivisions and members of board of directors.

No bonds issued by the Authority under this chapter shall constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof other than the Authority, but shall be payable solely from the revenue, money or property of the Authority as provided for in this chapter. No member of the board of directors or officer, employee or agent of the Authority or any person executing bonds of the Authority shall be liable personally on the bonds by reason of their issuance or execution. Each bond issued under this chapter shall contain on its face a statement to the effect (i) that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the principal of, or interest or premium on, the bond or other costs incident to the bond except from the revenue, money or property of the Authority pledged and (ii) that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of or interests or premium on the bond.

§ 9-266.10. Authorization, content and sale of bonds.

The bonds of the Authority shall be authorized by a resolution of the Board. The bonds shall bear the date or dates and mature at the time or times that the resolution provides, except that no bond shall mature more than fifty years from its date of issue. The bonds may be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place or places and at the time or times, and be subject to redemption or repurchase and contain such other provisions as may be determined by the Authority prior to their issuance. The bonds may bear interest payable at such time or times and at such rate or rates as determined by the Authority or as determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. Bonds may be sold by the Authority at public or private sale at the price or prices that the Authority determines and approves. The Authority may bring action pursuant to Article 6 (§ 15.1-227.52 et seq.) of Chapter 5.1 of Title 15.1 to determine the validity of any issuance or proposed issuance of its bonds under this chapter and the legality and validity of all proceedings previously taken, or proposed in a resolution of the Authority to be taken, for the authorization, issuance, sale and delivery of bonds and for the payment of the principal of and premium, if any, and interest on bonds.

§ 9-266.11. Provisions of resolution or trust indenture authorizing issuance of bonds.

A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within the Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.

B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:

1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

2. Pledging all or any part of the assets of, or funds under control of the Authority, including but not limited to all or any portion of moneys in the Fund, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;

3. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;

4. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;

5. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

6. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;

7. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;

8. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the

rights, powers and duties of the trustees;

9. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter; and

10. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

§ 9-266.12. Pledge by Authority.

Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such a pledge without any physical delivery thereof or further act. Furthermore, the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds, the trust indenture securing bonds or any other instrument, including filings under Title 8.9 (§ 8.9-101 et seq.) of the Uniform Commercial Code of Virginia, shall be necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds.

§ 9-266.13. Purchase of bonds by Authority.

The Authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the Authority out of any available funds, at any reasonable price. If the bonds are then redeemable, this price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

§ 9-266.14. Bonds as negotiable instruments.

Whether or not in form and character of negotiable instruments, the bonds of the Authority are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

§ 9-266.15. Validity of signatures of prior members or officers.

In the event that any of the members of the Board or any officers of the Authority cease to be members or officers before the delivery of any bonds signed by them, their signatures or authorized substitute signatures shall nevertheless be valid and sufficient for all purposes as if the members or officers had remained in office until delivery.

§ 9-266.16. Bondholder protection.

Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds issued under this chapter before the enactment of the amendments until the bonds, together with all premium and interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

§ 9-266.17. Establishment of capital reserve funds.

A. 1. The Authority may create and establish one or more capital reserve funds and may pay into each capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such a fund, (ii) any proceeds of the sale of bonds of the Authority, to the extent provided in the resolution authorizing the issuance of, or the trust indenture securing, the bonds, and (iii) any other moneys which may be made available to the Authority for the purpose of such a fund from any other source. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used solely for the payment when due of the principal of and premium, if any, and interest on the bonds secured in whole or in part by such a fund. If, however, moneys in any such fund are ever less than the minimum capital reserve fund requirement established for the fund, the Authority shall not use the moneys for any optional purchase or redemption of bonds. Any income or interest earned on, or increment to, any capital reserve fund due to its investment may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the capital reserve fund below its minimal requirement.

2. The Authority shall not at any time issue bonds secured in whole or in part by any capital reserve fund, if, upon the issuance of the bonds, the amount in the capital reserve fund will be less than its minimal requirement unless the Authority, at the time of issuance of the bonds, deposits in the fund an amount which, together with the amount then in the fund, will not be less than the fund's minimal capital reserve requirement.

B. In order to assure further the maintenance of capital reserve funds, the chairman of the Authority shall annually, on or before December 1, make and deliver to the Governor and the Secretary of Administration a certificate stating the sum, if any, required to restore each capital reserve fund to its minimal requirement. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each House of the General Assembly printed copies of a budget including the sum, if any, required to restore each capital reserve fund to its minimal requirement. All sums, if any, which may be appropriated by the General Assembly for any restoration

and paid to the Authority shall be deposited by the Authority in the applicable capital reserve fund. All amounts paid to the Authority by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority, shall be repaid to the Commonwealth without interest from available operating revenues of the Authority in excess of amounts required for the payment of bonds or other obligations of the Authority, the maintenance of capital reserve funds, and operating expenses.

C. The Authority may create and establish other funds as necessary or desirable for its corporate purposes.

D. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds not secured by a capital reserve fund.

§ 9-266.18. Grants from Commonwealth.

The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including deposits to the capital reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

§ 9-266.19. Exemption from taxation.

As set forth in § 9-266.3, the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom, or any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this chapter or upon the income therefrom. Any bonds issued by the Authority under the provisions of this chapter, the transfer thereof and the income therefrom, including any profit on the sale thereof, shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

§ 9-266.20. Bonds as legal investments and securities.

The bonds issued by the Authority in accordance with the provisions of this chapter are declared to be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions; all insurance companies and associations and other persons carrying on insurance business; all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries; and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. The bonds of the Authority are also hereby made securities which may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

§ 9-266.21. Deposit of money; expenditures; security for deposits.

A. All money of the Authority, except as otherwise authorized by law or provided in this chapter, shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings and loan associations located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by any officers or employees designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings and loan associations are authorized to give security for the deposits.

B. Notwithstanding the provisions of subsection A, the Authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds and to carry out such a contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

C. Subject to the provisions of subsection B hereof, funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities which are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § 26-40, (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

D. Whenever investments are made in accordance with this section, no director, officer or employee

429 of the Authority shall be liable for any loss therefrom in the absence of negligence, malfeasance,
430 misfeasance or nonfeasance on his part.

431 § 9-266.22. Priority of projects.

432 The Authority shall develop, in consultation with the Director of the Department of Environmental
433 Quality, a list of projects to be undertaken by the Authority in order of priority, with the highest priority
434 being accorded to projects posing the greatest danger to public health and the environment. The Board
435 shall periodically update the priority list. The Authority shall allocate its efforts and resources to
436 cleaning up abandoned waste sites in the order established by the priority list.

437 § 9-266.23. Remedial action programs for hazardous waste sites.

438 A. The Authority may issue a written declaration, based upon findings of fact, that an abandoned
439 waste site endangers the public health or the environment. After issuing such a declaration, and at any
440 time thereafter during which the declaration is in effect, the Authority shall have the authority to (i)
441 monitor the abandoned waste site; (ii) develop a plan for public notice and for community and local
442 government participation in any remedial action program to be undertaken; (iii) approve, in
443 consultation with the Waste Management Board, a remedial action program for an abandoned waste
444 site; (iv) coordinate the remedial action program for the site; and (v) ensuring that the remedial action
445 program is completed.

446 B. Where possible, the Authority shall work cooperatively with any owner, operator, responsible
447 party, federal agency, or agency of the Commonwealth to develop the remedial action program and
448 administer, procure, and coordinate funding for the implementation of the remedial action program for
449 the site.

450 § 9-266.24. Abandoned Waste Site Fund established; administration.

451 A. There is hereby established the Abandoned Waste Site Fund, hereafter referred to as the Fund, to
452 be used to finance the cleanup of abandoned waste sites throughout the Commonwealth.

453 B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such
454 moneys as appropriated by the General Assembly, and moneys received by the State Treasurer and
455 designated for deposit in the Fund.

456 C. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the
457 books of the State Comptroller. Any moneys remaining in the Fund at the end of the biennium shall not
458 revert to the general fund but shall remain in the Fund.

459 D. The disbursement of moneys from the Fund shall be made by the State Comptroller at the written
460 request of the Authority. Disbursements from the Fund may be made for the purposes outlined in this
461 chapter. The Authority shall promptly seek reimbursement from any person causing or contributing to
462 an abandoned waste site for all sums disbursed from the Fund for the cleanup or containment of the
463 site. The Authority shall be allowed to recover all legal and court costs and other expenses incident to
464 such actions for collection.

465 § 9-266.25. Power to condemn.

466 The Authority shall have the power to condemn any abandoned waste site in furtherance of its
467 purposes; provided that any such condemnation (i) will not subject the Authority, any member of the
468 Board, or any agency or instrumentality of the Commonwealth to liability under any federal or state law
469 or regulation resulting from ownership or operation of the site, (ii) is necessary to effectuate the
470 cleanup of the site, and (iii) has been approved by the governing body of the municipality having
471 jurisdiction over the property so condemned. Before any property is acquired by condemnation, the
472 Board may request the Attorney General to examine and report upon the title to the property, and it
473 shall be the duty of the Attorney General to make such examination and report. Any exercise of the
474 power to condemn as authorized by this section shall be in accordance with the provisions of Title 25
475 (§ 25-46.1 et seq.). Any property condemned by the Authority shall not be sold or leased by the
476 Authority unless the Authority, preceding the consummation of any such sale or lease, finds and
477 determines that such sale or lease is in furtherance of, or incidental to, the main purposes of the
478 Authority under this chapter or that such property is no longer needed in furtherance of, or incidental
479 to, such purposes.

480 § 9-266.26. Permits; liability of Authority.

481 A. For any cleanup or remedial action conducted entirely on an abandoned waste site, to the extent
482 that a permit would not be required under applicable federal law, the Waste Management Board may
483 grant a waiver from any provision of Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 that would
484 otherwise require the Authority to obtain a waste disposal permit, if the Authority has entered into a
485 voluntary remedial action plan to the satisfaction of the Board.

486 B. Neither the Authority, any member of the Board, nor any agency or instrumentality of the
487 Commonwealth acting on behalf of the Authority or the Board shall be subject to liability under any
488 provision of Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 for any act or omission authorized by this
489 chapter.

490 § 9-266.27. Annual reports; audit.

The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. The Clerk of each house of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Authority. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

§ 9-266.28. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste which it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.
12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.
13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.
14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.
15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board

552 regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees
553 received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste
554 management program set forth herein.

555 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
556 the disposal, treatment or storage of nonhazardous solid waste, permit application fees sufficient to
557 defray only costs related to the issuance of permits as required in this chapter in accordance with Board
558 regulations, but such fees shall not exceed costs necessary to issue such permits. All such fees received
559 by the Board shall be used exclusively for the solid waste management program set forth herein. The
560 Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and
561 10.1-1402.3.

562 17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in
563 accordance with this chapter.

564 18. Make separate orders and regulations it deems necessary to meet any emergency to protect public
565 health, natural resources and the environment from the release or imminent threat of release of waste.

566 19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid
567 or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly
568 managed and to institute legal proceedings to recover the costs of the containment or clean-up activities
569 from the responsible parties.

570 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
571 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
572 purpose of responding to solid or hazardous waste incidents and clean-up of sites which have been
573 improperly managed, including sites eligible for a joint federal and state remedial project under the
574 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
575 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
576 99-499, and for investigations to identify parties responsible for such mismanagement.

577 21. Abate hazards and nuisances dangerous to public health, safety or the environment, both
578 emergency and otherwise, created by the improper disposal, treatment, storage, transportation or
579 management of substances within the jurisdiction of the Board.

580 22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed
581 radioactive waste.

582 23. *Assist the Virginia Abandoned Waste Site Authority in planning, developing, undertaking,*
583 *carrying out, maintaining, and operating projects as provided in the Abandoned Waste Site Authority*
584 *Act (§ 9-266.1 et seq.).*

585 § 10.1-1405. Powers and duties of Director.

586 A. The Director, under the direction and control of the Secretary of Natural Resources, shall exercise
587 such powers and perform such duties as are conferred or imposed upon him by law and shall perform
588 any other duties required of him by the Governor or the Board.

589 B. In addition to the other responsibilities set forth herein, the Director shall carry out management
590 and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event
591 shall the Director have the authority to promulgate any final regulation.

592 The Director shall be vested with all the authority of the Board when it is not in session, subject to
593 such regulations as may be prescribed by the Board.

594 C. The Director shall serve as the liaison with the United States Department of Energy on matters
595 concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear
596 Waste Policy Act of 1982.

597 D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed
598 in the disclosure statement when the Director determines, in his sole discretion, that such a records
599 check will serve the purposes of this chapter.

600 E. *The Director shall conduct the day-to-day operations and activities of the Virginia Abandoned*
601 *Waste Site Authority, and carry out such of the powers and duties of the Authority as may be delegated*
602 *to him by the Board of Directors of the Authority, as provided in the Abandoned Waste Site Authority*
603 *Act (§ 9 -266.1 et seq.).*