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HOUSE BILL NO. 1023**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on General Laws
on February 21, 1996)

(Patron Prior to Substitute—Delegate Harris)

A BILL to amend and reenact § 2.1-1.5 of the Code of Virginia and to amend the Code of Virginia by adding in Title 9 a chapter numbered 46, consisting of sections numbered 9-350 through 9-361, creating the Virginia Information Providers Network Authority; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-1.5 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 9 a chapter numbered 46, consisting of sections numbered 9-350 through 9-361, 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 the enabling legislation of the entities:

Authorities

Assistive Technology Loan Fund Authority.
Richmond Eye and Ear Hospital Authority.
Small Business Financing Authority.
State Education Assistance Authority.
Virginia Agriculture Development Authority.
Virginia College Building Authority.
Virginia Economic Development Partnership.
Virginia Education Loan Authority.
Virginia Housing Development Authority.
Virginia Information Providers Network 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, Assistive Technology Loan Fund Authority.
Board of Directors, Richmond Eye and Ear Hospital Authority.
Board of Directors, Small Business Financing Authority.
Board of Directors, Virginia Economic Development Partnership.
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.
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.

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 Motor Vehicle Dealer Board.
 75 State Board for Community Colleges, Virginia Community College System.

Commissions

77 Alexandria Historical Restoration and Preservation Commission.
 78 Charitable Gaming Commission
 79 Chesapeake Bay Bridge and Tunnel Commission.
 80 Hampton Roads Sanitation District Commission.

Districts

82 Chesapeake Bay Bridge and Tunnel District.
 83 Hampton Roads Sanitation District.

Educational Institutions

85 Christopher Newport University.
 86 College of William and Mary in Virginia.
 87 Frontier Culture Museum of Virginia.
 88 George Mason University.
 89 James Madison University.
 90 Jamestown-Yorktown Foundation.
 91 Longwood College.
 92 Mary Washington College.
 93 Miller School of Albemarle.
 94 Norfolk State University.
 95 Old Dominion University.
 96 Radford University.
 97 The Science Museum of Virginia.
 98 University of Virginia.
 99 Virginia Commonwealth University.
 100 Virginia Community College System.
 101 Virginia Military Institute.
 102 Virginia Museum of Fine Arts.
 103 Virginia Polytechnic Institute and State University.
 104 The Library of Virginia.
 105 Virginia State University.

Foundations

107 Chippokes Plantation Farm Foundation.
 108 Rural Virginia Development Foundation.
 109 Virginia Conservation and Recreation Foundation.
 110 Virginia Historic Preservation Foundation.
 111 Virginia Outdoor Foundation.

Museum

113 Virginia Museum of Natural History.

Plantation

115 Gunston Hall Plantation.

System

117 Virginia Retirement System.

CHAPTER 46.

VIRGINIA INFORMATION PROVIDERS NETWORK ACT.

120 § 9-350. Definitions.

121 As used in this chapter, unless the context clearly indicates otherwise:

"Authority" means the Virginia Information Providers Network Authority, the political subdivision of the Commonwealth created by this chapter.

"Board" means the board of directors of the Authority.

"File" means a group of data consisting of a collection of related records which (i) concern one or more functions of a state agency and (ii) are treated as a single unit in an electronic data processing system.

"Gateway" means any centralized electronic information system by which public information shall be provided via dial-in modem or continuous link to the public through subscription or through public libraries.

"Public information" means any information created, acquired, or stored in electronic or magnetic form by state agencies which is included within the information deemed to be public pursuant to the Virginia Freedom of Information Act (§ 2.1-340 et seq.) or the Virginia Public Records Act (§ 42.1-76 et seq.).

"Record" means a group of related fields of data used to electronically store data about a subject, such as an employee, customer, vendor or other individual, or a transaction.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government.

"User association" means an association of users of information accessible on line.

§ 9-351. Declaration of purpose; Authority established.

The General Assembly determines that there exists in the Commonwealth a need to provide for the centralized marketing, provision, sale, leasing or executing of license agreements for access on line or in volume on such terms and conditions as may be determined to be in the best interest of the Commonwealth. Therefore, a political subdivision of the Commonwealth to be known as the Virginia Information Providers Network Authority is hereby created. The Authority's exercise of powers conferred by this chapter shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

§ 9-352. Board of directors.

The Authority shall be governed by a board of directors consisting of eleven members, two of whom shall be the Secretary of Administration and the Director of the Council of Information Management, both of whom shall serve during their terms of office. The remaining nine members shall be appointed by the Governor as follows: three members who are chief executive officers of agencies in the executive branch; two members from a list submitted by the Virginia State Bar Association; three members from user associations of a statewide character, except that no two shall represent the same user association; and one member from a list submitted by the State Librarian. Three of such directors appointed by the Governor shall be appointed for terms of one year, three for terms of two years, and three for terms of three years, effective from their dates of appointment. Thereafter, board members shall be appointed for terms of three years. All board members appointed by the Governor shall be confirmed by the affirmative vote of a majority of those voting in each house of the General Assembly. Vacancies in board membership shall be filled by appointment for the unexpired portion of the term. Board members shall be subject to removal from office for cause. The board shall annually elect one of its members as chairman, one as vice chairman, and another as secretary. The board may also elect other subordinate officers, who may or may not be members of the board, as it deems proper. The chairman or, in his absence, the vice chairman shall preside at all meetings of the board. In the absence of both the chairman and vice chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Six directors shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. Pursuant to § 14.1-5, board members shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending board meetings or while otherwise engaged in discharging their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the board chairman or by such other person as the board designates for this purpose. The board shall employ a network manager of the Authority, who shall serve at the pleasure of the board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him as may be delegated to him by the board. The network manager and employees of the Authority shall be compensated in the manner provided by the board.

§ 9-353. Powers and duties of the Authority.

The Authority may exercise all powers necessary or convenient for carrying out its statutory purposes, including, without limitation, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Foster the development of a coordinated, comprehensive system for providing ready access to

183 *electronic public state government information for individuals, businesses, and other entities;*

184 *4. Make and execute contracts, lease agreements and all other instruments necessary or convenient*
185 *to exercise the powers of the Authority or to further the public purpose for which the authority is*
186 *created;*

187 *5. Acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal*
188 *property of every kind and character, or any interest therein, in furtherance of the public purpose of the*
189 *Authority;*

190 *6. Apply for and accept any gifts or grants or loan guarantees or loans of funds or property or*
191 *financial and other aid in any form from the federal government or any agency or instrumentality*
192 *thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or*
193 *all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with*
194 *the terms and conditions thereof;*

195 *7. Contract with state agencies or any local government for the use by the Authority of any property,*
196 *facilities, or services of the state or any such state agency or local government or for the use by any*
197 *state agency or local government of any facilities or services of the Authority; and such state agencies*
198 *and local governments are authorized to enter into such contracts;*

199 *8. Notwithstanding reasonable charges for copying, search time and computer time as set forth in*
200 *§ 2.1-342, fix and collect fees and charges for data, media, and incidental services furnished by it to*
201 *any private individual or entity;*

202 *9. Deposit or invest funds held by it in any state depository or in any investment which is authorized*
203 *for the investment of proceeds of state general obligation bonds, and use for its corporate purposes or*
204 *redeposit or investment interest earned on such funds;*

205 *10. Exercise any power granted by the laws of the Commonwealth to public or private corporations*
206 *not in conflict with the public purpose of the Authority; and*

207 *11. Make rules and regulations for its own government.*

208 *§ 9-354. Network manager; duties.*

209 *The network manager shall (i) direct and supervise the day-to-day operations and expansion of such*
210 *gateway and network, including the initial phase of operations necessary to make such gateway*
211 *operational; (ii) attend meetings of the Authority; (iii) keep a record of all gateway, network and related*
212 *operations of the Authority, which shall be the property of the Authority; (iv) maintain and be custodian*
213 *of all financial and operational records, documents, and papers filed with the Authority; and (v) update*
214 *and revise annually the business plan of the Authority, in consultation with and under the direction of*
215 *the Authority's board of directors.*

216 *§ 9-355. Access to records of state agencies.*

217 *A. All state agencies may make available to the Authority access to public records or data which are*
218 *available in electronic format upon terms mutually agreed upon by the Authority and any such state*
219 *agency. The Authority shall reimburse the state agency for costs incurred in providing such access to*
220 *the Authority. The terms of the agreement between the Authority and state agency shall provide, inter*
221 *alia, that the Authority shall retain from the proceeds from the sale or licensing of such public records*
222 *or data only an agreed-upon amount sufficient to cover an appropriate share of the expenses incurred*
223 *by the Authority in accomplishing its purposes set forth in this chapter. If the state agency is the*
224 *Department of Motor Vehicles, such agreements shall provide that the balance of the proceeds from the*
225 *sale or licensing of such public records or data shall be distributed to such state agency. For any other*
226 *state agency, such agreements shall provide that one-half of the balance of the proceeds from the sale*
227 *or licensing of such public records or data shall be distributed to the state agency and the other*
228 *one-half of the balance of the proceeds shall be distributed to the general fund of the state treasury.*

229 *B. Where public records maintained by state agencies contain personal information as defined in*
230 *§ 2.1-379, only such information permitted or required by law to be disclosed shall be made available*
231 *under the provisions of this chapter.*

232 *§ 9-356. Access to and sale of files of public information; receipt of data in electric format from the*
233 *public; application of statutory restrictions on confidentiality to Authority.*

234 *The Authority may provide electronic access to public information furnished to it by any state agency*
235 *and to the extent provided for in the agreement with such agency via a dial-in gateway or electronic*
236 *network. The Authority shall explore ways and means of expanding the amount and kind of public*
237 *information provided, increasing the utility of the public information provided and the form in which it*
238 *is provided, expanding the base of users who access such public information and, where appropriate,*
239 *implementing changes.*

240 *The Authority shall have the authority to sell, or execute license agreements providing access to, an*
241 *entire file of public information in any electronic medium or format. However, nothing contained in this*
242 *section shall preclude any state agency from selling individual records maintained in electronic format*
243 *or otherwise to the public or other government agencies or entities, or from selling or otherwise*
244 *disseminating any data which the Authority declines to sell.*

The Authority may be authorized by the judicial and legislative branches to sell entire files of public information on their behalf. However, nothing in this chapter shall be construed to affect or pertain to records originating from or under the control of the clerks of the circuit courts of the Commonwealth except upon terms mutually agreed upon by the Authority, any state agency that may be holding such records for archival purposes, and the clerk's office where such records originated.

The Authority may receive data in electronic format from members of the public for the purpose of transmitting such data electronically to state agencies.

In circumstances where data furnished to the Authority by any state agency is no longer available from such agency, the Authority shall be subject to the Freedom of Information Act (§ 2.1-340 et seq.). All other statutory provisions governing public or official records, including, but not limited to, the Freedom of Information Act (§ 2.1-340 et seq.), the Privacy Protection Act of 1976 (§ 2.1-377 et seq.), and the Virginia Public Records Act (§ 42.1-76 et seq.), and all penalties for any violation thereof shall apply to the Authority and its employees. Nothing in this chapter shall relieve any public body of any duty imposed by the Freedom of Information Act, nor shall this chapter be construed to authorize or encourage the destruction or deletion of public records by public bodies.

§ 9-357. Exemption from taxes.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the Commonwealth. As the operation of the Authority and the undertaking of activities in the furtherance of the purposes of the Authority shall constitute performance of essential governmental functions, the Authority shall not be required to pay any taxes upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption hereby granted shall not be construed to extend to persons conducting a business on the premises of the facility for which local or state taxes would otherwise be required.

§ 9-358. Ownership of data not affected.

Nothing in this chapter shall be deemed to effect a transfer of ownership of any data from any state agency to the Authority.

§ 9-359. Financing and operations; Virginia Information Providers Network Fund established.

A. Initial funding for start-up costs incurred by the Authority shall be obtained from private donations. No state funds shall be used for any Authority purpose.

B. The Authority shall fund its operations from revenues generated from the sale or licensing of public information, and from money, goods or in-kind services donated to the Authority by private sources.

C. There is hereby established a special fund in the state treasury to be known as the Virginia Information Providers Network Fund, hereafter referred to as the Fund. All moneys received by the Authority, including revenues generated from the sales or licensing of public information and any gifts, donations, grants, or other contributions from any source, public or private, shall be deposited in the Fund. Expenses incurred by the Authority in accomplishing its purposes set forth in this chapter, as determined by the Board, shall be paid out of the Fund on warrant of the Comptroller. The Comptroller shall transfer the balance of the moneys in the Fund to the appropriate state agency or to the general fund, as required by the terms of the agreements between state agencies and the Authority pursuant to § 9-355, no later than June 30 each year.

§ 9-360. Exemption of Authority from personnel and procurement procedures.

The provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 and Chapter 7 (§ 11-35 et seq.) of Title 11 of the Code of Virginia shall not apply to the Authority in the exercise of any power conferred under this chapter.

§ 9-361. Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as the Auditor of Public Accounts prescribes. The Auditor of Public Accounts, or his legally authorized representatives, shall annually examine the accounts and books of the Authority. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of § 2.1-467.