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HOUSE BILL NO. 1113

Offered January 22, 1996

A *BILL to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 44, containing Articles 1 through 11, consisting of sections numbered 3.1-1081 through 3.1-1224, and to repeal Articles 1 (§§ 10.1-500 through 10.1-501.1), 2 (§§ 10.1-502 through 10.1-505), 3 (§§ 10.1-506 through 10.1-559), 4 (§§ 10.1-560 through 10.1-571), 5 (§§ 10.1-572 and 10.1-573) of Chapter 5 of Title 10.1, and Articles 1 (§§ 10.1-600 through 10.1-603), 1.2 (§§ 10.1-603.16 through 10.1-603.23), 2 (§§ 10.1-604 through 10.1-613), 3 (§§ 10.1-614 through 10.1-635), 4 (§§ 10.1-636 through 10.1-649) and 5 (§§ 10.1-650 through 10.1-657) of Chapter 6 of Title 10.1 of the Code of Virginia, relating to soil and water conservation districts.*

Patrons—Ruff, Bryant, Dudley, Griffith, Ingram, Kilgore, Wardrup, Weatherholtz and Wilkins; Senator: Newman

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 44, containing Articles 1 through 11, consisting of sections numbered 3.1-1081 through 3.1-1224 as follows:

CHAPTER 44.*Soil and Water Conservation**Article 1.**General provisions.**§ 3.1-1081. Definitions.*

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

"Board" means the Virginia Soil and Water Conservation Board.

"County" includes towns.

"City" includes all cities chartered under the Commonwealth.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Department of Agriculture and Consumer Services.

"District" or "soil and water conservation district" means a political subdivision of this Commonwealth organized in accordance with the provisions of this chapter.

"District director" means a member of the governing body of a district authorized to serve as a director.

"Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation is available, by posting at a reasonable number of conspicuous places within the appropriate area. Such posting shall include, where possible, posting at public places where it is customary to post notices concerning county or municipal affairs. Hearings held pursuant to such notice, at the time and place designated in the notice, may be adjourned from time to time without renewing the notice for the adjourned dates.

"Governing body of a city or county" means the entire governing body regardless of whether all or part of that city or county is included or to be included within a district.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any of their subdivisions, agencies or instrumentalities.

"Land occupier" or "occupier of land" includes any person, firm or corporation who holds title to, or is in possession of, any lands lying within a district organized, or proposed to be organized, under the provisions of this chapter, in the capacity of owner, lessee, renter, tenant, or cropper. The terms "land occupier" and "occupier of land" shall not include an ordinary employee or hired hand who is furnished a dwelling, garden, utilities, supplies, or the like, as part payment, or payment in full, for his labor.

"Locality" means a county, city or town.

§ 3.1-1082. Duty of attorney for the Commonwealth.

The attorney for the Commonwealth of the county or city in which the suits or actions under this chapter may arise shall represent the district directors or districts in such suits or actions.

§ 3.1-1083. Defense of claims.

The Attorney General shall provide the legal defense against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership,

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60 maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and
61 water conservation district or used by district employees or other authorized persons in the course of
62 their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized
63 governmental or proprietary capacity and in the course and scope of employment or authorization.

64 Article 2.

65 Virginia Soil and Water Conservation Board.

66 §3.1-1084. Soil and Water Conservation Board; composition.

67 The Virginia Soil and Water Conservation Board is continued within the Department of Agriculture
68 and Consumer Services and shall perform the functions conferred upon it in this chapter. The Board
69 shall consist of twelve voting members. The Commissioner of Agriculture and Consumer Services, the
70 Director of the State Cooperative Extension Service, the Director of Agriculture and Life Sciences,
71 Virginia Polytechnic Institute and State University, Research Division, the Associate Vice President for
72 Agriculture and Extension of Virginia State University, and the Director of the Department of
73 Conservation and Recreation or their designees shall be members of the Board. One member of the
74 Board shall be appointed by the Governor to serve at the pleasure of the Governor, for a term
75 coincident with that of the appointing Governor; vacancies in the office of such appointed member shall
76 be filled by the Governor. Four members shall be farmers and two members shall be farmers or district
77 directors, appointed by the Governor from a list of two qualified nominees for each vacancy submitted
78 by the Board of Directors of the Virginia Association of Soil and Water Conservation Districts and the
79 Soil and Water Conservation Board in joint session, each for a term of four years. Appointed members
80 shall not serve more than two consecutive full terms. Appointments to fill vacancies shall be made in the
81 same manner as described above, except that such appointments shall be for the unexpired terms only.
82 The Board may invite the Virginia State Conservationist, Soil Conservation Service, to serve as an
83 advisory nonvoting member. The Board shall keep a record of its official actions, shall adopt a seal and
84 may perform acts, hold public hearings, and promulgate regulations necessary for the execution of its
85 functions under this chapter.

86 §3.1-1085. Administrative officer and other employees; executive committee.

87 The Commissioner shall provide technical experts and other agents and employees, permanent and
88 temporary, necessary for the execution of the functions of the Board. The Board may create an executive
89 committee and delegate to the chairman of the Board, or to the committee or to one or more agents or
90 employees, such powers and duties as it deems proper. Upon request of the Board, for the purpose of
91 carrying out any of its functions, the supervising officer of any state agency or of any state institution of
92 learning shall, insofar as possible under available appropriations, and having due regard for the needs
93 of the agency to which the request is directed, assign or detail to the Board, members of the staff or
94 personnel of the agency or institution, and make special reports, surveys, or studies requested by the
95 Board.

96 § 3.1-1086. Chairman; quorum.

97 The Board shall designate its chairman and may, from time to time, change such designation. Six
98 members of the Board shall constitute a quorum, and the concurrence of a majority of those present and
99 voting shall be required for all determinations.

100 § 3.1-1087. Duties of Board.

101 In addition to other duties and powers conferred upon the Board, it shall have the following duties
102 and powers:

103 1. To give or loan appropriate financial and other assistance to district directors in carrying out any
104 of their powers and programs.

105 2. To keep district directors informed of the activities and experience of all other districts, and to
106 facilitate an interchange of advice and experience between the districts.

107 3. To coordinate the programs of the districts so far as this may be done by advice and consultation.

108 4. To secure the cooperation and assistance of the United States and any of its agencies, and of
109 agencies of the Commonwealth, in the work of the districts.

110 5. To disseminate information throughout the Commonwealth concerning the activities and programs
111 of the districts, and to encourage the formation of such districts in areas where their organization is
112 desirable.

113 6. To assist persons, associations, and corporations engaged in furthering the programs of the
114 districts; to encourage and assist in the establishment and operation of such associations and
115 corporations, and to authorize financial assistance to the officers and members of such associations and
116 corporations in the discharge of their duties.

117 7. To receive, review, approve or disapprove applications for assistance in planning and carrying out
118 works of improvement under the Watershed Protection and Flood Prevention Act (Public Law 566 -
119 83rd Congress, as amended), and to receive, review and approve or disapprove applications for any
120 other similar soil and water conservation programs provided in federal laws which by their terms or by
121 related executive orders require such action by a state agency.

8. To advise and recommend to the Governor approval or disapproval of all work plans developed under Public Law 83-566 and Public Law 78-535 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.

9. To provide for the conservation of soil and water resources, control and prevention of soil erosion, flood water and sediment damages thereby preserving the natural resources of the Commonwealth.

Article 3.

Soil and Water Conservation Districts.

§ 3.1-1088. Power to create new districts and to relocate or define district boundaries; composition of districts.

A. The Board shall have the power to (i) create a new district from territory not previously within an existing district, (ii) merge or divide existing districts, (iii) transfer territory from an existing district to another district, (iv) modify or create a district by a combination of the above and (v) relocate or define the boundaries of soil and water conservation districts in the manner hereinafter prescribed.

B. An incorporated town within any county having a soil and water conservation district shall be a part of that district. If a town lies within the boundaries of more than one county, it shall be considered to be wholly within the county in which the larger portion of the town lies.

§ 3.1-1089. Petitions filed with the Board.

Petitions to modify or create districts, or relocate or define boundaries of existing districts, shall be initiated and filed with the Board for its approval or disapproval by any of the following methods:

1. By petition of a majority of the directors of any or each district or by petition from a majority of the governing body of any or each county or city.

2. By petition of a majority of the governing body of a county or city not within an existing district, requesting to be included in an existing district and concurred in by the district directors.

3. By petition of a majority of the governing body of a county or city or parts thereof not included within an existing district, requesting that a new district be created.

4. By petition, signed by a number of registered voters equal to twenty-five percent of the vote cast in the last general election, who are residents of a county or city not included within an existing district, requesting that a new district be created, or requesting to be included within an existing district. If the petition bears the signatures of the requisite number of registered voters of a county or city, or two or more cities, then the petition shall be deemed to be the joint petition of the particular combination of political subdivisions named in the petition. If the petition deals in whole or in part with a portion or portions of a political subdivision or subdivisions, then the number of signatures necessary for each portion of a political subdivision shall be the same as if the whole political subdivision were involved in the petition, and may come from the political subdivision at large.

§ 3.1-1090. Contents and form of petition.

The petition shall set forth:

1. The proposed name of the district;

2. That there is need, in the interest of the public health, safety, and welfare, for the proposed district to function in the territory described in the petition, and a brief statement of the grounds upon which this conclusion is based;

3. A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivision, but shall be deemed sufficient if generally accurate;

4. A request that the Board define the boundaries for such district; that a hearing be held within the territory so defined on the question of the creation of a district in such territory; and that the Board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the Board may consolidate the petitions.

The Board shall prescribe the petition form.

§ 3.1-1091. Disapproval of petition.

If the Board disapproves the petition, its determination shall be recorded, and if the petitioners are the governing body of a district, county or city or a part of a county or city, the governing body shall be notified in writing. If the petitioners are the requisite number of registered voters prescribed by subdivision 4 of § 3.1-1089, notification shall be by a notice printed once in a newspaper of general circulation within the area designated in the petition.

§ 3.1-1092. Petition approved; Board to give notice of hearing.

If the Board approves the petition, within sixty days after such determination, the Board shall provide due notice of the approval in a newspaper of general circulation in each county or city involved. The notice shall include notice of a hearing upon the question of the desirability and necessity,

183 in the interest of the public health, safety, and welfare, of the action proposed by the petition upon (i)
184 the question of the appropriate boundaries to be assigned to such district, (ii) the propriety of the
185 petition and other proceedings taken under this chapter, and (iii) all questions relevant to such
186 inquiries.

187 § 3.1-1093. Adjournment of hearing when additional territory appears desirable.

188 If it appears upon the hearing that it may be desirable to include within the proposed district
189 territory outside of the area within which due notice of the hearing has been given, the hearing shall be
190 adjourned and due notice of a further hearing shall be given throughout the entire area considered for
191 inclusion in the district.

192 § 3.1-1094. Determination of need for district.

193 After a public hearing, if the Board determines that there is need, in the interest of the public health,
194 safety, and welfare, for the proposed district to function in the territory considered at the hearing, it
195 shall record its determination, and shall define, by metes and bounds or by legal subdivisions the
196 boundaries of the district. In so doing, the Board shall consider (i) the topography of the area
197 considered and of the Commonwealth, (ii) the composition of soils in the area, (iii) the distribution of
198 erosion, (iv) the prevailing land-use practices, (v) the desirability and necessity of including within the
199 boundaries the particular lands under consideration and the benefits the lands may receive from being
200 included within such boundaries, (vi) the relation of the proposed area to existing watersheds and to
201 other soil and water conservation districts already organized or proposed for organization, (vii) the
202 existing political subdivisions, and (viii) other relevant physical, geographical, and economic factors.
203 The territory to be included within such boundaries need not be contiguous.

204 § 3.1-1095. Determination that district not needed.

205 If the Board determines after the hearing, and after due consideration of the relevant facts, that
206 there is no need for a soil and water conservation district to function in the territory considered at the
207 hearing, it shall record its determination and deny the petition.

208 § 3.1-1096. Determination of feasibility of operation.

209 After the Board has made and recorded a determination that there is need for the organization of the
210 proposed district in a particular territory, and has defined the boundaries, it shall consider whether the
211 operation of a district within such boundaries is administratively practicable and feasible. In making its
212 determination, the Board shall consider the attitudes of the occupiers of lands lying within the defined
213 boundaries, the probable expense of the operation of such district, the effect upon the programs of any
214 existing districts, and other relevant economic and social factors. If the Board determines that the
215 operation of a district is administratively practicable and feasible, it shall record its determination and
216 proceed with the organization of the district. If the Board determines that the operation of a district is
217 not administratively practicable and feasible, it shall record its determination and deny the petition. If
218 the petition is denied, the Board shall notify the petitioner in the manner provided in this chapter.

219 § 3.1-1097. Composition of governing body.

220 If the Board determines that the operation of the proposed district within the defined boundaries is
221 administratively practicable and feasible, and the proposed district is created, then its governing body
222 shall be a board of district directors appointed or elected, and may include members of the governing
223 body of a local government, in the number and manner specified as follows:

224 1. If the district embraces one county or city, or less than one county or city, the board of district
225 directors shall consist of five members, three to be elected by the registered voters of the district and
226 two appointed by the Board.

227 2. If the district embraces more than one county or city, or parts thereof, the board of district
228 directors shall consist of two members elected by the registered voters from each county or city, or
229 parts thereof embraced by the district. Two members-at-large shall be appointed by the Board.

230 § 3.1-1098. Status of district directors in event of transfer, merger, or division of districts.

231 In the event of the transfer, merger, or division of districts, the status of the district directors
232 involved shall be affected as follows:

233 1. The composition of an existing district board of a district to which territory is transferred shall
234 remain in effect until the terms of office of the present elected members expire. Upon the transfer of a
235 county or city, or parts thereof, from one district to another district, district directors residing within the
236 territory transferred shall be appointed as directors of the district to which the territory is transferred
237 for a term of office to coincide with that of the elected directors of the district to which the territory is
238 transferred. At the option of the petitioners, a petition may request that a proposed transfer be treated
239 as a merger or division for the purpose of this section, and the Board at its discretion may grant or
240 refuse such request.

241 2. Upon the merger of existing districts, or upon the separation from two or more existing districts
242 of a county or city, or parts thereof, which merge to create a new district, all district directors residing
243 within the territory merged shall be appointed as directors of the new district for terms of office as
244 hereinafter provided. If the organization of the new district is completed in such time that district

directors may be nominated for election in the general election in November of the same calendar year in which the district was organized, one district director shall be appointed for a one-year term, and one district director shall be appointed for a two-year term. Appointments of the other district directors shall be for terms to expire on December 31 of the year in which the district is organized. If the organization of the new district is not completed in such time so that district directors may be nominated for election in the general election in November of the same calendar year in which such district is organized, one district director shall be appointed for a two-year term, and one district director shall be appointed for a three-year term. Appointments of the other district directors shall be for terms to expire on December 31 of the year following the year in which the district was organized.

3. Upon the division of an existing district, to create a new district, all elected or appointed district directors residing within the territory to be divided from the existing district shall be appointed as directors of the new district for terms of office as hereinafter provided. If the organization of the new district is completed in such time that district directors may be nominated for election in the general election in November of the same calendar year in which the district is organized, one district director shall be appointed for a one-year term, and one district director shall be appointed for a two-year term. If there are any other district directors residing within the territory divided, their appointments shall be made for terms to expire on December 31 of the year in which the district is organized. If the organization of the new district is not completed in such time so that district directors may be elected in the general election in November of the same calendar year in which such district is organized, one district director shall be appointed for a two-year term, and one district director shall be appointed for a three-year term. If there are any other district directors residing within the territory divided, their appointments shall be made for terms to expire on December 31 of the year following the year in which the district was organized.

This section shall not be construed as broadening or limiting the size of a governing body of a district as prescribed by § 3.1-1097. If the operation of this section results in a governing body larger or smaller than the appropriate size permitted by § 3.1-1097, then such a variation, if not otherwise corrected by operation of this section, shall be cured with the next general election after the transfer, merger, or division in which all those elected directors prescribed by § 3.1-1097 may be elected.

§ 3.1-1099. Application and statement to the Secretary of the Commonwealth.

Upon the creation of a district by any means authorized by this chapter, two district directors appointed by the Board and authorized by the Board to do so, shall present to the Secretary of the Commonwealth an application signed by them, which shall set forth: (i) that a petition for the creation of the district was filed with the Board pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were conducted; (ii) that the application is being filed in order to complete the organization of the district as a political subdivision under this chapter; (iii) that the Board has appointed them as district directors; (iv) the name and official residence of each of the district directors together with a certified copy of the appointments evidencing their right to office; (v) the term of office of each of the district directors; (vi) the proposed name of the district; and (vii) the location of the principal office of the district directors. The application shall be subscribed and sworn to by the two district directors authorized by the Board to make such application before an officer authorized by the laws of the Commonwealth to take and certify oaths. The application shall be accompanied by a certified statement by the Board that the district was created as required by law. The statement shall set forth the boundaries of the district as they have been defined by the Board.

If the creation of a district necessitates the dissolution of an existing district, an application shall be submitted to the Secretary of the Commonwealth, with the application for the district to be created, by the directors of the district to be dissolved, for the discontinuance of such district, contingent upon the creation of the new district. The application for discontinuance, duly verified, shall simply state that the lands encompassed in the district to be dissolved shall be included within the territory of the district created. The application for discontinuance of such district shall be accompanied by a certified statement by the Board that the discontinued district was dissolved as required by law and the new district was created as required by law. The statement shall contain a description of the boundaries of each district dissolved and shall set forth the boundaries of the district created as defined by the Board. The Secretary of the Commonwealth shall issue to the directors of each district a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

When the boundaries of districts are changed pursuant to the provisions of this chapter, the various affected district boards shall each present to the Secretary of the Commonwealth an application, signed by them, for a new certificate of organization evidencing the change of boundaries. The application shall be filed with the Secretary of the Commonwealth accompanied by a certified statement by the Board that the boundaries have been changed in accordance with the provisions of this chapter. The statement by the Board shall define the new boundary line in a manner adequate to describe the boundary changes of districts. When the application and statement have been filed with the Secretary of

306 the Commonwealth, the change of boundary shall become effective and the Secretary of the
307 Commonwealth shall issue to the directors of each of the districts a certificate of organization
308 evidencing the change of boundaries.

309 § 3.1-1100. Action of Secretary on the application and statement; change of name of district.

310 The Secretary of the Commonwealth shall examine the application and statement and, if he finds that
311 the name proposed for the district is not identical to that of any other soil and water conservation
312 district shall receive and file them and shall record the application in an appropriate book of record in
313 his office. If the Secretary of the Commonwealth finds that the name proposed for the district is
314 identical to that of any other soil and water conservation district, or so nearly similar as to lead to
315 confusion and uncertainty, he shall certify such fact to the Board, which shall submit to the Secretary of
316 the Commonwealth a new name for the district. Upon receipt of the new name, the Secretary of the
317 Commonwealth shall record the application, with the name so modified, in an appropriate book of
318 record in his office. When the application and statement have been made, filed and recorded, as herein
319 provided, the district shall constitute a political subdivision of the Commonwealth. The Secretary of the
320 Commonwealth shall make and issue to the directors a certificate, under the lesser seal of the
321 Commonwealth, of the due organization of the district and shall record the certificate with the
322 application and statement. The boundaries of the district shall include the territory as determined by the
323 Board, but shall not include any area included within the boundaries of another district, except in those
324 cases otherwise provided for in this article. The name of any district may be changed if a petition for
325 such change is subscribed by twenty-five or more landowners from each county or city comprising the
326 district and adopted by resolution of the district directors at any regular meeting. The district directors
327 shall submit a copy of the resolution to the Board and, if the Board concurs, it shall present the
328 resolution, together with a certified statement that it concurs, to the Secretary of the Commonwealth
329 who shall file the resolution and issue a new or amended certificate of organization.

330 § 3.1-1101. Renewal of petition after disapproval or denial.

331 After six months have expired from the date of the disapproval or denial of any petition for a soil
332 and water conservation district, subsequent petitions covering the same or substantially the same
333 territory may be filed with the Board as provided in this chapter.

334 § 3.1-1102. Contracts to remain in force; succession to rights and obligations.

335 Upon consummation of any transfer, merger, or division, or any combination thereof, using territory
336 within a previously existing district to form a new district or to add to an existing district, all contracts
337 in effect at the time of the consummation, affecting or relating to the territory transferred, merged, or
338 divided, to which the governing body of the district from which such territory was acquired is a party
339 shall remain in force for the period provided in the contracts. Rights and obligations acquired or
340 assumed by the district from which the territory was acquired shall succeed to the district to which the
341 territory is transferred.

342 § 3.1-1103. Determination of status of district boundaries upon annexation or consolidation.

343 Notwithstanding the provisions of § 3.1-1089, the Board may, in its discretion, relocate or redefine
344 district boundaries on its own motion pending or subsequent to any annexation or consolidation.

345 If the Board determines on its own motion to relocate or redefine district boundaries, the Board
346 shall serve written notice of its determination, containing the full terms of the proposed relocation or
347 redefinition, on the governing body of each district, county, city and town affected by the relocation or
348 redefinition of boundaries. If within forty-five days from the date of service of such notice each
349 governing body affected approves the Board's action by resolution of a majority of the members, the
350 Board may then proceed to act on its motion without a public hearing.

351 § 3.1-1104. Certificate of Secretary of Commonwealth as evidence.

352 In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any
353 contract, proceeding, or action of the district, the district shall be deemed to have been established,
354 reorganized, or renamed, in accordance with the provisions of this chapter upon proof of the issuance
355 of the certificate by the Secretary of the Commonwealth. A copy of such certificate shall be admissible
356 in evidence in any such suit, action, or proceeding and shall be proof of the issuance and contents
357 thereof.

358 § 3.1-1105. Nominating petitions; notice of election for district directors.

359 A. Within thirty days after the date of issuance by the Secretary of the Commonwealth of a certificate
360 of organization of a district, but not later than a date set by the Board, nominating petitions may be
361 filed with the Board to nominate candidates for elected directors of such districts. Nominating petitions
362 for elected directors of existing districts shall be filed with the Board no later than a date set by the
363 Board. Notice of the date for filing such petitions and the time of the election shall be published in a
364 newspaper of general circulation within the district at least thirty days before the filing date. The Board
365 may extend the time during which nominating petitions may be filed.

366 B. A nominating petition shall not be accepted by the Board, unless it is subscribed by twenty-five or
367 more registered voters residing within the boundaries of the district.

C. Registered voters may sign more than one nominating petition to nominate more than one candidate for district director.

D. The Board shall fix the time and give due notice of an election to be held for the election of district directors.

§ 3.1-1106. Names of nominees furnished electoral board; how ballots printed, etc.

The names of all nominees shall be furnished to the secretary of the electoral board of the respective county or city and shall be printed upon ballots. The ballots shall be printed, voted, counted and canvassed in conformity with the provisions of general law relating to elections, except as herein otherwise provided.

§ 3.1-1107. Canvassing returns.

If the district embraces more than one county or city, either in whole or in part, the result of the election shall be canvassed by the State Board of Elections. If the election is held at any other time than that fixed for the general election in November, the canvass shall be made as in the case of a special election to fill a vacancy.

§ 3.1-1108. Persons eligible to vote.

All registered voters residing within each county or city or part thereof shall be eligible to vote in the election for their respective nominees.

§ 3.1-1109. Determination of candidates elected.

If the district embraces one county or city, or less than one county or city, the three candidates who receive the largest number of the votes cast in the election shall be elected directors for the district.

If the district embraces more than one county or city, or parts thereof, the two candidates from each county or city, or part thereof, receiving the largest number of the votes cast in the election shall be the elected directors for the district.

§ 3.1-1110. Expenses and publication of results.

The expenses of such elections shall be paid by the counties or cities concerned. However, if the election is held at any other time than that fixed for the general election in November, the expenses shall be paid by the Board. The State Board of Elections shall publish, or have published within the district, the results of the election.

§ 3.1-1111. District directors constitute governing body; qualifications.

The governing body of the district shall consist of five or more district directors, elected and appointed as provided in this article.

The two district directors appointed by the Board shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties. One of the appointed district directors shall be the extension agent of the county or city, or one of the counties or cities constituting the district, or a part thereof. Other appointed and elected district directors shall reside within the boundaries of the district.

§ 3.1-1112. Designation of chairman; terms of office; filling vacancies.

A. The district directors shall designate a chairman and may change such designation.

B. The term of office of each district director shall be three years, except that the appointment of the first directors shall be for terms of office to provide for one appointment to be made in each year in which there is no election for directors within the district. A district director shall hold office until his successor has been elected or appointed and has qualified. The selection of successors to fill a full term shall be made in accordance with the provisions of this article.

C. A vacancy shall exist in the event of the death, resignation or removal of residence from the district of any director or the elimination or detachment from the district of the territory in which a director resides, or by the removal of a director from office by the Board. Any vacancy shall be filled by an appointment made by the Board for the unexpired term. The Board may fill vacancies in elective district directors' positions by appointment for the unexpired term. In the event of the creation of a new district, the transfer of territory from an existing district to an existing district, or the addition of territory not previously within an existing district to an existing district, the Board may appoint directors to fill the vacancies of elected directors prescribed by § 3.1-1097 in the newly created district or in the territory added to an existing district. Such appointed directors shall serve in office until the elected directors prescribed by § 3.1-1097 take office after the next general election at which directors for the entire district are selected.

§ 3.1-1113. Quorum and expenses.

A majority of the district directors shall constitute a quorum and the concurrence of a majority of those present and voting shall be required for all determinations. A district director shall receive no compensation for his services, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

§ 3.1-1114. Employment of officers, agents and employees.

The district directors may employ a secretary-treasurer, whose qualifications shall be approved by

429 the Board, technical experts, and such other officers, agents and employees, permanent and temporary,
430 as they may require, and shall determine their qualifications, duties and compensation.

431 § 3.1-1115. Delegation of powers.

432 The district directors may delegate to their chairman or to one or more district directors, agents or
433 employees such powers and duties as they may deem proper.

434 § 3.1-1116. Information furnished Board.

435 The district directors shall furnish to the Board or Department, upon request, copies of ordinances,
436 rules, regulations, orders, contracts, forms, and other documents that they adopt or employ, and other
437 information concerning their activities as the Board or Department may require in the performance of
438 its duties under this chapter.

439 § 3.1-1117. Bonds of officers and employees; records and accounts.

440 The district directors shall (i) provide for the execution of surety bonds for all employees and
441 officers who shall be entrusted with funds or property; (ii) provide for the keeping of a full and
442 accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted;
443 and (iii) provide for an annual audit of the accounts of receipts and disbursements by the Auditor of
444 Public Accounts or a certified public accountant approved by him.

445 § 3.1-1118. Removal from office.

446 Any district director may be removed by the Board upon notice and hearing for neglect of duty or
447 malfeasance in office, or may be removed in accordance with the provisions of general law.

448 § 3.1-1119. Representatives of governing bodies to be invited to consult with directors.

449 The district directors shall invite the legislative body of any locality located near the territory
450 comprised within the district to designate a representative to advise and consult with the directors of the
451 district on all questions of program and policy which may affect the property, water supply, or other
452 interests of such locality.

453 § 3.1-1120. District is political subdivision.

454 A soil and water conservation district organized under the provisions of this article shall constitute a
455 political subdivision of this Commonwealth.

456 § 3.1-1121. Surveys and dissemination of information.

457 Districts are authorized to (i) conduct surveys, investigations, and research relating to soil erosion
458 and floodwater and sediment damages, and to agricultural and nonagricultural phases of the
459 conservation, development, utilization, and disposal of water, and the preventive and control measures
460 and works of improvement needed; (ii) publish the results of such surveys, investigations, or research;
461 and (iii) disseminate information concerning preventive and control measures and works of
462 improvement. However, in order to avoid duplication of research activities, no district shall initiate any
463 research program except in cooperation with the government of the Commonwealth or the United States.

464 § 3.1-1122. Demonstrational projects.

465 Districts are authorized to conduct demonstrational projects within the district on lands owned or
466 controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency
467 administering and having jurisdiction thereof, and on any other lands within the district upon obtaining
468 the consent of the owner and occupier of such lands or the necessary rights or interests in such lands.
469 The purpose of such projects is to demonstrate by example the means, methods, and measures by which
470 soil and water resources may be conserved, and soil erosion in the form of soil washing may be
471 prevented and controlled, and works of improvement for flood prevention or agricultural and
472 nonagricultural phases of the conservation, development, utilization, and disposal of water may be
473 carried out.

474 § 3.1-1123. Preventive and control measures.

475 Districts are authorized to carry out preventive and control measures and works of improvement for
476 flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization,
477 and disposal of water within the district including, but not limited to, engineering operations, methods
478 of cultivation, the growing of vegetation and changes in use of land on lands owned or controlled by
479 the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering
480 and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of
481 the owner and occupier of such lands or the necessary rights or interests in such lands.

482 § 3.1-1124. Financial aid to agencies and occupiers.

483 Districts are authorized to enter into agreements, within the limits of available appropriations, to
484 give, lend or otherwise furnish financial or other aid to any governmental or other agency, or any
485 occupier of lands within the district, to provide erosion-control and prevention operations and works of
486 improvement for flood prevention or agricultural and nonagricultural phases of the conservation,
487 development, utilization, and disposal of water within the district. Agreements shall be subject to such
488 conditions as the directors may deem necessary to advance the purposes of this chapter.

489 § 3.1-1125. Acquisition, improvement and disposition of property.

490 Districts are authorized to (i) obtain options upon and to acquire, by purchase, exchange, lease, gift,

grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; (ii) maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and (iii) sell, lease, or otherwise dispose of any of their property or interests therein in furtherance of the provisions of this chapter.

§ 3.1-1126. Making material and equipment available.

Districts are authorized to make available, on terms they prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and other material or equipment that will assist land occupiers to conserve soil resources, to prevent and control soil erosion and to prevent floods or to carry out the agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water.

§ 3.1-1127. Construction, improvement, operation and maintenance of structures.

Districts are authorized to construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

§ 3.1-1128. Development of programs and plans.

Districts are authorized to develop comprehensive programs and plans for the conservation of soil resources, for the control and prevention of soil erosion, for flood prevention or for agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Such programs and plans shall specify the acts, procedures, performances, and avoidances which are necessary or desirable to effect such programs and plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land. After such programs and plans have been approved by the Board, districts are authorized to publish such programs and plans, and information, and bring them to the attention of occupiers of lands within the district.

§ 3.1-1129. Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.

Districts shall have the following additional authority:

1. To acquire by purchase, lease, or other similar means, and to administer, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by the Commonwealth or any of its agencies;

2. To manage, as agent of the United States or any of its agencies, or of the Commonwealth or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control or erosion prevention project, or combinations thereof, within its boundaries;

3. To act as agent for the United States or any of its agencies, or for the Commonwealth or any of its agencies, in connection with the acquisition, construction, maintenance, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries;

4. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from the Commonwealth or any of its agencies or from any other source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

§ 3.1-1130. Contracts; rules.

Districts are authorized to have a seal; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of their powers; to make, amend and repeal regulations not inconsistent with this chapter, to effect their purposes and powers.

§ 3.1-1131. Cooperation between districts.

The directors of any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter.

§ 3.1-1132. State agencies to cooperate.

Agencies of the Commonwealth which have jurisdiction over or administer any state-owned lands, and agencies of any political subdivision of the Commonwealth which have jurisdiction over or administer any publicly owned lands lying within the boundaries of any district, shall cooperate to the fullest extent with the district directors in the effectuation of programs and operations undertaken pursuant to this chapter. The district directors shall be given free access to enter and perform work upon such public-owned lands.

§ 3.1-1133. Conditions for extension of benefits.

As a condition to the extending of any benefits under this chapter to, or the performance of work

552 upon, any lands not owned or controlled by the Commonwealth or any of its agencies, the district
553 directors may require contributions in money, services, materials, or otherwise to any operations
554 conferring such benefits, and may require land occupiers to enter into and perform such agreements or
555 covenants as to the permanent use of such lands that will tend to prevent or control erosion and prevent
556 floodwaters and sediment damages thereon.

557 § 3.1-1134. Renting machinery and equipment.

558 Districts are authorized to rent the machinery and other equipment made available to them by the
559 Department to governing bodies and, individuals, or groups of individuals to be used by them for the
560 purpose of soil and water conservation upon such terms as the district directors deem proper.

561 § 3.1-1135. Petition by landowners.

562 Any time after two years after the organization of a district, any twenty-five owners of land lying
563 within the boundaries of the district may file a petition with the Board requesting that the operations of
564 the district be terminated and the existence of the district discontinued.

565 § 3.1-1136. Hearings.

566 The Board may conduct public meetings and public hearings upon the termination petition to assist
567 it in the considerations thereof.

568 § 3.1-1137. Referendum.

569 Within sixty days after a termination petition has been received by the Board it shall give due notice
570 of the holding of a referendum and shall supervise the referendum, and issue appropriate regulations
571 governing the conduct thereof. The ballot shall contain the following question: "Shall the existence of
572 the (name of the soil and water conservation district) be terminated?"

573 ☐ Yes

574 ☐ No"

575 All registered voters residing within the boundaries of the district shall be eligible to vote in the
576 referendum. No informalities in the conduct of the referendum or in any related matters shall invalidate
577 the referendum or the result if proper notice has been given and if the referendum has been fairly
578 conducted.

579 § 3.1-1138. Determination of Board.

580 The Board shall publish the result of the referendum and shall thereafter consider and determine
581 whether the continued operation of the district within the defined boundaries is administratively
582 practicable and feasible. If the Board determines that the continued operation of the district is
583 administratively practicable and feasible, it shall record the determination and deny the petition. If the
584 Board determines that the continued operation of the district is not administratively practicable and
585 feasible, it shall record its determination and certify the determination to the district directors. In
586 making its determination the Board shall consider the proportion of the votes cast in favor of the
587 discontinuance of the district to the total number of votes cast, the probable expense of carrying on
588 erosion control operations within the district, and other relevant economic and social factors. However,
589 the Board shall not have authority to determine that the continued operation of the district is
590 administratively practicable and feasible unless at least a majority of the votes cast in the referendum
591 have been cast in favor of the continuance of such district.

592 § 3.1-1139. Duty of directors after certification of Board.

593 Upon receiving from the Board certification that the Board has determined that the continued
594 operation of the district is not administratively practicable and feasible, the district directors shall
595 proceed to determine the affairs of the district. The district directors shall dispose of all property
596 belonging to the district at public auction and shall pay the proceeds of the sale into the state treasury.
597 The district directors shall then file an application, duly verified, with the Secretary of the
598 Commonwealth, for the discontinuance of the district, and shall transmit with the application the
599 certificate of the Board setting forth the determination of the Board that the continued operation of the
600 district is not administratively practicable and feasible. The application shall recite that the property of
601 the district has been disposed of and the proceeds paid over as provided by law, and shall set forth a
602 full accounting of such properties and proceeds of the sale. The Secretary of the Commonwealth shall
603 issue to the district directors a certificate of dissolution and shall record the certificate in an
604 appropriate book of record in his office.

605 § 3.1-1140. Effect of issuance of certificate of dissolution.

606 Upon issuance of a certificate of dissolution, all ordinances and regulations previously adopted and
607 in force within such district shall be of no further force. All contracts entered into, to which the district
608 or district directors are parties, shall remain in force for the period provided in the contracts. The
609 Board shall be substituted for the district or district directors as party to the contracts. The Board shall
610 be entitled to all benefits and subject to all liabilities under the contracts and shall have the same right
611 and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate
612 such contracts by mutual consent or otherwise, as the district directors would have had.

613 § 3.1-1141. Petitions limited to once in five years.

The Board shall not entertain petitions for the discontinuance of any district, conduct elections upon such petitions or make determinations pursuant to such petitions more often than once in five years.

Article 4.

Erosion and Sediment Control Law.

§ 3.1-1142. Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

"Certified plan reviewer" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1.

"Certified program administrator" means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Conservation plan," "erosion and sediment control plan," or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"District" or "soil and water conservation district" means a political subdivision of this Commonwealth organized in accordance with the provisions of Article 3 (§ 3.1-1088 et seq.) of this chapter.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity" means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

2. Individual service connections;

3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;

4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Surface or deep mining;

6. Exploration or drilling for oil and gas including the well site, roads, feeder lines and off-site disposal areas;

7. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of this title or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

675 8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other
676 related structures and facilities of a railroad company;

677 9. Agricultural engineering operations including but not limited to the construction of terraces,
678 terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of
679 the Dam Safety Act, Article 8 (§ 3.1-1169 et seq.) of Chapter 6 of this title, ditches, strip cropping, lister
680 furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

681 10. Disturbed land areas of less than 10,000 square feet in size; however, the governing body of the
682 program authority may reduce this exception to a smaller area of disturbed land or qualify the
683 conditions under which this exception shall apply;

684 11. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or
685 poles;

686 12. Shore erosion control projects on tidal waters when the projects are approved by local wetlands
687 boards, the Marine Resources Commission or the United States Army Corps of Engineers; and

688 13. Emergency work to protect life, limb or property, and emergency repairs; however, if the
689 land-disturbing activity would have required an approved erosion and sediment control plan, if the
690 activity were not an emergency, then the land area disturbed shall be shaped and stabilized in
691 accordance with the requirements of the plan-approving authority.

692 "Local erosion and sediment control program" or "local control program" means an outline of the
693 various methods employed by a program authority to regulate land-disturbing activities and thereby
694 minimize erosion and sedimentation in compliance with the state program and may include such items
695 as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

696 "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a
697 mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person,
698 firm or corporation in control of a property.

699 "Permittee" means the person to whom the permit authorizing land-disturbing activities is issued or
700 the person who certifies that the approved erosion and sediment control plan will be followed.

701 "Person" means any individual, partnership, firm, association, joint venture, public or private
702 corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county,
703 city, town, or other political subdivision of the Commonwealth, any interstate body, or any other legal
704 entity.

705 "Plan-approving authority" means the Board, the program authority, or a department of a program
706 authority, responsible for determining the adequacy of a conservation plan submitted for land-disturbing
707 activities on a unit or units of lands and for approving plans.

708 "Program authority" means a district, county, city, or town which has adopted a soil erosion and
709 sediment control program which has been approved by the Board.

710 "State erosion and sediment control program" or "state program" means the program administered
711 by the Board pursuant to this article, including regulations designed to minimize erosion and
712 sedimentation.

713 "State waters" means all waters on the surface and under the ground wholly or partially within or
714 bordering the Commonwealth or within its jurisdiction.

715 "Town" means an incorporated town.

716 § 3.1-1143. State erosion and sediment control program.

717 A. The Board shall develop a program and promulgate regulations for the effective control of soil
718 erosion, sediment deposition and nonagricultural runoff which must be met in any control program to
719 prevent the unreasonable degradation of properties, stream channels, waters and other natural resources
720 in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

721 The regulations shall:

722 1. Be based upon relevant physical and developmental information concerning the watersheds and
723 drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils,
724 hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics,
725 transportation, and public facilities and services;

726 2. Include such survey of lands and waters as may be deemed appropriate by the Board or required
727 by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical
728 erosion and sediment problems; and

729 3. Contain conservation standards for various types of soils and land uses, which shall include
730 criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing
731 activities.

732 B. The Board shall provide technical assistance and advice to, and conduct and supervise
733 educational programs for, districts and localities which have adopted local control programs.

734 C. The program and regulations shall be available for public inspection at the Department.

735 D. The Board shall promulgate regulations establishing minimum standards of effectiveness of
736 erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the

effectiveness of erosion and sediment control programs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A of this section are based.

E. The Board shall periodically conduct a comprehensive review and evaluation to ensure that all erosion and sediment control programs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition and nonagricultural runoff. The Board shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of erosion and sediment control programs.

F. The Board shall issue certificates of competence concerning the content, application and intent of specified subject areas of this chapter and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this chapter and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs.

§ 3.1-1144. Certification of local program personnel.

A. The minimum standards of local program effectiveness established by the Board pursuant to subsection D of § 3.1-1143 shall provide that within one year following the adoption of amendments to the local program adding the provisions of this section, (i) a conservation plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities are conducted by a certified inspector; and (iii) a local program shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the areas of plan review, project inspection, or program administration which was attained prior to the adoption of the mandatory certification provisions of subsection A of this section shall be deemed to satisfy the requirements of that area of certification.

§ 3.1-1145. Local erosion and sediment control programs.

A. Each district in the Commonwealth shall adopt and administer an erosion and sediment control program for any area within the district for which a county, city, or town does not have an approved erosion and sediment control program.

To carry out its program the district shall adopt regulations consistent with the state program. The regulations may be revised from time to time as necessary. Before adopting or revising regulations, the district shall give due notice and conduct a public hearing on the proposed or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if a district proposes or revises regulations that are more stringent than the state program. The program and regulations shall be available for public inspection at the principal office of the district.

B. In areas where there is no district, a county, city, or town shall adopt and administer an erosion and sediment control program.

C. Any county, city, or town within a district may adopt and administer an erosion and sediment control program.

Any town, lying within a county which has adopted its own erosion and sediment control program, may adopt its own program or become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town with an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

D. Any erosion and sediment control program adopted by a district, county, city, or town shall be approved by the Board if it is consistent with the state program and regulations for erosion and sediment control.

E. If a review conducted by the Board of a local control program indicates that the program authority has not administered, enforced or conducted its program in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection D of § 3.1-1143, the Board shall notify the program authority in writing, which notice shall identify corrective action required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the program authority has not implemented the corrective action identified by the Board within thirty days following receipt of the notice, or such additional period as is necessary to complete the implementation of the corrective action, then the Board shall revoke its approval of the program. Prior to revoking its approval of any local control program, the Board shall conduct a formal hearing pursuant to § 9-6.14:12 of the Administrative Process Act. Judicial review of

798 any order of the Board revoking its approval of a local control program shall be made in accordance
799 with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

800 F. If the Board revokes its approval of a local control program of a county, city, or town, and the
801 locality is in a district, the district shall adopt and administer an erosion and sediment control program
802 for the locality.

803 G. If the Board (i) revokes its approval of a local control program of a district, or of a county, city,
804 or town not in a district, or (ii) finds that a local program consistent with the state program and
805 regulations has not been adopted by a district or a county, city, or town which is required to adopt and
806 administer a local program, the Board shall, after such hearings or consultations as it deems
807 appropriate with the various local interests involved, develop, adopt, and administer an appropriate
808 program to be carried out within such district, county, city, or town, as applicable, by the Board.

809 H. If the Board has revoked its approval of any local control program, the program authority may
810 request that the Board approve a replacement program, and the Board shall approve the replacement
811 program if it finds that (i) the program authority is capable of administering the program in accordance
812 with the minimum standards of effectiveness and (ii) the replacement program otherwise meets the
813 requirements of the state program and regulations. The Board shall conduct a formal hearing pursuant
814 to § 9-6.14:12 of the Administrative Process Act on any request for approval of a replacement program.

815 I. Any program authority which administers an erosion and sediment control program may charge
816 applicants a reasonable fee to defray the cost of program administration. A program authority shall
817 hold a public hearing prior to enacting an ordinance establishing a schedule of fees. The fee shall not
818 exceed an amount commensurate with the services rendered, taking into consideration the time, skill and
819 administrators' expense involved.

820 J. The governing body of any county, city or town which (i) is in a district which has adopted a
821 local control program, (ii) has adopted its own local control program, (iii) is subject to a local control
822 program adopted by the Board, or (iv) administers a local control program, may adopt an ordinance
823 providing that violations of any regulation or order of the Board, any provision of its program, any
824 condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil
825 penalty for any one violation shall be \$100, except that the civil penalty for commencement of
826 land-disturbing activities without an approved plan as provided in § 3.1-1146 shall be \$1,000. Each day
827 during which the violation is found to have existed shall constitute a separate offense. In no event shall
828 a series of specified violations arising from the same operative set of facts result in civil penalties which
829 exceed a total of \$3,000, except that a series of violations arising from the commencement of
830 land-disturbing activities without an approved plan for any site shall not result in civil penalties which
831 exceed a total of \$10,000. Adoption of such an ordinance providing that violations are subject to a civil
832 penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a
833 misdemeanor under subsection A of § 3.1-1152.

834 § 3.1-1146. Regulated land-disturbing activities; submission and approval of control plan.

835 A. Except as provided in § 3.1-1147, no person may engage in any land-disturbing activity until he
836 has submitted to the district or locality an erosion and sediment control plan for the land-disturbing
837 activity and the plan has been reviewed and approved by the plan-approving authority. Where
838 land-disturbing activities involve lands under the jurisdiction of more than one local control program an
839 erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for
840 review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity
841 results from the construction of a single-family residence, an agreement in lieu of a plan may be
842 substituted for an erosion and sediment control plan if executed by the plan-approving authority.

843 B. The plan-approving authority shall review conservation plans submitted to it and grant written
844 approval within forty-five days of the receipt of the plan if it determines that the plan meets the
845 requirements of the Board's regulations and if the person responsible for carrying out the plan certifies
846 that he will properly perform the conservation measures included in the plan and will conform to the
847 provisions of this article.

848 When a plan is determined to be inadequate, written notice of disapproval stating the specific
849 reasons for disapproval shall be communicated to the applicant within forty-five days. The notice shall
850 specify the modifications, terms and conditions that will permit approval of the plan. If no action is
851 taken by the plan-approving authority within the time specified above, the plan shall be deemed
852 approved and the person authorized to proceed with the proposed activity.

853 C. An approved plan may be changed by the authority that approved the plan in the following cases:

854 1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
855 2. Where the person responsible for carrying out the approved plan finds that because of changed
856 circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed
857 amendments to the plan, consistent with the requirements of this article, are agreed to by the
858 plan-approving authority and the person responsible for carrying out the plan.

859 D. Electric and telephone utility companies and railroad companies shall file general erosion and

sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

1. Construction, installation or maintenance of electric and telephone utility lines; and
2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

The Board shall have sixty days in which to comment. Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications.

E. In order to prevent further erosion a local program may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

F. For the purposes of subsections A and B of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

§ 3.1-1147. State agency projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual specifications for its conduct of land-disturbing activities which have been reviewed and approved by the Department as being consistent with the state program or (ii) the state agency has submitted a conservation plan for the project which has been reviewed and approved by the Department.

B. The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land-disturbing activity (i) in any locality which has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the conservation plan is consistent with the requirements of the state program.

C. The Department shall not approve a conservation plan submitted by a federal or state agency for a project involving a land-disturbing activity in one locality with a local program with more stringent regulations than those of the state program unless the conservation plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B of this section shall apply.

D. The Department shall have sixty days in which to comment on any specifications or conservation plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.

E. As on-site changes occur, the state agency shall submit changes in a conservation plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

§ 3.1-1148. Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the achievement of adequate stabilization of the land-disturbing activity, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 3.1-1149. Monitoring, reports and inspections.

A. The plan-approving authority or, if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, the permit-issuing authority (i) shall provide for periodic inspections of the land-disturbing activity and (ii) may require monitoring and

921 reports from the person responsible for carrying out the plan, to ensure compliance with the approved
922 plan and to determine whether the measures required in the plan are effective in controlling erosion and
923 sediment. The owner, permittee, or person responsible for carrying out the plan shall be given notice of
924 the inspection. If the permit-issuing authority or plan-approving authority determines that there is a
925 failure to comply with the plan, notice shall be served upon the permittee or person responsible for
926 carrying out the plan by registered or certified mail to the address specified in the permit application or
927 in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or
928 employee supervising such activities. Where the plan-approving authority serves notice, a copy of the
929 notice shall also be sent to the issuer of the permit. The notice shall specify the measures needed to
930 comply with the plan and shall specify the time within which such measures shall be completed. Upon
931 failure to comply within the time specified, the permit may be revoked and the permittee or person
932 responsible for carrying out the plan shall be deemed to be in violation of this article and shall be
933 subject to the penalties provided by § 3.1-1152.

934 B. Notwithstanding the above provisions of this section the following may be applied:

935 1. Where a county, city, or town administers the local control program and the permit-issuing
936 authority and the plan-approving authority are not within the same local government department, the
937 locality may designate one department to inspect, monitor, report and ensure compliance. In the event a
938 district has been designated as the plan-approving authority for all or some of the conservation plans,
939 the enforcement of the program shall be with the local government department; however, the district
940 may inspect, monitor and make reports for the local government department.

941 2. Where a district adopts the local control program and permit-issuing authorities have been
942 established by a locality, the district by joint resolution with the appropriate locality may exercise the
943 responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and
944 enforcement.

945 3. Where a permit-issuing authority has been established, and such authority is not vested in an
946 employee or officer of local government but in the commissioner of revenue or some other person, the
947 locality shall exercise the responsibilities of the permit-issuing authority with respect to monitoring,
948 reports, inspections and enforcement unless such responsibilities are transferred as provided for in this
949 section.

950 C. Upon receipt of a sworn complaint of a violation of this section, § 3.1-1146 or § 3.1-1147 from
951 the representative of the program authority or the Board responsible for ensuring program compliance,
952 the chief administrative officer, or his designee, of the program authority or the Board may, in
953 conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order
954 requiring that all or part of the land-disturbing activities permitted on the site be stopped until the
955 specified corrective measures have been taken or, if land-disturbing activities have commenced without
956 an approved plan as provided in § 3.1-1146, requiring that all of the land-disturbing activities be
957 stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance
958 is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in
959 waters within the watersheds of the Commonwealth, or where the land-disturbing activities have
960 commenced without an approved plan or any required permits, such an order may be issued whether or
961 not the alleged violator has been issued a notice to comply as specified in subsection A above.
962 Otherwise, such an order may be issued only after the alleged violator has failed to comply with a
963 notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain
964 in effect for seven days from the date of service pending application by the enforcing authority or
965 alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was
966 alleged to have occurred. If the alleged violator has not obtained an approved plan or any required
967 permits within seven days from the date of service of the order, the chief administrative officer or his
968 designee may issue an order to the owner requiring that all construction and other work on the site,
969 other than corrective measures, be stopped until an approved plan and any required permits have been
970 obtained. Such an order shall be served upon the owner by registered or certified mail to the address
971 specified in the permit application or the land records of the locality in which the site is located. The
972 owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation
973 was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order
974 issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in
975 the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and
976 to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and
977 approval of corrective action or obtaining an approved plan or any required permits, the order shall
978 immediately be lifted. Nothing in this section shall prevent the chief administrative officer or his
979 designee from taking any other action specified in § 3.1-1152.

980 § 3.1-1150. Cooperation with federal and state agencies.

981 The districts and localities operating their own programs, and the Board are authorized to cooperate
982 and enter into agreements with any federal or state agency in connection with plans for erosion and

sediment control with respect to land-disturbing activities.

§ 3.1-1151. Appeals.

A. Final decisions of counties, cities or towns under this article shall be subject to review by the court of record of the county or city, provided that an appeal is filed within thirty days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. Final decisions of the districts shall be subject to an administrative review by the Board, provided that an appeal is filed within thirty days from the date of the written decision.

C. Final decisions of the Board either upon its own action or upon the review of the action of a district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 3.1-1152. Penalties, injunctions and other legal actions.

A. Violators of §§ 3.1-1146, 3.1-1147 or § 3.1-1149 shall be guilty of a Class 1 misdemeanor.

B. If a locality has adopted an ordinance establishing a uniform schedule of civil penalties as permitted by subsection J of § 3.1-1145, any person who violates any regulation or order of the Board, any condition of a permit, any provision of its program, or any provision of this article shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with the schedule. The erosion and sediment control administrator, his deputy or a certified inspector for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted by the locality wherein the land lies. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

C. The appropriate permit-issuing authority, the program authority, or the Board may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation under §§ 3.1-1146, § 3.1-1147 or § 3.1-1149 without the necessity of showing that an adequate remedy at law does not exist.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provision of this chapter may be liable to the program authority, or the Board, as appropriate, in a civil action for damages.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board, or any condition of a permit or any provision of this article, the Board, the Commissioner or plan approving or permit-issuing authority may provide, in an order issued by the Board or plan-approving or permit-issuing authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E.

G. Upon request of a program authority, or the permit-issuing authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Attorney General shall take appropriate legal action on behalf of the Board to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

§ 3.1-1153. Stop work orders by Board; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the program authority and to the Commissioner.

B. Upon receipt of the notice from the aggrieved owner and notification to the program authority, the Commissioner shall conduct an investigation of the aggrieved owner's complaint.

C. If the program authority has not responded to the alleged violation in a manner which causes the

1044 violation to cease and abates the damage to the aggrieved owner's property within thirty days following
1045 receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Commissioner
1046 require the violator to stop the violation and abate the damage to his property.

1047 D. If (i) the Commissioner's investigation of the complaint indicates that the program authority has
1048 not responded to the alleged violation as required by the local program, (ii) the program authority has
1049 not responded to the alleged violation within thirty days from the date of the notice given pursuant to
1050 subsection A of this section, and (iii) the Commissioner is requested by the aggrieved owner to require
1051 the violator to cease the violation, then the Commissioner shall give written notice to the program
1052 authority that the Commissioner will request the Board to issue an order pursuant to subsection E of
1053 this section.

1054 E. If the program authority has not instituted action to stop the violation and abate the damage to
1055 the aggrieved owner's property within ten days following receipt of the notice from the Commissioner,
1056 the Board is authorized to issue an order requiring the owner, permittee, person responsible for
1057 carrying out an approved plan, or person conducting the land-disturbing activities without an approved
1058 plan or required permit to cease all land-disturbing activities until the violation of the plan or permit
1059 has ceased, or an approved plan and required permits are obtained, as appropriate, and specified
1060 corrective measures have been completed.

1061 F. Such orders are to be issued only after a hearing with reasonable notice to the affected person of
1062 the time, place and purpose thereof, and they shall become effective upon service on the person by
1063 certified mail, return receipt requested, sent to his address specified in the land records of the locality,
1064 or by personal delivery by an agent of the Commissioner. However, if the Board finds that any such
1065 violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion
1066 of lands or sediment deposition in waters within the watersheds of the Commonwealth, it may issue,
1067 without advance notice or hearing, an emergency order directing such person to cease all
1068 land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after
1069 reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend or cancel
1070 such emergency order.

1071 G. If a person who has been issued an order or emergency order is not complying with the terms
1072 thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction,
1073 mandamus, or other appropriate remedy compelling the person to comply with such order.

1074 H. Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other
1075 remedy obtained pursuant to subsection G of this section shall be subject, in the discretion of the court,
1076 to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall
1077 be paid into the state treasury.

1078 § 3.1-1154. Authorization for more stringent regulations.

1079 A district or locality is authorized to adopt more stringent soil erosion and sediment control
1080 regulations than those necessary to ensure compliance with the Board's regulations. However, this
1081 section shall not be construed to authorize any district or locality to impose any more stringent
1082 regulations for plan approval or permit issuance than those specified in §§ 3.1-1146 and 3.1-1148.

1083 § 3.1-1155. No limitation on authority of Water Control Board or Department of Mines, Minerals
1084 and Energy.

1085 The provisions of this article shall not limit the powers or duties presently exercised by the State
1086 Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, or the powers or duties of
1087 the Department of Mines, Minerals and Energy as they relate to surface mine reclamation under
1088 Chapters 16 (§ 45.1-180 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration
1089 under the Virginia Gas and Oil Act (§ 45.1-361.1 et seq.).

1090 Article 5.

1091 Soil Survey.

1092 § 43.1-1156. Duty of Department to complete Virginia portion of National Cooperative Soil Survey.

1093 In addition to other duties the Department shall be responsible for accelerating the Virginia portion
1094 of the National Cooperative Soil Survey and for coordinating efforts to complete the inventory of
1095 Virginia's soil resources by 2000.

1096 § 3.1-1157. Immunity from prosecution for trespass.

1097 No criminal action for trespass shall lie against the Board, any agent or employee of the
1098 Department, or any agent or employee of the United States Department of Agriculture or Virginia
1099 Polytechnic Institute and State University, because of the mere entry upon the lands of any person for
1100 the purpose of performing duties in conjunction with the conduct and completion of the Virginia portion
1101 of the National Cooperative Soil Survey, provided that the agent or employee made a reasonable effort
1102 to obtain the consent of the owner of the land prior to his entry.

1103 Article 6.

1104 Flood Damage and Reduction Act.

1105 § 3.1-1158. Definitions.

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

"Emergency flood insurance program" or "emergency program" means the Emergency Program of the Federal Insurance Administration which provides subsidized flood insurance for potential flood victims, applicable to both new and existing structures, pending completion of applicable actuarial rates which is a prerequisite for eligibility to participate in the regular program.

"Flood hazard area" means those areas susceptible to flooding.

"Flood plain" or "flood-prone areas" means those areas adjoining a river, stream, water course, ocean, bay or lake which are likely to be covered by floodwaters.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, the building code, health regulations, special purpose ordinances such as flood plain ordinances, grading ordinances or erosion control ordinances, and other rules, regulations and ordinances which may affect flood plain uses. The term describes such legally enforceable regulations, in any combination thereof, which provide standards for the control of the use and occupancy of flood-prone areas.

"Hundred year flood" means a flood of that level which on the average will have a one percent chance of being equaled or exceeded in any given year at designated locations.

"Locality" means a county, city, or town.

"National flood insurance program" means the program established by the United States Congress under provisions of the National Flood Insurance Act of 1968, as amended, and as expanded in the Flood Disaster Protection Act of 1973, designed to provide flood insurance at rates made affordable through federal subsidy.

"Nonfederal cost" means the flood protection project costs provided by sources other than the federal government.

"Regular flood insurance program" means a program of insurance under the national flood insurance program, for which the Federal Insurance Administrator has issued a flood insurance rate map and applicable actuarial rates, and under which new construction will not be eligible for flood insurance except at the applicable actuarial rates.

§ 3.1-1159. Powers and duties of Department.

The Department shall:

1. Develop a flood protection plan for the Commonwealth. This plan shall include:

a. An inventory of flood-prone areas;

b. An inventory of flood protection studies;

c. A record of flood damages;

d. Strategies to prevent or mitigate flood damage; and

e. The collection and distribution of information relating to flooding and flood plain management.

2. Serve as the coordinator of all flood protection programs and activities in the Commonwealth, including the coordination of federal flood protection programs administered by the United States Army Corps of Engineers, the United States Department of Agriculture, the Federal Emergency Management Agency, the United States Geological Survey, the Tennessee Valley Authority, other federal agencies and local governments.

3. Make available flood and flood damage reduction data to localities for planning purposes, in order to assure necessary local participation in the planning process and in the selection of desirable alternatives which will fulfill the intent of this article. This shall include the development of a data base to include (i) all flood protection projects implemented by federal agencies and (ii) the estimated value of property damaged by major floods.

4. Assist localities in their management of flood plain activities in cooperation with the Department of Housing and Community Development.

5. Carry out the provisions of this article in a manner which will ensure that the management of flood plains will preserve the capacity of the flood plain to carry and discharge a hundred year flood.

6. Make, in cooperation with localities, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with local flood plain management ordinances, rules and regulations.

7. Coordinate with the United States Federal Emergency Management Agency to ensure current knowledge of the identification of flood-prone communities and of the status of applications made by localities to participate in the National Flood Insurance Program.

8. Establish guidelines which will meet minimum requirements of the National Flood Insurance Program in furtherance of the policy of the Commonwealth to assure that all citizens living in flood-prone areas may have the opportunity to indemnify themselves from flood losses through the purchase of flood insurance under the regular flood insurance program of the National Flood Insurance Act of 1968 as amended.

9. Subject to the provisions of the Appropriations Act, provide financial and technical assistance to localities in an amount not to exceed fifty percent of the nonfederal costs of flood protection projects.

1167 § 3.1-1160. State agency compliance.

1168 All agencies and departments of the Commonwealth shall comply with the flood plain regulations
1169 established pursuant to this article when planning for facilities in flood plains.

1170 Article 7.

1171 Flood Prevention and Protection Assistance Fund.

1172 § 3.1-1161. Definitions.

1173 As used in this article unless the context requires a different meaning:

1174 "Flood prevention or protection" means the construction of dams, levees, flood walls, channel
1175 improvements or diversions, local flood proofing, evacuation of flood-prone areas or land use controls
1176 which reduce or mitigate damage from flooding.

1177 "Flood prevention or protection studies" means hydraulic and hydrologic studies of flood plains
1178 with historic and predicted floods, the assessment of flood risk and the development of strategies to
1179 prevent or mitigate damage from flooding.

1180 "Fund" or "revolving fund" means the Flood Prevention and Protection Assistance Fund.

1181 "Local funds" means cash provided for project or study implementation that is not derived from
1182 federal or state grants or loans.

1183 "Local public body" means any city, county, town, water authority, service authority or special
1184 taxing district.

1185 § 3.1-1162. Flood Prevention and Protection Assistance Fund established.

1186 The Flood Prevention and Protection Assistance Fund is hereby established. The Fund shall consist
1187 of any moneys appropriated by the General Assembly and funds returned by localities in the form of
1188 interest and repayment of loan principal. Any moneys remaining in the Fund at the end of the biennium
1189 including any appropriated funds and all principal interest accrued, interest and payments shall not
1190 revert to the general fund.

1191 § 3.1-1163. Administration of the Fund.

1192 The Commissioner shall be responsible for the administration of the Fund and shall direct the
1193 distribution of grants or loans from the Fund to particular local public bodies. The Commissioner is
1194 authorized to promulgate regulations for the proper administration of the Fund. Such regulations may
1195 include, but are not limited to, the establishment of amounts, interest rates, repayment terms,
1196 consideration of the fiscal stability of the particular local public body applying and all other criteria for
1197 awarding of grants or loans.

1198 § 3.1-1164. Purposes for which Fund is to be used.

1199 A. The Commissioner is authorized to make grants or loans to any city, county, town, water
1200 authority, service authority or taxing district for the purpose of assisting the local public body in the
1201 development and implementation of flood prevention or protection projects, or for flood prevention or
1202 protection studies. Grants or loans from the Fund may match, but shall not exceed the amount of
1203 contribution derived from local funds. No grant or loan award, individually or in combination for a
1204 single project, shall exceed twenty-five percent of the unencumbered balance of the fund as determined
1205 at the beginning of the fiscal year.

1206 B. The Commissioner is authorized to expend from the Fund up to \$50,000 annually, but no more
1207 than ten percent of the Fund's balance, which shall be utilized as cost share with federal agencies in
1208 flood protection studies of statewide or regional significance.

1209 § 3.1-1165. Condition for making loans or grants.

1210 A. The Commissioner may authorize a loan or grant under the provisions of § 3.1-1164 only when
1211 the following conditions exist:

1212 1. An application for the loan or grant has been submitted by the applicant in the manner and form
1213 specified by the Commissioner, setting forth the amount of the loan or grant requested, and the use to
1214 which the loan or grant will be applied. The application shall describe in detail (i) the area to be
1215 studied or protected, including the population and the value of property to be protected, historic
1216 flooding data and hydrologic studies projecting flood frequency; (ii) the estimated cost-benefit ratio of
1217 the project; (iii) the ability of the locality to provide its share of the cost; (iv) the administration of
1218 local flood plain management regulations; and (v) other necessary information to establish project or
1219 study priority.

1220 2. The local public body agrees and furnishes assurance, satisfactory to the Commissioner, that it
1221 will satisfactorily maintain any structure financed, in whole or in part, through the loans or grants
1222 provided under this article.

1223 3. The purpose for which the loan or grant is sought is one described in § 3.1-1164.

1224 4. If the requested loan or grant is sought to acquire land, the Commissioner shall require
1225 satisfactory evidence prior to acting on the request that the local public body will acquire the land if
1226 the loan or grant is made.

1227 5. A local public body is eligible to receive a grant once every five years, provided that it has a
1228 flood mitigation plan approved by the Commissioner and has demonstrated satisfactory evidence of plan

implementation. Lacking an approved plan the local public body is eligible for a grant once every ten years.

6. The Commissioner shall award no grant which would reduce the available balance of the Fund below \$200,000; however, the Commissioner may provide a loan from the unencumbered balance of the Fund.

B. In addition to the condition for making loans established under this article, the Commissioner may require of a local public body such covenants and conditions as the Commissioner deems necessary or expedient to further the purpose of the loan.

C. The Commissioner may consent to and approve any modification in the terms of any loan to any local public body subject to the regulations promulgated.

§ 3.1-1166. Period of loan; interest rate; loan shall constitute a lien.

Any loan made pursuant to § 3.1-1164 shall be made for a period not to exceed twenty years and shall bear interest at the rate of three percent annually. Payment of interest and principal shall be made to the State Treasurer and credited to the revolving fund, and evidence of debt taken for such loan shall be deposited with the State Treasurer and kept by him. Whenever a loan is made in accordance with the provisions of this article, a lien is hereby created against any real or personal property acquired with loan proceeds. Prepayment of the principal of any such loan, in whole or in part, may be made by the borrower without penalty; however, the borrower shall be liable for interest accrued on the principal at the time of prepayment.

§ 3.1-1167. Recovery of money due to Fund.

If a borrower defaults on any payment due the State Treasurer pursuant to § 3.1-1166 or on any other obligation incurred pursuant to the provisions of this article, the amounts owed to the Fund by the borrower may be recovered by the State Comptroller, transferring to the Fund the amount of the payment due to the Fund from the distribution of state funds to which the defaulting borrower may be entitled pursuant to any state law, or any money which is to be paid into the Fund may be recoverable with interest by the Commonwealth, in the name of the Commissioner, on motion in the Circuit Court of the City of Richmond. The Attorney General shall institute and prosecute such proceedings after a request for such action has been made by the Commissioner.

§ 3.1-1168. Record of application for grants or loans and action taken.

A record of each application for a grant or loan pursuant to § 3.1-1164 and the action taken thereon shall be open to public inspection at the office of the Department and shall be presented to the Governor and members of the legislature prior to budgetary sessions of the General Assembly.

Article 8.

Dam Safety Act.

§ 3.1-1169. Definitions.

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

"Height" means the structural height of a dam which is defined as the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam to the top of the dam.

"Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials. The term "impounding structure" shall not include: (i) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (ii) dams owned or licensed by the United States government; (iii) dams constructed, maintained or operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment smaller than 100 acre-feet; (iv) water or silt retaining dams approved pursuant to § 45.1-222; (v) obstructions in a canal used to raise or lower water; (vi) nonagricultural dams which are less than twenty-five feet in height or which create a maximum impoundment smaller than 50 acre-feet; or (vii) dams not more than six feet in height regardless of storage capacity or with a storage capacity of not more than 15 acre-feet regardless of height.

"Owner" means the owner of the land on which a dam is situated, the holder of an easement permitting the construction of a dam and any person or entity agreeing to maintain a dam.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows.

§ 3.1-1170. Promulgation of regulations by the Board.

The Board shall promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated. Dam safety regulations promulgated by the State Water Control Board shall remain in full force until amended in accordance with applicable procedures.

§ 3.1-1171. Local advisory committee.

When requested by the governing body of any affected county or city, the Board shall provide for the

1290 creation of a local advisory committee to advise the Board on impoundments within that locality. The
1291 advisory committee shall include, but not be limited to, representation of the owner and each affected
1292 county or city. Prior to the issuance of any permits under this article, the Board shall advise any
1293 existing local advisory committee of any affected jurisdiction for which a permit is being sought, and
1294 request comments from the committee on the permit application. No permit shall be issued until at least
1295 sixty days after such a local advisory committee has been so advised.

1296 § 3.1-1172. Safety inspections.

1297 No one shall maintain a dam which unreasonably threatens the life or property of another. The
1298 Board shall cause safety inspections, not to exceed that of a phase I inspection report as established by
1299 the U.S. Army Corps of Engineers, to be made of impounding structures on such schedule as it deems
1300 appropriate. The time of the initial inspection and the frequency of reinspection shall depend on such
1301 factors as the condition of the structure and its size, type, location and downstream hazard potential.
1302 The owners of dams found to have deficiencies which could threaten life or property if not corrected
1303 shall take the corrective actions, which may include a phase II inspection report as established by the
1304 U.S. Army Corps of Engineers, needed to remove such deficiencies within a reasonable time. All safety
1305 inspections shall be conducted by or under the supervision of a licensed professional engineer. Each
1306 report shall bear the seal and signature of the licensed professional engineer responsible for the
1307 inspection.

1308 The Board shall be responsible for the inspection and reinspection of flood control dams where the
1309 maintenance and operation of the dam is the responsibility of a soil and water conservation district and
1310 where the permit for operation of the impounding structure is held by such a district.

1311 § 3.1-1173. Unsafe dams presenting imminent danger.

1312 When the Commissioner finds an unsafe dam constituting an imminent danger to life or property, he
1313 shall immediately notify the Department of Emergency Services and confer with the owner. The owner of
1314 a dam found to constitute an imminent danger to life or property shall take immediate corrective action.
1315 If the owner does not take appropriate and timely action to correct the danger found, the Governor
1316 shall have the authority to take immediate appropriate action, without the necessity for a hearing, to
1317 remove the imminent danger. The Attorney General may bring an action against the owner of the
1318 impounding structure for the Commonwealth's expenses in removing the imminent danger. There shall
1319 be a lien upon the owner's real estate for the Commonwealth's expenses in removing the imminent
1320 danger. The owner may avoid the Commonwealth's costs, and recover any damages, upon proving that
1321 the dam was known to be safe at the time such action was taken, and that the owner had provided or
1322 offered to immediately provide such proof to the Commissioner before the action complained of was
1323 taken. Nothing herein shall in any way limit any authority existing under the Emergency Services and
1324 Disaster Law (§ 44-146.13 et seq.).

1325 § 3.1-1174. Unsafe dams presenting nonimminent danger.

1326 A. Within a reasonable time after completion of a safety inspection of an impounding structure
1327 authorized by § 3.1-1172, the Board shall issue a report to the owner of the impounding structure
1328 containing its findings and recommendations for correction of any deficiencies which could threaten life
1329 or property if not corrected. Owners who have been issued a report containing recommendations for
1330 correction of deficiencies shall undertake to implement the recommendations contained in the report
1331 according to the schedule of implementation contained in the report. If an owner fails or refuses to
1332 commence or diligently implement the recommendations for correction of deficiencies according to the
1333 schedule contained in an issued report, the Commissioner shall have the authority to issue an
1334 administrative order directing the owner to commence implementation and completion of such
1335 recommendations according to the schedule contained in the report with modifications as appropriate.
1336 Within thirty days after being served by personal service or by mail with a copy of an order issued
1337 pursuant to this section, any owner shall have the right to petition the Board for a hearing. A timely
1338 filed petition shall stay the effect of the administrative order.

1339 The hearing shall be conducted before the Board or a designated member thereof pursuant to
1340 § 9-6.14:11. The Board shall have the authority to affirm, modify, amend or cancel the administrative
1341 order. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial
1342 review of the final Board decision pursuant to the provisions of the Administrative Process Act
1343 (§ 9-6.14:1 et seq.).

1344 B. The provisions of subsection A of this section notwithstanding, if the Commissioner determines,
1345 after the report is issued, that changed circumstances justify reclassifying the deficiencies of an
1346 impounding structure as an imminent danger to life or property, the Commissioner may proceed directly
1347 under § 3.1-1179 for enforcement of his order, and the owner shall have the opportunity to contest the
1348 fact based upon which the administrative order was issued.

1349 § 3.1-1175. Installation of IFLOWS gauges.

1350 A soil and water conservation district responsible for the maintenance and operation of a flood
1351 control dam shall be permitted to install Integrated Flood Observing and Warning Systems (IFLOWS)

gauges and associated equipment, or a device approved by the Department of Emergency Services, while awaiting funds to make structural modifications to correct emergency spillway capacity deficiencies in the dam, identified by the Board in a report issued pursuant to § 3.1-1174, when any of the following conditions exist: (i) funds are not available to make such structural modifications to the dam, (ii) the completion of such structural modifications requires the acquisition of additional property or easements by exercise of the power of eminent domain, or (iii) funds for the IFLOWS equipment or an equivalent device have been appropriated by the General Assembly. Installation of IFLOWS gauges or similar devices shall not affect the regulated status of the dam under the Virginia Dam Safety Act (§ 3.1-1169 et seq.). Any IFLOWS gauges and associated equipment shall be installed in a manner approved by the Department of Emergency Services and shall be operated and maintained by the Department of Emergency Services.

§ 3.1-1176. Right of entry.

The Board and its agents and employees shall have the right to enter any property upon consent of the owner or custodian to perform such inspections and tests or to take such other actions it deems necessary to fulfill its responsibilities under this article. If entry is denied, the Board may apply to any magistrate whose territorial jurisdiction encompasses the property to be inspected or entered for a warrant authorizing such investigation, tests or other actions. Such warrant shall issue if the magistrate finds probable cause to believe that there is a dam on such property which is not known to be safe.

§ 3.1-1177. Dam safety coordination.

The Board shall coordinate all impoundment safety activities in the Commonwealth, which shall include, but not be limited to: (i) the maintenance of an inventory of all impoundment structures, and of all other similar structures which are not regulated under this article to the extent the Board deems necessary; (ii) the maintenance of a repository for record drawings of all such structures to the extent the Board deems necessary; (iii) the maintenance of an inventory of safety inspection reports for each such structure to the extent the Board deems necessary; and (iv) the maintenance of a secondary repository for all dam safety emergency action plans which are primarily filed with the Department of Emergency Services. The Board shall provide technical assistance in the preparation, updating and execution of such plans. It shall establish uniform maintenance-of-records requirements and uniform inspection standards to be applied to all impounding structures in the Commonwealth and to be recommended for all other similar structures. It may inspect or cause to be inspected state-owned or state-licensed dams on a cost reimbursable basis at the request of the state agency owning the state-owned dam or of the licensor of the state-licensed dam.

§ 3.1-1178. Technical Advisory Committee.

The Board shall establish an Impoundment Safety Technical Advisory Committee to provide technical review. The Committee may make recommendations to the Board.

§ 3.1-1179. Enforcement.

Any person or legal entity failing or refusing to comply with an order issued pursuant to this article may be compelled to comply with the order in a proceeding instituted in any appropriate court by the Board.

Article 9.

Watershed Improvement Districts.

§ 3.1-1180. Establishment within soil and water conservation district authorized.

Whenever it is found that soil and water conservation or water management within a soil and water conservation district or districts will be promoted by the construction of improvements to check erosion, provide drainage, collect sediment or stabilize the runoff of surface water, a small watershed improvement district may be established within such soil and water conservation district or districts in accordance with the provisions of this article.

§ 3.1-1181. Petition for establishment; what to set forth.

A. Any twenty-five owners of land lying within the limits of a proposed watershed improvement district, or a majority of such owners if there are fewer than fifty, may file a petition with the directors of the soil and water conservation district or districts in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the territory described in the petition. The petition shall set forth:

1. The proposed name of the watershed improvement district;
2. That there is need, in the interest of the public health, safety, and welfare, for a watershed improvement district to function in the territory described in the petition;
3. A description of the territory proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate;
4. That the territory described in the petition is contiguous and is the same watershed, or is two or more contiguous watersheds;
5. A request that the territory described in the petition be organized as a watershed improvement

1413 district;

1414 6. The method for financing the proposed district, whether by means of a tax on all real estate in the
1415 proposed district or a service charge on the increase in the fair market value of all real estate in the
1416 proposed district caused by the district's project.

1417 B. Land lying within the limits of one watershed improvement district shall not be included in
1418 another watershed improvement district.

1419 § 3.1-1182. Notice and hearing on petition; determination of need for district and defining
1420 boundaries.

1421 Within thirty days after a petition has been filed with the directors of the soil and water conservation
1422 district or districts, they shall cause due notice to be given of a hearing upon the practicability and
1423 feasibility of creating the proposed watershed improvement district. All owners of land within the
1424 proposed watershed improvement district and all other interested parties shall have the right to attend
1425 such a hearing and to be heard. If the directors determine from the hearing that there is need, in the
1426 interest of the public health, safety, and welfare, for the organization of the proposed watershed
1427 improvement district, they shall record their determination and define the boundaries of the watershed
1428 improvement district. The provisions of Article 2 (§ 3.1-1084 et seq.) shall apply, mutatis mutandis, to
1429 such proceedings.

1430 § 3.1-1183. Determination of whether operation of proposed district is feasible; referendum.

1431 If the district directors determine that a need for the proposed watershed improvement district exists
1432 and after they define the boundaries of the proposed district, they shall consider the administrative
1433 feasibility of operating the proposed watershed improvement district. To assist the district directors in
1434 determining such question, a referendum shall be held upon the proposition of the creation of the
1435 proposed watershed improvement district. Due notice of the referendum shall be given by the district
1436 directors. All owners of land lying within the boundaries of the proposed watershed improvement district
1437 shall be eligible to vote in the referendum. The district directors may prescribe necessary regulations
1438 governing the conduct of the hearing.

1439 § 3.1-1184. Ballots used in such referendum.

1440 The question shall be submitted by ballots, which shall contain the following question: "Shall a
1441 watershed improvement district be created of the lands described below and lying in the county(ies) or
1442 city(ies) of and?"

1443 ☐ Yes

1444 ☐ No"

1445 The ballot shall set forth the boundaries of the proposed district determined by the Board.

1446 The ballot shall also set forth the method or methods of real estate assessment as determined by the
1447 district directors.

1448 § 3.1-1185. Consideration of results of referendum; two-thirds favorable vote required.

1449 The results of the referendum shall be considered by the district directors in determining whether the
1450 operation of the proposed watershed improvement district is administratively practicable and feasible.
1451 The district directors shall not be authorized to determine that operation of the proposed watershed
1452 improvement district is administratively practicable and feasible unless at least two-thirds of the votes
1453 cast in the referendum, which two-thirds vote shall also represent ownership of at least two-thirds of the
1454 land in the proposed district, have been cast in favor of the creation of the watershed improvement
1455 district.

1456 § 3.1-1186. Declaration of organization of district; certification to Board.

1457 If the district directors determine that operation of the proposed watershed improvement district is
1458 administratively practicable and feasible, they shall declare the watershed improvement district to be
1459 organized and shall record the fact in their official minutes. Following such entry in their official
1460 minutes, the district directors shall certify the fact of the organization of the watershed improvement
1461 district to the Board, and shall furnish a copy of the certification to the clerk of each county or city in
1462 which any portion of the watershed improvement district is situated for recordation in the public land
1463 records of each such county or city. The watershed improvement district shall thereupon constitute a
1464 political subdivision of this Commonwealth.

1465 § 3.1-1187. Establishment of watershed improvement district situated in more than one soil and
1466 water conservation district.

1467 If a proposed watershed improvement district is situated in more than one soil and water
1468 conservation district, copies of the petition shall be presented to the directors of all the soil and water
1469 conservation districts in which the proposed watershed improvement district is situated, and the
1470 directors of all affected soil and water conservation districts shall act jointly as a board of directors
1471 with respect to all matters concerning the watershed improvement district, including its organization.
1472 The watershed improvement district shall be organized in the same manner and shall have the same
1473 powers and duties as a watershed improvement district situated entirely in one soil and water
1474 conservation district.

§ 3.1-1188. Inclusion of additional territory.

Petitions for including additional territory within an existing watershed improvement district may be filed with directors of the soil and water conservation district or districts in which the watershed improvement district is situated, and in such cases the provisions hereof for petitions to organize the watershed improvement district shall be observed to the extent deemed practicable by the district directors. In referenda upon petitions for such inclusion, all owners of land situated in the proposed additional territory shall be eligible to vote. No additional territory shall be included in an existing watershed improvement district unless owners of land representing two-thirds of the acreage proposed to be included vote in favor thereof.

§ 3.1-1189. Governing body of district; trustees.

The directors of the soil and water conservation district or districts in which the watershed improvement district is situated shall be the governing body of the watershed improvement district. They may appoint, in consultation with and subject to the approval of the Board, three trustees who shall be owners of land within the watershed improvement district. The trustees shall exercise the administrative duties and powers delegated to them by the directors of the soil and water conservation district or districts. The trustees shall hold office at the will of the directors of the soil and water conservation district or districts and the Board. The trustees shall designate a chairman and may change such designation. One of the trustees may be selected as treasurer and shall be responsible for the safekeeping of the funds of the watershed improvement district. When a watershed improvement district lies in more than one soil and water conservation district, the directors of all such districts shall act jointly as the governing body of the watershed improvement district.

§ 3.1-1190. Officers, agents and employees; surety bonds; annual audit.

The trustees may, with the approval of the directors of the soil and water conservation district or districts, employ such officers, agents, and other employees as they require, and shall determine their qualifications, duties and compensation. The district directors shall provide for the execution of surety bonds for the treasurer and such other trustees, officers, agents, and employees as shall be entrusted with funds or property of the watershed improvement district, and shall publish an annual audit of the accounts of receipts and disbursements of the watershed improvement district.

§ 3.1-1191. Status and general powers of district; power to levy tax or service charge; approval of landowners required.

A watershed improvement district shall have all of the powers of the soil and water conservation district or districts in which the watershed improvement district is situated, and in addition shall have the authority to levy and collect a tax or service charge to be used for the purposes for which the watershed improvement district was created. No tax shall be levied nor service charge imposed under this article unless two-thirds of the owners of land, which two-thirds owners shall also represent ownership of at least two-thirds of the land area in such district, voting in a referendum called and held in the manner prescribed in this article, approve the levy of a tax to be expended for the purposes of the watershed improvement district.

§ 3.1-1192. Levy of tax or service charge; when district in two or more counties or cities; landbooks certified to treasurers.

A. On or before March 1 of each year, the trustees of the watershed improvement district shall make an estimate of the amount of money they deem necessary to be raised for the year in such district (i) for operating expenses and interest payments and (ii) for amortization of debt, and, after approval by the directors of the soil and water conservation district or districts, and the Board, shall establish the tax rate or service charge rate necessary to raise such amount of money. The tax rate or service charge rate to be applied against the amount determined under subsection C or D of this section shall be determined before the date fixed by law for the determination of the general levy by the governing body of the counties or cities in which the district is situated.

B. The trustees of a watershed improvement district which imposes a tax on real estate or a service charge based on the increase in the fair market value of real estate caused by the district's project shall make up a landbook of all properties subject to the watershed improvement district tax or service charge on forms similar to those used by the county or city affected.

A separate landbook shall be made for each county or city if the district is located in more than one county or city. The landbook or landbooks of all properties subject to the district tax or the service charge, along with the tax rate or service charge rate fixed by the governing body of the district for that year, shall be certified to the appropriate county or city treasurer or treasurers, and filed in the clerk's office of such locality or localities, by the governing body of the watershed improvement district on or before the day the county or city landbook is required to be so certified. Such landbook or landbooks shall be subject to the same retention requirements as the county or city landbook.

C. For tax purposes under this article, the assessed valuation of all real estate located in a watershed improvement district shall be the same fair market valuation that appears in the most recent

landbook for the county, city, or town wherein the subject property is located. However, in a watershed improvement district which is located in two or more counties or cities and in which there is a disparity of assessed valuations between the counties or cities, the governing body of the watershed improvement district may petition the judge or judges of the circuit courts in which the district is located to appoint one or more persons to assess all of the real estate in the district. The compensation of such person or persons shall be prescribed by the governing body of the district and paid out of the funds of the district.

D. In districts authorized to impose a service charge, the service charge shall be based on the initial increase in fair market value resulting from a project. In order to determine the initial increase in fair market value, the trustees shall subtract the fair market value of each parcel without the project, as shown in the landbook for the year immediately preceding the year in which the project was begun from the fair market value of the parcel following completion of the project. The fair market value of each parcel with the project shall be determined by the district directors in a reasonable manner. The values so determined shall be the values against which the service charge rate is imposed so long as any bonds remain outstanding, and thereafter unless a change is approved by the district directors. If an additional improvement is made while any bonds are outstanding, the district directors may cause a new increase in fair market values to be computed to reflect such improvement. However, while any bonds are outstanding, such newly computed values shall not be used unless the total new increase in fair market values in the district is equal to or greater than the previously determined increase in fair market values. Within thirty days after determining the increase in fair market value for all real estate in the watershed improvement district resulting from the project, the trustees shall mail a notice of such determination to the owner of record of each parcel in the district.

E. The assessments and determinations of increase in fair market value made under the provisions of this section may be used only for the watershed improvement district tax or service charge and shall in no way affect any county or city assessment or levies.

F. Any person, firm, or corporation aggrieved by any determination of increased value made under any provision of this article shall apply in writing to the trustees of the watershed improvement district within sixty days after the mailing of the notice required in subsection D of this section. Such application shall specify the increased value in the opinion of the applicant and the basis for such opinion. The trustees shall rule on all such applications within 120 days after mailing the notice required in subsection D of this section. If any applicant remains aggrieved by the determination of increased value after such a ruling, he may apply to the circuit court of the county or city wherein the land is situated for a correction of such determination of increased value, within the time limits and following the procedures set out in Article 5 (§ 58.1-3980 et seq.) of Chapter 39 of Title 58.1.

G. The provisions of this section shall not be used to change the method of real estate assessment in any watershed improvement district established prior to January 1, 1976.

§ 3.1-1193. Collection of tax or service charge; proceeds kept in special account; expenditures from such account.

The special tax or service charge levied shall be collected at the same time and in the same manner as county or city taxes with the proceeds therefrom to be kept in a separate account by the county or city treasurer identified by the official name of the watershed improvement district. Expenditures from such account may be made with the approval of the directors of the soil and water conservation district or districts on requisition from the chairman and the treasurer of the board of trustees of the watershed improvement district.

§ 3.1-1194. Fiscal powers of governing body; may poll landowners on question of incurring indebtedness or issuing bonds.

The governing body of any watershed improvement district shall have power, subject to the conditions and limitations of this article, to incur indebtedness, borrow funds, and issue bonds of such watershed improvement district. The circuit court of the county or city in which any portion of the watershed improvement district is located, upon the petition of a majority of the members of the governing body of the watershed improvement district, shall order a referendum at any time not less than thirty days from the date of such order, which shall be designated therein, to determine whether the governing body shall incur indebtedness or issue bonds for one or more of the purposes for which the watershed improvement district was created.

The referendum shall be conducted in the manner prescribed by this article for the conduct of other referendums in the watershed improvement districts.

§ 3.1-1195. Order authorizing governing body to incur indebtedness or issue bonds.

If the owners of at least two-thirds of the land area in the district vote in the election, and if at least two-thirds of the voters in the election vote in favor of incurring the indebtedness or issuing bonds, the circuit court or courts shall enter an order authorizing the governing body of the watershed improvement district to incur indebtedness or issue bonds for one or more of the purposes for which the district was created.

§ 3.1-1196. *Type of indebtedness incurred or bonds issued.*

The type of indebtedness incurred or bonds issued shall be that adopted by the governing body of the watershed improvement district and approved by the Board and the State Council on Local Debt.

§ 3.1-1197. *Annual tax for payment of interest or to amortize indebtedness or bonds.*

The governing body of the watershed improvement district shall, if necessary to pay the interest on the indebtedness or bonds or to amortize such indebtedness or bonds in a manner approved by the State Council on Local Debt, levy an annual tax or service charge in the manner prescribed by § 3.1-1192 on all the real estate in the watershed improvement district subject to local taxation, to satisfy such obligations. This tax, irrespective of any approvals required pursuant to § 3.1-1180, shall be sufficient to pay interest and to amortize such indebtedness or bonds at the times required.

§ 3.1-1198. *Powers granted additional to powers of soil and water conservation district; soil and water conservation district to continue to exercise its powers.*

The powers herein granted to watershed improvement districts shall be additional to the powers of the soil and water conservation district or districts in which the watershed improvement district is situated; and the soil and water conservation district or districts shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise their powers within the watershed improvement district.

§ 3.1-1199. *Power to incur debts and accept gifts, etc.; watershed improvement district to have same powers as soil and water conservation district.*

A watershed improvement district shall have power, as set forth in this article, to incur debts and repay them over the period of time and at the rate or rates of interest, not exceeding eight percent, that the lender agrees to. Any watershed improvement district may accept, receive and expend gifts, grants or loans from whatever source received. In addition, they shall have the same powers, to the extent necessary, within the watershed improvement district that the soil and water conservation district or districts in which the same is located exercise or may possess.

§ 3.1-1200. *Question to be submitted to qualified voters; approval required.*

In connection with any referendum held pursuant to the provisions of this article, the directors shall also provide for the submission of the question involved to the qualified voters of the watershed improvement district and any question required to be submitted to referendum hereunder shall only be deemed to be approved, if approved both by vote of the landowners of the district as here above required and by a majority vote of the qualified voters of the district voting in such referendum.

§ 3.1-1201. *Conduct of referenda.*

The referenda authorized or required by this article shall be conducted pursuant to regulations prescribed by the Board and not as provided for under § 24.2-684.

§ 3.1-1202. *Power of eminent domain.*

In addition to any other powers conferred on it by law, any watershed improvement district organized under the provisions of this article shall be authorized to acquire by eminent domain any lands, property rights, franchises, rights-of-way, easements or other property deemed necessary or convenient for the efficient operation of the district. Such proceedings shall be in accordance with and subject to the provisions of the laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of a public service company and subject to the provisions of Chapters 1.1 (§ 25-46.1 et seq.) and 5 (§ 25-232.01 et seq.) of Title 25.

Article 10.

Conservation, Small Watersheds Flood Control and Area Development Fund.

§ 3.1-1203. *Definitions.*

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

"Facility" means any structures, foundations, appurtenances, spillways, lands, easements and rights-of-way necessary to (i) store additional water for immediate or future use in feasible flood prevention sites; (ii) create the potential to store additional water by strengthening the foundations and appurtenances of structures in feasible flood prevention sites; or (iii) store water in sites not feasible for flood prevention programs, and to properly operate and maintain such stores of water or potential stores of water.

"Fund" or "revolving fund" means the Conservation, Small Watersheds Flood Control and Area Development Fund.

"Storing additional water in feasible flood prevention sites" means storage of water for other than flood prevention purposes above the capacity of any given structure to hold water for the purpose of flood prevention in flood prevention sites within a flood prevention project having a favorable benefit-cost ratio where it is economically feasible to provide the capacity to store additional water or the potential for additional water storage capacity.

§ 3.1-1204. *Fund continued; administrative control.*

The "Conservation, Small Watersheds Flood Control and Area Development Fund," is continued and

shall be administered and used as hereinafter provided. The revolving fund shall also consist of any moneys appropriated by the General Assembly.

The administrative control of the fund and the responsibility for the administration of the provisions of this article are hereby vested in the Virginia Soil and Water Conservation Board. The Board is authorized to establish guidelines for the proper administration of the fund and the provisions of this article.

§ 3.1-1205. Purposes for which fund to be used.

A. The Board is authorized, with the concurrence of the State Treasurer, to order the State Comptroller to make loans from the revolving fund to any county, city, town, water authority, utility or service authority or special taxing district, hereafter referred to as the borrower, having the legal capacity and organizational arrangements necessary for obtaining, giving security for, and raising revenues for repaying authorized loans, and for operating and maintaining facilities for which the loan is made. The money loaned shall be used by the borrower for facilities to store additional water in feasible flood prevention sites or to store water in sites not feasible for flood prevention programs. The amount of any loan or the sum of any outstanding loans to any one borrower shall not exceed \$500,000 without the written approval of the Governor.

B. To promote the economic growth of the Commonwealth, the Board, after public hearing and with the written approval of the Governor, may invest funds from the revolving fund in facilities to store additional water in feasible flood prevention sites for municipal, industrial, and other beneficial uses where localities fail to do so, or in facilities to create the potential to store additional water in feasible flood prevention sites where impoundment projects are being developed to less than optimum potential, thereby allowing the enlargement of such impoundments as the need arises. Such action may be initiated by a request from the soil and water conservation district or districts encompassing such water storage sites.

C. The Board may draw on the revolving fund to meet maintenance expenses incident to the proper management and operation of facilities resulting from the investments authorized by subsection B above. In addition, the Board may draw on the revolving fund for emergency repairs to the above facilities and facilities constituting the security for loans made by authority of subsection A above. The Board shall not provide funds for emergency repairs to facilities constituting security for loans unless it appears to the Board that funds for repairs are not available from other sources.

D. The Board is authorized to purchase, operate and maintain necessary machinery and other equipment suitable for engineering and other operations incident to soil and water conservation and other purposes of the Board. The Board shall have the custody and control of the machinery and other equipment, and shall provide storage for it, and it shall be available to the districts upon terms the Board prescribes. In addition to other terms the Board may prescribe, it shall have authority to execute rental-purchase contracts with individual districts for the equipment, whereby the title to machinery and other equipment purchased under authority of this law may be transferred to such district when approved by the Board. The Board may, in its discretion, sell the same to any person upon terms and conditions it may deem proper. The proceeds derived from the sale or rental of machinery, provided for in this section and in § 3.1-1134, shall be paid into the revolving fund.

E. The Board is authorized to make loans from the revolving fund to any soil and water conservation district for the purchase of necessary machinery and other equipment suitable for engineering and other operations incident to soil and water conservation and other purposes of the district. Terms for loans to districts under this section shall be prescribed by the Board, and payments of interest and principal shall be made to the State Treasurer and credited to the revolving fund.

§ 3.1-1206. Conditions for making loan.

The Board shall authorize the making of a loan under subsection A of § 3.1-1205 only when the following conditions exist:

1. An application for the loan has been submitted by the borrower in the manner and form specified by the Board, setting forth in detail the need for the storage of water, the amount of the loan requested and the use to which the loan shall be applied as well as any efforts made to secure funds from any other source, and such other information required by the Board. The application shall be first submitted to the soil and water conservation district or districts encompassing the watershed wherein the proceeds of the loan would be applied. When the application is approved by the district or districts, the application shall be forwarded to the Board.

2. The borrower agrees and furnishes assurance, satisfactory to the Board, that it will satisfactorily maintain any structure financed in whole or in part through the loans provided by this article.

3. The purpose for which the loan is sought is to acquire land, easements and rights-of-way, or engineering or legal services necessary for a water storage facility or project, or to construct the water storage facility itself.

If the requested loan or any part thereof is for the purpose of acquiring land, easements and rights-of-way, then the loan or part thereof designated for such purpose shall not be granted in the

absence of evidence satisfactory to the Board that the borrower requesting the loan will in fact acquire the land, easements or rights-of-way if the loan is granted.

§ 3.1-1207. Political subdivisions may borrow from other sources.

Any entity eligible under subsection A of § 3.1-1205 may borrow funds as provided in this article before, simultaneously, or after borrowing funds from other sources for the same purpose for which funds are borrowed under the provisions of this article.

§ 3.1-1208. Powers of Board in aid of the provisions of § 3.1-1205.

The Board shall have the following powers to effectuate the provisions of subsection B of § 3.1-1205:

1. To expend funds from the revolving fund for field surveys and investigations, notwithstanding the possibility that the Board may subsequently determine that the proposed investment is not feasible.

2. To make and execute contracts and other instruments necessary or convenient to the construction, improvement, operation and maintenance of facilities.

3. To make agreements with and act as agent for the United States, or any of its agencies, or for this Commonwealth or any of its agencies, or any local government in connection with the acquisition, construction, maintenance, operation, or administration of any project in which the Board has invested funds; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this Commonwealth or any of its agencies or from any other source; and to use or expend such moneys, services, materials, or other contributions in carrying on its investment function.

4. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and improve any properties acquired.

§ 3.1-1209. Record of applications for loans and action taken.

A record of each application for a loan pursuant to § 3.1-1206 received by the Board and the action taken thereon shall be open to public inspection at the office of the Board and shall be presented to the Governor and members of the legislature prior to the budgetary sessions of the General Assembly.

§ 3.1-1210. Period of loan; interest rate; loan shall constitute a lien.

Any loan made pursuant to the provisions of subsection A of § 3.1-1205 may be made for any period not to exceed twenty years and shall bear interest at the rate of one percent annually for the first ten years or until such time as water stored under the provisions of this article is used by the borrower for the purpose stated in the application for the loan, if such use occurs within the first ten years. Interest on the loan for the second ten-year period plus the balance of the first ten-year period during which water was used, if any, shall bear interest at a rate set jointly by the Board and the State Treasury Board. Such interest rate shall conform as nearly as possible to the interest on bonds sold for water development or similar purposes within the Commonwealth within the last six months prior to setting such interest rate, taking into consideration any fluctuations of the money market which may have occurred subsequent to the last sale of such bonds within the six-month period. If no such bonds have been sold within the six-month period, the interest rate shall be set to conform as nearly as possible with the rate charged by the commercial money market for such or similar purposes. However, when the attendant facilities, such as but not limited to a filtration plant, pumping station, and pipelines, necessary for the use of the water stored cost the borrower more than \$100,000, interest on the loan for the second ten-year period or the ten-year period plus the balance of the first ten-year period during which water was used, if any, shall be at the rate of three percent annually. Any borrower receiving a loan under the provisions of this article shall agree to repay the loan in equal annual installments of principal together with interest at the applicable rate on the unpaid balance of the loan. Payments of interest and principal shall be made to the State Treasurer and credited to the revolving fund, and evidence of debt taken for such loan shall be deposited with the State Treasurer and kept by him. Whenever a loan is made in accordance with the provisions of this article, a lien is hereby created against all of the funds and income of the borrower, as well as upon any real or personal property acquired with loan proceeds. Prepayment of the principal of any such loan, in whole or in part, may be made by the borrower without penalty; however, the borrower shall be liable for interest accrued on the principal at the time of prepayment.

§ 3.1-1211. Recovery of money due to fund.

If a borrower defaults on any payment due the State Treasurer pursuant to § 3.1-1210 or on any other obligation incurred pursuant to the provisions of this article, the amounts owed to the fund by the borrower may be recovered by the State Comptroller transferring to the revolving fund the amount of the payment due to the revolving fund from the distribution of state funds to which the defaulting borrower may be entitled pursuant to any state law; or, any money which ought to be paid into the revolving fund may be recoverable with interest by the Commonwealth, in the name of the Board, on motion in the Circuit Court of the City of Richmond. The Attorney General shall institute and prosecute such proceedings after a request for such action has been made by the Board.

1782 § 3.1-1212. Limits on expenditures authorized under subsection B of § 3.1-1205; sale of resulting
1783 facilities; sale of stored water; renting facilities.

1784 Expenditures by the Board for any one facility under the provisions of subsection B of § 3.1-1205
1785 shall not exceed \$500,000 without the written approval of the Governor for construction and seeding,
1786 acquisition of land, easements, and rights-of-way, engineering costs, appraisal costs, legal services, and
1787 other costs related to the facility. The Board is authorized to sell any facility resulting from an
1788 expenditure authorized by subsection B of § 3.1-1205 to any entity to whom a loan could be made
1789 pursuant to the provisions of subsection A of § 3.1-1205 under the terms and conditions prescribed
1790 hereinafter. Conveyances of any such facilities shall be executed by the chairman of the Board acting
1791 pursuant to a resolution of the Board and shall be approved by the Governor and Attorney General as
1792 to form and substance. Upon the transfer of title of such facilities, the purchasing entity shall grant an
1793 easement or right-of-way to the appropriate soil and water conservation district to assure the continued
1794 operation, inspection and repair of the works of improvement on the land sold, and in all cases, the
1795 purchasing entity shall agree to maintain the facility in a satisfactory manner. The Board may contract
1796 with an entity eligible to borrow from the revolving fund pursuant to subsection A of § 3.1-1205, for the
1797 sale of water stored at facilities constructed by expenditures pursuant to subsection B of § 3.1-1205.
1798 However, it is not the intent of this article to provide a means whereby the Commonwealth shall store
1799 and sell water to such entities; therefore, unless extenuating circumstances prevail, such contract shall
1800 be entered into with the understanding that such entities shall acquire the rights of the Board in the
1801 water storage facility by a future date agreeable to the Board and entity. The Board may lease such
1802 facilities to any agency or entity of government, corporation, organization or individual for recreational
1803 purposes or any other uses which will not impair the facilities' value for future water supply. Proceeds
1804 from the sale of stored water or sale or rental of such facilities shall be placed in the revolving fund.

1805 § 3.1-1213. Purchase price and terms of sales authorized by § 3.1-1212.

1806 When an entity, as the term is used in § 3.1-1212, agrees to purchase a facility and the rights
1807 incident thereto resulting from the storing of additional water in feasible flood prevention sites or the
1808 strengthening of foundations and appurtenances of feasible flood prevention sites in which the Board
1809 has invested pursuant to subsection B of § 3.1-1205, the purchase price shall be the total expenditure
1810 from the revolving fund by the Board for such facility plus a surcharge of three percent annually on all
1811 funds expended for the facility, other than funds expended pursuant to subsection C of § 3.1-1205, from
1812 the date of expenditure to the date of purchase by the purchasing entity.

1813 With the approval of the Board, the purchasing entity may finance the purchase price, or any portion
1814 thereof, of the facility under the terms and conditions of subsection A of § 3.1-1205 and § 3.1-1210, and
1815 the provisions of §§ 3.1-1210 and 3.1-1211 shall apply, mutatis mutandis, to such financing. If a
1816 purchasing entity finances the purchase of a facility as hereinabove provided, such purchasing entity
1817 shall not be precluded from applying for a loan authorized by subsection A of § 3.1-1205 to the limit
1818 imposed by that section to complete any facility purchased to store additional water.

1819 § 3.1-1214. Disposition of facilities financed under article when part of debt remains outstanding.

1820 No facility financed from the revolving fund under the provisions of this article, in whole or in part,
1821 shall be sold by an entity when any portion of the debt owed to the revolving fund remains unpaid.
1822 However, if the purchaser is an entity having the taxing power, then such sale may be made even
1823 though all or a portion of the debt to the revolving fund remains unpaid, if the purchasing entity agrees
1824 to assume the obligation to repay the outstanding debt and all interest thereon. If such sale is approved
1825 by the Board, then the purchasing entity shall be solely liable for the obligations undertaken by the
1826 principal debtor, and the principal debtor shall be released therefrom.

1827 § 3.1-1215. Acquisition of lands, easements, and rights-of-way.

1828 A. The Board, in addition to the provisions of § 3.1-1205, may use funds from the revolving fund to
1829 pay the cost of the purchase of needed lands, easements, and rights-of-way, or to share the costs thereof
1830 with soil and water conservation districts for soil and water conservation and flood control needs when
1831 the following conditions have been met:

1832 1. The program of work for the project has been found by the Board to be feasible, practicable and
1833 will promote the health, safety, and general welfare of the people of the Commonwealth;

1834 2. The soil and water conservation district or its cosponsors of the project have obtained a minimum
1835 of seventy-five percent of the necessary lands, easements, and rights-of-way in the project, or portion of
1836 a project (subwatershed) for which funds are requested prior to the use of funds for this purpose;

1837 3. The district and its cosponsors, if any, have submitted a plat to the Board showing the lands,
1838 easements and rights-of-way previously acquired, as well as the remaining lands, easements and
1839 rights-of-way necessary to the project but not acquired. In addition, the Board may require any other
1840 information which it deems necessary. The district and cosponsors shall certify to the Board that funds
1841 are unobtainable from any other source to acquire the remaining land, easements, and rights-of-way
1842 necessary to the project, in whole or in part;

1843 4. The funds to be used for lands, easements, and rights-of-way shall be granted to the district or

cosponsor of the project in whose name the land, easement, or right-of-way shall be recorded.

B. No later than ten years from the purchase of lands and rights-of-way with the funds provided by this section for soil and water conservation and flood control needs, or upon the completion of the watershed project, or a portion of the project (subwatershed) and upon written demand of the owners, their heirs or assigns from whom such land and rights-of-way were acquired, such property shall be reconveyed by the district or cosponsor to the former owners, their heirs or assigns, upon repayment of the original purchase price, without interest, unless such lands and rights-of-way are granted or retained for public purposes as hereinafter provided. After ten years, and no later than twelve years after the purchase date of lands and rights-of-way with the funds provided by this section, unless such lands and rights-of-way are granted or retained for public purposes or reconveyed as provided above, it shall be the duty of the district or cosponsor, to sell the property purchased wholly or partially from the funds provided by this section. The Board shall specify the terms for any such sale. Upon the sale or reconveyance of such property, the district or cosponsor shall remit to the Board a pro rata share of the proceeds of such sale or repayment pursuant to a reconveyance, equal to the percentage of the total cost of the acquisition of such property from any allocation of funds made hereunder and all such remittances shall be deposited to the revolving fund. The district or cosponsor of the project in whose name the acquisition of the land or rights-of-way to be sold is recorded shall retain any easement or right-of-way to assure the continued operation, maintenance, inspection, and repair of the works of improvement constructed on the land to be sold. The district and cosponsor of a project, with the approval of the Board, may grant for public purposes fee title to lands and rights-of-way acquired under the provisions of this section to any political subdivision, including a cosponsor, an agency of the state or federal government, or a regional park authority.

§ 3.1-1216. Sale to Board of property and rights-of-way acquired by condemnation.

For the purpose of subsection B of § 3.1-1205 the Board is authorized to purchase property and rights-of-way condemned for watershed and water storage purposes under §§ 25-232.01, 15.1-238.1, 21-118 and 15.1-1250 and the condemnor is authorized to sell any such property or rights-of-way to the Board.

Article 11.

Stream Restoration Assistance Program.

§ 3.1-1217. Definitions.

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

"Continual accelerated erosion" means a rapid increase in the erosion rate of stream banks caused by loss of vegetation, diversion of water by constrictions, undermining, and other resultant effects of severe floods.

"Natural streams" means nontidal waterways which are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Program" means the Stream Restoration Assistance Program.

"Stream restoration" means any combination of structural and vegetative measures which may be taken to restore, stabilize, and protect a natural stream which has been damaged by severe flooding and is consequently subject to continual accelerated erosion or other detrimental effects. The term shall also include measures to return stream flow to its original channel in cases where the stream course has been changed as a result of flooding.

§ 3.1-1218. Establishment and administration of Program.

The Stream Restoration Assistance Program is continued to protect the natural streams of the Commonwealth. The Program shall aid in the stabilization and protection of natural streams which have been severely damaged by naturally occurring flooding events. The Program shall be administered by the Board in cooperation with soil and water conservation districts and local governments throughout the Commonwealth. To assist in the development of the Program, the Board shall seek the advisory opinion of the State Water Control Board and the Department of Game and Inland Fisheries.

§ 3.1-1219. Program applicability.

The Stream Restoration Assistance Program shall apply only to natural nontidal streams which have been damaged as a result of naturally occurring flooding events. Streams which have been damaged by land-disturbing activities, vehicular traffic, or other human causes shall not be eligible for assistance under the Program.

§ 3.1-1220. Application for assistance.

Landowners who wish to receive assistance under the Program shall apply to the Board. The Board shall provide copies of the applications to the chairmen of the soil and water districts, where applicable, and the local governing bodies having jurisdiction in the area where the damage has occurred.

§ 3.1-1221. Damage inspections and reports.

1905 A. Upon receipt of an application for assistance, the Board shall schedule a field inspection of the
1906 affected stream segment to determine the extent of damages. Such field inspections should be scheduled
1907 and coordinated so that affected landowners and appropriate conservation districts and local
1908 government officials can participate.

1909 B. Following the field inspection, the Board shall prepare an inspection report which includes a
1910 recommendation concerning the extent to which the Commonwealth should assist the applicant in
1911 restoring the stream.

1912 C. Draft copies of the inspection report shall be submitted to the applicant, persons who attended the
1913 field inspection, and chairmen of conservation districts and local governing bodies having jurisdiction in
1914 the area where the damage has occurred. These persons shall be given forty-five days to submit written
1915 comments and recommendations concerning the report. The final report shall contain copies of all
1916 written comments and recommendations received.

1917 § 3.1-1222. Types of assistance.

1918 Upon approval of an application for assistance, the Board may provide technical and financial
1919 assistance to the applicant according to the following guidelines:

1920 1. The Board shall maintain a technical staff to recommend stream restoration measures, to estimate
1921 costs, and to prepare engineering plans and specifications which may be used to implement such
1922 measures. The actual preparation of plans and specifications shall not be undertaken until the applicant
1923 certifies that adequate funding is available, and that the plans will be implemented within one year after
1924 all necessary permits are obtained.

1925 2. Financial assistance may be provided to applicants to the extent that funds for that purpose are
1926 available to the Board. In no case shall such assistance exceed fifty percent of the total cost of
1927 construction. Funds shall not be disbursed until the Board has made a final inspection and has
1928 determined that all work is adequately completed in accordance with the plans and specifications.

1929 3. To receive financial assistance, applicants must certify that they have explored and exhausted all
1930 other possible funding sources. In cases where a national disaster area has been declared, no funding
1931 shall be provided under the Program until it is determined to what extent the federal government will
1932 participate in stream restoration along the segments under consideration.

1933 When requests for financial assistance exceed available resources, the Board shall set priorities and
1934 allocate funds as it deems appropriate to accomplish the maximum benefit.

1935 § 3.1-1223. Board action on assistance requests.

1936 The Board shall consider requests for technical and financial assistance from landowners whose
1937 property borders on or contains natural streams which have been damaged by flooding. Upon
1938 consideration of the application, inspection report, and any other relevant information, the Board shall
1939 determine whether or not assistance shall be provided, and the type and extent of assistance to be
1940 provided. In making such determinations, the Board shall consider the potential for continual
1941 accelerated erosion of the stream banks in the future and other possible detrimental effects to the stream
1942 which may result if no corrective measures are undertaken. In cases where it is determined that there is
1943 not likely to be accelerated stream bank erosion or other significant detrimental effects in the future, the
1944 assistance request shall not be approved.

1945 § 3.1-1224. Account established.

1946 An account designated as the Stream Restoration Account shall be established to provide grants to
1947 landowners who make requests under the Stream Restoration Assistance Programs. The Board may seek
1948 money from federal and private sources to establish and maintain the Stream Restoration Fund.

1949 2. That Articles 1 (§§ 10.1-500 through 10.1-501.1), 2 (§§ 10.1-502 through 10.1-505), 3 (§§ 10.1-506
1950 through 10.1-559), 4 (§§ 10.1-560 through 10.1-571), 5 (§§ 10.1-572 and 10.1-573) of Chapter 5 of
1951 Title 10.1, and Articles 1 (§§ 10.1-600 through 10.1-603), 1.2 (§§ 10.1-603.16 through 10.1-603.23), 2
1952 (§§ 10.1-604 through 10.1-613), 3 (§§ 10.1-614 through 10.1-635), 4 (§§ 10.1-636 through 10.1-649)
1953 and 5 (§§ 10.1-650 through 10.1-657) of Chapter 6 of Title 10.1 of the Code of Virginia are
1954 repealed.

1955 3. That the Department of Conservation and Recreation's "Flood Prevention and Protection
1956 Assistance Fund Regulations" (VR 217-02-00) shall be administered by the Department of
1957 Agriculture and Consumer Services and shall remain in full force and effect notwithstanding the
1958 transfer of such regulations.

1959 4. That all records and equipment necessary to and related to the continued operation of the Flood
1960 Damage Reduction Act (§ 10.1-600 et seq.), the Flood Prevention and Protection Assistance Fund
1961 (§ 10.1-603.16 et seq.), the Dam Safety Act (§ 10.1-604 et seq.) and the Comprehensive Flood
1962 Control Program (§§ 10.1-658 and 10.1-659) shall be transferred from the Department of
1963 Conservation and Recreation to the Department of Emergency Services.

1964 5. That any grants or loans issued by the Department of Conservation and Recreation or the
1965 Virginia Soil and Water Conservation Board under the Flood Prevention and Protection
1966 Assistance Regulations shall remain in full force and effect, but the administrative responsibility of

1967 the Commonwealth of Virginia for such grants and loans shall be transferred to the Department
1968 of Agriculture and Consumer Services.

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