

# Draft

## VIRGINIA CODE COMMISSION

*Monday, May 7, 2018 - 10:00 a.m.  
Richmond, Virginia 23219*

**Members Present:** John S. Edwards; Ryan T. McDougle; Gregory D. Habeeb; James A. Leftwich, Jr.; Robert L. Calhoun; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Chris Nolen; Thomas M. Moncure, Jr.; Samuel T. Towell; Mark Vucci

**Members Absent:** Charles S. Sharp

**Staff Present:** Scott Meacham, Amigo Wade, Kristen Walsh, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Lilli Hausenfluck, Division of Legislative Services (DLS)

**Others Present:** Senator Adam Ebbin; Tom Lisk, Chair, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis; Janet Carpenter, Treasury Department; Ellen Coates, Office of the Attorney General

**Call to order; welcome and introduction of new members:** Senator Edwards, chair, called the meeting to order at 10:05 a.m. He introduced Delegate Leftwich; Rita Davis, Governor's designee; and Samuel Towell, Attorney General designee, and welcomed them to the Commission.

**Approval of minutes:** The minutes of the November 20, 2017, meeting of the Commission, as printed and distributed to the members, were approved without objection.

**Election of vice chair:** Senator Edwards asked for a motion to nominate a vice chair for the Commission. Delegate Leftwich nominated Delegate Habeeb, and Judge Lilley seconded the nomination. Delegate Habeeb accepted the nomination. He stated that the Commission should adopt a policy to rotate the chairmanship between the Senate and the House. The Commission elected Delegate Habeeb as vice chair of the Commission.

**Reappoint members of the Administrative Law Advisory Committee (ALAC):** Tom Lisk requested that the Commission reappoint four members of ALAC whose terms expire this month: Tom Lisk, Brooks Smith, Alex Skirpan, and Eric Page. At later meetings, Mr. Lisk will request additional reappointments or new appointments to fill vacancies. On motion of Mr. Nolen, properly seconded, the Commission reappointed the four individuals as requested.

Mr. Lisk will present ALAC's work plan at the next meeting.

**Referral of Senate Joint Resolution 216 (2017) - repeal the constitutional prohibition on same-sex marriages and civil unions:** Senate Bill 782 (2017), which repeals statutory prohibitions on same-sex marriages and civil unions, and Senate Joint Resolution 216 (2017), which repeals a similar provision in the Constitution of Virginia, were referred by the Senate Committee for Courts of Justice to the Commission. At its November 2017 meeting, the Commission approved a bill for introduction in the 2018 Session of the General Assembly to repeal §§ 20-45.2 and 20-45.3 of the Code of Virginia as obsolete. In light of the procedural policy of the House of Delegates not to consider constitutional amendments in short sessions, the Commission deferred action on SJR 216 until after the 2018 legislative session. Mark Vucci stated that in the 2018 legislative session, the Commission's bill (Senate Bill 50) and a similar bill introduced by Senator Ebbin (Senate Bill 3) were carried over to the 2019 session.

Senator Edwards reminded the Commission that it had received an opinion from the Attorney General indicating that §§ 20-45.2 and 20-45.3 were obsolete within the meaning of § 30-141 of the Code of

Virginia and that the similar prohibition in Article I, § 15-A of the Constitution of Virginia violated the U.S. Constitution due to the United States Supreme Court's decision in *Obergefell v. Hodges*.

Senator Ebbin explained that his resolution provides the voters an opportunity to speak on this matter, and the earliest that will occur is November 3, 2020. The purpose of the resolution is to have the Constitution reflect the law of the land.

Senator McDougle stated that Senator Ebbin will need a new resolution for the 2019 session. The Commission briefly discussed whether a new resolution was necessary. Senator Ebbin indicated he would introduce a new resolution in the 2019 legislative session. Senator Edwards stated that the Commission's motion would be a motion to recommend a change in the Constitution. Delegate Habeeb stated that when the Commission adopts its 2019 legislative package, the Commission would support the statutory repeal and the change to the Constitution as part of the package.

On motion of Mr. Towell, seconded by Mr. Miller, the Commission recommended to the General Assembly that the Constitution be amended to remove the prohibitions on same-sex marriages and civil unions.

**Code of Virginia publication contract:** Mr. Vucci stated that the most recent contract with LexisNexis was signed in 2009 and contained an expiration date of August 31, 2016, with two two-year renewal options. The second two-year renewal option was approved last year, and the final contract expiration will be August 31, 2020. Mr. Vucci recommended forming a work group for a publication contract that should be in place by the end of 2019. The Commission designated Mr. Vucci, Mr. Miller, and Ms. Davis as members of the work group.

**Contract renewal for publication of the Virginia Register of Regulations:** Karen Perrine stated that the current contract with LexisNexis for publication of the Virginia Register of Regulations will expire June 1, 2018. The contract provides for renewal every two years. Staff recommends renewal on the same terms as the current contract, and LexisNexis is in agreement. On motion of Mr. Miller, duly seconded, the Commission approved renewal of the contract until June 1, 2020. Mr. Nolen abstained from voting; LexisNexis is a client of his law firm, although he does not personally represent or provide services to LexisNexis.

**Recodification of Title 55, Property and Conveyances:** Amigo Wade reviewed the current status of the recodification project and the schedule for 2018. Staff will present the complete recodification report in October and the final draft bill in November.

Mr. Wade, assisted by Kristen Walsh, presented proposed Subtitle V - Miscellaneous, Chapters 1 through 6. During the review, the Commission discussed or took action as follows:

**Chapter 1 - Escheats.**

Line 59: Delegate Leftwich questioned the replacement of "seised" with more modern terminology, as there is a body of law based on the word "seised." Mr. Wade said the recodification work group expressed no concerns about removal of that term but that staff will check with the work group.

Lines 101–104: Mr. Wade explained that the substantive change regarding the number of jurors required to concur in the verdict after an inquest is recommended because the section contains conflicting requirements. The Treasury Department and Office of the Attorney General agree with the recommendation to use a majority vote. Ms. Walsh stated there is no case law on this matter and that her research had indicated the intent of the General Assembly was to use a majority vote.

Mr. Miller proposed that the Commission recommend changing the number of jurors required to return a verdict to a majority as proposed by staff. The change will be highlighted in the recodification report as a substantive change. Ellen Coates, Assistant Attorney General, stated that it has been a very long time since this process has been used to escheat a property.

Senator McDougle proposed that the Commission recommend seven as the required number of jurors and draft a separate Commission bill to change seven to a majority. He stated that making substantive changes in Commission bills undermines the way General Assembly members consider those bills.

After discussion, Senator Edwards determined that the review of the remainder of the subtitle should continue and this issue would be revisited.

Line 161: Rita Davis questioned the impact of deleting the phrase "if in written form" on a holdover lease that converts from a yearly agreement in writing to a month-to-month without being in writing. After discussion, the Commission decided to retain the phrase "if in written form."

At the request of Judge Lilley, Ms. Coates and Janet Carpenter, Department of the Treasury, explained and clarified the escheat process. Ms. Carpenter stated that since the law changed some years ago allowing localities to sell property for back taxes within two years, her office has not seen any escheats.

Senator Edwards directed staff to obtain information and background from escheators and persons involved in the addition of "majority" in 1988.

#### Chapter 2 - Uniform Disposition of Unclaimed Property Act.

Line 2: Mr. Miller questioned the addition of "uniform" to the chapter title, as the Virginia statute has not kept pace with the Uniform Law Commission's uniform acts. Mr. Wade suggested replacing "uniform" with "Virginia," and the Commission concurred.

Line 513: Ms. Davis suggested retaining the phrase "in his discretion" to have a standard for review by a circuit court. Mr. Wade and Ms. Walsh explained that use of the word "may" on line 512 set the standard for review.

Lines 657–658: Mr. Vucci stated that before Senator McDougle left, he expressed a concern about the reference to "a newspaper of general circulation in the county or city where the property is to be sold," as many small localities no longer have papers. Mr. Wade explained that newspapers such as the *Richmond Times-Dispatch* and the *Virginia Pilot* would qualify, as each is a newspaper of "general circulation" in a locality.

Chapter 3 - Property Loaned to Museums. Mr. Wade advised that all changes in this chapter were technical.

#### Chapter 4 - Drift Property.

Lines 17–46: Mr. Wade stated that §§ 55-202 through 55-206 are repealed as obsolete.

#### Chapter 5 - Trespasses; Fences.

Line 80: Senator Edwards questioned changing "creep" to "pass." Mr. Vucci advised that Senator McDougle had the same question. After discussion, the Commission determined to leave "pass," as it includes "creep."

Line 130: Mr. Towell asked if the addition of the phrase "of general circulation in such county" imposed a greater publication burden. Ms. Walsh indicated that it would; staff was attempting to make

it consistent with similar requirements in other sections. Mr. Wade added that this provision concerns an important declaration that requires adequate notice.

Lines 224–233: Mr. Towell asked if jurisdiction would always be in general district court, no matter the dollar value. Mr. Wade stated that staff will research the limits of damages. Ms. Davis stated that the changes seem to eliminate the requirement that an owner get a warrant within three days. Ms. Walsh advised that the work group felt three days was not practical. Mr. Wade explained that the change also was to modernize the provision to reflect current practice and stated that staff will revisit the provision.

Lines 242–246: Delegate Leftwich stated that the changes regarding how a governing body may make local fence law appear to be substantive. Ms. Walsh stated that in the past, the Commission has included substantive changes in a recodification bill. The changes are listed prominently at the beginning of the recodification report in the Executive Summary. Ms. Walsh explained that "by ordinance" was added because under Title 15.2, counties act by ordinance, resolution, or motion and not by declaration, and the addition clarifies existing law. After discussion, Senator Edwards directed staff to check with stakeholders, such as the Virginia Municipal League and the Virginia Association of Counties.

Line 402: Mr. Wade stated that this reference to "a newspaper having general circulation" will be reviewed with similar provisions previously discussed.

#### Chapter 6 - Virginia Self-Service Storage Act.

Delegate Leftwich asked whether portable storage units, often called PODS, fall under this Act, particularly those that are transferred to a large warehouse for storage. Ms. Walsh stated that staff will research the issue and report to the Commission at a later meeting.

Lines 180–183: Ms. Walsh informed the Commission that there are six savings clauses in the Code of Virginia and generally they are very old. In this case, the date is July 1, 1981. The Commission discussed whether there could be a rental agreement entered into before July 1, 1981, that is still in effect somewhere in Virginia. After discussion, the Commission determined not to repeal the savings clause provision.


**Status of 2018 Code Commission–related bills:** Karen Perrine reviewed the chart of Code Commission–related bills in the 2018 Session of the General Assembly. The bills recommended by the Commission relating to Title 23.1 recodification cleanup, obsolete election laws, obsolete provisions and venue in criminal cases in Title 16.2 or 17.1, notification of withholding orders, and time frame for a hearing officer's report passed. As previously discussed, Senate Bill 50 was continued to 2019 in the Senate Committee for Courts of Justice.

House Bill 246 regarding the duties of the Commission was continued to 2019 in the Senate Committee on Rules. House Bill 413 and Senate Bill 603 were based on the report regarding the use of gender-specific and gender-neutral language that was presented to the Commission at its October 2017 meeting; neither bill passed.

**Other business:** Mark Vucci stated that the terms of Mr. Nolen and Judge Lilley on the Commission expire this summer. Under § 30-145 A 5 of the Code of Virginia, the Commission may recommend the appointment of a citizen member. Both appointments are made by the Speaker of the House. Mr. Moncure moved that the Commission request that the Speaker reappoint Mr. Nolen and Judge Lilley. Mr. Towell seconded, and the motion passed.

**Public comment, adjournment:** Senator Edwards opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting was adjourned.

The next meeting is Monday, June 18, 2018, at 10 a.m. in the Speaker's Conference Room, 6th Floor, Pocahontas Building.

Commonwealth of Virginia		
<div>Thomas A. Lisk, Chair</div> <hr/> <div>Andrew Kubincanek, Program Coordinator</div>		<div>Pocahontas Building 900 E. Main St. Eighth Floor Richmond, Virginia 23219 (Phone) 804-786-3591 (Fax) 804-692-0625 akubincanek@dls.virginia.gov <a href="http://codecommission.dls.virginia.gov/alac/alac.shtml">http://codecommission.dls.virginia.gov/alac/alac.shtml</a></div>
Administrative Law Advisory Committee		

## 2018 Work Plan Administrative Law Advisory Committee

### **Hearing Officer Deskbook Update**

The Administrative Law Advisory Committee (ALAC) will form a work group to update the Hearing Officer Deskbook to account for statutory changes. This work group will also consider a suggestion from a hearing officer regarding the creation of standard rules and procedures or recommended best practices for administrative cases.


### **Executive Review Process**

The work group will continue to discuss recommendations on ensuring the efficiency and effectiveness of the executive review process for rules and regulations.

Thomas A. Lisk, Chair  
Roger L. Chaffe  
Jeffrey S. Gore

Paul Kugelman  
Eric M. Page  
Karen Perrine

Mike Quinan  
Alexander F. Skirpan, Jr.  
Brooks Smith  
Kristi Wright

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Andrew Kubincanek, Program Coordinator		
Administrative Law Advisory Committee		

## Administrative Law Advisory Committee 2018 Reappointments

### Committee Member

### Term Expiration

Jeffrey S. Palmore-Reed Smith

New

**Jeffrey S. Palmore** - Jeff Palmore joined Reed Smith in 2013 after serving as a senior legal and policy advisor for the Governor of Virginia. His practice focuses on representing clients before the Virginia General Assembly, Executive branch agencies, and Virginia local governments. He also advises clients on federal and state campaign finance issues, lobbying law, election law, and government ethics matters. He assists a number of clients with federal and state compliance issues related to political contributions, political activity, and lobbying.

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Brooks Smith  
Kristi Wright

## **Virginia Code Commission**

### **Recommendations for Sections Not Set Out in Title 15.2**

#### **§ 15.2-1128. Certain cities authorized to exchange information regarding criminal history.**

Applicants for employment as paramedics or emergency medical technicians making application to the personnel office of any city having a population of not less than 260,000 nor more than 264,000 according to the 1990 United States Census shall be required to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant; however, such applicants may be required, if required by local ordinance, to pay the cost of the fingerprinting or criminal records check or both.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the city. If an applicant is denied employment because of information appearing in his criminal history record, the locality shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant. The information shall not be disseminated except as provided in this section.

**RECOMMENDATION:** Place into the Code using current section number. Replace population bracket with City of Norfolk.

#### **§ 15.2-1130. Liability for failure to provide adequate security or crowd control.**

Any city having a population between 100,000 and 110,000 or between 150,000 and 160,000 may provide by ordinance that any person who has negligently failed to provide adequate security or crowd control at a sporting event, restaurant, night club or other business or commercial activity that draws large crowds of people may be liable in a separate civil action for the cost associated with any emergency response by the law-enforcement agency or emergency medical services personnel of such city caused by the sponsor, owner or tenant of any sporting event, restaurant, night club or other business or commercial establishment who negligently failed to provide adequate security or crowd control. Such person shall be liable to the city in an amount not to exceed \$1,000.

**RECOMMENDATION:** Place into the Code using current section number. Replace population brackets with the Cities of Portsmouth and Chesapeake.

#### **§ 15.2-1201.1. Discharging employee for service on board prohibited; penalty.**

A board member of a county with a population between 31,000 and 31,500 shall not be discharged from employment as a result of his absence from employment due to attendance at regular board meetings upon giving reasonable notice to his employer of such absence. Any employer violating the provisions of this section shall be subject to a civil penalty of up to



\$2,500.

**RECOMMENDATION:** Place into the Code using current section number. Replace population bracket with Buchanan County.

**§ 15.2-1212. Frederick County; resolution of board of supervisors; referendum; election.**

A. Upon resolution passed by the board of supervisors of Frederick County and filed with the circuit court asking for a referendum all the question of Frederick County being governed by a board of supervisors, one or more, elected from each magisterial district and a chairman elected from the county at large, the court shall by order entered of record, require the regular election officials at the November, nineteen hundred seventy-four regular election to open a poll and take the sense of the qualified voters of the county on the question submitted as herein provided. The clerk of the county shall cause a notice of such election to be published in a newspaper published in or having a general circulation in the county, once a week for three consecutive weeks, and shall post a copy of such notice at the door of the courthouse of the county.

B. The regular election officers of the county at the time designated in the order authorizing the vote shall open the polls at the various voting places in the county and conduct the election in such manner as is provided by law for other elections, insofar as the same is applicable. The election shall be by ballot; and the ballots shall be prepared by the electoral board and distributed to the various election precincts as in other elections. The ballots used shall be printed to read as follows: "Do you approve the adoption of the county's board of supervisors being elected by magisterial districts and the chairman elected from the county at large?

[ ] Yes

[ ] No"

The squares to be printed in such ballots shall not be less than one quarter nor more than one-half inch in size.

Any person voting at such election shall place a (✓) or a cross (X) or (+) mark or a line (-) in the square before the appropriate word indicating how he desires to vote on the question submitted.

The ballots shall be counted, returns made and canvassed as in other elections, and the results certified by the commissioners of election to the circuit court, or the judge thereof in vacation, shall enter of record the results of the election. If it shall appear by the report of the commissioners of election that a majority of the qualified voters of the county voting approve the adoption of the county's board of supervisors being elected from magisterial districts and the chairman elected from the county at large, the circuit court of the county, or the judge thereof in vacation, shall enter of record such fact.

C. At the next succeeding election, following approval of the plan provided for herein, at which the county's board of supervisors are to be elected, the form of organization of such county's board of supervisors shall be in accordance with the form provided for herein.

D. All county and district officers of such county, unless otherwise sooner removed, shall continue to hold office until their successors are elected and have qualified.

E. A referendum as described hereinabove to revert to the former method of electing the chairman and supervisors may be conducted upon a resolution of the board of supervisors as provided hereinabove. In lieu of such resolution by the board of supervisors, a referendum as described hereinabove may be conducted upon a petition filed with the circuit court of the county or the judge thereof in vacation; signed by ten percent of the qualified voters of such county requesting such referendum, the court of the judge shall proceed as in the case of a resolution by the board of supervisors.

**RECOMMENDATION:** Place into the Code using current section number.

**§ 15.2-1213. Referendum in Loudoun County on election of the county chairman from the county at large.**

A. The board of supervisors of Loudoun County may by resolution petition the circuit court of the county for a referendum on the question of whether there should be a chairman of the county board of supervisors elected at large. Alternatively, a like referendum may be requested by a petition to the circuit court signed by registered voters equal in number at least to ten percent of the registered voters of the county as of January 1 of the year in which the petition is filed. Upon the filing of either petition, which shall be filed not less than ninety days before a November general election, the circuit court shall order the election officials at the next November general election held in the county to open the polls and take the sense of the voters on the question set forth in this subsection. The clerk of the court shall publish notice of the referendum to be published once a week for four consecutive weeks prior to the referendum in a newspaper having general circulation in the county, and shall post a copy of such notice during the same time at the door of the courthouse of the county. The ballot shall be printed as follows:

"Shall the chairman of the county board of supervisors, to be known as the county chairman, be elected by the voters of the county at large?

\_Yes

\_No"

The election shall be held and the results certified as provided in § 24.1-165 § 24.2-684.

B. If a majority of the qualified voters voting in such referendum vote in favor of the election of a county chairman of the board of supervisors from the county at large, beginning at the next general election for the board of supervisors, the county chairman shall be elected for a term of the same length and commencing at the same time as that of other members of the county board of supervisors. The county board of supervisors thereafter shall consist of one member elected from each district of such county and a county chairman elected by voters of the county at large. No

person may be a candidate for county chairman at the same time he is a candidate for membership on the county board from any district in the county.

The county chairman shall be the chairman of the county board of supervisors and preside at the meetings thereof. The chairman shall represent the county at official functions and ceremonial events. The chairman shall have all voting and other rights, privileges, and duties of other members of the board and additional rights, privileges, and duties such others not in conflict with general law this article as the board may prescribe. The chairman also shall have the power to set the agenda for board meetings; however, any such agenda may be modified by an affirmative vote of the board. The duties of the chairman during board meetings include but are not limited to (i) enforcement of time limits, as appropriate; (ii) enforcement of the rules relating to debate and the rules relating to order and decorum within the board; and (iii) response to inquiries from board members relating to parliamentary procedure.

In addition, the chairman shall have the power to (i) call special meetings of the board in accordance with the procedures and restrictions of § 15.2-1418, mutatis mutandis; (ii) appoint county representatives to regional boards, authorities, and commissions which are authorized in advance by the board; however, any such appointment shall be subject to revocation by an affirmative vote of a majority of all members elected to the board acting within the 30-day period following that appointment; and (iii) create and appoint committees of the board and name presiding members of such committees as authorized by the board. Any such committee or appointment shall be subject to revocation by an affirmative vote of a majority of all members elected to the board. However, the powers of the chairman themselves may only be modified by unanimous vote of all board members. At the first meeting at the beginning of its term and any time thereafter when necessary, the board of supervisors shall elect a vice chairman from its membership, who shall perform the duties of the chairman in his absence.

**RECOMMENDATION:** Place into the Code using current section number.

**§ 15.2-1213.1. Referendum in Page County on election of the county chairman from the county at large.**

A. On or before August 15, 2004, the circuit court for Page County shall order a referendum to be held on the question of whether the qualified voters of the County shall elect a chairman of the board of supervisors from the county at large to serve as chairman and as an additional member of the board. The referendum shall be held at the time of the 2004 November general election. The question to be placed on the ballot shall be as follows:

"Shall the chairman of the county board of supervisors, to be known as the county chairman, be elected by the voters of the county at large?"

☐ Yes

☐ No"

The election shall be held and the results certified as provided in §§ 24.2-682 and 24.2-684.

B. Following certification of the election results by the electoral board, the court shall enter an order proclaiming the results of such election and a duly certified copy of such order shall be transmitted to the board of supervisors of the County and the State Board of Elections. If a majority of the voters voting in the referendum vote in favor of the election of a chairman at large, the first election for a chairman shall be held at the November 2005 general election, and the candidate elected shall serve for a term of four years.

C. The county chairman shall be the chairman of the county board of supervisors and preside at the meetings thereof. The chairman shall represent the County at official functions and ceremonial events. The chairman shall have all voting and other rights, privileges, and duties of other members of the board and additional rights, privileges, and duties not in conflict with general law as the board may prescribe. At the first meeting at the beginning of its term and any time thereafter when necessary, the board of supervisors shall elect a vice chairman from its membership, who shall perform the duties of the chairman in his absence.

**RECOMMENDATION:** Place into the Code using current section number.

#### **§ 15.2-1226. Authority of certain counties over Smith Mountain Lake.**

A. The governing bodies of Bedford, Franklin and Pittsylvania Counties may by ordinance regulate the land of their respective counties in and around Smith Mountain Lake below the 800 foot contour concerning the location, size and length of wharves, piers, boathouses, docks, bulkheads, and similar structures to provide for safe navigation of the lake. Such ordinance shall not conflict with the provisions of the Uniform Statewide Building Code or with the rights and responsibilities accorded Appalachian Power Company under its federal license to operate the Smith Mountain Project. The ordinance may include:

1. Procedures for approval of construction of such by the governing body or its designated agent; and
2. Penalties for violation of the ordinance.

B. Such governing bodies may act jointly in the enactment, administration and enforcement of such an ordinance pursuant to § 15.2-1300.

**RECOMMENDATION:** Place into the Code using current section number.

#### **§ 15.2-1227. Well covers in Caroline County.**

Caroline County may by ordinance provide that owners of property keep covers on water wells and may after reasonable notice cover uncovered water wells by its own agents or employees, in

which event the cost or expense thereof shall be chargeable to and paid by the owners of such property and may be collected by the county as taxes are collected.

**RECOMMENDATION:** Place into the Code using current section number.

**§ 15.2-1228. Repair of foundation damage in certain counties.**

Any county having a county charter with a population between 200,000 and 215,000 may by ordinance provide that the county may use public funds to repair existing residential dwellings damaged by foundation failures caused by high clay content soil subject to moisture-related shrinking and swelling. Such ordinance may place conditions on the use or expenditure of such public funds. The expenditure of such public funds by the county under this subsection during a fiscal year shall not exceed two percent of the county's locally derived revenues from that fiscal year.

For purposes of this subsection, the term "public funds" shall include only general tax revenues from real and personal property, and shall not include any special fee assessment, or other tax or charge, however denominated.

The county shall keep funds collected for building permit fees and any funds received from any other fees collected under any special act in separate accounts, and separate from other locally derived revenues, and may not use fees collected for building permits or fees collected under any special act, directly or indirectly, for purposes authorized under this subsection.

**RECOMMENDATION:** Place into the Code using current section number. Replace population description with Chesterfield County.

**§ 15.2-1635.1. Maximum total compensation for clerk of court in certain counties.**

In Arlington, Fairfax, Fauquier, Loudoun and Rappahannock Counties wherein the clerk of the circuit court serves also as the clerk of the general district court and juvenile and domestic relations district court under the provisions of § 16.1-69.38, such clerk may be paid a sum not to exceed five thousand dollars, by local supplement, for each of the two district courts served.

**RECOMMENDATION:** Place into the Code using current section number.

**§ 15. 2-2158. Fee for street lighting.**

A. Frederick County, which provides street lighting service to certain of its residents, may by ordinance charge a fee for the provision of the service, not to exceed the actual cost incurred by the county to procure, develop and maintain such service, including a reasonable reserve.

B. So long as the benefits of any street lighting can be shown to inure to the specific benefit of identifiable neighborhoods or discrete customers in approximately equivalent amounts, the fee

may be calculated by dividing the total amount of the street lighting charge by the number of affected customers.

C. The fee authorized by this with which the owner of any such property has been charged and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and administered and enforced in the same manner as provided in Chapter 39 (§ 58.1-3900 et seq.) of Title 58. 1.

**RECOMMENDATION:** Place into the Code using current section number.

**§ 15.2-2257. Procedure to modify certain covenants in certain counties.**

Upon a verified petition signed by the owners, other than the original subdivider, of ten percent of the lots in any subdivision previously recorded, the circuit court for any county with a 1980 population of more than 27,500 but less than 29,000, in which such subdivision lies, shall have authority to conduct a hearing and modify any and all covenant provisions of any previously recorded deed of dedication or other document relating to road maintenance fees as to any roads located within the subdivision. Upon receipt of the petition, the court shall, if all owners of lots within such subdivision are not before the court, enter an order of publication under the provisions of subdivision 3 of § 8.01-316, making the owners of all lots not owned by petitioners parties to the cause, which shall then be docketed and set for trial on the chancery side of the court. Should the court, after hearing evidence and argument of counsel, find that the streets and roads in the subdivision require maintenance in excess of that provided for with the road maintenance funds specified in the covenants to permit emergency vehicles ready access to the residents of the subdivision to ensure the public health, safety, and welfare, the court may increase the fees required for road maintenance to the extent reasonably necessary to permit emergency vehicles ready access to the residents of the subdivision. The funds collected shall be accounted for as provided in § 15.2-2256. Nothing herein shall be construed to prohibit the members of a subdivision association from proceeding under the provisions of subsection C of § 55-344 the Property Owners' Association Act (§ 55-508 et seq.).

**RECOMMENDATION:** Place into the Code using current section number. Replace population bracket with Shenandoah County.

**§ 15.2-2277. Franklin County may require that notice be given to deed grantees of certain disclaimers regarding responsibility for roads; county eligible to have certain streets taken into secondary system.**

Franklin County may by ordinance require that the clerk of the circuit court for the county, when a division of land creates any parcels equal to or greater than five acres, notify every grantee shown all the recorded deed for such parcel (i) that any roads constructed to serve parcels of five acres or more will not be accepted by the Virginia Department of Transportation or by the county unless the roads meet applicable subdivision street standards of the Department, and (ii) that neither the Department nor the county will maintain such roads until such time as the roads are brought into

compliance with applicable subdivision street standards of the Department in effect at the time and without cost to funds administered by the Department or the county. The notice shall be by first class mail to the address shown on the recorded deed.

The county shall be deemed to have met the definition of "county" under subsection B of § 33.1-72.1 upon adoption of such ordinance and shall be eligible to have certain streets taken into the secondary system pursuant to § 33.1-72.1 without additional action being necessitated with regard to subdivision ordinances.

**RECOMMENDATION:** Place into the Code using current section number. Update Code references.

#### **§ 15.2-3245. Validation of proceedings.**

All proceedings heretofore taken in contraction of the corporate limits of the City of Fairfax, are hereby validated, ratified, approved and confirmed, and all such contractions or attempted contractions of the corporate limits of such city are hereby declared to have been validly created and established, notwithstanding any defects or irregularities in the creation thereof.

**RECOMMENDATION:** Place into the Code using current section number.

### **CHAPTER 46. MULTICOUNTY TRANSPORTATION IMPROVEMENT DISTRICTS.**

**RECOMMENDATION:** Place entire chapter into the Code using current chapter and section numbers. Consider naming the localities included under the definition of "county" in § 15.2-4602.

#### **Article I. General Provisions.**

#### **§ 15.2-4600. Short title; application.**

This chapter shall be known as the "Multicounty Transportation Improvement Districts." No district shall be created under this chapter after June 30, 1993.

#### **§ 15.2-4601. Purpose of chapter.**

It is the intent of the legislature to encourage the formation of transportation improvement districts in multicounty circumstances in order to facilitate regional transportation initiatives, and to gain access to revenues in addition to general state and local taxes for the purpose of accelerating construction of vital transportation improvements.

It is the further intent of the legislature to grant to governing bodies of counties in which such transportation improvement districts may be formed the authority to provide long-term zoning and land use protection to properties paying the special taxes which further the purpose of this chapter.

It is the further intent of the legislature that all districts created pursuant to this chapter provide such long-term zoning protection where such special taxes have been imposed.

It is the further intent of the legislature to declare that the formation of transportation improvement districts, and the granting of long-term land use protection in exchange for the payment of special taxes, promote the public health, safety, and welfare.

### **§ 15.2-4602. Definitions.**

As used in this chapter, unless the context indicates another meaning or intent:

"Commission " means the governing body of the local district.

"Cost" means all or any part of the cost of acquisition, construction, reconstruction, alteration, landscaping, or enlargement of a public mass transit system or highway which is located in counties which are authorized by this chapter to create a transportation improvement district, including the cost of the acquisition of land, rights-of-way, property rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure on land so acquired, including the cost of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses and such other expenses as may be necessary, or incident to the construction of the project or, solely as to districts created pursuant to this chapter after July 1, 1990, the creation of the district (the costs of which creation shall not exceed \$150,000), and of such subsequent additions thereto or expansion thereof, and to determining the feasibility or practicability of such construction, the cost of financing such construction, additions or expansion and placing the project and such additions or expansion in operation.

"County" means any county having a population of more than 500,000 and any adjoining county.

"District" or "local district" means any transportation improvement district created under the provisions of § 15.2-4603.

"District advisory board" or "advisory board" means the board appointed by the commission in accordance with § 15.2-4605.

"Federal agency" means and includes the United States of America or any department, bureau, agency or instrumentality thereof

"Owner" or "landowner" means the person or entity which has the usufruct, control or occupation of the taxable real property as determined by the commissioner of revenue of the jurisdiction in which the subject real property is located pursuant to § 58.1-3281.

"Revenues" means any or all fees, tolls, taxes, rents, notes, receipts, assessments, moneys and income derived by the local district and includes any cash contributions or payments made to the



local district by the Commonwealth or any agency, department or political subdivision thereof or by any other source.

"Town" means any town having a population of more than 1,000.

"Transportation improvements" means any and all real or personal property utilized in constructing and improving (i) any mass transportation project and (ii) any primary highway or portion thereof, located within any district created pursuant § 15.2-4603. Such improvements include, without limitation, public mass transit systems, public highways, all buildings, structures, approaches, and other facilities and appurtenances thereto, rights-of-way, bridges, tunnels, transportation stations, terminals, areas for parking, and all related equipment and fixtures.

### **§ 15.2-4603. Creation of district.**

A. A transportation improvement district shall be created under this chapter only by the resolutions of the boards of supervisors of the adjoining counties, as defined in § 15.2-4602, upon the joint petition to each board of supervisors in which the proposed district is located of the owners of at least fifty-one percent of either the land area or the assessed value of land in each county which is within the boundaries of the proposed district and which has been zoned for commercial or industrial use or is used for such purposes. Any proposed district shall include land in each county and may include any land within a town located within such county. Such petitions should:

1. Set forth the name and address describe the boundaries of the proposed district;
2. Describe the transportation facilities proposed within the district;
3. Describe a proposed plan fa providing such transportation facilities with the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;
4. Describe the benefits which can be expected from the provision of such transportation facilities within the district;
5. Request each board to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, each local board of supervisors shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own taxable real property within the boundaries of the proposed district may appear and show cause why any property or properties; should not be included in the proposed district. If real property situated within a town is include in the proposed district, the board of supervisors shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution, determine if it wishes such property to be included within the proposed district, and shall deliver a copy of any such resolution to the board of supervisors at the public hearing required hereunder; the resolution shall be binding upon the board of supervisors with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the county. At least ten days shall intervene between the third publication and the date set for the hearing.

**§ 15.2-4603. Creation of district; extension of term of district.**

A. A transportation improvement district shall be created under this chapter only by the resolutions of the boards of supervisors of the adjoining counties, as defined in § 15.2-4602, upon the joint petition to each board of supervisors in which the proposed district is located of the owners of at least fifty-one percent of either the land area or the assessed value of land in each county which is within the boundaries of the proposed district and which has been zoned for commercial or industrial use or is used for such purposes. Any proposed district shall include land in each county and may include any land within a town located within such county. Such petitions should:

1. Set forth the name and describe the boundaries of the proposed district;
2. Describe the transportation facilities proposed within the district;
3. Describe a proposed plan for providing such transportation facilities within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;
4. Describe the benefits which can be expected from the provision of such transportation facilities within the district; and
5. Request each board to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, each local board of supervisors shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own taxable real property within the boundaries of the proposed district may appear and show cause why any property or properties should not be included in the proposed district. If real property situated within a town is included in the proposed district, the board of supervisors shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution, determine if it wishes such property to be included within the proposed district, and shall deliver a copy of any such resolution to the board of supervisors at the public hearing required hereunder; the resolution shall be binding upon the board of supervisors with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the county. At least ten days shall intervene between the third publication and the date set for the hearing.

C. If each board of supervisors finds the creation of the proposed district would be in furtherance of the applicable county comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety and general welfare, each board of supervisors shall pass a resolution, which

shall be reasonably consistent with the petition, creating the district and providing for the appointment of an advisory board in accordance with § 15.2-4605. Each resolution shall provide a description with specific terms and conditions of all commercial and industrial zoning classifications which shall be in force in the district upon its creation, together with any related criteria, and a term of years, not to exceed twenty years, as to which each such zoning classification and each related criterion set forth therein shall not be eliminated, reduced, or restricted if a special tax is imposed as provided in § 15.2-4607. However, this commitment shall not limit the legislative prerogative of the board of supervisors in any county in which a district is wholly or partly located with respect to land use approvals of any kind arising from requests initiated by an owner of property therein, or as specifically required to comply with the provisions of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or the regulations adopted pursuant thereto, or other state law, or the requirements of the federal Clean Water Act (33 U.S.C. § 1342 (p)) and regulations promulgated thereunder by the federal Environmental Protection Agency or applicable state regulations.

Notwithstanding the foregoing provisions of this subsection, in the case of any district created under this section prior to July 1, 1992, all commercial and industrial zoning classifications, and all zoning ordinance text and regulations relating thereto, including site plan regulations, regarding allowable uses, densities, setbacks, building heights, required parking, and open space in force in the district on the date of the district's creation shall be deemed to have been a part of the ordinance creating the district, and shall remain at least as permissive without limitation, reduction, or restriction, except as provided hereinabove with respect to land use approvals of any kind or nature arising from requests initiated by landowners or as required to comply with the Chesapeake Bay Preservation Act or regulations adopted pursuant thereto, other state law or the requirements of the federal Clean Water Act (33 U.S.C. § 1342 (p)) and regulations promulgated thereunder by the federal Environmental Protection Agency or applicable state regulations, until the earlier of July 1, 2037, or for a period of fifteen years from the date the district was created so long as there remain any outstanding monetary obligations of the district or the commission incurred pursuant to the powers of the commission set forth in this chapter. Any rezonings, with respect to individual parcels of land in a district which have been duly approved by a board of supervisors prior to July 1, 1992, shall remain in effect, regardless of who initiated such rezonings. Each resolution shall also provide that the district shall expire either thirty-five years from the date upon which the resolution is passed or when the district is abolished in accordance with § 15.2-4616; however, the term of any district created under this chapter is extended for a period of fifteen years beyond any such thirty-five-year term.

After the public hearing, each board of supervisors shall deliver a true copy of its proposed resolution creating the district to the petitioning landowners or their attorney-in-fact. Any petitioning landowner may then withdraw his signature on the petition in writing at any time prior to the vote of the board of supervisors. If any signatures on the petition are withdrawn as provided herein, the board of supervisors may pass the proposed resolution in conformance herewith only upon certification that the petition continues to meet the provisions of subsection A of this section with respect to minimum acreage or assessed value as the case may be. After the boards of supervisors have adopted resolutions creating the district, the district shall be established and the name of the district shall be "The ..... Transportation Improvement District."

#### **§ 15.2-4604. Commission established.**

The powers of the local district created in accordance with this chapter shall be exercised by a commission composed of four of the elected members of each of the boards of supervisors of the counties in which it is located, appointed by their respective boards of supervisors. The Chairman of the Commonwealth Transportation Board, or his designee, shall be an ex officio member of the commission.

The members of the commission shall elect one of their number chairman. The chairman may or may not be the chairman or presiding officer of a board of supervisors. In addition, commission members, with the advice of the district advisory board, shall elect a secretary and treasurer, who may or may not be a member or employee of a board of supervisors or other governmental body represented on the commission. The offices of secretary and treasurer may be combined. A majority of commission members shall constitute a quorum, and the vote of a majority of the commission membership shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers and duties. The 1990 amendments to the provisions of this paragraph shall not be effective for the Route 28 Primary Highway Transportation Improvement District until such time as the special tax revenues from the District exceed the total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years.

#### **§ 15.2-4605. Creation of district advisory boards.**

Within thirty days after the establishment of a district in accordance with the procedures provided in § 15.2-4603, the commission shall appoint a district advisory board of twelve members, consisting of: three members appointed by the board of supervisors of each participating county, each of whom either resides on or owns land within that portion of the district which is located in the county from which the member is appointed or is a designee of a landowner as described below; three members who own land zoned for commercial or industrial use within that portion of the district from each participating county or who are designees of landowners as described below who are elected by the landowners of the district, voting on a basis weighted by acreage owned or assessed value, as the case may be. Such elections may be conducted by the commission by mail ballot of owners of land within that portion of the district in each participating county. A corporation owning land within the district may designate one of its officers or employees, and a partnership owning land within the district may designate an individual who is one of its general partners, and such designees are eligible to be appointed members of the district advisory board. Each member shall be appointed for a definite term of four years, except the initial appointment of advisory board members shall provide that the terms of half of the members shall be for two years. Thereafter, elections shall be conducted biennially on the anniversary of the creation of the district in the same manner as described in the preceding provisions of this section. Members may be reelected or reappointed provided that they, or the corporation or partnership they represent, own land zoned for commercial or industrial use within the district at the time of their reelection or reappointment. If a vacancy occurs with respect to an advisory member initially elected by a board of supervisors, or any successor of such a member, that board of supervisors shall appoint a new member who is a resident or landowner within the local district. If a vacancy occurs with

respect to an advisory member initially elected by landowners, or any successor of such a member, then the board of supervisors shall appoint a new board member who is a landowner within the district elected in the manner provided herein.

The members shall serve without pay, but the commission shall provide the advisory board with facilities for the holding of meetings and shall appropriate funds needed to defray the reasonable expenses and fees of the board, which shall not exceed \$20,000 annually, including, without limitation, expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on all annual budget submitted by the advisory board, approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the board shall be called by the chairman or by two members of the board upon written request to the secretary of the board. A majority of the members shall constitute a quorum. The 1990 amendments to the provisions of this paragraph shall not be effective for the Route 28 Primary Highway Transportation Improvement District until such time as the special tax revenues from the District exceed the total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years.

The advisory board shall present an annual report to the commission on the transportation needs of the district and on the activities of the board, and the advisory board shall present special reports on transportation matters as requested by the commission or the board of supervisors of either county concerning taxes to be levied pursuant to § 15.2-4607.AA

#### **§ 15.2-4606. Powers and duties of commission.**

The commission shall have the following powers and duties:

I. To construct, reconstruct, alter, improve, and expand (i) any public mass transit system in the district or (ii) any primary highway located within the district having no more than two through travel lanes as of January 1, 1987, which is located in both counties which comprise the district, and which was not financed under the authority provided by the Commonwealth of Virginia Transportation Facilities Bond Act of 1979.

2. To acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any public mass transit system or primary highway transportation improvements in the district and to sell, lease as lessor, transfer or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing regarding such disposition. At the hearing, the residents and owners of property within the district shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. To negotiate and contract with any person, authority or state or federal agency or instrumentality with regard to any matter necessary and proper to provide any public mass transit system or primary highway transportation facility, including, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement, expansion or maintenance of any transportation improvements in the district. No such contract shall extend for a period that exceeds thirty years.
4. To enter into a continuing service contract for a purpose authorized by this chapter and to make payments of the proceeds received from the special taxes levied pursuant to § 15.2-4607, together with any other revenues, for the payment of installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under the contract, subject to the limitation imposed by § 15.2-4607. However, payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract may not obligate a county to make payments for services of the district.
5. To accept the allocations, contributions or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, state or federal agency or instrumentality for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.
6. To contract for the extension and use of any public mass transit system or primary highway into territory outside of the local district on such terms and conditions as the commission determines.
7. To employ and fix the compensation of personnel who may be deemed necessary for the construction, operation or maintenance of any public mass transit system or primary highway in the district.
8. To have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, to request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations.
9. To invest any funds, received pursuant to § 15.2-4608, which are not otherwise obligated to make payments to the Commonwealth Transportation Board or to any other purpose, in accordance with Chapter 18 (§ 2. 1-327 et seq.) of Title 2.1.

**§ 15.2-4607. Annual special improvements tax; use of revenues.**

Upon the written request of the district commission made concurrently to both boards of supervisors pursuant to subdivision 8 of § 15.2-4606, each board of supervisors may levy and collect an annual special improvements tax on taxable real estate zoned for commercial or industrial use or used for such purposes and taxable leasehold interests in that portion of the improvement district within its jurisdiction. Notwithstanding the provisions of Article 4 (§ 58. 1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied upon the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than \$0.20

per \$100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203. Such special improvement taxes shall be collected at the same time and in the same manner as county taxes are collected, and the proceeds shall be kept in a separate account. The effective date of the initial assessment shall be January 1 of the year following adoption of the resolution creating and establishing the district. All revenues received by each county pursuant to such taxes shall be paid to or at the direction of the district commission for its use pursuant to §§ 15.2-4606 and 15.2-4608.

**§ 15.2-4608. Agreements with Commonwealth Transportation Board; payment of special improvements tax to Transportation Trust Fund.**

A. The district may contract with the Commonwealth Transportation Board for the Board to perform any of the purposes of the district.

The district may agree by contract to pay over all or a portion of the special improvements tax and all or a portion of the sums received pursuant to subsection C to the Commonwealth Transportation Board, which shall hold such sums in and disburse them from a special account. The Commonwealth Transportation Board shall have the right to assign, convey, pay over, or deliver such sums to a third party in connection with the provision of services to the district pursuant to an agreement entered into under this chapter or any other applicable law.

Prior to executing any such contract, the district shall seek the agreement of each board of supervisors creating the district that the county administrator or other officer charged with the responsibility for preparing the county's annual budget shall submit in the budget for each fiscal year in which any Commonwealth of Virginia Transportation Contract Revenue Bonds issued for such district are outstanding, all amounts to be paid to the Commonwealth Transportation Board under such contract during such fiscal year.

If the amount required to be paid to the Commonwealth Transportation Board under the contract is not paid for a period of sixty days after the amount is due, the Commonwealth Transportation Board is hereby directed, until the amount has been paid, to withhold sufficient funds from funds appropriated and allocated, pursuant to the highway allocation formula as provided by law, to the highway construction district in which a project covered by such contract is located or to any county in which such project is located and to use such funds to satisfy the contractual requirements.

B. While nothing in this article shall limit the authority of any county to change the classification of any parcel of land zoned for commercial or industrial use or used for such purpose, upon the written request or approval of the owner of the property affected by such change after the effective date of any such contract, except for changes in zoning classification from commercial or industrial use to residential use approved in accordance with subsection C, should a change in zoning classification so requested result in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board pursuant to the contract, the district shall request the board of supervisors to increase the rate of such tax by such amount up to the maximum authorized rate as may be necessary to prevent such shortfall. If, however, a deficit remains after any rezoning and

adjustment of the tax rate or the rate is at the maximum authorized rate and cannot be increased, then the amount of funds otherwise appropriated and allocated pursuant to the highway allocation formula as provided by Article 1.1 (§ 33.1-23.01 et seq.) of Chapter 1 of Title 33.1 to the highway construction district in which a project covered by such contract is located or to a county in which such project is located, shall be reduced by the amount of such deficit and used to satisfy the deficit.

C. For any property within the district for which a county changes its zoning classification from commercial or industrial use to residential use upon the written request or approval of the owner, the county shall require the simultaneous payment from the property owner of a sum representing the present value of the future special improvements taxes estimated by the county to be lost as a result of such change in classification. On a case-by-case basis, however, the board of supervisors may, in its sole discretion, defer, for no more than sixty days, the effective date of such change in zoning classification. Upon deferral, the lump sum provided for in this subsection shall be paid to the county in immediately available funds acceptable to the county before the deferred effective date. If the landowner fails to make this lump sum payment as and when required, the change in zoning classification shall not become effective and the ordinance shall be void. Special improvements taxes previously paid in the year of the zoning change may be credited toward the payment on a prorated basis. The portion of the payment that may be credited shall be that portion of the year following the change in zoning classification. The district and the Commonwealth Transportation Board shall agree to a method of calculating the present value of the loss of future special improvements taxes resulting from such a change in zoning classification and the procedure for payment of such funds to the Commonwealth Transportation Board. Sums paid pursuant to this subsection which represent the estimated special improvements taxes which otherwise would have been imposed upon the rezoned property in any given year shall be included in calculations which may be made pursuant to §§ 15.2-4604 and 15.2-4605 in order to determine whether special tax revenues from the district have exceeded total debt service on the bonds issued pursuant to Chapter 676 of the 1988 Acts of Assembly for three consecutive years. Whenever any county acts in accordance with such an agreement between the district and the Commonwealth Transportation Board, the change in zoning classification shall not be considered to have resulted in a shortfall in the total annual revenues from the imposition of the special improvements tax and the payments required to be made to the Commonwealth Transportation Board.

**§ 15.2-4609. Jurisdiction of counties and officers, etc., not affected.**

Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the respective local governing bodies; sheriffs; treasurers; commissioners of the revenue; circuit, district, or other courts; clerks of any court; magistrates or any other county or state officer in regard to the area embraced in any district, or restrict or prevent any county or town or its governing body from imposing and collecting taxes or assessments for public improvements as permitted by law. Any county which creates a district pursuant to this section may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in subsection C of § 15.2-4603 for a term not to exceed twenty years from the date on which such district is created.

**§ 15.2-4610. Allocation of funds to local transportation districts.**



The board of supervisors of any county which has created a local district pursuant to § 15.2-4603, may advance funds, or provide matching funds, from money not otherwise specifically allocated or obligated, from whatever source received or generated, including without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the project for which it was created. The Commonwealth Transportation Board may allocate funds to a district only from the construction district or districts in which such transportation district is located pursuant to the highway allocation formula to assist the district with all approved project as provided by law.

**§15.2-4611. Reimbursement for advances to local transportation district.**

The commission shall direct the district treasurer to reimburse the county or town from any funds of the district, not otherwise specifically allocated or obligated, to the extent that a county or town has made advances.

**§ 15.2-4612. Cooperation between districts and other political subdivisions.**

Any local district created under the provisions of this chapter may enter into agreements with localities and other political subdivisions within the Commonwealth for joint or cooperative action in accordance with the authority contained in § 15.2-1300.

**§ 15.2-4613. Tort liability.**

No pecuniary liability of any kind shall be imposed on the Commonwealth or on any county, town, or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance, by or on the part of a district created under this chapter, its agents, servants, or employees.

**15.2 -4614. Approval by Commonwealth Transportation Board.**

The district may not construct or improve a mass transit system or public highway without the approval of the Commonwealth Transportation Board and without the approval of each county in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise his powers of condemnation pursuant to §§ 25-46.1 through 25-46.36, §§ 33.1-89 through 33.1-132, or § 33.1-229 for the purpose of acquiring property for transportation improvements within the district. Upon completion of the construction or improvement, the Commonwealth Transportation Board shall take the public highway into the primary system of state highways for purposes of maintenance and subsequent improvement as necessary. Upon acceptance by the Commonwealth of the highway into the primary system of highways, all rights, title and interest in the right-of-way held by the commission and improvements of such highway shall vest in the Commonwealth. Upon completion of the construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of the mass transit system shall vest in the Northern Virginia Transportation Commission or other agency or instrumentality of the Commonwealth.

**NOTE:** Update Code sections

**Article 2.**  
**Boundary Changes for Local Districts.**

**§ 15.2-4615. Enlargement of local districts.**

A. The district shall be enlarged by resolutions of the boards of supervisors of the participating counties upon the concurrent joint petitions of the commission and the owners of at least fifty-one percent of the land area of the district within each county, and of at least fifty-one percent of the land area located within the territory sought to be added to the district; however, any such territory shall be contiguous to the existing district. Joint petitions shall present the information required by § 15.2-4603 A. Upon receipt of Stich petitions, each county shall use the standards and procedures described in subsections B and C in § 15.2-4603; however, the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property should not be included in the proposed district.

B. If each county board of supervisors finds the enlargement of a local district would be in accordance with the applicable county comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety and general welfare, and if each board finds that enlargement of the district does not limit or adversely affect the rights and interests of any party which has contracted with the district, each board shall pass identical resolutions providing for the enlargement of the district.

**§ 15. 2-4616. Abolition of local transportation districts.**

A. Any district created under the provisions of this chapter may be abolished by resolutions passed by each board of supervisors upon the joint petition of the commission and the owners of at least fifty-one percent of the land area located within the district in each county. A joint petition:

1. May state whether the purposes for which the district was formed substantially have been achieved;
2. May state that all obligations theretofore incurred by the district have been fully paid;
3. May describe the benefits which can be expected from the abolition of the district; and
4. Shall request each board of supervisors to abolish the district.

B. Upon receipt of such a petition, each board shall use the standards and procedures described in subsections B and C of § 15.2-4603, mutatis mutandis; however, all interested persons who either reside on or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If each board of supervisors finds that the abolition of the district would be (i) in accordance with the applicable county comprehensive plan for the development of the area, (ii) in the best

interests of the residents and owners of the property within the district, and (iii) in furtherance of the public health, safety and general welfare; and that all debts of the district have been paid and the purposes of the district either have been fulfilled or should not be fulfilled by the district; or that each board of supervisors, with the approval of the voters of each county, has agreed to assume the debts of the district, then each board shall pass a resolution abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the county in which the district was located.

### **Article 3. Construction of Chapter.**

#### **§ 15.2-4617. Chapter to constitute complete district for acts authorized; liberal construction.**

This chapter shall constitute full and complete authority for the district, without regard to the provisions of any other law, for the doing of the acts and things herein authorized. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof. Any court test concerning the validity of any bonds which may be issued for transportation improvements made pursuant to this chapter may be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26.

**NOTE:** This section is currently set out.

#### **§ 15.2-4618. Validation of districts.**

All proceedings held in the creation of a district pursuant to § 15.2-4603 prior to March 1, 1988, are hereby ratified, validated and confirmed, and all such districts so created or attempted to be created pursuant to the provisions of Article 1 (§ 15.2-4600 et seq.) of this chapter are declared hereby to have been validly created, notwithstanding any defects or irregularities in the creation of such a district or in the selection or appointment of the commission or the advisory board of such a district.

### **Chapter 47 Transportation Improvement District in Individual Localities.**

**RECOMMENDATION:** Place entire chapter into the Code using current chapter and section numbers. Consider naming the localities included under the definition of "locality" in § 15.2-4701.

### **Article 1. General Provisions.**

#### **§ 15.2-4700. Short title; application.**

This chapter shall be known as the "Transportation Improvement District in Individual Localities Act." No district shall be created under this chapter after June 30, 1993.

### **§ 15.2-4701. Definitions.**

As used in this chapter, unless the context indicates another meaning or intent:

"Commission" means the governing body of the local district.

"Cost" means all or any part of the cost of acquisition, construction, reconstruction, alteration, landscaping, utilities, parking, or enlargement of a public mass transit system or highway which is located in localities which are authorized by this chapter to create a transportation improvement district, including the cost of the acquisition of land, rights-of-way, properly rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure Oil land so acquired, including the cost of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during construction and, if deemed advisable by the commission, for a reasonable period after completion of such construction, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses and such other expenses as may be necessary or incident to the construction of the project, or creation of the district (which shall not exceed \$150,000), and of such subsequent additions thereto or expansion thereof, and to determining the feasibility or practicability of such construction, the cost of financing such construction, additions or expansion and placing the project and such additions or expansion in operation.

"District" or "local district" means any transportation improvement district created under the provisions of § 15.2-4702.

"District advisory, board" or "advisory board" means the board appointed by the commission in accordance with § 15.2-4704.

"Federal agency" means and includes the United States of America or any department, bureau, agency, or instrumentality thereof.

"Locality" means (i) any county that has the county executive form of government and is located adjacent to a county with a population of more than 500,000 according to the 1980 or any subsequent census, (ii) any county that has been granted a county charter and has a population of more than 100,000 according to the 1980 or any subsequent census, and (iii) any city that is located adjacent to a county that has been granted a county charter and has a population of more than 100,000 according to the 1980 or any subsequent census.

"Owner" or "landowner" means the person or entity which has the usufruct, control or occupation of the taxable real property as determined by the commissioner of revenue of the jurisdiction which the subject real property is located pursuant to § 58.1-3281.

"Revenues" means any or all fees, tolls, taxes, rents, notes, receipts, assessments, moneys and income derived by the local district and includes any cash contributions or payments made to the local district by the Commonwealth or any agency, department or political subdivision thereof or by any other source.

"Town" means any town having a population of more than 1,000 as determined by the 1980 census.

"Transportation improvements" means any and all real or personal property utilized in constructing and improving any public mass transit system or any highway or portion or interchange thereof including utilities and parking facilities within the secondary, primary, or interstate highway system of the Commonwealth or any highway included in the county's land use and transportation plan located within the district created pursuant to § 15.2-4702. Such improvements include, without limitation, public mass transit systems or public highways, all buildings, structures, approaches, and other facilities and appurtenances thereto, rights-of-way, bridges, tunnels, transportation stations, terminals, areas for parking and all related equipment and fixtures.

#### **§ 15.2-4702. Creation of district.**

A. A transportation improvement district shall be created under this chapter only by the resolution of the local governing body of the locality in which the proposed district is located, upon the petition to the governing body (i) of the owners of at least fifty-one percent of either the land area or assessed value of land which is within the boundaries of the proposed district and which has been zoned for commercial or industrial use or is used for such purposes or (ii) in a county with a population of more than 100,000 according to the 1980 or any subsequent census which has been granted a county charter, of fifty-one percent of the owners of land which is designated for such purposes in the county's land use and transportation plan and is not zoned for residential use at the time the district is created.

The roads, intersections, and rights-of-way thereof which form boundaries of these districts shall be considered as part of each respective district. Any proposed district may include any land within a town in such county. Such petitions should:

1. Set forth the name and describe the boundaries of the proposed district;
2. Describe the transportation facilities proposed within the district;
3. Describe a proposed plan for providing such transportation facilities within the district and describe specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;
4. Describe the benefits which can be expected from the provision of such transportation facilities within the district; and
5. Request the local governing body to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, the governing body shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own taxable real property within the boundaries of the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property within a town is included in the proposed district, the governing body shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution, determine if it wishes such property to be included within the proposed district, and shall deliver a copy of any such resolution

to the board of supervisors at the public hearing required hereunder; the resolution shall be binding upon the governing body with respect to the inclusion or exclusion of such properties within the proposed district. The petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the locality. At least ten days shall intervene between the third publication and the date set for the hearing.

C. If the local governing body finds the creation of the proposed district would be in furtherance of the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of real property within the proposed district, and in furtherance of the public health, safety, and general welfare, the governing body of the qualifying locality may, at its option, pass a resolution, which shall be reasonably consistent with the petition, creating the district and providing for the appointment of all advisory board in accordance with § 15.2-4704. The resolution shall provide: (i) a description with specific terms and conditions of all commercial and industrial zoning classifications which shall be in force in the district upon its creation, together with any related criteria, and a term of years, not to exceed twenty years, as to which each such zoning classification and each related criteria set forth therein shall not be eliminated, reduced, or restricted, except upon the written request or approval of the owner of any property affected by a change, or as specifically required to comply with the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or other state law and (ii) that the district shall expire either thirty-five years from the date upon which the resolution is passed or when the district is abolished in accordance with § 15.2-4714.

After the public hearing, the local governing body shall deliver a true copy of its proposed resolution creating the district to the petitioning landowners or their attorney-in-fact. Any petitioning landowner may then withdraw his signature on the petition in writing at any time prior to the vote of the local governing body. If any signatures on the petition are withdrawn as provided herein, the local governing body may pass the proposed resolution in conformance herewith only upon certification that the petition continues to meet the provisions of subsection A of this section with respect to minimum acreage or assessed value as the case may be. After the local governing body has adopted resolutions creating the district, the district shall be established and the name of the district shall be "The ..... Transportation Improvement District."

#### **§ 15.2-4703. Commission established.**

A. The powers of the local district created in accordance with this chapter shall be exercised by a commission composed of three of the elected members of the local governing body of the locality in which it is located, appointed by such governing body. The Chairman of the Commonwealth Transportation Board, or his designee, shall be a member of the commission, ex officio.

B. The commission members shall elect one of their number chairman. The chairman may not be the chairman or presiding officer of the local governing body. In addition, the commission members, with the advice of the district advisory board, shall elect a secretary and treasurer, who may not be members or employees of the governing body. The offices of secretary and treasurer may be combined. A majority of commission members shall constitute a quorum, and the vote of a majority of commission members shall be necessary for any action taken by the

commission. No vacancy in commission membership shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers and duties.

#### **§ 15.2-4704. Creation of district advisory boards.**

Within thirty days after the establishment of a district in accordance with the procedures provided in § 15.2-4702, the local governing body shall appoint a district advisory board of seven members. All members shall reside all or own or represent commercially or industrially zoned land within the district. Should there not be enough residents or landowners within a district to appoint a seven-member advisory board, then such board shall consist of the lesser number of existing residents or landowners. Each member shall be appointed for a definite term of four years, except the initial appointment of advisory board members shall provide that the terms of three of the members shall be for two years. If a vacancy occurs with respect to all advisory member initially appointed by the local governing body, or any successor of such a member, the local governing body shall appoint a new member who is a representative or owner of commercially or industrially zoned property within the local district.

The members shall serve without pay, but the local governing body shall provide the advisory board with facilities for the holding of meetings, and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the advisory board which shall not exceed \$20,000 annually, including without limitation expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget submitted by the board, and approved by the commission, sufficient to carry out its responsibilities under this chapter. The advisory board shall elect a chairman and a secretary and such other officers as it deems necessary. The board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the board shall be called by the chairman or by two members of the board upon written request to the secretary of the board. A majority of the members shall constitute a quorum.

The advisory board shall present all annual report to the commission on the transportation needs of the district and on the activities of the board, and the advisory board shall present special reports on transportation matters as requested by the commission or the local governing body of the locality concerning taxes to be levied pursuant to § 15.2-4706.

#### **§15.2-4705. Powers and duties of commission.**

The commission shall have the following powers and duties:

1. To construct, reconstruct, alter, improve, and expand any public mass transit system or highway located within the district which is located in the county which comprises the district, and which was not financed under the authority provided by the Commonwealth of Virginia Transportation Facilities Board Act of 1979.
2. To acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any public mass transit system or highway transportation improvements in the district and to sell, lease as lessor, transfer or dispose of any part of any transportation improvements in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing regarding such disposition. At the hearing, the residents and owners of property

within the district shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district, as prescribed by the commission. Such public hearing may be adjourned from time to time.

3. To negotiate and contract with any person, authority, transportation district, state or federal agency or instrumentality with regard to any matter necessary and proper to provide any public mass transit system or highway transportation facility, including, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement, expansion or maintenance of any transportation improvements in the district. No such contract shall extend for a period that exceeds thirty years.

4. To enter into a continuing service contract for purpose authorized by this chapter and to make payments of the proceeds received from the special taxes levied pursuant to § 15.2-4706, together with any other revenues, for the payment of installments due under that service contract. The district may apply such payments annually during the term of that service contract in an amount sufficient to make the installment payments due under that contract, subject to the limitation imposed by § 15.2-4706, but payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract may not obligate a locality to make payments for services of the district.

5. To accept the allocations, contributions or funds of, or to reimburse from, any available source, including, but not limited to, any person, authority, transportation district or state or federal agency or instrumentality for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, and expansion of any transportation improvements in the district.

6. To contract for the extension and use of any transportation improvements into territory outside of the local district on such terms and conditions as the commission determines.

7. To employ and fix the compensation of personnel who may be deemed necessary for the construction, operation or maintenance of any transportation improvements in the district.

8. To have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, to request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations.

#### **§ 15.2-4706. Annual special improvements; tax; use of revenues.**

Upon the written request of the district commission made to the local governing body pursuant to subdivision 8 of § 15.2-4705, the local governing body may levy and collect an annual special improvements tax all taxable real property zoned for commercial or industrial use or used for such purposes and leasehold interests in that portion of the improvement district within its jurisdiction. Notwithstanding the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied upon the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than \$0.20 per \$100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203; however, if all the owners in any district so request this limitation on rate shall not apply. Such special improvements taxes shall be collected at the same time and in the same manner as the locality's taxes are collected, and the proceeds shall be kept in a separate account. All revenues received by the locality pursuant to such taxes shall be paid over to the district commission for its use pursuant to § 15.2-4705.



**§ 15.2-4707. Jurisdiction of localities and officers, etc., not affected.**

Neither the creation of a district nor any other provision in this chapter shall affect the power, jurisdiction, or duties of the local governing body; sheriff; treasurer; commissioner of the revenue; circuit, district, or other courts; clerks of any court; magistrates; or any other local or state officer in regard to the area embraced in any district, or restrict or prevent the locality or town, or the governing body of the locality or town, from imposing and collecting taxes or assessments for public improvements as permitted by law. Notwithstanding any contrary provisions of law, any locality which creates a district pursuant to this section may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all commercial and industrial classifications within the district as provided in subsection C of § 15.2-4702 for a term not to exceed twenty years from the date on which such a district is created.

**§ 15.2-4708. Allocation of funds to local transportation districts.**

The governing body which created a district pursuant to § 15.2-4702, may advance funds, or provide matching funds, from money not otherwise specifically allocated or obligated, from whatever source received or generated, including without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a local district to assist the local district to undertake the project for which it was created. The Commonwealth Transportation Board may allocate funds to a district only from the construction district or districts in which such transportation district is located pursuant to the highway allocation formula to assist the district with all approved project as provided by law.

**§ 15.2-4709. Reimbursement for advances to local transportation district.**

Notwithstanding the provisions of any other law, the commission shall direct the district treasurer to reimburse the locality or town from any funds of the district, not otherwise specifically allocated or obligated, to the extent that a locality or town has made advances.

**§ 15.2-4710. Cooperation between districts and other political subdivisions.**

Any local district created under the provisions of this chapter may enter into agreements with localities and other political subdivisions within the Commonwealth for joint or cooperative action in accordance with the authority contained in § 15.2-1305.

**§ 15.2-4711. Tort liability.**

No pecuniary liability of any kind shall be imposed upon the Commonwealth or the locality, town, or landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance, by or all the part of a district, its agents, servants, or employees.

**§ 15.2-4712. Approval by Commonwealth Transportation Board.**

The district may not construct or improve a transportation improvement without the approval of the Commonwealth Transportation Board and without the approval of the locality in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise his powers of condemnation pursuant to §§ 25-46. 1 through 25-46.36, §§ 33.1-89 through 33.1-132, or § 33.1-229 for the purpose of acquiring property for transportation improvements within the district. Upon completion of the construction or improvement, the Commonwealth Transportation Board shall take the public highway into the secondary, primary, or interstate system of state highways for purposes of maintenance and subsequent improvement as necessary. Upon acceptance by the Commonwealth of the highway into the primary system of highways all rights, title and interest in the right-of-way and improvements of such public mass transit system or highway shall vest in the Commonwealth. Upon completion of such construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of the mass transit system shall vest in the Northern Virginia Transportation Commission or other agency or instrumentality of the Commonwealth.

**NOTE:** Update Code sections.

## **Article 2.**

### **Boundary Changes for Local Districts.**

#### **§ 15.2-4713. Enlargement of local districts.**

A. The district shall be enlarged by a resolution of the governing body of the locality upon the joint petition of the commission and the owners of at least fifty-one percent of either the land area or assessed value of land of the district within the locality, and of at least fifty-one percent of either the land area or assessed value of land located within the territory sought to be added to the district; however, any such territory shall be contiguous to the existing district. The joint petition shall present the information required by § 15.2-4702 A. Upon receipt of such a petition the locality shall use the standards and procedures provided in subsections B and C in § 15.2-4702; however, the residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property should not be included in the proposed district.

B. If the governing body finds the enlargement of the district would be in accordance with the applicable comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety and general welfare, and if the governing body finds that enlargement of the district does not limit or adversely affect the rights and interests of any party which has contracted with the district, the governing body of the locality may, at its option, pass a resolution providing for the enlargement of the district.

#### **§ 15.2-4714. Abolition of local transportation districts.**

A. Any district created under this chapter may be abolished by a resolution passed by the local governing body upon the joint petition of the commission and the owners of at least fifty-one

percent of either the land area or assessed value of land located within the district in the locality. The joint petition:

1. May state whether the purposes for which the district was formed substantially have been achieved;
2. May state that all obligations theretofore incurred by the district have been fully paid;
3. May describe the benefits which can be expected from the abolition of the district; and
4. Shall request the local governing body to abolish the district.

B. Upon receipt of such a petition, the governing body shall use the standards and procedures described in subsections B and C of § 15.2-4702, *mutatis mutandis*; however, all interested persons who either reside on or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If the governing body finds that the abolition of the district would be (i) in accordance with the applicable comprehensive plan for the development of the area, (ii) in the best interests of the residents and owners of the property within the district, and (iii) in furtherance of the public health, safety and general welfare; and that all debts of the district have been paid and the purposes of the district either have been fulfilled or should not be fulfilled by the district, or that the governing body, with the approval of the voters of the locality, has agreed to assume the debts of the district, then the local governing body shall pass a resolution abolishing the district and the district advisory board. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the locality.

### **Article 3. Construction of Chapter.**

#### **§ 15.2-4715. Chapter to constitute complete district for acts authorized; liberal construction.**

This chapter shall constitute full and complete authority for the district, without regard to the provisions of any other law, for the doing of the acts and things herein authorized. This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes hereof. Any court test concerning the validity of any bonds which may be issued for transportation improvements made pursuant to this chapter may be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26.

**NOTE:** This section is currently set out.

#### **§ 15.2-4716. Validation of districts.**

All proceedings held in the creation of any district or districts pursuant to § 15.2-4702 prior to January 1, 1992, are hereby ratified, validated, and confirmed, and any such districts so created pursuant to Article I (§ 15.2-4700 et seq.) of this chapter are declared hereby to have been validly created, notwithstanding any defects or irregularities in the creation of any such district or in the selection or appointment of the commission or the advisory board of any such district.

## **Chapter 48.**

### **Virginia Transportation Service District Act.**

**RECOMMENDATION:** Place entire chapter into the Code using current chapter and section numbers. Consider naming the counties included under the definition of "county" in § 15.2-4801.

#### **§ 15.2-4800. Short title; application.**

This chapter shall be known as the "Virginia Transportation Service District Act." No district shall be created under this chapter after June 30, 1993.

#### **§ 15.2-4801. Definitions.**

As used in this chapter, unless the context indicates another meaning or intent:

"Board of supervisors" means the governing body of a county empowered to act under the provisions of this chapter.

"Commission" means the governing body of the district created under § 15.2-4802.

"Cost" means all or any part of the cost of acquisition, construction, reconstruction, alteration, landscaping, enlargement, conservation, remodeling or equipping of a transportation facility or portion thereof, including the cost of the acquisition of land, rights-of-way, property rights, easements and interests acquired for such construction, alteration or expansion, the cost of demolishing or removing any structure on land so acquired, including the cost of acquiring any lands to which such structures may be removed, the cost of all labor, materials, machinery and equipment, financing charges, insurance, interest on all bonds prior to and during construction and, if deemed advisable by the governing body, for a reasonable period after completion of such construction, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, provisions for working capital, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, studies, estimates of costs and revenues, administrative expenses and such other expenses as may be necessary or incident to the creation of the district (which shall not exceed \$150,000), construction of the project and the provision of equipment therefor, and of such subsequent additions thereto or expansion thereof, and to determining the feasibility or practicality of such construction, the cost of financing such construction, additions or expansion, and placing the project and such additions or expansion in operation.

"County" means (i) any county organized under the urban county executive form of government, (ii) any county adjoining a county organized under the urban county executive form of government, and (iii) any county with a population of at least 32,000 but not more than 36,000 according to the most recent United States census.

"District" means any transportation service district created under the provisions of § 15.2-4802.

"District advisory board" means the board appointed by the board of supervisors in accordance with § 15.2-4804.

"Federal agency" means and includes the United States of America or any department, bureau, agency or instrumentality thereof.

"Owner" or "landowner" means the person or entity which has the usufruct, control or occupation of the real property as determined annually by the county.

"Public highways" includes any public highways, roads, or streets, whether maintained by the Commonwealth or otherwise.

"Revenues" means any or all fees, tolls, rents, notes, receipts, assessments, taxes, moneys, and income derived by the district and includes any cash contributions or payments made to the district by the Commonwealth, any political subdivision thereof, or by any other source.

"Town" means any town having a population of more than 1,000 as determined by the 1980 census.

"Transportation facilities" means any real or personal property acquired, constructed or improved, or utilized in constructing or improving any public highway or portion thereof or any publicly owned mass transit systems situated or operated within the district created pursuant to appurtenances thereto, rights-of-way, bridges, tunnels, transportation stations, terminals, areas for parking and all related equipment and fixtures.

#### **§ 15.2-4802. Creation of district.**

A. A district shall be created under this chapter only by a resolution of the board of supervisors upon the petition of the owners of at least fifty-one percent of either the assessed value of land or land area of the real property of the county which is within the boundaries of the proposed district, and which (i) is unimproved, regardless of zoning or (ii) has been zoned for commercial or industrial use or is used for such purposes. Any proposed district may include land within a town located in such county. Such petition shall:

1. Set forth the name and describe the boundaries of the proposed district;
2. Describe the transportation facilities proposed within the district;
3. Describe a proposed plan for providing such transportation facilities within the district and describe specific terms and conditions with respect to all zoning classifications and uses, densities, and criteria related thereto which the petitioners request for the proposed district;
4. Describe the benefits which can be expected from the provision of such transportation facilities within the district; and
5. Request the board of supervisors to establish the proposed district for the purposes set forth in the petition.

B. Upon the filing of such a petition, the board of supervisors shall fix a day for a hearing on the question of whether the proposed district shall be created. The hearing shall consider whether the residents and owners of property within the proposed district would benefit from the establishment of the proposed district. All interested persons who either reside in or who own real property within the boundaries of the proposed district shall have the right to appear and show cause why any property or properties should not be included in the proposed district. If real property located within a town is included in the proposed district, the board of supervisors shall deliver a copy of the petition and notice of the public hearing thereon to the town council at least thirty days prior to the public hearing, and the town council may, by resolution duly passed, determine if it wishes such property located within the town to be included within the proposed district, and shall deliver a copy of any such resolution to the board of supervisors with respect to the inclusion or exclusion of such properties within the proposed district; however, the petition shall comply with the provisions of this section with respect to minimum acreage or assessed valuation. Notice of the hearing shall be given by publication once a week for three consecutive weeks in a newspaper of general circulation within the county as designated by the board of supervisors. At least ten days

shall intervene between the completion of the publication and the date set for the hearing. The publication shall be considered complete on the twenty-first day after the first publication.

C. If the board of supervisors finds the creation of the proposed district would be in accordance with the comprehensive plan for the development of the area, in the best interests of the residents and owners of the property within the proposed district, and in furtherance of the public health, safety and general welfare, it shall pass a resolution creating the district, which resolution shall be reasonably consistent with the petition. The resolution shall provide: (i) a description with specific terms and conditions of all zoning classifications which shall be in force in the district upon its creation, together with any related criteria, and a term of years, not to exceed twenty years, as to which each zoning classification and each related criteria set forth therein shall not be eliminated, reduced, or restricted, except upon the written request or approval of the owner of any property affected by a change, or as specifically required to comply with the provisions of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) or the regulations adopted pursuant thereto, or other state law; and (ii) that the district shall terminate no later than thirty-five years from the date of the resolution.

After the public hearing, the board of supervisors shall deliver a true copy of its proposed resolution creating the district to the petitioning landowners or their attorney-in-fact. Any petitioning landowner may then withdraw its signature on the petition in writing at any time prior to the vote of the board of supervisors. If any signatures on the petition are withdrawn as provided herein, the board of supervisors may pass the proposed resolution in conformance herewith only upon certification that the petition continues to meet the provisions of subsection A of this section with respect to minimum acreage or assessed value as the case may be.

D. A district which proposes to construct or improve any portion of a two-lane primary highway which traverses an international airport at a county jurisdiction line shall be created in concert with the creation of a district in the adjoining county.

E. Where unimproved property, regardless of zoning, is included in the resolution creating the district, the board of supervisors, upon approving the resolution, shall direct that a copy of the resolution be recorded in the land records of the circuit court for the judicial circuit in which that county is located, for each parcel of unimproved real property included in the district. For purposes of this section, "parcel" means tax map parcel.

#### **§ 15.2-4803. Commission established.**

A. The power of the district created under § 15.2-4802 shall be exercised by a commission composed of five members of the board of supervisors. The Chairman of the Commonwealth Transportation Board, or his designee, shall be a member of any commission created pursuant to this article, ex officio.

B. The members of the commission shall elect one of their number chairman. The chairman of the commission may or may not be the chairman or presiding officer of the board of supervisors. In addition, with the advice of the district advisory board, the members of the commission shall elect a secretary, and treasurer, who may or may not be members or employees of the board of

supervisors or any other governmental body represented on the commission. The offices of secretary and treasurer may be combined. A majority of the members of the commission shall constitute a quorum, and the vote of a majority of the members of the commission shall be necessary for any action taken by the commission. No vacancy in the membership of the commission shall impair the right of a majority of the members to form a quorum or to exercise all of its rights, powers and duties.

#### **§ 15.2-4804. Creation of district advisory board.**

Within thirty days after passage of the resolution creating a district in accordance with the procedures provided in § 15.2-4802, the board of supervisors shall appoint a district advisory board of six members composed as follows: three members selected by the board of supervisors, each of whom either resides on or owns land within the district; and three members who own land within the district who are nominated by the landowners who were co-petitioners to the board of supervisors in the establishment of the district, voting on a basis weighted by either acreage or assessed value of real property owned therein as the case may be. Such elections shall be conducted by the commission by mail ballot of owners of land within the district. One member from each group of three as so selected or nominated shall be appointed for a term of four years, one for three years, and one for two years. Beginning two years after the creation of the district, elections shall be held annually on the anniversary of the creation of the district in the same manner described in the preceding provisions of this section. Members may be reelected or reappointed provided that they, or the corporation or partnership they represent, own land zoned for commercial or industrial use within the district at the time of their reelection or reappointment. Whenever a vacancy occurs with respect to a member initially nominated by landowners who were petitioners to the board of supervisors, or any successor of such a member, then the board of supervisors shall appoint a new board member who is a landowner within the district, and who is among a list of nominees made by those remaining board members who were initially nominated by those petitioning landowners, or their successors.

The members shall serve without pay, but the commission shall provide the advisory board with facilities for the holding of meetings and the commission shall appropriate funds needed to defray the reasonable expenses and fees of the board which shall not exceed \$20,000 annually, including, without limitation, expenses and fees arising out of the preparation of the annual report. Such appropriations shall be based on an annual budget, submitted by the board and approved by the commission, sufficient to carry out its responsibilities under this article. The board shall fix the time for holding regular meetings, but it shall meet at least once every year. Special meetings of the board shall be called by the chairman or by two members of the board upon written request to the secretary of the board. A majority of the members shall constitute a quorum, but no action of the board shall be valid unless authorized by at least five of the six members appointed to the board.

The board shall present an annual report to the commission on the transportation needs of the district and on the activities of the board, and the board shall present to the commission special reports on transportation matters which it deems necessary concerning any contract or other matters mentioned in § 15.2-4805.

#### **§ 15.2-4805. Powers and duties of commission.**

The commission shall have the following powers and duties with respect to the district:

1. To construct, reconstruct, alter, improve, expand, provide financial assistance to (including making loans) and operate transportation facilities in the district for the use and benefit of the public in the district.
2. To acquire by gift, purchase, lease, in-kind contribution to construction costs, or otherwise any transportation facilities in the district and to sell, lease as lessor, transfer or dispose of any part of any transportation facilities in such manner and upon such terms as the commission may determine to be in the best interests of the district. However, prior to disposing of any such property or interest therein, the commission shall conduct a public hearing with respect to such disposition. At the hearing, the residents and owners of property within the district shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the district as prescribed by the commission. Such public hearing may be adjourned from time to time.
3. To negotiate and contract with any person, authority, transportation district, or state or federal agency or instrumentality with regard to any matter necessary and proper to provide any transportation facility, including, but not limited to, the financing, acquisition, construction, reconstruction, alteration, improvement or expansion of any transportation facility in the district.
4. To accept the allocations, contributions or funds of, or to reimburse from, any available source, including, but not limited to, any person, corporation, authority, transportation district, or state or federal agency or instrumentality for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, expansion and the operation or maintenance of any transportation facilities in the district.
5. To enforce the collection of any delinquent rates, fees, costs or other charges for the use of transportation facilities against any person, corporation, authority or federal agency using the facilities. The charges made for the use of any such facility shall be collectible by distress, levy, garnishment, attachment or as otherwise permitted by law.
6. To enter into a continuing service contract for a purpose authorized by this article and to make payments of the proceeds received from the special taxes levied pursuant to this article, together with any other revenues, for the payment of installments due under that service contract. The district may apply such payments annually during the term of that service contract, subject to the limitation imposed by § 15.2-4806, but payments for any such service contract shall be conditioned upon the receipt of services pursuant to the contract. Such a contract may not obligate a county to make payments for services.
7. Upon the written request of the advisory board to contract for the extension and use of any transportation facility into territory outside of the district on such terms and conditions as the commission may determine.



8. To employ and fix the compensation of personnel who may be deemed necessary for the construction, operation or maintenance of any transportation facility.

9. To have prepared an annual audit of the district's financial obligations and revenues, and upon review of such audit, to request a tax rate adequate to provide tax revenues which, together with all other revenues, are required by the district to fulfill its annual obligations.

**15.2-4806. Annual special improvement tax; use of revenues.**

Upon the written request of the district commission made to the boards of supervisors pursuant to subdivision 9 of § 15.2-4805, the board of supervisors may levy and collect an annual special improvements tax on all taxable real property which (i) is zoned for commercial or industrial use or used for such purposes or (ii) was unimproved at the time the district was created, regardless of zoning. Notwithstanding the provision of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, the tax shall be levied upon the assessed fair market value of the taxable real property. The rate of the special improvements tax shall not be more than \$0.20 per \$100 of the assessed fair market value of any taxable real estate or the assessable value of taxable leasehold property as specified by § 58.1-3203. Such special improvements taxes shall be collected at the same time and in the same manner as county taxes are collected, and the proceeds shall be kept in a separate account. All revenues received by a county pursuant to such taxes shall be paid over to the district commission for its use pursuant to this article.

**§ 15.2-4807. Allocation of funds to district.**

The board of supervisors of any county which has created a district pursuant to this article may advance funds or provide matching funds from moneys not otherwise specifically allocated or obligated, from whatever source received or generated, including without limitation, general revenues, special fees and assessments, state allocations, and contributions from private sources to a district to assist the district to undertake the project or projects for which it was created. The Commonwealth Transportation Board may allocate funds to a district only from the construction district or districts in which such transportation district is located pursuant to the highway allocation formula to assist the district with an approved project as provided by law.

**§ 15.2-4808. Reimbursement for advances to district.**

Notwithstanding the provisions of any other law, the commission shall direct the district treasurer to reimburse the county or town from any funds of the district, not otherwise specifically allocated or obligated, to the extent that the county or town has made advances.

**§ 15.2-4809. Cooperation between districts and adjoining localities.**

Any district created under the provisions of this chapter may enter into agreements with adjoining localities for joint or cooperative action in accordance with the authority contained in § 15.2-1300.

**§ 15.2-4810. Tort liability.**

No pecuniary liability of any kind shall be imposed upon the Commonwealth or upon the county, town, or any landowner therein because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance, by or on the part of a district, its agents, servants, or employees.

**§ 15.2-4811. Approval by Commonwealth Transportation Board.**

The district may not construct or improve a public highway or public mass transit system without the approval of the Commonwealth Transportation Board may exercise its powers of condemnation pursuant to §§ 25-46.1 through 25-46.36, §§ 33.1-89 through 33.1-132, or §§ 33.1-229 for the purpose of acquiring property for transportation facilities within the district. Upon completion of such construction or improvement of a public highway, the Commonwealth Transportation Board shall take such public highway into the primary or secondary system of state highways for purposes of maintenance and subsequent improvement as necessary. Upon acceptance by the Commonwealth of the highway into the state highway system, all rights, title and interest in the right-of-way and improvements of such highway shall vest in the Commonwealth. Upon completion of such construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall rest in the Northern Virginia Transportation Commission or other agency or instrumentality of the Commonwealth.

**NOTE:** Update Code references.

**§ 15.2-4812. Enlargement of districts.**

A. The district may be enlarged by resolution of the board of supervisors upon the petition of (i) the owners of at least fifty-one percent of either the assessed value of land or land area, as the case may be, of real property in the district which (a) is unimproved regardless of zoning, or (b) has been zoned for commercial or industrial use or is used for such purposes in the district, and (ii) the owners of at least fifty-one percent of either the assessed value of land or land area, as the case may be, of real property which is located within the territory sought to be added to the district and which (a) is unimproved, regardless of zoning, or (b) has been zoned for commercial or industrial use or is used for such purposes; provided, that any such territory shall be contiguous to the existing district. The petitioners shall present the information required by § 15.2-4802. Upon receipt of such petitions the county shall use the standards and procedures described in § 15.2-4802, except that residents and owners of both the existing district and the area proposed for the enlargement shall have the right to appear and show cause why any property or properties should not be included in the proposed enlargement of the district.

B. If the board of supervisors finds the enlargement of a district (i) would be in accordance with the applicable county comprehensive plan for the development of the area, (ii) would be in the best interests of the residents and owners of the real property within the proposed district, (iii) would be in furtherance of the public health, safety and general welfare, and (iv) would not limit or adversely affect the rights and interests of any party which has contracted with the district, the board of supervisors shall pass a resolution providing for the enlargement of the district.

C. Where unimproved property, regardless of zoning, is included in the resolution enlarging the district, the board of supervisors, upon approving the resolution, shall direct that a copy of the resolution be recorded in the land records of the circuit court for the judicial circuit in which that county is located for each parcel of unimproved real property included in the district. For purposes of this section, "Parcel" means tax map parcel.

#### **§ 15.2-4813. Abolition of district.**

A. Any district created hereunder may be abolished by a resolution passed by the board of supervisors upon the petition of the owners of at least fifty-one percent of either the assessed value of land or land area, as the case may be, of real property in the district which (i) was unimproved on the date the district was created or (ii) was zoned for commercial and industrial use or used for such purposes located within the district at the time the petition for abolition is filed. The petition shall request the board of supervisors to abolish the district. The petition may also:

1. State whether the purposes for which the district was formed have been substantially achieved;
2. State whether all obligations theretofore incurred by the district have been fully paid; and
3. Describe the benefits which can be expected from the abolition of the district; and

B. Upon receipt of such a petition the board of supervisors shall use, mutatis mutandis, the standards and procedures described in § 15.2-4802, except that all interested persons who either reside in or who own real property within the boundaries of the district shall have the right to appear and show cause why the district should not be abolished.

C. If the board of supervisors finds that the abolition of the district would be (i) in accordance with the applicable county comprehensive plan for the development of the area, (ii) in the best interests of the residents and owners of the property within the district, and (iii) in furtherance of the public health, safety and general welfare, and that all debts of the district either have been paid and the purposes of the district have been fulfilled or should not be fulfilled by the district, or the board of supervisors with approval of the voters of the county has agreed to assume the debts of the district, then the board of supervisors shall pass a resolution abolishing the district. Upon abolition of the district, the title to all funds and properties owned by the district at the time of such dissolution shall vest in the Commonwealth.

D. Where unimproved property, regardless of zoning, is included in the resolution dissolving the district, the board of supervisors, upon approving the resolution, shall direct that a copy of the resolution be recorded in the land records of the circuit court for the judicial circuit in which that county is located, for each parcel of unimproved real property included in the district. For purposes of this section, "parcel" means tax map parcel.

#### **§ 15.2-4814. Article to constitute complete authority for district for acts authorized; liberal construction.**

This article shall constitute full and complete authority for the district, without regard to the provisions of any other law, for doing the acts and things herein authorized. This article, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to

effect the purposes hereof. Any court test concerning the validity of any bonds which may be issued for transportation improvements made pursuant to this article shall be determined pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of this title.

**NOTE:** This section is set out.

**§ 15.2-4815. Jurisdiction of counties, towns and officers, etc., not affected.**

Neither the creation of a district nor any other provision in this article shall affect the power, jurisdiction, or duties of the respective local governing bodies; sheriffs; treasurers; commissioners of revenue; circuit, district, or other courts; clerks of any court; magistrates; or any other town, county, or state officer in regard to the area embraced in any district, nor restrict or prevent any town or county or its governing body from imposing and collecting taxes or assessments for public improvements as permitted by law. Notwithstanding any contrary provisions of law, any county which creates a district pursuant to this section may obligate itself with respect to the zoning ordinances, zoning ordinance text, and regulations relating thereto for all classifications within the district as provided in subsection C of § 15.2-4802 for a term not to exceed twenty years from the date on which such a district is created.

**#End of Chapter 48**

**§ 15.2-5118. Powers of Authority; streetlights in King George County.**

Notwithstanding any contrary provision of law in this chapter, an authority may lease as lessee or otherwise contract for the provision of, operate and maintain streetlights in a county having a population between 13,200 and 14,000 according to the 1990 United States Census. The lessor or other contractual provider of such streetlights shall be a public service corporation which holds a certificate of public convenience and necessity to provide retail electric service in the territory in which such streetlights are located. King George County may contribute funds to the authority by act of its governing body for use by the authority in carrying out the authority's powers listed in this section. In addition, the authority may fix, charge and collect rates, fees and charges for the use of the service described in this section or for such service furnished by the authority. Such rates, fees, and charges shall be charged to and collected from any person contracting for the service, or lessee, or tenant or any other person who uses or occupies any real estate served by or benefiting from the service.

**RECOMMENDATION:** Place into the Code using current section number. Replace population bracket with King George County.

**§ 15.2-5120. Powers of authority in certain counties and cities.**

An authority or authorities created pursuant to the provisions of this chapter by counties that have adopted the county manager plan of government and a city contiguous thereto having a 1980 population of more than 100,000, singularly or jointly, two or all of such counties and cities may

enter into contracts relating to the furnishing of services and facilities for refuse collection and disposal and conversion of same to energy (system) with any person or partnership or corporation (entity). The contract shall not have a term in excess of thirty years from the date on which service is first provided. It may make provisions for:

1. The use by the authority of all or a portion of the disposal capacity of such system for the authority's present or future requirement,
2. The delivery by or for the account of the authority of specified quantities of refuse, whether or not the authority collects such refuse,
3. The making of payments in respect of such quantities of refuse, whether or not the refuse is delivered, including payments in respect of revenues lost if such refuse is not delivered,
4. Adjustments to payments to be made by the authority because of inflation, changes in energy prices or residue disposal costs, taxes imposed upon the system or other events beyond the control of the entity or in respect of the actual costs of maintaining, repairing or operating the system, including debt service or capital lease payments, capital costs or other financing charges relating to the system, and
5. The collection by the entity of fees, rates or charges from persons using disposal capacity for which the authority has contracted.

The authority may fix, charge and collect fees, rates and charges for services furnished or made available by the entity operating the system to provide sufficient funds at all times during the term of the contract, together with other funds available to the authority for such purposes, to pay all amounts due from time to time under such contract and to provide a margin of safety for such payment. The authority may covenant with the entity to establish and maintain fees, rates and charges at such levels during the term of the contract for such purposes.

Such fees, rates and charges shall not apply to refuse generated, purchased or utilized by any enterprise located in the service area and engaged in the business of manufacturing, mining, processing, refining or conversion, which is not disposed at or through such system.

The rates, fees and charges may be imposed upon the owners, tenants or occupants of each occupied lot or parcel of land which the authority determines (with the concurrence at the time of such determination of the local government in which such parcel is located) is in the service area, or portion thereof, of the system for which the authority has contracted, whether or not refuse generated from such parcel are actually delivered to such system.

The rates, fees and charges shall be fixed in accordance with the procedures set forth in the subsection D of § 15.2-5136. Such rates, fees and charges may be allocated among the owners, tenants or occupants of each lot or parcel of land which the authority determines is in the service area, or portion thereof, of the system for which the authority has contracted. Such allocation may be based upon:

1. Waste generation estimates, the average number of persons residing, working in or otherwise connected with such premises, the type and character of such premises or upon any combination of the foregoing factors, or
2. The amount of refuse delivered to such system, or

3. The assessed value of such parcels, or
4. A combination of the foregoing.

There shall be a lien on real estate for the amount of such fees, rates and charges as provided in § 15.2-5139. The authority is empowered by resolution or other lawful action to enforce the payment of the lien by means of the actions described in § 15.2-5138.

The power to establish such fees, rates and charges shall be in addition to any other powers granted hereunder and such fees, rates and charges shall not be subject to the jurisdiction of any commission, authority or other unit of government. The entity contracting with the authority, except to the extent rights herein given may be restricted by the contract, either at law or in equity, by suit, mandamus or other proceedings, may protect and enforce any and all rights granted under such contract and may face and compel the performance of all duties required by this chapter or by such contract to be performed by the authority or by any officer thereof, including without limitation the fixing, charging and collecting of rates, fees and charges in accordance with this chapter and such contract.

Such contract, with the irrevocable consent of the entity, may be made directly with the trustee for indebtedness issued to finance such system and provide for payment directly to such trustee. The authority may pledge fees, rates and charges made in respect of the contract with the entity and such pledge shall be valid and binding from the time when it is made. Fees, rates and charges so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery or further act and the lien of such pledge shall be valid and binding against all parties having claims of any kind, in tort, contract or otherwise irrespective of whether such parties have notice thereof. Neither the contract nor any assignment thereof need be filed or recorded except in the records of the authority.

The requirements and restrictions of § 15.2-5121 shall not apply to any contract of the authority with respect to the system if the entity for such system will not collect refuse from the generators of the same, and there are no such facilities located in the area served by the authority.

**RECOMMENDATION:** Place into the Code using current section number. Replace locality name descriptions with Arlington County and the City of Alexandria.

#### **§ 15.2-6201. Findings of fact.**

The economy of the Alleghany-Highlands region has not kept pace with that of the rest of the Commonwealth. The economic problems of the Alleghany-Highlands region are due in large part to its inability to diversify. The region has suffered, and continues to suffer, widespread unemployment in great disproportion to the rest of the Commonwealth.

The Alleghany-Highlands Economic Development Authority will assist this region of the Commonwealth to achieve a greater degree of economic stability.

It is hereby further declared that the foregoing is a public purpose and use for which public moneys may be spent and such activity will serve a public purpose in providing jobs to the citizens of the Commonwealth.

**RECOMMENDATION:** Place into the Code using current section number. Alternatively, consider repealing since "findings of fact" are not typically codified in statute.

## Title 55.1 Proposed Subtitles

### Subtitle I Property Conveyances

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Creation and Limitation of Estates</i>	<i>Chapter 1: Creation and Limitation of Estates; Their Qualities; Chapter 20: Virginia Solar Easements Act; § 55-153 (Clouds on Title) from Chapter 8: Clouds on Title</i>	<i>10/16/17; 11/20/17 (for Article 1)</i>
<i>Chapter XX [2]: Property Rights of Married Persons</i>	<i>Chapter 3: Property Rights of Married Women</i>	<i>11/20/17</i>
<i>Chapter XX [3]: Form and Effect of Deeds and Covenants; Liens</i>	<i>Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	<i>10/16/17</i>
<i>Chapter XX [4]: Fraudulent and Voluntary Conveyances; Writings Necessary to be Recorded</i>	<i>Chapter 5: Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.,; Writing Necessary to be Recorded</i>	<i>10/16/17</i>
<i>Chapter XX [5]: Commutation and Valuation of Certain Estates and Interests</i>	<i>Chapter 15: Apportionment of Moneys; Management of Institutional Funds</i>	<i>8/14/17</i>

### Subtitle II Real Estate Settlements and Recordation

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Recordation of Documents</i>	<i>Chapter 6: Recordation of Documents</i>	<i>11/20/17</i>
<i>Chapter XX [2]: Virginia Residential property Disclosure Act</i>	<i>Chapter 27: Virginia Residential Property Disclosure Act</i>	<i>11/20/17</i>
<i>Chapter XX [3]: Exchange Facilitators Act</i>	<i>Chapter 27.1: Exchange Facilitators Act</i>	<i>11/20/17</i>
<i>Chapter XX [4]: Real Estate Settlements</i>	<i>Chapter 27.2: Real Estate Settlements</i>	<i>11/20/17</i>
<i>Chapter XX [5]: Real Estate Settlement Agents</i>	<i>Chapter 27.3: Real Estate Settlement Agents</i>	<i>11/20/17</i>
<i>Chapter XX [6]: Commercial Real Estate Brokers Lien Act</i>	<i>Chapter 28: Commercial Real Estate Broker's Lien Act</i>	<i>11/20/17</i>



### Subtitle III Rental Conveyances

Proposed	Current	Date Approved by Code Commission
<i>Part A</i>		
<i>Chapter XX [1]: General Provisions</i>	<i>Chapter 13: Landlord and Tenant; Chapter 13.2: Virginia Residential Landlord and Tenant Act; Chapter 25: Transfer of Deposits</i>	<i>9/19/16 - needs to be rewritten; present in Aug 2018</i>
<i>Chapter XX [2]: Virginia Residential Landlord and Tenant Act</i>	<i>Chapter 13.2: Virginia Residential Landlord and Tenant Act</i>	<i>9/19/16; 10/17/16 (follow-up) - needs to be rewritten; present in Aug 2018</i>
<i>Chapter XX [3]: Other Residential Tenancies</i>	<i>Chapter 13: Landlord and Tenant</i>	<i>10/17/16 - needs to be rewritten; present in Aug 2018</i>
<i>Part B: Commercial and Other Tenancies</i>		
<i>Chapter XX [4]: Manufactured Home Lot Rental Act</i>	<i>Chapter 13.3: Manufactured Home Lot Rental Act</i>	<i>present in Aug 2018</i>
<i>Chapter XX [5]: Residential Ground Rent Act</i>	<i>Article 4 (Residential Ground Rent Act) of Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	<i>10/17/16- needs to be rewritten; present in Aug 2018</i>
<i>Chapter XX [6]: Commercial Tenancies</i>	<i>Chapter 13: Landlord and Tenant; Chapter 25: Transfer of Deposits</i>	<i>11/21/16</i>
<i>Chapter XX [7]: Deeds of Lease</i>	<i>Article 1 (Form and Effect of Deeds and Leases) and Article 3 (Effect of Certain Expressions in Deeds and Leases) of Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	<i>10/17/16</i>
<i>Chapter XX [8]: Emblements</i>	<i>Chapter 14: Emblements</i>	<i>10/17/16</i>

**\*\*HB 2033 will require rewrite of Part A**

### Subtitle IV Common Interest Communities

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Property Owners' Association Act</i>	<i>Chapter 26: Property Owners' Association Act</i>	<i>6/26/17</i>
<i>Chapter XX [2]: Virginia Condominium Act</i>	<i>Chapter 4.2: Virginia Condominium Act</i>	<i>6/26/17</i>
<i>Chapter XX [3]: Horizontal Property Act</i>	<i>Chapter 4.1: Horizontal Property</i>	<i>5/15/17</i>
<i>Chapter XX [4]: Virginia Real Estate Cooperative Act</i>	<i>Chapter 24: Virginia Real Estate Cooperative Act</i>	<i>6/26/17</i>
<i>Chapter XX [5]: Virginia Real Estate Time-Share Act</i>	<i>Chapter 21: The Virginia Real Estate Time-Share Act</i>	<i>8/14/17</i>
<i>Chapter XX [6]: Subdivided Land Sales Act</i>	<i>Chapter 19: Subdivided Land Sales Act</i>	<i>5/15/17</i>

### Subtitle V Miscellaneous

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Escheats</i>	<i>Chapter 10: Escheats Generally</i>	<i>5/7/18 - wrap up issues at June 2018 meeting</i>
<i>Chapter XX [2]: Uniform Disposition of Unclaimed Property Act</i>	<i>Chapter 11.1: Disposition of Unclaimed Property</i>	<i>5/7/18</i>
<i>Chapter XX [3]: Property Loaned to Museums</i>	<i>Chapter 11.2: Property Loaned to Museums</i>	<i>5/7/18</i>
<i>Chapter XX [4]: Drift Property</i>	<i>Chapter 11: Estrays and Drift Property</i>	<i>5/7/18</i>
<i>Chapter XX [5]: Trespasses; Fences</i>	<i>Chapter 18: Trespasses; Fences</i>	<i>5/7/18 - wrap up issues at June 2018 meeting</i>
<i>Chapter XX [6]: Virginia Self-Service Storage Act</i>	<i>Chapter 23: Virginia Self-Service Storage Act</i>	<i>5/7/18</i>

### Sections and Chapters Relocated from Title 55

Proposed	Current	Date Approved by Code Commission
<i>Title 1: Chapter 6: Virginia Coordinate System</i>	<i>Chapter 17: Virginia Coordinate System</i>	<i>present in June 2018</i>
<i>Title 8.01: Chapter 3: Article 13.1: Warrants in Distress; Article 15.1: Waste; Chapter 18.1: Assignment for the Benefit of Creditors</i>	<i>Chapter 9: Assignment for Benefit of Creditors; Chapter 13: Landlord and Tenant; Chapter 12: Waste</i>	<i>10/17/16 (Warrants in Distress) present in June 2018 (Waste; Assignment for the Benefit of Creditors)</i>
<i>Title 32.1: Chapter 20: Disposition of Assets by Nonprofit Health Care Entities</i>	<i>Chapter 30: Disposition of Assets by Nonprofit Health Care Entities</i>	<i>present in June 2018</i>
<i>Title 36: Chapter 12: First-Time Home Buyer Savings Plan Act</i>	<i>Chapter 32: First-Time Home Buyer Savings Plan Act</i>	<i>present in June 2018</i>
<i>Title 45.1: Chapter 14.7:3: Mineral Rights</i>	<i>Chapter 8: Clouds on Title</i>	<i>10/16/17</i>
<i>Title 54.1: Chapter 23.3: Article 1: Common Interest Community Board and Article 2: Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund</i>	<i>Chapter 23.3 of Title 54.1: Common Interest Communities; Chapter 29 of Title 55</i>	<i>5/15/17</i>
<i>Title 57: Chapter 2: Article 1</i>	<i>Chapter 2: Educational, Literary, and Charitable Gifts, Devises, Etc.</i>	<i>present in June 2018</i>
<i>Title 64.2: Chapter 1: Article 2</i>	<i>§ 55-19.5 (provisions in certain trust void)</i>	<i>10/16/17</i>
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## **Title 55 Recodification Work Group By Selected Sub-Work Group**

### **Rental Conveyance Sub-Work Group (7)**

John G. "Chip" Dicks (FutureLaw)  
Christie Marra (Virginia Poverty Law Center, Inc.)  
Brian M. Gordon (Virginia Apartment and Office Building Association)  
Tyler Craddock (Virginia Manufactured and Modular Housing Association)  
Phil Abraham (Vectre Corporation)  
Phil Storey (Legal Aid Justice Center)  
John Rick (Attorney)

### **Common Interest Community Sub-Work Group (10)**

Phillip Richardson (Eck, Collins & Richardson)  
Robert Diamond (Reed Smith)  
John G. "Chip" Dicks (FutureLaw)  
Heather Gillespie (Department of Professional and Occupational Regulation)  
Trisha Henshaw (DPOR)  
Lucia Anna Trigiani (Mercer Trigiani)  
David Mercer (Mercer Trigiani)  
Edward Mullen (Reed Smith)  
Jeremy Moss (Vandevender Black)  
Nicole Brenner (Reed Smith)

### **Real Estate Conveyance Sub-Work Group (21)**

Larry J. McElwain (Scott Kroner, PLC)  
Melvin E. Tull, III (Virginia Bankers Association)  
Philip W. Richardson (Eck, Collins & Richardson)  
John G. "Chip" Dicks (FutureLaw)  
Professor Eric Kades (William & Mary Law School)  
Hon. John Frey (Clerk of the Circuit Court, Fairfax County)  
Mary Broz Vaughan (DPOR)  
Lucia Anna Trigiani (Mercer Trigiani)  
Edward Mullen (Reed Smith)  
David Mercer (Mercer Trigiani)  
Benjamin D. Leigh (Atwill, Troxell & Leigh, P.C.)  
Phil Abraham (Vectre Corporation)  
Ann K. Crenshaw (Kaufman & Canoles)  
Neil Kessler (Troutman Sanders)  
Laura Farley (Virginia Association of REALTORS)  
Jeffrey Palmore (Reed Smith)  
Professor Alex Johnson (University of Virginia)  
\*Vicki Bridgeman (Director, Virginia Treasury Department, Division of Unclaimed Property)  
\*Ellen Coates (Senior Assistant Attorney General, Office of the Attorney General)

*\*Added to assist with review of the chapters pertaining to escheats and unclaimed property.*

## Title 55 Recodification

### Reference Guide for Material to Be Presented on June 18, 2018

<b>Items presented at the Virginia Code Commission meeting of May 7, 2018</b>
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At the May 7, 2018, meeting of the Virginia Code Commission, staff presented proposed Subtitle V of Title 55.1. Proposed Subtitle V contains reorganized miscellaneous chapters that are contained in existing Title 55 and belong in proposed Title 55.1 but that do not logically fit within proposed Subtitle I, II, III, or IV. Over the course of staff's presentation, a total of seven items were raised that required additional review.

#### **Proposed Chapter 1: Escheats**

- **Item 1: Number of jurors required to concur in inquest verdict.** The current language creates a conflict. The first sentence of current language states that at least seven of the jurors impaneled (which may be between seven and 10 pursuant to § 55-173) must concur in and sign the verdict. The second sentence states that a verdict is effective if signed by a majority. At the request of the Code Commission, staff sent proposed changes and a description of the issues to the escheators via the Division of Unclaimed Property. A majority (13 of 15) of the responses we received stated that there was a discrepancy in the language and favored changing the language to reflect that a simple majority of jurors is required.
- **Item 2: Bond of escheator.** Delegate Habeeb received an email from an escheator in his district regarding the bond required for escheators under § 55-169. Current language does not specify whether the bond is secured or unsecured, and clerks are inconsistent in their requirements. Staff recommends that the provision specify that an escheator's bond is unsecured, which is consistent with the requirements for allowing a fiduciary to qualify for giving bond without surety under the Virginia Small Estate Act (§ 64.2-600 et seq.) (see § 64.2-1411).
- **Item 3: Replacement of term "seised."** The Code Commission wanted staff to make sure changing the term "seised" to "owned" did not have any unintended consequences. In the recodification of Title 64.2, two instances of the phrase "seized of" were changed to "in possession of." The drafting note for one of these changes stated that it was intended to modernize the language, and the drafting note for the other change stated that it was technical in nature.

#### **Proposed Chapter 5: Trespasses; Fences**

- **Item 1: How governing body of county may make local fence law.** Current language states that a board of supervisors of a county may "declare" the boundary line of such county to be a lawful fence. Pursuant to § 15.2-1425, counties may act only by ordinances, resolutions, and motions, but current language does not specify the process for the "declaration." Staff recommended requiring that the locality act by ordinance, and the Code Commission wanted this change to be vetted by the localities. Through the Virginia Association of Counties (VACo), staff reached out to the counties to ask if the recommended change was appropriate. Sixteen counties responded, and all agreed that the change was appropriate (some even stating that they already used the ordinance process).

- **Item 2: Notice requirement for petition to fix boundaries of villages.** Current law only requires that notice of the intention to file a petition to fix the boundaries of a village or unincorporated community be posted at the front door of the courthouse and at three or more conspicuous places within such boundaries. Under common practice, such notices are typically published in a newspaper. Through VACo, staff reached out to the counties to ask if the recommended change was appropriate. All 16 responses stated that they thought a change to the notice requirements was appropriate, but there was a split as to whether the notification should be (i) in a newspaper, but with the publication requirement being identical to those for ordinances in § 15.2-1427, or (ii) on the locality's website. The two options are outlined in your materials.
- **Item 3: Description of a lawful fence; "creep" versus "pass."** At its May 7 meeting the Code Commission voted to accept the proposed recommendation of change "creep" to "pass." A question has arisen regarding whether replacing the word "creep" with "pass" amounts to a substantive change to the requirements for a fence. Staff further researched the issue and was unable to find any Virginia cases interpreting the term "creep" as used in § 55-299. In the opinion of staff and the work group, when the law was originally enacted, the word "creep" probably meant to pass through the fence, although there was no case law to support this interpretation.
- **Item 4: Duty to issue warrant when trespassing animal is impounded.** The Code Commission expressed concern over the staff and work group recommendations (i) deleting the three-day return date for the warrant for damages caused by a trespassing animal and (ii) specifying that the warrant was a warrant in debt, which limits the jurisdictional limit of the damages to \$25,000. Because the recommended changes were solely intended to update old language, it is recommended that the current language be reinstated and that only technical changes be made.

### **Virginia Coordinate Systems**

- Existing Chapter 17, related to the Virginia coordinate systems, is logically relocated as proposed Chapter 6 of Title 1 (General Provisions).
- The National Geodetic Survey (NGS) is a federal agency charged with defining and managing the national coordinate system, which provides the foundation for (i) transportation and communication, (ii) mapping and charting, and (iii) other science and engineering applications. The statute designates the Virginia coordinate system for defining and stating positions or location of points in the Commonwealth.
- Consists of 11 sections in which no substantive changes are recommended. The names of two federal entities and one state administering entity are updated to the entities currently carrying out the functions.

### **Wastes; Assignment for the Benefit of Creditors**

#### **Waste**

- Existing Chapter 12, which contains a civil cause of action for waste, is logically relocated as proposed Article 15.1 of existing Chapter 3, Actions, of Title 8.01 (Civil Remedies and Procedure). This new article is proposed to be located after Chapter 15, Improvements, which is another type of civil action related to property use.

- Consists of four sections in which no substantive changes are recommended.

#### **Assignment for the Benefit of Creditors**

- Existing Chapter 9, Assignments for Benefit of Creditors, of Title 55 is logically relocated as proposed Chapter 18.1 of Title 8.01 (Civil Remedies and Procedure). This new chapter is proposed to be located after existing Chapter 18, Execution and Other Means of Recovery.
- This chapter outlines a procedure by which debtors may pay off their creditors, but this procedure is not often used because of the availability of federal bankruptcy procedures.
- Consists of two articles containing 12 sections, 10 of which have only technical changes recommended and one of which has no change recommended.

#### **Disposition of Assets by Nonprofit Care Entities**

- Existing Chapter 30 of Title 55, related to disposition of assets by nonprofit health care entities, is logically relocated as proposed Chapter 20 of Title 32.1 (Health).
- Consists of three sections, one of which has only technical changes recommended and three of which have no changes recommended.

#### **First-Time Home Buyers Savings Plan Act**

- Existing Chapter 32 of Title 55, related to the First-Time Home Buyer Savings Plan Act, is logically relocated as proposed Chapter 12 of Title 36 (Housing).
- Consists of five sections, three of which have only technical changes recommended and two of which have no changes recommended.

#### **Educational, Literary, & Charitable Gifts, Devices, Etc.**

- Existing Chapter 2 of Title 55, related to the validity of certain charitable gifts, is logically relocated as one section within Article 1 of Chapter 2 of Title 57 (Religious and Charitable Matters; Cemeteries).
- Consists of one section, which has only technical changes.

1 **Subtitle V; Chapter 1: Escheats**

2

3 ***ITEM 1: NUMBER OF JURORS REQUIRED TO CONCUR IN INQUEST VERDICT***

4

5 Change proposed at 5-7-18 meeting:

6 ~~§ 55-175~~ 55.1-xxx. How verdict signed; where returned and recorded.

7 When the inquest is ~~ended~~ concluded and the verdict concurred in by a majority of the jurors

8 impaneled, ~~or at least seven of them, it~~ such verdict shall be signed by those so concurring and

9 by the escheator. ~~This verdict is effective so long as it is signed by a majority of the jurors. The~~

10 escheator shall, within ~~ten~~ 10 days, return the verdict to the clerk's office of the circuit court.

11 After receiving the verdict, the clerk of such court shall record it in accordance with § 17.1-266

12 and shall provide copies thereof within ~~ten~~ 10 days to the commissioner of the revenue and the

13 local treasurer or the person performing those duties. This escheat verdict shall be recorded in

14 the grantor index of the record books in the clerk's office.

15

16 Issue: Current language creates a conflict. The first sentence of current language states that at

17 least seven of the jurors impaneled (which may be between seven and 10 pursuant to § 55-173)

18 must concur in and sign the verdict. The second sentence states that a verdict is effective is

19 signed by a majority. If there were seven jurors impaneled, the first sentence would require the

20 verdict to be unanimous, and the second sentence would require four jurors to agree for the

21 verdict to be effective.

22

23 **Recommendation: Staff sent proposed changes and a description of the issues to the**

24 **escheators via the Division of Unclaimed Property. A majority (13 of 15) of the responses**

25 **we received stated that there was a discrepancy in the language and favored changing the**

26 **language to reflect that a simple majority of jurors is required.**

27

28 **ITEM 2: BOND OF ESCHEATOR**

29

30 Issue: Delegate Habeeb received an email from an escheator in his district regarding the bond  
31 required for escheators under § 55-169. Current language does not specify whether the bond is  
32 secured or unsecured, and clerks are inconsistent in their requirements. The Division of  
33 Unclaimed Property has stated that it will reimburse escheators for the cost of a secured bond,  
34 but that requires extra time and paperwork.

35

36 **Recommendation: Specify that an escheator's bond is unsecured, which is consistent**  
37 **with the requirements for allowing a fiduciary to qualify for giving bond without surety**  
38 **under the small estate act (see § 64.2-1411):**

39

40 ~~§ 55-169 55.1-xxx. Their bond; their removal~~ Bond of escheator.

41 Each escheator shall give bond for the judicial circuit for which he is appointed in the  
42 circuit court for the locality in which he resides, in the penalty of \$3,000, without surety, and may  
43 continue in office until removed or until a successor is duly appointed and qualified. If property  
44 in another locality within the appointed judicial circuit escheats to the Commonwealth at the  
45 inquest hearing, the escheator shall give bond within that locality as determined by the clerk of  
46 the circuit court in the locality and in a penalty of a percentage of the assessed value of the property  
47 according to the records of the commissioner of the revenue. The bond ~~must~~ shall be obtained  
48 within ~~ten~~ 10 days following the inquest hearing.

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55 **ITEM 3: REPLACEMENT OF TERM "SEISED"**

56

57 Change proposed at 5-7-18 meeting:

58 ~~§ 55-171~~ 55.1-xxx. Annual report to escheator; lands not liable.

59 Each treasurer shall, every May, furnish to the escheator of his county or city a list of all  
60 lands within his district ~~of which~~ owned by any person who has died ~~seised of an estate of~~  
61 ~~inheritance~~ (i) intestate and without any known heir; or (ii) testate without disposing of all  
62 property by will and without leaving any surviving heir to inherit the property. No land shall be  
63 liable to escheat ~~which for fifteen years~~ that has been held for 15 years under adverse possession  
64 as at common law by the person claiming ~~the same~~ such land, or those under whom he holds, but  
65 only if taxes were paid throughout that period by the claimant or those under whom he holds.

66

67 Issue: The Code Commission wanted staff to check to make sure changing the term "seised" to  
68 "owned" did not have any unintended consequences.

69

70 **Recommendation: According to Black's Law Dictionary, "seisin" means the**  
71 **possession of real property under claim of freehold estate. In the recodification of Title 64.2,**  
72 **two instances of the phrase "seized of" were changed to "in possession of." The drafting**  
73 **note for one of these changes stated that it was intended to modernize the language, and the**  
74 **drafting note for the other change stated that it was technical in nature.**

75 Staff recommends changing the term "seised of" to " in possession of" for  
76 consistency with the updated language of the Title 64.2 recodification as follows:

77

78 ~~§ 55-171~~ 55.1-xxx. Annual report to escheator; lands not liable.

79 Each treasurer shall, every May, furnish to the escheator of his county or city a list of all  
80 lands within his district ~~of which~~ any person who has died ~~seised~~ in possession of an estate of  
81 inheritance (i) intestate and without any known heir; or (ii) testate without disposing of all

82 property by will and without leaving any surviving heir to inherit the property. No land shall be  
83 liable to escheat ~~which for fifteen years~~ that has been held for 15 years under adverse possession  
84 as at common law by the person claiming ~~the same~~ such land, or those under whom he holds, but  
85 only if taxes were paid throughout that period by the claimant or those under whom he holds.

86 ~~§ 55-182~~ § 55.1-xxx. Escheators to certify lands escheated.

87 Every escheator shall, within ~~sixty~~ 60 days after ~~inquisition found~~ an inquest that finds on  
88 behalf of the Commonwealth, transmit to the State Treasurer a certificate showing the number of  
89 tracts or lots escheated ~~thereby~~, the reputed quantity of each parcel, a description sufficient to  
90 identify each parcel, and the names of the persons found to have died ~~seised thereof~~ in possession  
91 of such parcel, or from whom the land escheated.

92 ~~§ 55-195~~ § 55.1-xxx. In favor of creditor of decedent.

93 If any debt of a person who died ~~seised of~~ in possession of such lands ~~that~~ escheated to  
94 the Commonwealth, ~~remain~~ remains unpaid after all the personal estate of such person has been  
95 applied to the payment of his debts, the creditor may file his ~~bill in equity~~ complaint, accompanied  
96 with an affidavit that the debt is bona fide due, to recover such debt in the circuit court to which  
97 the ~~inquisition~~ inquest of escheat was returned and make the escheator defendant. If the court  
98 ~~upon the evidence adduced shall be of opinion and decree~~ orders that the debt or any part thereof  
99 is due, the amount ~~decreed~~ ordered to be due shall be paid by the escheator, if ~~so much of the~~  
100 escheator has enough of the proceeds of sale remain in his hands remaining to cover the amount,  
101 or out of the state treasury, if so much of such enough of the proceeds shall that have been paid  
102 into and still remain in the state treasury still remain in the state treasury, or to the credit of the  
103 Literary Fund.

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109 **Subtitle V; Chapter 5: Trespasses; Fences**

110

111 ***ITEM 1: HOW GOVERNING BODY OF COUNTY MAY MAKE LOCAL FENCE LAW***

112

113 Change proposed at 5-7-18 meeting:

114       ~~§ 55-310~~ 55.1-xxx. How governing body of county may make local fence law.

115       The board of supervisors or other governing body in any county ~~in this State, after posting~~  
116 ~~publishing~~ notice of the time and place of meeting thirty days at the front door of the courthouse,  
117 and at each voting place in the county, and by publishing the same once a week for four successive  
118 weeks in some newspaper of such county, if any be published therein, and if none be published  
119 therein, in some newspaper having a general circulation therein, a majority of the board being  
120 present and concurring as required by subsection F of § 15.2-1427, may, by ordinance, declare  
121 the boundary line of each lot or tract of land, or any stream in such county, ~~or any magisterial~~  
122 ~~district thereof~~ of such county, or any selected portion of such county, to be a lawful fence as to  
123 any or all of the animals mentioned in ~~§ 55-306~~ domesticated livestock, or may declare any other  
124 kind of fence for such county, magisterial district, or selected portion of the county than as  
125 prescribed by ~~§ 55-299~~ 55.1-xxx to be a lawful fence, as to any or all of such animals.

126

127 Issue: Current language states that a board of supervisors of a county may "declare" the  
128 boundary line of such county to be a lawful fence. Pursuant to § 15.2-1425, counties may only  
129 act by ordinances, resolutions, and motions, but current language does not specify the process  
130 for the "declaration." Staff recommended requiring that the locality act by ordinance, and the  
131 Code Commission wanted this change to be vetted by the localities.

132

133       **Recommendation:** Through VaCO, staff reached out to the counties to ask if the  
134 recommended change was appropriate. Sixteen counties responded, and all agreed that the  
135 change was appropriate (some even stated that they already used the ordinance process).

136 **ITEM 2: NOTICE REQUIREMENT FOR PETITION TO FIX BOUNDARIES OF**  
137 **VILLAGES**

138

139 Change proposed at 5-7-18 meeting:

140 ~~§ 55-324~~ § 55.1-xxx. Petition for action ~~under § 55-323~~ to fix boundaries of villages.

141 Twenty or more ~~freeholders~~ landowners residing within the boundaries referred to in ~~§ 55-~~  
142 ~~323~~ § 55.1-xxx may ~~present to such court~~ file a petition signed by them ~~praying~~ requesting that the  
143 boundaries of such village or unincorporated community be fixed for the purposes of ~~§ 55-323;~~  
144 ~~notice~~ § 55.1-xxx. Notice of the intention to ~~present~~ file such petition, stating the date on which the  
145 ~~same petition~~ will be presented filed, and such notice shall be posted at the front door of the  
146 courthouse of such county, and at three or more conspicuous places within such boundaries, at  
147 ~~least ten~~ 10 days before the day on which such petition is to be presented and published once a  
148 week for four successive weeks in a newspaper having general circulation in such county where  
149 the village is located. Such petition shall state with reasonable certainty the boundaries within  
150 which it is desired to prohibit such animals from running at large, ~~and shall also state that at least~~  
151 300 persons reside within such boundaries, and that a majority of the ~~freeholders~~ landowners  
152 residing therein are in favor of prohibiting such animals from running at large.

153

154 Issue: Current law only requires that notice of the intention file a petition to fix the boundaries  
155 of a village or unincorporated community be posted at the front door of the courthouse and at  
156 three or more conspicuous places within such boundaries. Under common practice, such notices  
157 are typically published in a newspaper; in the opinion of staff, only having a physical posting  
158 requirement does not provide sufficient notice to the public and is not consistent with the current  
159 policies of the Commonwealth for providing public notice.

160

161 **Recommendation: Through VaCO, staff reached out to the counties to ask if the**  
162 **recommended change was appropriate. All sixteen of the responses stated that they thought**

a change to the notice requirements was appropriate, but there was a split as to whether the notification should be (i) in a newspaper, but with the publication requirement being identical to those for ordinances in § 15.2-1427, or (ii) on the locality's website. The two options are outlined below:

**Option 1 (newspaper with same requirements as for ordinances)**

~~§ 55-324~~ 55.1-xxx. Petition for action ~~under § 55-323~~ to fix boundaries of villages.

Twenty or more ~~freeholders~~ landowners residing within the boundaries referred to in ~~§ 55-323~~ 55.1-xxx may ~~present to such court~~ file a petition signed by them ~~praying~~ requesting that the boundaries of such village or unincorporated community be fixed for the purposes of ~~§ 55-323~~; ~~notice~~ 55.1-xxx. Notice of the intention to ~~present~~ file such petition, stating the date on which the same ~~petition~~ will be presented filed, and such notice shall be (i) posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries and (ii) published once a week for two successive weeks in a newspaper having a general circulation in the county where the village is located, ~~at least ten~~ 10 days before the day on which such petition is to be presented. Such petition shall state with reasonable certainty the boundaries within which it is desired to prohibit such animals from running at large, ~~and shall also state that at least 300 persons reside within such boundaries, and that a majority of the freeholders~~ landowners residing therein are in favor of prohibiting such animals from running at large.

**Option 2 (locality's website)**

~~§ 55-324~~ 55.1-xxx. Petition for action ~~under § 55-323~~ to fix boundaries of villages.

Twenty or more ~~freeholders~~ landowners residing within the boundaries referred to in ~~§ 55-323~~ 55.1-xxx may ~~present to such court~~ file a petition signed by them ~~praying~~ requesting that the boundaries of such village or unincorporated community be fixed for the purposes of ~~§ 55-323~~; ~~notice~~ 55.1-xxx. Notice of the intention to ~~present~~ file such petition, stating the date on which the same ~~petition~~ will be presented filed, and such notice shall be posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries, and

190 on the county's official website. at least ~~ten~~ 10 days before the day on which such petition is to be  
191 presented. Such petition shall state with reasonable certainty the boundaries within which it is  
192 desired to prohibit such animals from running at large, ~~and shall also state that at least 300 persons~~  
193 reside within such boundaries, and that a majority of the ~~freeholders~~ landowners residing therein  
194 are in favor of prohibiting such animals from running at large.

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217 **ITEM 3: DESCRIPTION OF A LAWFUL FENCE; "CREEP" VERSUS "PASS"**

218

219 Change proposed at 5-7-18 meeting:

220 ~~§ 55-299 55.1-xxx. Definition~~ Description of lawful fence.

221 Every fence shall be deemed a lawful fence as to any domesticated livestock ~~named in §~~  
222 ~~55-306, which that~~ could not creep pass through the same such fence, if it is:

223 ~~(1) Five~~ 1. At least five feet high, including, if the fence ~~be~~ is on a mound, the mound to  
224 the bottom of the ditch;

225 ~~(2) Of~~ 2. Made of barbed wire, at least 42 inches high, consisting of at least four strands  
226 of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced  
227 no farther than 12 feet apart unless a substantial stay or brace is installed halfway between such  
228 posts, trees, or other supports to which such wires ~~shall be~~ are also fixed;

229 ~~(3) Of~~ 3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least  
230 three boards firmly attached to posts, trees, or other supports substantially set in the ground;

231 ~~(4) Three~~ 4. At least three feet high, if such fence is within the limits of any ~~incorporated~~  
232 town whose charter ~~does not prescribe~~ neither prescribes, nor give gives to the town council  
233 thereof ~~power of prescribing to prescribe~~, what shall constitute a lawful fence within such  
234 corporate limits; or

235 ~~(5) 5. Any other~~ fence of any kind ~~whatsoever, except as otherwise~~ described in this  
236 section, ~~and except in the case of incorporated towns as set forth in subdivision (4), which shall~~  
237 be if it is:

238 a. At least 42 inches high;

239 b. Constructed from materials sold for fencing or consisting of systems or devices based  
240 on technology generally accepted as appropriate for the confinement or restriction of domesticated  
241 livestock ~~named in § 55-306;~~ and

242 c. Installed pursuant to generally acceptable standards so that applicable domesticated  
243 livestock ~~named in § 55-306~~ cannot creep pass through the same.

244 A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a  
245 lawful fence as to any domesticated livestock ~~mentioned in § 55-306.~~

246 Nothing contained in this section shall affect the right of any such town to regulate or  
247 forbid the running at large of cattle and other domestic animals within its corporate limits.

248 The Board of Agriculture and Consumer Services may adopt ~~rules and~~ regulations  
249 regarding lawful fencing consistent with this section to provide greater specificity as to the  
250 requirements of lawful fencing. The absence of any such ~~rule or~~ regulation shall not affect the  
251 validity or applicability of this section as it relates to what constitutes lawful fencing.

252

253 Issue: Does replacing the word "creep" with "pass" change the requirements for a fence?

254

255 **Recommendation: At the May Code Commission meeting, the Commission voted to**  
256 **accept the proposed recommendation of change "creep" to "pass." Staff further researched**  
257 **the issue and was unable to find any Virginia cases interpreting the term "creep" as used in**  
258 **§ 55-299. In the opinion of staff and the workgroup, when the law was originally enacted,**  
259 **the word "creep" probably just meant to pass through the fence, although there was no case**  
260 **law to support this theory. In the opinion of staff, it is unlikely that the General Assembly**  
261 **intended to say that a fence was only lawful if it was built to a certain height, as specified in**  
262 **§ 55-299, and would prevent an animal from moving through it slowly or close to the ground**  
263 **(the dictionary definition of "creep") but not at a normal speed and at a normal height for**  
264 **domesticated livestock.**

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**271    ITEM 4: DUTY TO ISSUE WARRANT WHEN TRESPASSING ANIMAL IS IMPOUNDED**

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273    Change proposed at 5-7-18 meeting:

274            ~~§ 55-309~~ 55.1-xxx. Duty to issue warrant when animal impounded.

275            ~~It shall be the duty of such An owner or tenant of such lands so trespassed upon, within~~  
276    ~~three days after the taking up and impounding such animal unless the damages be otherwise~~  
277    ~~settled, to apply to a person authorized to issue warrants of the county or city in which such land~~  
278    ~~is situated for a warrant for the amount of damages so claimed by him, and such court, or the clerk~~  
279    ~~thereof, shall issue the same, to be made returnable at as early a date, not less than three days~~  
280    ~~thereafter, as shall be deemed best by him; and upon the hearing of the case the judge shall give~~  
281    ~~such judgment as is deemed just and right by any domesticated livestock may recover damages~~  
282    for taking up and impounding such animal by filing a warrant in debt pursuant to § 16.1-79 for  
283    the amount of damages claimed.

284

285    Issue: The Code Commission expressed concern over (i) deleting the three-day return date for  
286    the warrant for damages caused by a trespassing animal and (ii) specifying that the warrant was  
287    a warrant in debt, which limits the jurisdictional limit of the damages to \$25,000.

288

289            **Recommendation: Because the recommended changes were solely intended to update**  
290    **old language, it is recommended that the current language be reinstated and that only**  
291    **technical changes be made to this section as follows:**

292

293            ~~§ 55-309~~ 55.1-xxx. Duty to issue warrant when animal impounded.

294            ~~It shall be the duty of such An owner or tenant of such lands so trespassed upon by any~~  
295    domesticated livestock, within three days after the taking up and impounding such animal unless  
296    the damages ~~be~~ are otherwise settled, ~~to~~ shall apply to a person authorized to issue warrants of the  
297    county or city in which such land is situated for a warrant for the amount of damages ~~so~~ claimed

298 by him, ~~and such.~~ The court, or the clerk thereof, shall issue ~~the same~~ such warrant, to be made  
299 returnable at as early a date, not less than three days ~~thereafter~~ after such issuance, as shall be  
300 deemed best by him; and upon the hearing of the case the judge shall give such judgment as is  
301 deemed just and right.

302 #

1 TITLE 1.

2 GENERAL PROVISIONS.

3 CHAPTER ~~17~~ 6.

4 VIRGINIA COORDINATE ~~SYSTEM~~ SYSTEMS.

5 **Drafting note: Existing Chapter 17, related to the Virginia coordinate systems, is**  
6 **logically relocated as proposed Chapter 6 in Title 1 (General Provisions).**

7 § ~~55-287~~ 1-600. Virginia coordinate systems designated.

8 The systems of plane coordinates ~~which~~ that have been established by the National Ocean  
9 ~~Survey/National Service/National~~ Geodetic Survey or its successors for defining and stating the  
10 positions or locations of points on the surface of the earth within the Commonwealth ~~of Virginia~~  
11 ~~are hereafter~~ to be known and designated as the "Virginia Coordinate System of 1927" and the  
12 "Virginia Coordinate System of 1983."

13 **Drafting note: The National Ocean Survey is changed to the National Ocean Service**  
14 **throughout this proposed chapter pursuant to its federal name change in 1983. Technical**  
15 **changes are made.**

16 § ~~55-288~~. ~~Repealed.~~

17 **Drafting note: Repealed by Acts 1984, c. 726.**

18 § ~~55-288.1~~ 1-601. North and South Zones.

19 For the purpose of the use of ~~these systems~~ the Virginia Coordinate System of 1927 and  
20 the Virginia Coordinate System of 1983, the Commonwealth is divided into a "North Zone" and  
21 a "South Zone."

22 The area now included in the following counties and cities shall constitute the North Zone:  
23 the Counties of Arlington, Augusta, Bath, Caroline, Clarke, Culpeper, Fairfax, Fauquier,  
24 Frederick, Greene, Highland, King George, Loudoun, Madison, Orange, Page, Prince William,  
25 Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren, and Westmoreland;  
26 and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Harrisonburg, Manassas,  
27 Manassas Park, Staunton, Waynesboro, and Winchester.

28           The area now included in the following counties and cities shall constitute the South Zone:  
29   the Counties of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Bedford,  
30   Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Carroll, Charles City,  
31   Charlotte, Chesterfield, Craig, Cumberland, Dickenson, Dinwiddie, Essex, Floyd, Fluvanna,  
32   Franklin, Giles, Gloucester, Goochland, Grayson, Greenville, Halifax, Hanover, Henrico, Henry,  
33   Isle of Wight, James City, King and Queen, King William, Lancaster, Lee, Louisa, Lunenburg,  
34   Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton,  
35   Northumberland, Nottoway, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George,  
36   Pulaski, Richmond, Roanoke, Rockbridge, Russell, Scott, Smyth, Southampton, Surry, Sussex,  
37   Tazewell, Washington, Wise, Wythe, and York; and the Cities of Bristol, Buena Vista,  
38   Charlottesville, Chesapeake, Colonial Heights, Covington, Danville, Emporia, Franklin, Galax,  
39   Hampton, Hopewell, Lexington, Lynchburg, Martinsville, Newport News, Norfolk, Norton,  
40   Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Suffolk, Virginia  
41   Beach, and Williamsburg.

42           **Drafting note: Technical changes.**

43           ~~§ 55-289~~ 1-602. Designation of systems in land description.

44           A. As established for use in the North Zone, the Virginia Coordinate System of 1927 or  
45   the Virginia Coordinate System of 1983 shall be named, and in any land description in which it  
46   is used, it shall be designated; the "Virginia Coordinate System of 1927, North Zone" or "Virginia  
47   Coordinate System of 1983, North Zone."

48           B. As established for use in the South Zone, the Virginia Coordinate System of 1927 or  
49   the Virginia Coordinate System of 1983 shall be named, and in any land description in which it  
50   is used, it shall be designated; the "Virginia Coordinate System of 1927, South Zone" or "Virginia  
51   Coordinate System of 1983, South Zone."

52           **Drafting note: Technical changes.**

53           ~~§ 55-290~~ 1-603. Plane coordinates used in systems.

The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of these systems, shall be expressed in U.S. survey feet and decimals of a foot. One of these distances, to be known as the "x-coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate," shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Ocean Survey/National Service/National Geodetic Survey, or its successors, and whose plane coordinates have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either Virginia-Coordinate-System coordinate system.

When converting coordinates in the Virginia Coordinate System of 1983 from meters and decimals of a meter to feet and decimals of a foot, the U.S.-survey Survey foot conversion factor (one foot equals 1200/3937 meters) shall be used. This requirement does not preclude the continued use of the International foot conversion factor (one foot equals 0.3048 meters) in those counties and cities where this factor was in use prior to July 1, 1992. The plat or plan shall contain a statement of the conversion factor used and the coordinate values of a minimum of two project points in feet.

**Drafting note: The National Ocean Survey is changed to the National Ocean Service throughout this proposed chapter pursuant to its federal name change in 1983. Technical changes are made.**

~~§-55-291~~ 1-604. Tract of land lying in both coordinate zones.

When any tract of land to be defined by a single description extends from one into the other of the ~~above two~~ coordinate zones established in this chapter, the positions of all points on its boundaries may be referred to either of the two zones, with the zone ~~which~~ that is used being specifically named in the description.

**Drafting note: Technical changes.**

80        §—55-292\_1-605. Definition of systems by National Ocean—Survey/National  
81        Service/National Geodetic Survey; adopted.

82        A. For purposes of more precisely defining the Virginia Coordinate System of 1927, the  
83        following definition by the National Ocean—Survey/National Service/National Geodetic Survey is  
84        adopted:

85        The Virginia Coordinate System of 1927, North Zone, is a Lambert conformal projection  
86        of the Clarke spheroid of 1896, having standard parallels at north latitudes 38° 02' and 39° 12',  
87        along which parallels the scale shall be exact. The origin of coordinates is at the intersection of  
88        the meridian 78° 30' west of Greenwich with the parallel 37° 40' north latitude, such origin being  
89        given the coordinates:  $x = 2,000,000'$ , and  $y = 0'$ .

90        The Virginia Coordinate System of 1927, South Zone, is a Lambert conformal projection  
91        of the Clarke spheroid of 1896, having standard parallels at north latitudes 36° 46' and 37° 58',  
92        along which parallels the scale shall be exact. The origin of coordinates is at the intersection of  
93        the meridian 78° 30' west of Greenwich with the parallel 36° 20' north latitude, such origin being  
94        given the coordinates:  $x = 2,000,000'$ , and  $y = 0'$ .

95        B. For purposes of more precisely defining the Virginia Coordinate System of 1983, the  
96        following definition by the National Ocean—Survey/National Service/National Geodetic Survey is  
97        adopted:

98        The Virginia Coordinate System of 1983, North Zone, is a Lambert conformal conic  
99        projection based on the North American Datum of 1983, having standard parallels at north  
100        latitudes 38° 02' and 39° 12', along which parallels the scale shall be exact. The origin of  
101        coordinates is at the intersection of the meridian 78° 30' west of Greenwich and the parallel 37°  
102        40' north latitude. ~~The, such~~ origin being given the coordinates:  $x = 3,500,000$  meters and  $y =$   
103        2,000,000 meters.

104        The Virginia Coordinate System of 1983, South Zone, is a Lambert conformal conic  
105        projection based on the North American Datum of 1983, having standard parallels at north  
106        latitudes 36° 46' and 37° 58', along which parallels the scale shall be exact. The origin of

107 coordinates is at the intersection of the meridian 78° 30' west of Greenwich and the parallel 36°  
108 20' north latitude. ~~This, such~~ origin ~~is being~~ given the coordinates: x = 3,500,000 meters and y =  
109 1,000,000 meters.

110 **Drafting note: The National Ocean Survey is changed to the National Ocean Service**  
111 **throughout this proposed chapter pursuant to its federal name change in 1983. Technical**  
112 **changes are made.**

113 ~~§-55-293~~ 1-606. Position of systems.

114 The position of the Virginia ~~Coordinate~~ coordinate systems shall be as marked on the  
115 ground by triangulation or traverse stations established in conformity with the standards of  
116 accuracy and specifications for first-order and second-order geodetic surveying as prepared and  
117 published by the Federal Geodetic Control ~~Committee (FGCC)~~ Subcommittee of the Federal  
118 Geographic Data Committee of the ~~United States~~ U.S. Department of Commerce. The geodetic  
119 position of stations defining the position of the Virginia Coordinate System of 1927, shall have  
120 been rigidly adjusted on the North American Datum of 1927, and the plane coordinates shall have  
121 been computed on the Virginia Coordinate System of 1927 ~~herein defined~~. The geodetic position  
122 of stations defining the position of the Virginia Coordinate System of 1983 shall have been rigidly  
123 adjusted on the North American Datum of 1983, and the plane coordinates shall have been  
124 computed on the Virginia Coordinate System of 1983 ~~herein defined~~. Any such station may be  
125 used for establishing a survey connection with the Virginia ~~Coordinate~~ coordinate systems.

126 **Drafting note: The Federal Geodetic Control Committee is changed to the Federal**  
127 **Geodetic Control Subcommittee of the Federal Geographic Data Committee in this and the**  
128 **following section pursuant to a federal reorganization in 1990. Technical changes are made.**

129 ~~§-55-294~~ 1-607. Limitation on use of systems.

130 No coordinates based on the Virginia ~~Coordinate~~ coordinate systems, purporting to define  
131 the position of a point on a land boundary, shall be presented to be recorded in any public land  
132 records or deed records unless such point is within two kilometers of a public or private  
133 monumented horizontal control station established in conformity with the standards of accuracy

134 and specifications for second-order, class II or better geodetic surveying as prepared and  
135 published by the Federal Geodetic Control-Committee Subcommittee of the Federal Geographic  
136 Data Committee of the United States U.S. Department of Commerce. Standards and specifications  
137 of the Federal Geodetic Control-Committee Subcommittee or its successor in force on the date of  
138 said such survey shall apply. The publishing of the existing control stations, or the acceptance  
139 with intent to publish the new established control stations, by the National Ocean Survey/National  
140 Service/National Geodetic Survey will constitute constitutes evidence of adherence to the Federal  
141 Geodetic Control-Committee Subcommittee specifications. The two-kilometers kilometers'  
142 limitation may be modified by a duly authorized state agency to meet local conditions. Nothing  
143 contained in this chapter shall be interpreted as preventing the use of the Virginia-Coordinate  
144 System coordinate systems in any unrecorded deeds, maps, or computations.

145 **Drafting note: The Federal Geodetic Control Committee is changed to the Federal**  
146 **Geodetic Control Subcommittee of the Federal Geographic Data Committee in this and the**  
147 **following section pursuant to a federal reorganization in 1990. Technical changes are made.**

148 ~~§ 55-295~~ 1-608. Limitation on use of name of systems.

149 The use of the terms "Virginia Coordinate System of 1927" or "Virginia Coordinate  
150 System of 1983" on any map, report of survey, or other document, shall be limited to coordinates  
151 based on the Virginia-Coordinate coordinate systems as defined in this chapter.

152 **Drafting note: Technical changes.**

153 ~~§ 55-296~~ 1-609. Use of system not compulsory.

154 For purposes of describing the location of any survey station or land boundary corner in  
155 the Commonwealth of Virginia, it shall be considered a complete, legal, and satisfactory  
156 description of such location to give the position of said such survey station or land boundary  
157 corner on the system of plane coordinates defined in this chapter. Nothing contained in this  
158 chapter shall require any purchaser or mortgagee to rely on a description any part of which  
159 depends exclusively upon either Virginia-Coordinate System coordinate system.

160 **Drafting note: Technical changes.**



§ 55-297 1-610. ~~Virginia Polytechnic Institute and State~~ Old Dominion University  
designated as administrative agency.

163       ~~The Virginia Polytechnic Institute and State~~ Old Dominion University is herewith  
164 designated as the authorized state agency to collect and distribute information, to authorize such  
165 modifications as are referred to in § ~~55-294~~ 1-607, and generally to advise with and assist  
166 appropriate state and federal agencies and individuals interested in the development of the  
167 provisions of this chapter.

168           **Drafting note: Virginia Polytechnic Institute and State University is replaced with**  
169   **Old Dominion University pursuant to budget language contained in Item 178 C of Chapter**  
170   **\_\_\_ of the Acts of Assembly of 2018, effective for the biennium ending June 30, 2020, which**  
171   **provides: "Notwithstanding § 55-297, Code of Virginia, Old Dominion University is hereby**  
172   **designated as the administrative agency for the Virginia Coordinate System." Similar**  
173   **language has been in effect in the budgets since 1998. A technical change is made.**

**174**                    ~~§ 55-297.1. Repealed.~~

**175**            **Drafting note: Repealed by Acts 2015, c. 709, cl. 2.**

176                    ~~§ 55-297.2. Repealed.~~

**177**                    **Drafting note: Repealed by Acts 1987, c. 517.**

178 #

## TITLE 8.01.

## CIVIL REMEDIES AND PROCEDURE.

## CHAPTER 3.

## ACTIONS.

~~CHAPTER 12.~~~~WASTE.~~Article 15.1.Waste.

**Drafting note: Existing Chapter 12, which contains a civil cause of action for waste, is logically relocated as proposed Article 15.1 in existing Chapter 3, Actions, of Title 8.01 (Civil Remedies and Procedure). This new article is proposed to be located after Chapter 15, Improvements, which is another type of civil action related to property use.**

~~§ 55-211 8.01-178.1. Persons in possession liable for waste~~ Waste; who is liable.

~~If any A. Any tenant of land or any person who has aliened land commit who commits any waste thereon, while he remains is in possession of such land, unless by he has special license so to do so, he shall be liable to any party injured, for damages.~~

~~§ 55-212. Also tenant in common, etc.~~

~~If a B. Any tenant in common, or joint tenant or parcener commit who commits waste, he shall be liable to his cotenants, jointly or severally, for damages.~~

~~§ 55-213. Also guardian or conservator.~~

~~If a C. Any guardian or conservator commit who commits waste of the estate of his ward, he shall be liable to the ward, at the expiration of his guardianship or conservatorship, for damages.~~

**Drafting note: Existing §§ 55-211, 55-212, and 55-213 are combined into one section because they each specify a category of person who may be liable for waste. The phrase "to any party injured" in proposed subsection A is deleted as unnecessary. The term "parcener" in proposed subsection B is deleted as obsolete; additionally, it is not used**

28 elsewhere in the Code. Language is updated for modern usage and technical changes are  
29 made.

30 ~~§ 55-214 8.01-178.2. Action therefor; if waste wanton; Civil action for waste; double~~  
31 damages.

32 Any person, ~~entitled to damages in any such case, who is injured due to another person's~~  
33 ~~committing waste on his land may recover the same in an action on the case damages for such~~  
34 ~~waste by initiating a civil action. If it shall be found by the a jury finds that the waste was~~  
35 ~~committed wantonly a result of wanton misconduct, judgment shall be for double the amount of~~  
36 damages assessed therefor.

37 **Drafting note: Language is updated for modern usage and clarity and technical**  
38 **changes are made.**

39 ~~§ 55-215 8.01-178.3. Waste for tenant to sell or remove manure from leased premises.~~

40 If a tenant at will or for years, without a special license ~~so to do so, remove by sale or~~  
41 ~~otherwise from the leased premises sells or otherwise removes manure made thereon on such~~  
42 ~~leased premises in the ordinary course of husbandry, consisting of (i) ashes leached or unleached;~~  
43 ~~(ii) collections from the stables, barnyard, or cattle pens or other places on the leased premises;~~  
44 ~~or (iii) composts formed by an admixture of these or any of them any such manure with the soil~~  
45 ~~or other substances, such removal shall be deemed waste and within for the purposes of the~~  
46 provisions of the ~~preceding sections of this chapter~~ article.

47 **Drafting note: Clause designations are added for clarity. Language is updated for**  
48 **modern usage and clarity, and technical changes are made.**

49 ~~§ 55-216 8.01-178.4. Waste committed during pendency of suit action.~~

50 If the tenant in possession of land, pending any ~~suit to recover or charge the same action~~  
51 ~~initiated pursuant to § 8.01-178.2, with knowledge of such suit action, commit commits any waste~~  
52 ~~on the land, the court in which the suit is, or the judge of the court in vacation, may, on petition~~  
53 ~~of the plaintiff alleging such waste, verified by oath, and after reasonable notice to the tenant,~~  
54 ~~make an order forbidding prohibit the tenant to commit from committing further waste on the land~~

during the pendency of the ~~suit and disobedience of the~~ action. Violation of such order by the tenant, after he ~~shall have~~ has been served with a copy, thereof may be punished as a contempt by the court ~~in term or by the judge in vacation~~; but it shall be provided in the order aforesaid that it ~~is~~. The order shall not to take effect be effective until the plaintiff, or someone for him, shall have ~~given~~ gives bond with sufficient surety ~~before the court or the clerk thereof in his office~~, in such penalty as the court or judge thereof shall prescribe as prescribed by the court, with condition to pay to the tenant, in case the plaintiff does not succeed in recovering or charging the land, such damages as may accrue to the tenant ~~in~~ as a consequence of such order. If the plaintiff ~~succeeds~~ succeeds in recovering or charging the land, he may recover ~~in an action on the case against him~~ who committed the waste three times the amount of the damages assessed ~~therefor~~ for such waste.

**Drafting note: Language used in the old equitable pleading practice, including "suit," is replaced with modern terminology. Language is updated for modern usage and clarity and technical changes are made.**

#### CHAPTER ~~9~~ 18.1.

#### ASSIGNMENTS FOR BENEFIT OF CREDITORS.

**Drafting note: Existing Chapter 9, Assignments for Benefit of Creditors, of Title 55 is logically relocated as proposed Chapter 18.1 in Title 8.01 (Civil Remedies and Procedure). This chapter outlines a procedure by which debtors may pay off their creditors, but it is not often used because of the availability of federal bankruptcy procedures. This new chapter is proposed to be located after existing Chapter 18, Execution and Other Means of Recovery.**

#### Article 1.

#### Assignment of Property.

**Drafting note: Existing Article 1, containing provisions relating to the assignment of property, is retained as proposed Article 1.**

~~§ 55-156~~ 8.01-525.1. Recordation; notice of sale; preferences prohibited.

Whenever a deed of assignment for the benefit of creditors is executed, ~~the same deed~~ shall be ~~forthwith~~ recorded ~~as are other deeds and the~~. If no notice of the sale has previously been

82 ~~given, the~~ trustee named ~~therein~~ in such deed, or the one substituted in the manner hereinafter  
83 prescribed ~~in this article, if no notice has been given,~~ before selling under the deed of assignment,  
84 shall, at least ~~ten~~ 10 days before the sale ~~mail a registered letter or notice to,~~ notify each of the  
85 creditors named in the deed by certified mail, return receipt requested, advising of (i) the execution  
86 thereof, ~~of such sale;~~ (ii) when, where, and how the sale will be held; (iii) the terms ~~thereof, of~~  
87 such sale; and (iv) whether or not the deed provides that acceptance shall be in full satisfaction.  
88 No creditor shall be preferred in the deed except those given a lien or preference by law, or those  
89 having a valid lien upon the property conveyed, or some part ~~thereof, of such lien,~~ and those  
90 having a lien shall be preferred only to the extent of the value of the property upon which they  
91 have a lien.

92 **Drafting note: Language is updated for modern usage and clarity. The notice**  
93 **provision is updated in accordance with title-wide conventions. Clause designations are**  
94 **added for clarity. Technical changes are made.**

95 ~~§ 55-157~~ 8.01-525.2. Substitution of another trustee by creditors.

96 A majority of the unsecured creditors in number and amount of the assignor may agree in  
97 writing upon a trustee different from the one named in the deed of assignment, ~~whereupon and~~  
98 upon petition to the court, ~~or the judge thereof in vacation, which that~~ that would have jurisdiction if  
99 suit were brought against the assignor, such agreed trustee may be substituted in lieu of such  
100 named trustee with all of the rights, powers, and duties conferred upon such named trustee in the  
101 deed of assignment ~~and the. The clerk of the court shall cause to be entered in the deed book~~  
102 where the deed of assignment is recorded ~~the fact of the entry of~~ shall record such order and shall  
103 include a reference to the order book and page where ~~the same~~ such deed is recorded, together  
104 with the name of the substituted trustee, and shall make proper indexing. The substitute trustee  
105 shall reside in the county or city in which the property that is conveyed in the deed of assignment  
106 or the greater portion thereof in value is located.

107 **Drafting note: Language is updated for modern usage and technical changes are**  
108 **made.**

Any creditor of the assignor who questions the validity of any other creditor's claim, or the trustee if he questions the validity of any claim, may file, within ~~thirty~~ 30 days after the recordation of the deed, a petition against the creditor whose claim is questioned in the court ~~which~~ that would have jurisdiction if the suit was brought by the creditor whose claim is questioned against the assignor, and the burden of proof shall be upon the creditor whose claim is questioned. Upon the filing of such petition, the court, ~~or the judge of such court in vacation,~~ may order the party whose claim is questioned to appear at such time as it thinks right and proper to defend such claim and the court shall determine the matter in a summary way.

**121**            ~~§ 55-159~~ 8.01-525.4. Provision to bar further claim by creditors who accept deed.

**125            Drafting note: Technical changes.**

**127** Every trustee referred to in this article shall receive reasonable compensation for services.

129 Article 2.

131           **Drafting note: Existing Article 2, containing provisions relating to the assignment of**  
132           **salary, wages, or income, is retained as proposed Article 2 and renamed as "Assignment of**  
133           **Salary, Wages, or Income" to reflect the subject matter of the article.**

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136 Whenever any judge is of the opinion that any debtor desires honestly to pay his just debts  
137 and can do so with the cooperation of his creditors, and such debtor is willing to assign Upon  
138 petition of a debtor for the assignment of his salary, wages, or income to a trustee for the benefit  
139 of his creditors, a judge may, subject to the supervision and orders of the court, the judge may, on  
140 the written assignment, under oath, of the salary, wages or income of such debtor, setting forth  
141 the names of his creditors and the amount due each one, and upon the filing of the same with the  
142 court, together with the written consent of a majority of his creditors in number and in amount,  
143 appoint some responsible person willing to accept such appointment as appoint a trustee, subject  
144 to the supervision and order of the court, to receive the such salary, wages, or income of such  
145 debtor and pay off the obligations due by him as hereinafter such debtor as provided in this article,  
146 provided that (i) the debtor has provided to the court, under oath, a statement of his salary, wages,  
147 or income and the names of his creditors and the amount due to each one, and (ii) a majority of  
148 the creditors have provided written consent of such assignment to the court. ~~When~~ If the debtor is  
149 employed on a salary or for wages, the written consent of his employer ~~shall be necessary~~ is  
150 required.

151 **Drafting note: Language is reorganized and updated for modern usage and clarity.**  
152 **Technical changes are made.**

153 § ~~55-462~~ 8.01-525.7. Trustee; rights and duties; compensation.

154 The ~~A~~ trustee appointed pursuant to § 8.01-525.6 shall make written reports to the court  
155 ~~at such times as the court may direct, for which services the~~ as required by the court. The trustee  
156 ~~may charge as compensation a fee of five per centum percent~~ of such wages, salary, wages, or  
157 income received and disbursed by him; provided, however, that no public officer or employee  
158 who receives a full-time full-time salary and who acts as trustee under this section article shall  
159 retain such fee for his personal use.

160 The trustee, upon being appointed, shall give written notice to any person, firm, or  
161 corporation who may be at the time, or may thereafter become indebted to owe the debtor any  
162 salary, wages, or income, and upon receiving such notice, such person, firm, or corporation shall

163 pay to the trustee any salary, wages, or income that ~~may be owing~~ are owed to such debtor, ~~as and~~  
164 ~~when the same is~~ at the time it would be otherwise due to the debtor.

165 The trustee ~~shall have the right to~~ may compromise and settle any claims against the debtor  
166 ~~when in his discretion he believes~~ such compromise shall be for the benefit of all the creditors.

167 **Drafting note: Language is updated for modern usage and clarity. The phrase "shall**  
168 **have the right to" is replaced with "may" according to the title-wide conventions. Technical**  
169 **changes are made.**

170 ~~§ 55-163~~ 8.01-525.8. Resignation of trustee.

171 The trustee may resign at any time after accounting for all funds in his possession, and the  
172 court may appoint another trustee.

173 **Drafting note: Technical change.**

174 ~~§ 55-164~~ 8.01-525.9. Debts; order of payment.

175 The trustee shall immediately upon receipt of such salary, wages, or income, or at such  
176 other time as the court may direct, disburse the ~~fund~~ funds as follows:

177 ~~(1) Pay 1.~~ The trustee shall first pay to the debtor ~~direct~~ directly, or for his benefit as the  
178 court may direct, any amount ~~he~~ the debtor may be entitled to as exempt by law if he is a  
179 householder and head of a family; or, if he is not a householder or head of a family, then such  
180 amount for the necessities of life as may be agreed upon by the creditors in the assignment. ~~But~~  
181 ~~nothing~~ Nothing in this ~~section~~ subdivision shall prevent the trustee from paying to the debtor a  
182 greater amount than is exempt by law if agreed to by the creditors and approved by the court.

183 ~~(2) 2.~~ The trustee shall next pay, according to such funds as he has in his possession, a pro  
184 rata share of the balance to all the creditors on an equal basis; or, in such proportions as the  
185 creditors may agree.

186 **Drafting note: Technical changes.**

187 ~~§ 55-165~~ 8.01-525.10. Exemption from garnishment, levy, or distress.

188 When the assignment is executed and approved by the court and the trustee has been  
189 appointed and notice given to the creditors ~~mentioned~~ listed in the assignment, such assignment



190 shall be deemed legal and binding upon all creditors and such salary, wages, or income shall be  
191 exempt from garnishment, levy, or distress during such time as the assignment is in existence;  
192 ~~and such.~~ Such assignment shall have priority over all liens subsequently obtained.

193 **Drafting note: Technical changes.**

194 ~~§ 55-166~~ 8.01-525.11. Termination of assignment by court.

195 The court may, at any time, upon ~~complaint~~ a motion stating that the terms of the  
196 assignment are not being ~~fairly observed~~ complied with, order the debtor and trustee to appear  
197 before the court ~~at such time as it may designate,~~ and the court may, if the evidence justifies, or,  
198 in its discretion, declare the assignment null and void. When such action is taken by the court, a  
199 written notice shall be sent ~~forthwith~~ to all persons named in the assignment.

200 The court may, on its own motion, revoke the assignment whenever it ~~feels~~ determines  
201 that the ends of justice are not being attained.

202 When the assignment has been fully complied with, the court shall discharge the trustee  
203 and notify the employer of the debtor, if there is one, that the debtor is ~~from thenceforth~~ entitled  
204 to receive his entire salary, wages, or income ~~direct~~ directly.

205 **Drafting note: The phrase "at such time as it may designate" is deleted as**  
206 **unnecessary. Technical changes are made.**

207 ~~§ 55-167~~ 8.01-525.12. Clerk to preserve ~~papers, etc.~~ assignment; fees.

208 The clerk of the court wherein any assignment is filed, as otherwise provided by law, shall  
209 ~~carefully preserve the same~~ maintain the court records of such assignment, together with all  
210 reports of the trustee, and shall keep an index of all such assignments. For filing the assignment,  
211 the fee as prescribed in § 17.1-275 shall be charged.

212 **Drafting note: Language related to the retention of court records is clarified for**  
213 **consistency with provisions contained in Title 17.1 (Courts of Record). Technical changes**  
214 **are made.**

215 #

## TITLE 32.1.

## HEALTH.

CHAPTER ~~30~~ 20.

## DISPOSITION OF ASSETS BY NONPROFIT HEALTH CARE ENTITIES.

**Drafting note: Existing Chapter 30 of Title 55, related to disposition of assets by nonprofit health care entities, is logically relocated as proposed Chapter 20 of Title 32.1 (Health).**

~~§ 55-531~~ 32.1-373. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context requires a different meaning:

"Disposition of assets" means any action undertaken by a nonprofit entity to dispose of control of all or substantially all of its assets pursuant to an agreement of sale, transfer, lease, exchange, option, joint venture, or partnership, or to convert to a for-profit entity or to otherwise restructure the nonprofit entity or its assets, resulting in a change in control or governance of the entity or assets.

"Nonprofit entity" means ~~(a)~~ (i) a foreign or domestic nonstock corporation licensed and subject to regulation under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 or ~~(b)~~ (ii) a person that is exempt from taxation under 26 U.S.C. § 501(c)(3) or (4) and is, or owns, one of the following:

~~(i)~~ (a) a hospital licensed under Chapter 5 (§ 32.1-123 et seq.) of ~~Title 32.1~~ this title or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2; ~~(ii)~~ (b) a health maintenance organization licensed under Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2; ~~(iii)~~ (c) a nursing home, including a facility known by varying nomenclature or designation such as convalescent home, skilled nursing facility or skilled care facility, intermediate care facility, extended care facility, ~~a~~ or certified nursing facility or nursing care facility, licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of ~~Title 32.1~~; or ~~(iv)~~ (d) a facility for the provision of continuing care registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

**Drafting note: Technical changes.**

28           ~~§ 55-532~~ 32.1-374. Obligations of nonprofit entity.

29           Prior to disposition of assets, any nonprofit entity shall provide to the Attorney General  
30 written notice, on a form provided by the Attorney General, of its intent to dispose of such assets,  
31 including the terms of the proposal. The notice shall be given at least 60 days in advance of the  
32 effective date of such proposed transaction in order that the Attorney General may exercise his  
33 common law and statutory authority over the activities of these organizations. The Attorney  
34 General may employ expert assistance in reviewing any proposed transaction, and such  
35 reasonable expenses incurred by the Attorney General shall be paid by a party to the proposed  
36 transaction.

37           Within 10 days of receipt of the notice from the entity, the Attorney General shall cause a  
38 public notice of the transaction to be published in a newspaper in which legal notices may be  
39 published in that jurisdiction.

40           No later than 40 days prior to any disposition of assets, the nonprofit entity shall convene  
41 a public meeting to set forth its expectations ~~about~~ concerning how the health care needs of the  
42 community will be served following the proposed disposition of assets and to receive comments  
43 and respond to questions on the potential impact of the proposed disposition of assets on the  
44 community served by the nonprofit entity. Notice of the time and place of such meeting shall be  
45 published at least 10 days prior to the meeting in a newspaper in which legal notices may be  
46 published in that jurisdiction.

47           Notice to the Attorney General pursuant to this section shall be given for State Corporation  
48 Commission approval sought pursuant to Article 11 (§ 13.1-893.1) of Chapter 10 of Title 13.1  
49 and §§ 38.2-203 and 38.2-1322 through 38.2-1328 and subdivision A 1 of § 38.2-4316. Such  
50 notice need not be given where the State Corporation Commission determines, in its sole  
51 discretion, that there is a reasonable expectation that the foreign or domestic nonstock corporation  
52 licensed and subject to regulation under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 or health  
53 maintenance organization referenced ~~herein~~ in this chapter will not be able to meet its obligations  
54 to subscribers or enrollees.



## TITLE 36.

## HOUSING.

CHAPTER ~~32~~ 12.

## FIRST-TIME HOME BUYER SAVINGS PLAN ACT.

**Drafting note: Existing Chapter 32 of Title 55, related to the First-Time Home Buyer Savings Plan Act, is logically relocated as proposed Chapter 12 of Title 36 (Housing).**

~~§ 55-555~~ 36-171. Definitions.

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

"Account holder" means an individual who establishes, individually or jointly with one or more other individuals, an account with a financial institution for which the account holder claims a first-time home buyer savings account status on his Virginia income tax return.

"Allowable closing costs" means a disbursement listed on a settlement statement for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

"Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union, ~~or~~ any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the Commonwealth.

"First-time home buyer savings account" or "account" means an account with a financial institution for which the account holder claims first-time home buyer savings account status on his Virginia income tax return for taxable year 2014 or any taxable year thereafter, pursuant to this chapter for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary. Financial institutions shall not be required to (i) designate an account as a first-time home buyer savings account, or designate the beneficiaries of such accounts, in the financial institutions' account contracts or systems or in any other way; (ii) track the use of funds withdrawn from such accounts; (iii) allocate funds in

28 such accounts among joint account owners or multiple beneficiaries; or (iv) report any of the  
29 information stated in ~~clauses~~ clause (i), (ii), or (iii) to the Department of Taxation or other  
30 governmental agency. Financial institutions shall not be responsible for or liable for (a)  
31 determining or ensuring that an account satisfies the requirements to be a first-time home buyer  
32 savings account, (b) determining or ensuring that costs are eligible costs, or (c) reporting or  
33 remitting taxes or penalties for such accounts.

34 "Qualified beneficiary" means an individual ~~or individuals only who reside~~ resides in the  
35 Commonwealth at the time of settlement on the purchase of a single-family residence in the  
36 Commonwealth who (i) ~~have~~ has never owned or purchased under contract for deed, either  
37 individually or jointly, a single-family residence in the Commonwealth or outside of the  
38 Commonwealth; (ii) ~~are~~ is designated as the beneficiary of an account designated by the account  
39 holder as a first-time home buyer savings account; and (iii) may apply moneys or funds held in  
40 such account for eligible costs. A qualified beneficiary may use the funds from such account for  
41 eligible costs regardless of whether such qualified beneficiary purchases the single-family  
42 residence as sole owner or jointly with another individual.

43 "Settlement statement" means the statement of receipts and disbursements for a  
44 transaction related to real estate, including a statement prescribed under the Real Estate Settlement  
45 Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., as amended, and the regulations  
46 thereunder, or an executed sales agreement for the purchase of a manufactured home being  
47 conveyed as personal property.

48 "Single-family residence" means a single-family residence owned and occupied by a  
49 qualified beneficiary, including a manufactured home, trailer, mobile home, condominium unit,  
50 or cooperative.

51 **Drafting note: In the definition of "qualified beneficiary" the plural "individuals" is**  
52 **stricken on the basis of § 1-227, which states that throughout the Code any word used in the**  
53 **singular includes the plural and vice versa. Technical changes are made.**

54 ~~§-55-556~~ 36-172. Claiming first-time home buyer status.

55           A. The account holder shall be responsible for the use or application of moneys or funds  
56 in an account for which the account holder claims first-time home buyer savings account status.

57           B. The account holder shall (i) not use moneys or funds held in an account to pay expenses  
58 of administering the account, except that a service fee may be deducted from the account by a  
59 financial institution; (ii) maintain documentation, which may include the settlement statement, of  
60 the segregation of moneys or funds in separate accounts and documentation of eligible costs for  
61 the purchase of a single-family residence in the Commonwealth; ~~such documentation may include~~  
62 ~~the settlement statement~~; (iii) file, with the account holder's Virginia income tax return, forms  
63 developed by the Department of Taxation regarding treatment of the account as a first-time home  
64 buyer savings account under this chapter, along with the Form 1099 issued by the financial  
65 institution for such account; and (iv) remit to the Department of Taxation the tax on any amounts  
66 (a) added to individual income pursuant to subdivision 6 of § 58.1-322.01 or (b) recaptured  
67 pursuant to subdivision 25 of § 58.1-322.02.

68           C. The Tax Commissioner shall develop guidelines applicable to account holders to  
69 implement the provisions of this chapter. Such guidelines shall be exempt from the provisions of  
70 the Administrative Process Act (§ 2.2-4000 et seq.). Such guidelines shall not apply to, or impose  
71 administrative, reporting, or other obligations or requirements on, financial institutions-related  
72 accounts for which first-time home buyer savings account status is claimed by the account holder.

73           **Drafting note: Technical change.**

74           ~~§ 55-557~~ 36-173. Tax exemption; conditions.

75           A. All interest or other income earned attributable to an account shall be excluded from  
76 the Virginia taxable income of the account holder as provided under subdivision 25 of § 58.1-  
77 322.02.

78           B. There shall be an aggregate limit of \$50,000 per account on the amount of principal for  
79 which the account holder may claim first-time home buyer savings account status. Only cash and  
80 marketable securities may be contributed to an account.

81 C. Subject to the aggregate limit on the amount of principal that may be contributed to an  
82 account pursuant to subsection B, there shall be a limitation of \$150,000 on the amount of  
83 principal and interest or other income on the principal that may be retained within an account.

84 D. An account holder shall be subject to Virginia income tax pursuant to subdivision 6 of  
85 § 58.1-322.01 to the extent of any loss deducted as a capital loss by the individual for federal  
86 income tax purposes attributable to the person's account.

87 E. Upon being furnished proof of the death of the account holder, a financial institution  
88 shall distribute the principal and accumulated interest or other income in the account in  
89 accordance with the terms of the contract governing the account.

90 **Drafting note: No change.**

91 ~~§ 55-558~~ 36-174. Withdrawal of funds from account for purposes other than eligible costs  
92 for first-time home purchase.

93 If moneys or funds are withdrawn from an account for any purpose other than the payment  
94 of eligible costs by or on behalf of a qualified beneficiary, there shall be imposed a penalty  
95 calculated using the Form 1099 showing the amount of income exempted from state income tax,  
96 and a five percent penalty shall be assessed on the amount of exempted income. The penalty shall  
97 be paid to the Department of Taxation. In addition, as provided under subdivision 25 of § 58.1-  
98 322.02, the account holder shall also be subject to recapture of income that was subtracted  
99 pursuant to that subdivision.

100 Such five percent penalty shall not apply to, and there shall be no recapture of income with  
101 regard to, the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the  
102 qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to  
103 a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or  
104 (iii) transferred from an account established pursuant to this chapter into another account  
105 established pursuant to this chapter for the benefit of another qualified beneficiary.

106 **Drafting note: Technical changes.**

107 ~~§ 55-559~~ 36-175. False claims prohibited.



108           A person who knowingly prepares or causes to be prepared a false claim, receipt,  
109   statement, or billing to avoid or evade taxes or penalties upon the withdrawal of money or funds  
110   from an account for which the account holder claims first-time home buyer savings account status  
111   is guilty of a Class 1 misdemeanor.

**112 Drafting note: No change.**

113 #

~~TITLE 55.~~

~~CHAPTER 2.~~

~~EDUCATIONAL, LITERARY AND CHARITABLE GIFTS, DEVISES, ETC.~~

TITLE 57.

RELIGIOUS AND CHARITABLE MATTERS; CEMETERIES.

CHAPTER 2.

CHURCH PROPERTY; BENEVOLENT ASSOCIATIONS AND OBJECTS.

Article 1.

General Provisions.

**Drafting note: Existing Chapter 2 of Title 55, which contains one section related to the validity of certain charitable gifts, is logically relocated as one section within Article 1 of Chapter 2 of Title 57 (Religious and Charitable Matters; Cemeteries).**

~~§ 55-26. Repealed.~~

**Drafting note: Repealed by Acts 1975, c. 547.**

~~§ 55-26.1 57-6.1. Validity of literary, educational, and charitable gifts, grants, devises, or bequests.~~

Every gift, grant, devise, or bequest ~~which, since made on or after April 2, 1839, has been~~  
~~or at any time hereafter shall be made for literary or educational purposes or for education, and~~  
every gift, grant, devise, or bequest made ~~hereafter~~ on or after April 6, 1976, for charitable  
purposes, whether made in any case to ~~a body corporate or unincorporated, any type of entity or~~  
to a natural person, shall be as valid as if made to or for the benefit of a certain natural person,  
except such devises or bequests, if any, ~~as that~~ that have failed or become void by virtue of the seventh  
section of the Act of the General Assembly passed on April 2, 1839, entitled "an act concerning  
devises made to schools, academies, and colleges." Nothing in this section shall be ~~so~~ construed  
so as to give validity to any devise or bequest to or for the use of any unincorporated theological  
seminary. Every gift, grant, devise, or bequest made for literary, educational, or charitable  
purposes before April 6, 1976, is hereby validated.

28           **Drafting note: The date "April 6, 1976," is added to replace "hereafter" because it**  
29           **is the date on which the statute became effective. Technical changes are made.**

**30**        ~~§§ 55-27 through 55-34. Repealed.~~

**31 Drafting note: Repealed by Acts 2005, c. 935, cl. 3, effective July 1, 2006.**

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