

To: Code Commission
Re: Title 45.1 Recodification
Date: September 17, 2018
From: Scott Meacham, DLS

Work Group Composition Proposal
Draft

A. State government

1. State Corporation Commission
2. Virginia Department of Environmental Quality
3. Virginia Department of Mines, Minerals and Energy

B. Industry

Organizations

4. Virginia Coal and Energy Alliance
5. Virginia Oil and Gas Association
6. Virginia Transportation Construction Alliance

Individuals

7. Patrick McCrady, Corporate Mining Engineer for Titan America

C. Conservation and environmental groups

8. Southern Environmental Law Center
9. Virginia Renewable Energy Alliance
10. Sierra Club, Virginia Chapter

D. Academics and attorneys

11. Virginia State Bar, Environmental Law Section
12. Professor Ronald H. Rosenberg, William & Mary Law School
13. Professor Mark "Buzz" Belleville, Appalachian School of Law

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 for 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 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.

§ 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.

SUMMARY

Registrar of Regulations. Directs the Division of Legislative Services to employ a Registrar of Regulations for the purpose of performing the duties of the Virginia Register Act (§ 2.2-4100 et seq.). Current law directs the Code Commission to appoint the Registrar. The bill reflects current practice with respect to the Registrar of Regulations.

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4001, 2.2-4101, and 2.2-4102 of the Code of Virginia, relating to
2 the Registrar of Regulations.

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

4 **1. That §§ 2.2-4001, 2.2-4101, and 2.2-4102 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 **§ 2.2-4001. Definitions.**

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

8 "Agency" means any authority, instrumentality, officer, board or other unit of the state government
9 empowered by the basic laws to make regulations or decide cases.

10 "Agency action" means either an agency's regulation or case decision or both, any violation,
11 compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal
12 or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency
13 or court.

14 "Basic law" or "basic laws" means provisions of the Constitution and statutes of the
15 Commonwealth authorizing an agency to make regulations or decide cases or containing procedural
16 requirements therefor.

17 "Case" or "case decision" means any agency proceeding or determination that, under laws or
18 regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated
19 private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in
20 compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

21 "Guidance document" means the same as that term is defined in § 2.2-4101.

22 "Hearing" means agency processes other than those informational or factual inquiries of an
23 informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private
24 parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the

25 making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided
26 in § 2.2-4020 in connection with case decisions.

27 "Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of
28 the Supreme Court in accordance with § 2.2-4024.

29 "Public assistance and social services programs" means those programs specified in § 63.2-100.

30 "Registrar" means the Registrar of Regulations ~~appointed~~ employed as provided in § 2.2-4102.

31 "Rule" or "regulation" means any statement of general application, having the force of law,
32 affecting the rights or conduct of any person, adopted by an agency in accordance with the authority
33 conferred on it by applicable basic laws.

34 "Subordinate" means (i) one or more but less than a quorum of the members of a board constituting
35 an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons
36 designated by the agency to act in its behalf.

37 "Virginia Register of Regulations" means the publication issued under the provisions of Article 6
38 (§ 2.2-4031 et seq.).

39 "Virginia Regulatory Town Hall" means the website operated by the Department of Planning and
40 Budget, which has online public comment forums and displays information about regulatory actions under
41 consideration in the Commonwealth and sends this information to registered public users.

42 **§ 2.2-4101. Definitions.**

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

44 "Agency" means any authority, instrumentality, officer, board, or other unit of the government of
45 the Commonwealth with express or implied authority to issue regulations other than the General
46 Assembly, courts, municipal corporations, counties, other local or regional governmental authorities
47 including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the
48 Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under
49 the provisions of § 30-150, and educational institutions operated by the Commonwealth with respect to
50 regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining

51 of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of
52 students.

53 "Virginia Administrative Code" means the codified publication of regulations under the provisions
54 of Chapter 15 (§ 30-145 et seq.) of Title 30.

55 "Commission" means the Virginia Code Commission.

56 "Guidance document" means any document developed by a state agency or staff that provides
57 information or guidance of general applicability to the staff or public to interpret or implement statutes or
58 the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal
59 management of agencies. Nothing in this definition shall be construed or interpreted to expand the
60 identification or release of any document otherwise protected by law.

61 "Registrar" means the Registrar of Regulations ~~appointed~~ employed as provided in § 2.2-4102.

62 "Rule" or "regulation" means any statement of general application, having the force of law,
63 affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority
64 conferred on it by applicable basic laws.

65 "Virginia Register of Regulations" means the publication issued under the provisions of Article 6
66 (§ 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

67 **§ 2.2-4102. Registrar of Regulations; publications.**

68 The ~~Commission shall engage or appoint on a contract, part-time, or annual basis~~ Division of
69 Legislative Services shall employ a professionally experienced or trained Registrar of Regulations. Under
70 the direction of the Commission or the Director of the Division of Legislative Services, the Registrar shall,
71 ~~at a suitable place to be designated by the Commission,~~ perform the duties required by this chapter or
72 assigned by the Commission or the Director of the Division of Legislative Services in accordance with
73 Chapter 40 (§ 2.2-4000 et seq.), this chapter, or Chapter 15 (§ 30-145 et seq.) of Title 30. The Commission
74 shall ~~as necessary also (i) appoint clerical or other personnel if any, (ii) arrange by contract or otherwise~~
75 ~~for the necessary facilities and services, and (iii)~~ provide for the compilation and publication of the
76 Virginia Register of Regulations and the Virginia Administrative Code pursuant to §§ 2.2-4031 and 30-
77 146.

78

#

SUMMARY

Publication of Code of Virginia, Virginia Administrative Code, and Virginia Register of Regulations. Authorizes the Virginia Code Commission to fulfill its responsibilities in publishing the Code of Virginia, Virginia Administrative Code, and Virginia Register of Regulations by means of either online publication or actual printing. Current law mandates actual printing for some of these publications but allows online publication in other cases.

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4031, 30-34.10:2, 30-146, and 30-147 of the Code of Virginia,
2 relating to the publication of the Code of Virginia, the Virginia Administrative Code, and the
3 Virginia Register of Regulations.

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

5 **1. That §§ 2.2-4031, 30-34.10:2, 30-146, and 30-147 of the Code of Virginia are amended and**
6 **reenacted as follows:**

7 **§ 2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public**
8 **hearings of proposed regulations.**

9 A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall
10 include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices
11 of all public hearings on regulations; and (v) petitions for rulemaking made in accordance with § 2.2-
12 4007. The entire proposed regulation shall be published in the Register; however, if an existing regulation
13 has been previously published in the Virginia Administrative Code, then only those sections of regulations
14 to be amended need to be published in the Register. If the length of the regulation falls within the
15 guidelines established by the Registrar for the publication of a summary in lieu of the full text of the
16 regulation, then, after consultation with the promulgating agency, the Registrar may publish only the
17 summary of the regulation. In this event, the full text of the regulation shall be available for public
18 inspection at the office of the Registrar and the promulgating agency.

19 If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of
20 Regulations, the only changes that have been made are those that can be clearly and concisely explained,
21 the adopted regulation need not be published at length. Instead, the Register shall contain a notation that
22 the proposed regulation has been adopted as published as a proposed regulation without change or stating
23 the changes made. The proposed regulation shall be clearly identified with a citation to the issue and page
24 numbers where published.

25 A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be
26 used in administering the regulation shall be published with the proposed and final regulation in the
27 Register.

28 B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear
29 language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior
30 to their publication in the Register. The notice required by § 2.2-4007.03 shall include (i) a statement of
31 the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as
32 to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the
33 name, address and telephone number of an individual to contact for further information about that
34 regulation. Agencies shall present their proposed regulations in a standardized format developed by the
35 Virginia Code Commission in accordance with subdivision 2 of § 2.2-4104 of the Virginia Register Act
36 (§ 2.2-4100 et seq.). Notwithstanding the exemptions allowed under § 2.2-4002, 2.2-4006 or 2.2-4011,
37 the proposed and final regulations of all agencies shall be published in the Register. However, proposed
38 regulations of the Marine Resources Commission and regulations exempted by subject from the provisions
39 of this chapter by subsection B of § 2.2-4002 shall be exempt from this section.

40 C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia
41 Code Commission's website. ~~The Virginia Code Commission may arrange for the printing of the Virginia~~
42 ~~Register as provided in § 30-146.~~

43 **§ 30-34.10:2. Access to Code of Virginia, Virginia Administrative Code, and Virginia**
44 **Register of Regulations.**

45 The text of the Code of Virginia, the Virginia Administrative Code, and the Virginia Register of
46 Regulations shall be a part of the legislative electronic information system and the Internet subject to such
47 conditions and restrictions as may be established by the Virginia Code Commission in accordance with
48 its responsibilities for publishing and maintaining the Codes and Register as set forth in § 30-146.
49 ~~Copyright~~ Any copyright interests of the Code publisher, which include case annotations, cross-reference
50 notes, editor's notes, collateral reference notes, and effect of amendment notes, shall not be violated.

51 **§ 30-146. Publication of Code of Virginia, Virginia Administrative Code, and Virginia**
52 **Register of Regulations; authority regarding type and form.**

53 The Commission is charged with the responsibility of publishing and maintaining a Code of the
54 general and permanent statutes of the Commonwealth. ~~The Commission shall also have the responsibility~~
55 ~~of publishing and maintaining and~~ the Virginia Administrative Code, ~~and publishing the Virginia Register~~
56 ~~of Regulations as provided for in § 2.2-4031.~~ Publication of the Codes may be in an electronic or print
57 format, as determined by the Commission. The Commission shall also have the responsibility of
58 publishing the Virginia Register of Regulations in an electronic format as required under § 2.2-4031.

59 The Commission may arrange for the Code of Virginia, the Virginia Administrative Code, and the
60 Virginia Register of Regulations to be (i) ~~printed and~~ published by or at the expense of the Commonwealth
61 and sold and otherwise distributed by the Commonwealth or (ii) privately ~~printed and~~ published, under
62 the direction and supervision of the Commission and upon such terms as the Commission may provide,
63 and sold and distributed by the publisher upon such terms, including terms as to price, as the Commission
64 may provide.

65 The Commission shall have full discretion to arrange for the publication of annotated or
66 unannotated copies of the Code of Virginia, the Virginia Administrative Code, and the Virginia Register
67 of Regulations; to fix the number of volumes; and to decide all questions of form, makeup, and
68 arrangement, including title pages, prefaces, annotations, indices, tables of contents and reference,
69 appendices, paper, type, binding, and lettering. The Commission may arrange for the Code of Virginia
70 and the Virginia Administrative Code to be made permanent editions and kept current by means of
71 supplements and replacement volumes.

72 **§ 30-147. Contracting with publishers; property rights regarding Code of Virginia and**
73 **Virginia Administrative Code material.**

74 A. The Commission may enter into contracts with any reputable person for such editorial
75 work, ~~printing publishing~~, indexing, annotating, and other work as may be necessary. All parts of any
76 code published or authorized to be published by the Commission, including statute text, regulation text,
77 catchlines, historical citations, numbers of sections, articles, chapters and titles, frontal analyses and

78 revisor's notes, shall become and remain the exclusive property of the Commonwealth to be used only as
79 the Commission may direct. However, the Commission shall acknowledge a property right in and the right
80 to copyright materials prepared and added to any code by the person preparing it. Such materials may
81 include, inter alia, case annotations, indices, various notes concerning sections, and reference tables.

82 B. Trade secrets or proprietary information submitted by any person contracting or proposing to
83 contract with the Commission in connection with the publication of (i) the Code of Virginia, (ii) the
84 Virginia Administrative Code, or (iii) any other materials published by the Commission shall not be
85 subject to public disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However,
86 the person or firm shall invoke the protections of this subsection prior to or upon submission of the data
87 or other materials to be protected and state the reasons why protection is necessary. The Commission may,
88 in closed session, discuss, consider, review, or deliberate upon proposals ~~which~~ that contain trade secrets
89 or proprietary information submitted by any person contracting or proposing to contract with the
90 Commission in connection with the publication of the Code of Virginia or the Virginia Administrative
91 Code.

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Title Organization Report
Proposed Title 55.1 Property and Conveyances

**SUBTITLE I.
PROPERTY CONVEYANCES.**

Chapter 1		Creation and Limitation of Estates.
	Article 1	Creation and Transfer of Estates.
	Article 2	Rule Against Perpetuities.
	Article 3	Joint Ownership of Real or Personal Property.
	Article 4	Virginia Solar Easements Act.
Chapter 2		Property Rights of Married Persons.
Chapter 3		Form and Effect of Deeds and Covenants; Liens.
	Article 1	Form and Effect of Deeds; Easements.
	Article 2	Form and Effect of Deeds of Trust; Sales Thereunder; Assignments; Releases
	Article 3	Satisfaction of Security Interest in Real Property.
	Article 4	Effect of Certain Expressions in Deeds.
Chapter 4		Fraudulent and Voluntary Conveyances; Writing Necessary to be Recorded.
Chapter 5		Commutation and Valuation of Certain Estates and Interests.

**SUBTITLE II.
REAL ESTATE SETTLEMENTS AND RECORDATION.**

Chapter 6		Recordation of Documents.
	Article 1	General Provisions.
	Article 2	Acknowledgments Generally.
	Article 3	Uniform Recognition of Acknowledgements Act.
	Article 4	Deeds and Acknowledgements of Corporations.
	Article 5	Validating Certain Acts, Deeds, and Acknowledgements.
	Article 6	United States Judgments; Bankruptcy.
	Article 7	Uniform Federal Lien Registration Act.
	Article 8	Uniform Real Property Electronic Recording Act.
Chapter 7		Virginia Residential Property Disclosure Act.
Chapter 8		Exchange Facilitators Act.
Chapter 9		Real Estate Settlements.
Chapter 10		Real Estate Settlement Agents.
Chapter 11		Commercial Real Estate Broker's Lien Act.

SUBTITLE III.
RENTAL CONVEYANCES.

Chapter 12		Virginia Residential Landlord and Tenant Act.
	Article 1	General Provisions.
	Article 2	Landlord Obligations.
	Article 3	Tenant Obligations.
	Article 4	Tenant Remedies.
	Article 5	Landlord Remedies.
	Article 6	Retaliatory Action.
Chapter 13		Manufactured Home Lot Rental Act.
Chapter 14		Nonresidential Tenancies.
	Article 1	General Provisions.
	Article 2	Assignments.
	Article 3	Landlord Obligations.
	Article 4	Landlord Remedies.
	Article 5	Miscellaneous Provisions.
Chapter 15		Residential Ground Rent Act.
Chapter 16		Deeds of Lease.
Chapter 17		Emblements.

SUBTITLE IV.
COMMON INTEREST COMMUNITIES.

Chapter 18		Property Owners' Association Act.
	Article 1	General Provisions.
	Article 2	Disclosure Requirements; Authorized Fees.
	Article 3	Operation and Management of Association.
Chapter 19		Virginia Condominium Act.
	Article 1	General Provisions.
	Article 2	Creation, Alteration, and Termination of Condominiums.
	Article 3	Management of Condominium.
	Article 4	Administration of Chapter; Sale, Etc., of Condominium Units.
	Article 5	Disclosure Requirements; Authorized Fees.
Chapter 20		Horizontal Property Act.
	Article 1	General Provisions.
	Article 2	Creation and Alteration of Horizontal Property Regimes.
	Article 3	Management of Horizontal Property Regimes.
	Article 4	Protection of Purchasers.
Chapter 21		Virginia Real Estate Cooperative Act.
	Article 1	General Provisions.

	Article 2	Creation, Alteration, and Termination of Cooperatives.
	Article 3	Management of Cooperatives.
	Article 4	Protection of Cooperative Purchasers.
	Article 5	Administration and Registration of Cooperatives.
Chapter 22		Virginia Real Estate Time-Share Act.
	Article 1	General Provisions.
	Article 2	Creation, Termination, and Management.
	Article 3	Protection of Purchasers.
	Article 4	Financing.
	Article 5	Registration.
	Article 6	Administration.
Chapter 23		Subdivided Land Sales Act.

**SUBTITLE V.
MISCELLANEOUS.**

Chapter 24		Escheats.
Chapter 25		Virginia Disposition of Unclaimed Property Act.
	Article 1	Definitions; Property Abandoned or Assumed Abandoned
	Article 2	Reciprocity for Property Presumed Abandoned or Escheated under Laws of Another State.
	Article 3	Procedural and Administrative Matters.
Chapter 26		Property Loaned to Museums
Chapter 27		Drift Property
Chapter 28		Trespasses; Fences
	Article 1	Electric Fences.
	Article 2	What Constitutes Lawful Fence.
	Article 3	Cattle Guards and Gates Across Rights-of-Way.
	Article 4	Trespass in Crossing Lawful Fence.
	Article 5	No-Fence Law.
	Article 6	Division Fences.
	Article 7	Special Provisions for Unincorporated Communities.
	Article 8	Cutting Timber.
Chapter 29		Virginia Self-Service Storage Act



COMMONWEALTH of VIRGINIA

Senator John S. Edwards
Chairman

VIRGINIA CODE COMMISSION
Pocahontas Building

900 East Main Street
Richmond, Virginia 23219
(804) 698-1883

*Report of the
Virginia Code Commission
The Revision of Title 55 of the Code of Virginia*

**Richmond, Virginia
November 2018**

To: The Honorable Ralph S. Northam, Governor of Virginia

and

The General Assembly of Virginia

In accordance with its authority granted pursuant to § 30-152 of the Code of Virginia, the Virginia Code Commission undertook the revision of Title 55 (Property and Conveyances) in May 2016. The title has not been revised since the adoption of the Code of Virginia of 1950; the current revision therefore presents an opportunity to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to real and personal property in the Commonwealth.

The Commission was assisted by a Work Group composed of Phillip Abraham, Esq., Vectre Corporation; Nicole Brenner, Esq., Reed Smith; Vicki Bridgeman, Division of Unclaimed Property, Virginia Treasury Department; Mary Broz-Vaughan, Department of Professional and Occupational Regulation; Ellen Coates, Esq., Senior Assistant Attorney General, Office of the Attorney General; Tyler Craddock, Virginia Manufactured and Modular Housing Association; Ann Crenshaw, Esq., Kaufman & Canoles; Robert Diamond, Esq., Reed Smith; John “Chip” Dicks, Esq., FutureLaw; Laura Farley, Esq., Virginia Association of REALTORS; John Frey, Clerk of the Circuit Court, Fairfax County; Heather Gillespie, Department of Professional and Occupational Regulation; Brian Gordon, Apartment and Office Building Association of Metropolitan Washington; Trisha Henshaw, Department of Professional and Occupational Regulation; Professor Alex Johnson, Jr., University of Virginia School of Law; Professor Eric Kades, William & Mary Law School; Neil Kessler, Esq., Troutman Sanders; Benjamin Leigh, Esq., Atwill, Troxell & Leigh, PC; Christie Marra, Esq., Virginia Poverty Law Center; Larry McElwain, Esq., Scott Kroner, PLC; David Mercer, Esq., MercerTrigiani; Jeremy Moss, Esq., Vandeventer Black; Edward Mullen, Esq., Reed Smith;

Jeffrey Palmore, Esq., Reed Smith; Phillip Richardson, Esq., Eck, Collins & Richardson; John Rick, John F. Rick, PLLC; Phil Storey, Esq., Legal Aid Justice Center; Lucia Anna Trigiani, Esq., MercerTrigiani; and Melvin Tull III, Esq., Virginia Bankers Association.

The contributions of the Work Group were invaluable, and the Commission wishes to express its sincere gratitude to the members of the Work Group for the significant time and effort they devoted to the revision of Title 55. These contributors represent a cross section of stakeholders and interested groups, and their expertise proved to be a key resource for the Commission and its staff.

The Virginia Code Commission recommends that the General Assembly enact legislation during the 2019 Session to implement the revisions proposed in this report.

Respectfully submitted,

Senator John S. Edwards, Chairman

Senator Ryan T. McDougle

Delegate Jay A. Leftwich, Jr.

The Honorable Charles S. Sharp

The Honorable Leslie L. Lilley

Thomas M. Moncure, Jr.

E.M. Miller, Jr.

Christopher R. Nolen

Rita Davis

Samuel T. Towell

Mark J. Vucci

EXECUTIVE SUMMARY

INTRODUCTION

Title 55 (Property and Conveyances) contains provisions of the Code of Virginia that address property in the Commonwealth, including the conveyance of real estate and rental property, the settlement and recordation of real estate, and common interest communities found in the Commonwealth.

Title 55 has not been revised since the adoption of the Code of Virginia of 1950, at which time the title consisted of 18 chapters. In the ensuing 68 Regular Sessions of the General Assembly, 26 chapters have been added and seven have been repealed, resulting in the existing title, which comprises 37 current chapters. In the intervening years, the original organizational scheme has been compromised by the insertion of new chapters within or at the end of the title and by the insertion of new sections within or at the end of an existing chapter. It has become appropriate to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to real and personal property in the Commonwealth.

ORGANIZATION OF PROPOSED TITLE 55.1

Proposed Title 55.1 consists of 29 chapters divided into five proposed subtitles: Subtitle I (Property Conveyances), Subtitle II (Real Estate Settlements and Recordation), Subtitle III (Rental Conveyances), Subtitle IV (Common Interest Communities), and Subtitle V (Miscellaneous).

Subtitle I contains proposed Chapters 1 through 5, all of which pertain to real and personal property conveyances.

Proposed Chapter 1 (Creation and Limitation of Estates) includes provisions relating to the creation and transfer of estates. It contains sections from existing Chapter 1 (Creation and Limitation of Estates; Their Qualities) and existing Chapter 20 (Virginia Solar Easements Act). In addition, existing § 55-153, relating to removal of a cloud on title, is relocated from existing Chapter 8 to this proposed chapter.

Proposed Chapter 2 (Property Rights of Married Persons) contains provisions found in existing Chapter 3 (Property Rights of Married Women) addressing the property rights of married persons, including the section pertaining to the abolition of equitable separate estates. The name of proposed Chapter 2 and the proposed text of the chapter with regard to married women is updated to apply the chapter contents to all spouses, as opposed to just married women. See additional specifics regarding this chapter in the chapter drafting note.

Proposed Chapter 3 (Form and Effect of Deeds and Covenants; Liens) contains the provisions from of existing Chapter 4 of the same name, which addresses deeds, including deeds of trust, easements, and the satisfaction of security interest in real property.

Proposed Chapter 4 (Fraudulent and Voluntary Conveyances; Writings Necessary to Be Recorded) contains the provisions of existing Chapter 5 (Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writings Necessary to Be Recorded),

which addresses certain void conveyances of real or personal property, including the authority of a court to set aside such a conveyance, as well as provisions governing the recording of certain contracts and deeds.

Proposed Chapter 5 (Commutation and Valuation of Certain Estates and Interests) contains the provisions of existing Article 2 (Commutation and Valuation of Certain Estates and Interests; Tables) of Chapter 15.

Subtitle II contains proposed Chapters 6 through 11, which include provisions governing the recordation and settlement of real estate, including various uniform acts enacted in Virginia relating to the requirements of such recording and settlement.

Proposed Chapter 6 (Recordation of Documents) contains the provisions of existing Chapter 6 of the same name, which governs the general process of the recordation of documents in the Commonwealth. This proposed chapter also contains three uniform acts enacted in Virginia: (i) the Uniform Recognition of Acknowledgements Act, currently found in existing Article 2.1 of Chapter 6; (ii) the Uniform Federal Lien Registration Act, currently found in existing Article 6 of Chapter 6; and (iii) the Uniform Real Property Electronic Recording Act, currently found in existing Article 7 of Chapter 6.

Proposed Chapter 7 (Virginia Residential Property Disclosure Act) contains the provisions of existing Chapter 27 of the same name, which pertains to certain required disclosures by owners of real residential property to potential purchasers of such property.

Proposed Chapter 8 (Exchange Facilitators Act) contains the provisions of existing Chapter 27.1 of the same name, which contains requirements for the activities of exchange facilitators, who are persons that for a fee enter into an agreement with a taxpayer to act as (i) a qualified intermediary in an exchange of like-kind property, (ii) an Exchange Accommodation Titleholder, or (iii) a qualified trustee or escrow holder.

Proposed Chapter 9 (Real Estate Settlements) contains the provisions of existing Chapter 27.2 of the same name, which contains provisions relating to the settlement of real estate in the Commonwealth, including the duties of a lender and settlement agent involved in such a settlement.

Proposed Chapter 10 (Real Estate Settlement Agents) contains the provisions of existing Chapter 27.3 of the same name, which outlines which persons may act as real estate settlement agents in the Commonwealth, along with the duties required of such agents.

Proposed Chapter 11 (Commercial Real Estate Broker's Lien Act) contains the provisions of existing Chapter 28 of the same name, which allows a commercial broker who provides licensed services resulting in the procuring of a tenant of commercial real estate to obtain a lien upon rent paid by the tenant.

Subtitle III contains proposed Chapters 12 through 17, all of which pertain to the conveyance of rental property in the Commonwealth.

Proposed Chapter 12 (Virginia Residential Landlord and Tenant Act) contains the provisions of existing Chapter 13.2 of the same name, which governs the rental of certain residential properties in the Commonwealth, including the duties and remedies of both the landlord of and the tenant renting such a property. In addition, existing Chapter 25

(Transfer of Deposits), a one-section chapter that pertains to the transfer of security deposits by the owner of rental property to a subsequent owner upon transfer of the rental property to such subsequent owner, is relocated to proposed Chapter 12 (and, with amendment, is included in Chapters 13 and 14).

Proposed Chapter 13 (Manufactured Home Lot Rental Act) contains the provisions of existing Chapter 13.3 of the same name, which governs the rental of manufactured home lots in the Commonwealth, including the rights and obligations of manufactured home park landlords and tenants. In addition, existing Chapter 25 (Transfer of Deposits), a one-section chapter that pertains to the transfer of security deposits by the owner of rental property to a subsequent owner upon transfer of the rental property to such subsequent owner, is amended as it relates to manufactured home lot rental and included in proposed Chapter 13.

Proposed Chapter 14 (Commercial Tenancies) contains certain provisions of existing Chapter 13 (Landlord and Tenant) that are applicable to nonresidential tenancies. Provisions of existing Chapter 13 that apply only to residential tenancies are proposed for repeal because, as a result of Chapter 730 of the Acts of Assembly of 2017 and Chapter 221 of the Acts of Assembly of 2018, they were made identical in substance to provisions in proposed Chapter 12. In addition, existing Chapter 25 (Transfer of Deposits), a one-section chapter that pertains to the transfer of security deposits by the owner of rental property to a subsequent owner upon transfer of the rental property to such subsequent owner, is amended as it relates to commercial tenancies and included in proposed Chapter 14.

Proposed Chapter 15 (Residential Ground Rent Act) contains the provisions of existing Article 4 of Chapter 4 of the same name, which governs the rent or charge paid for the use of land, whether or not title of such land is transferred to the user, or a lease of land, for personal residential purposes.

Proposed Chapter 16 (Deeds of Lease) contains the provisions of existing Article 1 (Form and Effect of Deeds and Leases) and existing Article 3 (Effect of Certain Expressions in Deeds and Leases) of Chapter 4 that relate specifically to deeds of lease, including the form of a deed of lease and certain covenants of a lessor and lessee to a lease.

Proposed Chapter 17 (Emblements) contains the provisions of existing Chapter 14 of the same name, which relates to the law of emblements, that is, annual crops produced by cultivation legally belonging to the tenant with the implied right for its harvest, and they are treated as the tenant's property.

Subtitle IV contains proposed Chapters 18 through 23, all of which pertain to common interest communities found within the Commonwealth.

Proposed Chapter 18 (Property Owners' Association Act) contains the provisions of existing Chapter 26 of the same name, including the applicability of the Act, resale disclosure requirements of property subject to the Act, and sections pertaining to the operation and management of such associations.

Proposed Chapter 19 (Virginia Condominium Act) contains the provisions of existing Chapter 4.2 (Condominium Act), which sets forth the rules governing property considered to be a condominium, including provisions setting forth the creation,

alteration, and termination of a condominium, rules governing the management and sale of a condominium, and resale disclosure requirements for condominiums.

Proposed Chapter 20 (Horizontal Property Act) contains the provisions of existing Chapter 4.1 (Horizontal Property), which relates to developments established under a horizontal property regime. Numerous existing sections (§§ 55-79.16, 55-79.21, 55-79.21:2 through 55-79.31, and 55-79.33) pertaining to the protection of horizontal property purchasers are recommended for repeal as obsolete because as of July 1, 1974, the Horizontal Property Act was superseded by existing Chapter 4.2 (Condominium Act). As a result, no new developments may be established under a horizontal property regime, and protections for purchasers under this Act are no longer needed.

Proposed Chapter 21 (Virginia Real Estate Cooperative Act) contains the provisions of existing Chapter 24 of the same name, which pertains to real estate considered to be a cooperative in the Commonwealth, including the rules governing the creation, alteration, and termination of cooperatives; the management of cooperatives; the protection of cooperative purchasers; and the administration and registration of cooperatives.

Proposed Chapter 22 (Virginia Real Estate Time-Share Act) contains the provisions of existing Chapter 21 (The Virginia Real Estate Time-Share Act), which governs time-shares in the Commonwealth, including the creation, termination, and management of a time-share; the protection of purchasers of a time-share; and the financing, registration, and administration of a time-share.

Proposed Chapter 23 (Subdivided Land Sales Act) contains the provisions of existing Chapter 19 of the same name, which pertains to the subdivision of land into 100 or more lots that are sold or disposed of by land sales installment contracts and whose purchaser has access to common facilities and amenities for which annual dues are paid.

Subtitle V consists of proposed Chapters 24 through 29, all of which are currently contained in existing Title 55 and belong in proposed Title 55.1 but none of which logically fit within the context of the other subtitles previously outlined.

Proposed Chapter 24 (Escheats) contains the provisions of existing Chapter 10 (Escheats Generally), which pertains to the escheat to the Commonwealth of dormant and unclaimed property with no known owner.

Proposed Chapter 25 (Virginia Disposition of Unclaimed Property Act) contains the provisions of existing Chapter 11.1 (Disposition of Unclaimed Property), which pertains to the system in place in the Commonwealth for transferring to and holding by the Commonwealth of intangible or tangible personal property upon abandonment of such property.

Proposed Chapter 26 (Property Loaned to Museums) contains the provisions of existing Chapter 11.2 of the same name, which pertains to the loaning of property to museums in the Commonwealth, including the process by which the ownership of property that is loaned to museums is established.

Proposed Chapter 27 (Drift Property) contains the provisions of existing Chapter 11 (Estrays and Drift Property), which details the procedure by which a property owner who finds a stray animal or a boat or vessel adrift on his land may notify the court of the finding and through a proceeding obtain an appraisal of the value of the property.

Existing §§ 55-202 through 55-206 of existing Chapter 11, addressing such procedures with respect to stray animals and abandoned watercrafts, are proposed for repeal because they are obsolete, as other procedures found in the Code and in common law address these situations according to modern practice. The title of proposed Chapter 27 reflects the remaining portion of the existing chapter.

Proposed Chapter 28 (Trespasses; Fences) contains the provisions of existing Chapter 18 of the same name, which relates to fences and boundaries, trespasses by animals, and damages for timber cutting.

Proposed Chapter 29 (Virginia Self-Service Storage Act) contains the provisions of existing Chapter 23 of the same name, which governs personal property stored within leased spaces at storage facilities in the Commonwealth.

STATUTORY PROVISIONS PROPOSED FOR REPEAL

During the revision process, the Code Commission became aware of a number of existing sections and an existing chapter that are either unnecessary or obsolete and have been stricken in this report; these are recommended for repeal and thus not included in the proposed title. Chapter drafting notes in the body of the report describe the reasons for the recommended repeal of the following chapter and sections:

- §§ 55-79.16, 55-79.21, 55-79.21:2 through 55-79.31, and 55-79.33.
- §§ 55-202 through 206.
- § 18.2-324.1 (Punishment for violation of §§ 55-298.1 through 55-298.5, relating to electric fences).
- As previously noted, numerous provisions of existing Chapter 13 that apply only to residential tenancies are proposed to be repealed because, as a result of Chapter 730 of the Acts of Assembly of 2017 and Chapter 221 of the Acts of Assembly of 2018, they were made identical in substance to provisions in proposed Chapter 12. Such provisions are as follows: existing §§ 55-221.1 and 55-225.01 through 55-225.50 and subsections B, C, and D of existing § 55-243.

OTHER AFFECTED TITLES

The following chapters are relocated from existing Title 55 to other titles of the Code of Virginia:

- Chapter 17 (§ 55-287 et seq.) (Virginia Coordinate System) is relocated as proposed Chapter 6 (§ 1-600 et seq.) of Title 1 (General Provisions).
- Chapter 12 (§ 55-211 et seq.) (Waste) is relocated as proposed Article 15.1 (§ 8.01-178.1 et seq.) of Chapter 3 (Actions) (§ 8.01-25 et seq.) of Title 8.01 (Civil Remedies and Procedure).
- Chapter 9 (§ 55- 156 et seq.) (Assignments for Benefit of Creditors) is relocated as proposed Chapter 18.1 (§ 8.01-525.1 et seq.) of Title 8.01 (Civil Remedies and Procedure).

- Chapter 29 (§ 55-528 et seq.) (Common Interest Community Management Information Fund) is relocated as proposed Article 2 (§ 54.1-2354.1 et seq.) of Chapter 23.3 (Common Interest Communities) of Title 54.1 (Professions and Occupations).
- Chapter 30 (§ 55-531 et seq.) (Disposition of Assets by Nonprofit Health Care Entities) is relocated as proposed Chapter 20 (§ 32.1-373 et seq.) of Title 32.1 (Health).
- Chapter 32 (§ 55-555 et seq.) (First-Time Home Buyer Savings Plan Act) is relocated as proposed Chapter 12 (§ 36-171 et seq.) of Title 36 (Housing).
- Chapter 2 (§ 55-26.1) (Educational, Literary and Charitable Gifts, Devises, Etc.) is relocated as one section, proposed § 57-6.1, within Article 1 (§ 57-3 et seq.) of Chapter 2 (Church Property; Benevolent Associations and Objects) of Title 57 (Religious and Charitable Matters; Cemeteries).

The following sections are relocated from existing Title 55 to other titles of the Code of Virginia:

- § 55-19.5, relating to certain types of trusts and Medicaid planning, located within existing Chapter 1 (§ 55-1 et seq.) is relocated to Article 2 (§ 64.1-102 et seq.) of Chapter 1 of Title 64.2 (Wills, Trusts, and Fiduciaries).
- §§ 55-154, 55-154.2, and 55-155 of existing Chapter 8 (§ 55-153 et seq.) (Clouds on Title) are relocated to proposed Chapter 14.7:3 (Mineral Rights) of Title 45.1 (Mines and Mining).
- §§ 55-227 through 55-237 of existing Chapter 13 (§ 55-217 et seq.) that contain provisions relating to a civil cause of action for recovering rent are relocated as proposed Article 13.1 (§ 8.01-130.1 et seq.) of Chapter 3 (Actions) of Title 8.01 (Civil Remedies and Procedure).

The following provisions are relocated from other titles of the Code of Virginia to proposed Title 55.1:

- The provisions of § 18.2-324.1, which provide that a violation of existing §§ 55-298.1 through 55-298.5 is a Class 1 misdemeanor, are moved to proposed § 55.1-2803 (existing § 55-298.5) of proposed Chapter 28 (Trespasses; Fences).

The relocation of sections, articles, and chapters to other titles of the Code of Virginia is not intended to have any substantive effect on their interpretation.

An outline of the organization of proposed Title 55.1 is included as Appendix A.

TECHNICAL CHANGES MADE THROUGHOUT TITLE 55.1

Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering. If a drafting note states "technical changes," the section contains technical changes to the text ranging from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When sections contain structural or substantive changes, such as the deletion or addition of language, the drafting note describes the reason for the proposed change.

Many of the technical changes arose from the Code Commission's determination that terminology should be clear, consistent, and modern. The following list provides a representative

sample of the most significant and most widely implemented technical changes made in the proposed title.

The following technical changes are made in order to maintain consistency with changes made in previous title revisions, to update antiquated language, to provide clarity, and to bring Title 55.1 into accordance with Title 1 rules of construction for the Code:

- § 1-218. Includes. "Includes" means includes, but not limited to.
- § 1-221. Locality. "Locality" means a county, city, or town as the context may require.
- § 1-227. Number. A word used in the singular includes the plural, and a word used in the plural includes the singular.
- § 1-244. Short title citations. Short titles have been eliminated as unnecessary in light of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short-title citation.
- § 1-216. Gender. A word used in the masculine includes the feminine and neuter.
- In accordance with title-wide conventions, gender-specific terms are replaced with gender-neutral ones.
- References to "court of competent jurisdiction" after "court" have been deleted as unnecessary.
- Purpose statements have been stricken in accordance with the Code Commission's policy that purpose statements do not have general and permanent application and thus are not to be included in the Code.
- Subsection catchlines have been stricken pursuant to the Code Commission's policy that such catchlines are unnecessary.
- Outdated language used in the old equitable pleading practice, including use of the words "bill," "decree," and "suit," is replaced with modern terminology.
- The requirement that a newspaper be in "an English language" is deleted as unnecessary and for consistency throughout the Code.
- "And/or": This grammatical shortcut, which often leads to confusion or ambiguity, is amended throughout to reflect the appropriate meaning: "and" in the sense of all, inclusive; "or" in the sense of "either/any or both/all."
- When grammatically feasible, "will" or "must" is changed to "shall" or other appropriate term.
- "Virginia" is replaced with "the Commonwealth."
- The phrase "goods or chattels" is modernized with the phrase "personal property."
- "Shall have the authority to" and similar variants of this term are changed to "may."
- To the extent feasible, unclear references to "herein," "therefor," "thereof," and "thereon" are replaced with more specific references.

- Phrases such as "heretofore or hereafter" are removed because they mean "before now or after now."
- Definitions are moved to the beginning of the section, article, chapter, etc., to provide the reader better clarity and context.
- "This Commonwealth" is replaced with "the Commonwealth."
- When grammatically feasible, "shall be guilty" is changed to "is guilty."
- "Admit to record" is changed to "record," and "admitted to record" is changed to "recorded."
- The phrase "tenants by the entireties" is changed to "tenants by the entirety" for consistency throughout the title.
- In the context of an administrative agency promulgating regulations, the word "rules" is stricken prior to the word "regulations" because an administrative agency promulgates regulations, not rules.

SUBSTANTIVE CHANGES PROPOSED IN TITLE 55.1

When the Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include:

- The title of existing Chapter 3 (Property Rights of Married Women) is changed to Property Rights of Married Persons in proposed Chapter 2 to reflect the title-wide convention that gender-neutral terms are preferable to gender-specific ones. The language throughout the chapter is also updated to apply the chapter contents to all spouses, as opposed to just married women. These amendments resolve the current law's potentially unconstitutional sex-based classification, which applies to wives but not husbands. See *Schilling v. Bedford Co. Mem'l Hospital*, 225 Va. 539, 303 S.E.2d 905 (1983) (holding that the doctrine of necessities, which made a husband responsible for the necessary goods and services furnished to his wife, was unconstitutional).
- As previously noted, existing Chapter 29 (§ 55-528 et seq.) (Common Interest Community Management Information Fund) is relocated as proposed Article 2 (§ 54.1-2354.1 et seq.) of Chapter 23.3 (Common Interest Communities) of Title 54.1 (Professions and Occupations). Existing sections of Chapter 23.3 of Title 54.1 are designated as part of proposed Article 1. A substantive change is recommended to add a new section (proposed § 54.1-2345.1) to Article 1, which uses language from the Uniform Common Interest Ownership Act and excludes the following from being deemed common interest communities: (i) contractual arrangements for cost sharing between two or more common interest communities or contractual arrangements between an association and the owner of real estate outside of the common interest community's boundary and (ii) certain covenants of separately owned or leased parcels of real estate.
- Existing § 55-169 provides that an escheator is to provide a \$3,000 bond for the judicial circuit in which he is appointed in the circuit court of the locality in which he resides. In proposed § 55.1-2402, a substantive change is made to specify that the escheator's bond is not required to be secured. This change is consistent with the requirements for a fiduciary's bond pursuant to § 64.2-1411.

- Existing § 55-170 relates to the increase or reduction of penalty of an escheator's bond. The section provides that an escheator who is required to give a bond with an increased penalty and who fails to do so within a reasonable time period has neglected an official duty within the meaning of § 55-169. This provision is proposed for repeal as obsolete; according to existing § 55-168, escheators serve at the pleasure of the Governor and may be removed with or without cause, including neglect of an official duty. Existing § 55-169 was amended in 1982 to remove language relating to neglect of official duty, but existing § 55-170 was not amended at that time to reflect those changes.
- Existing § 55-175 has conflicting requirements as to how many jurors are required to concur in a verdict in an escheat proceeding: One portion of the section states that at least seven impaneled jurors must concur in the verdict, whereas another sentence states that a verdict must be signed by a majority of the jurors. The sentence stating that a verdict is effective if signed by a majority is proposed for repeal.
- Existing § 55-310 contains provisions regarding how the governing body of a county may make a local fence law. Proposed § 55.1-2814 contains a substantive change by providing that a county must act by ordinance to make a local fence law, cross-referencing the notification requirements contained in subsection F of § 15.2-1427 for adopting an ordinance. Existing § 55-310 contains language that is unclear as to the process needed for the declaration of a lawful fence since, pursuant to § 15.2-1425, counties may only act by ordinances, resolutions, and motions.
- Existing § 55-324 outlines the petition process for an action to fix the boundaries of a village or unincorporated community, including the requirement of posting a notice at the front door of a county courthouse and at three or more conspicuous places within the boundaries of the village or unincorporated community. A substantive change is recommended in proposed § 55.1-2828 by adding the requirement to publish the notice in a newspaper of general circulation for consistency throughout the chapter.

ENACTMENT CLAUSES

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 55 or any other title of the Code of Virginia as such titles existed prior to October 1, 2019, are transferred in the same or modified form to a new section or chapter of Title 55.1 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 55.1 or any other title, all references to any such former section or chapter of Title 55.1 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.
3. That the regulations of any department or agency affected by the revision of Title 55 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.
4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 55.1 so as to give effect to other laws enacted by the 2019 Session of the General Assembly, notwithstanding the delay in the effective date of this act.
5. That the repeal of Title 55 and § 18.2-324.1, effective as of October 1, 2019, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Title 55 nor the enactment of Title 55.1 shall apply to offenses committed prior to October 1, 2019, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2019, if any of the essential elements of the offense occurred prior thereto.
6. That any notice given, recognizance taken, or process or writ issued before October 1, 2019, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 55.1 had been effective before the same was given, taken, or issued.
7. That if any clause, sentence, paragraph, subdivision, or section of Title 55.1 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 55.1 are declared severable.
8. That the repeal of Title 55, effective as of October 1, 2019, shall not affect the validity, enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.
9. That the repeal of Title 55, effective October 1, 2019, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.
10. That the repeal of Title 55, effective as of October 1, 2019, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.
11. That § 18.2-324.1 and Title 55 (§ 55-1 et seq.) of the Code of Virginia are repealed.

12. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2019, shall be made in accordance with the provisions of this act.

13. That the provisions of this act shall become effective on October 1, 2019.

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COMPARATIVE TABLE: TITLE 55 TO PROPOSED TITLE 55.1

TITLE 55. PROPERTY AND CONVEYANCES	
CHAPTER 1. CREATION AND LIMITATION OF ESTATES; THEIR QUALITIES.	
55-1. Aliens may acquire, hold and transmit real estate; when reciprocity required.	55.1-100
55-2. When deed or will necessary to convey estate; no parol partition or gift valid.	55.1-101
55-3. When gift of goods or chattels invalid.	55.1-102
55-4. Suicide or attainder.	55.1-103
55-5. Estates to lie in grant as well as in livery.	55.1-104
55-6. Same estates may be created by deed as by will.	55.1-105
55-7. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.	55.1-106
55-7.1, 55-7.2.	Repealed by Acts 2005, c. 935, cl. 3
55-8. Default or surrender of tenant for life not to prejudice remainderman, etc.	55.1-107
55-9. Conveyance of estate or interest in property by grantor to himself and another.	55.1-108
55-10. Deed good for grantor's right; operation of warranty.	55.1-109
55-11. Grant, etc., without words of limitation.	55.1-110
55-12. Fee tail converted into fee simple.	55.1-111
55-12.1. Uniform Statutory Rule Against Perpetuities.	55.1-124
55-12.2. When nonvested property interest or power of appointment created.	55.1-125
55-12.3. Reformation.	55.1-126
55-12.4. Exclusions from statutory rule against perpetuities.	55.1-127
55-12.5. Prospective application.	55.1-128
55-12.6. Uniformity of application and construction.	55.1-129
55-13. Certain limitations construed.	55.1-130
55-13.1. Employee trusts.	55.1-131
55-13.2. Determination of "lives in being" for purpose of rule against perpetuities.	55.1-132
55-13.3. Application of the rule against perpetuities to nondonative transfers.	55.1-133
55-14. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's Case abolished.	55.1-112
55-14.1. Doctrine of worthier title abolished.	55.1-113
55-15. When contingent remainder not to fail.	55.1-114
55-16. When remainders not defeated.	55.1-115
55-17. In what conveyances possession transferred to the use.	55.1-116
55-17.1. Land trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.	55.1-117

COMPARATIVE TABLE: TITLE 55 TO PROPOSED TITLE 55.1

55-18. Deed of release effectual.	55.1-118
55-19.	Repealed by Acts 2005, c. 935, cl. 3
55-19.1.	Repealed by Acts 1990, c. 927
55-19.2.	Repealed by Acts 1991, c. 415
55-19.3, 55-19.4.	Repealed by Acts 2005, c. 935, cl. 3
55-19.5. Provision in certain trust void.	64.1-801.2
55-20. Survivorship between joint tenants abolished.	55.1-134 subsection A
55-20.1. Joint ownership in real and personal property.	55.1-135
55-20.2. Tenants by the entireties in real and personal property; certain trusts.	55.1-136
55-21. Exceptions to § 55-20.	55.1-134 subsection B
55-22. When person not a party, etc., may take or sue under instrument.	55.1-119
55-23. Informalities in deeds made by attorneys-in-fact.	55.1-120
55-24. Time for objections to irregularities in advertising sales made by trustees.	55.1-121
55-25. Recovery at death of life tenant of taxes paid on life estate.	55.1-122
55-25.1.	Repealed by Acts 2016, ch. 266, cl. 2
CHAPTER 2. EDUCATIONAL, LITERARY AND CHARITABLE GIFTS, DEVISES, ETC.	
55-26.	Repealed by Acts 1975, c. 547
55-26.1. Validity.	57-6.1
55-27 through 55-34.	Repealed by Acts 2005, c. 935, cl. 3
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