

SWCD Director Reference Notebook 2016

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SECTION I

VA FREEDOM OF INFORMATION ACT (FOIA)

The Virginia Freedom of Information Act (FOIA)

Chapter 37 of Title 2.2, Code of Virginia

Virginia FOIA Council's website:
<http://foiacouncil.dls.virginia.gov>

This overview was prepared by staff of the Virginia Department of Conservation and Recreation for members of the Commonwealth's Soil and Water Conservation Districts as a means of raising awareness and understanding about certain provisions of the Virginia Freedom of Information Act. It should be used as a companion reference to the Code of Virginia. It is not intended to serve as a legally binding interpretation of the act or its provisions. Should an interpretation be needed, contact the VA FOIA Advisory Council (foiacouncil@dls.virginia.gov or 1-866-448-4100) or your OAG Representative. You may also visit the FOIA Advisory Council's website at <http://foiacouncil.dls.virginia.gov/> for additional information.

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FOIA

“ensures the people of the Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies....

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.”

Code § 2.2-3700(B)

Are SWCDs subject to the Act?

Yes. SWCDs are considered a public body covered by FOIA.

“Public body means any legislative body...district or agency of the Commonwealth or of any *political subdivision of the Commonwealth*”

Code § 2.2-3701 (Emphasis added.)

This presentation addresses the following FOIA topics:

- 🌿 Public Meetings
- 🌿 Closed Meetings
- 🌿 Meeting Notices & Agendas
- 🌿 Electronic Communication Meetings
- 🌿 Minutes
- 🌿 Responding to Requests for Public Records
- 🌿 FOIA Remedies & Penalties

PUBLIC MEETINGS

“Open Meeting or Public Meeting
means a meeting at which the public
may be present.”

Code § 2.2-3701 (Emphasis added.)

Which district gatherings and/or
meetings are considered open or
public meetings?

A gathering of three or more district directors to discuss or transact SWCD business is considered an open meeting.

However, “Neither the gathering of employees of a public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

Code § 2.2-3701

What about committee meetings? Are they defined as open meetings that are subject to FOIA?

Yes! Committees of public bodies are actually defined as “public bodies” in and of themselves. “Public body means...any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body.”

Code § 2.2-3701

What implications does this have for SWCD committee meetings?

All committee meetings are subject to FOIA which means that committee meetings must be advertised, open to the public and a record of minutes kept.

🦁 A committee meeting is a public meeting if three or more members are assembled and discussing committee business, or a quorum if less than three (i.e., when a committee only has two or three members then two members is a quorum and any time two members get together to discuss committee business, it is considered a meeting).

🦁 All members count toward the membership present whether they are directors, citizen members or otherwise appointed.

🦁 A single person does not constitute a public body for meeting purposes.

Code § 2.2-3701

Some Points to Note Regarding Committee Membership

Committees are appointed by the full board with an advisory function to make recommendations and report back to a board or to vote on an item as empowered by the full board.

🦁 Associate directors count toward the constituent membership of a committee as supported by the Code within the definition of public body; “It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members.”

🦁 Agency representatives count toward the constituent membership of a committee if they are appointed by the SWCD board as members of the committee.

🦁 SWCD employees are not included as part of the membership of a committee as long as they are assisting a committee as a part of their duties as employees.

🦁 Once a SWCD employee is appointed as a member of a committee by the SWCD board, then the employee is counted toward the constituent membership of a committee.

Code § 2.2-3701



CLOSED MEETINGS

“Closed Meeting means a meeting from which the public is excluded.”

Code § 2.2-3701 (Emphasis added.)

When are closed meetings allowed?

Closed meetings are only allowed for certain purposes.

Purposes include personnel matters; consultation with legal counsel; discussion of special awards; and discussion or consideration of personal and proprietary nature submitted as part of a resource management plan (RMP).

A complete list of the [46 purposes](#) is found in the **Code § 2.2-3711(A)**.

Can a SWCD close an open meeting in order to discuss RMP information?

YES. Discussion of personal or proprietary information as related to a resource management plan constitutes a reason to close a meeting under the 46 purposes for a closed meeting listed in FOIA under § 2.2-3711(A).

Closed Meeting Procedures

🦁 The SWCD board or committee must be holding an open meeting at which a director makes an appropriate closed meeting motion.

🦁 A closed meeting motion must do 3 things:

1. Identify the subject matter.

2. State the purpose of the closed meeting.

3. Cite the specific exemption that allows the closed meeting.

Code § 2.2-3712(A)

Closed Meeting Procedures

🦁 During a closed meeting, the public body must restrict discussion to the matters specifically exempted from FOIA and included in the closed meeting motion.

Code § 2.2-3712(C)

🦁 Upon conclusion of a closed meeting, the open meeting must be reconvened and the body must certify via roll call or other recorded vote to be included in the minutes:

1. Only items exempt from FOIA were discussed.
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2. Only items specified in the original motion were discussed.
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Code § 2.2-3712(D)

Closed Meeting Procedures

Remember: No official action may be taken during a closed meeting. Decisions made or agreed upon during a closed meeting DO NOT BECOME EFFECTIVE until they receive a vote from the public body during an open meeting.

“...In no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.”

Code § 2.2-3712(H)

"No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting."

Code § 2.2-3711(B)

MEETING NOTICES

“Every public body shall give notice of the date, time and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted *and* in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator...The notice shall be posted at least three working days prior to the meeting.”

Code § 2.2-3707(C) (Emphasis added.)

What if the SWCD meeting is held on the same day, time and place every month?

The district may post an annual written notice of the set meeting dates and post it in a prominent public location at which notices are regularly posted *and* in the office of the clerk or the chief administrator of the public body. However, if any changes are made to the day, time or place, written notice of the changes must be displayed at least three working days prior to the meeting.

MEETING AGENDAS

“At least one copy of all agenda packets and, unless **exempt**, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to members of the public body.”

Code § 2.2-3707(F) (Emphasis added.)

Examples of **exempt items** include personnel records and information supplied for the purpose of a resource management plan. A complete list is found in the **Code §§ 2.2-3705.1 thru 2.2-3706.**

ELECTRONIC COMMUNICATION MEETINGS

May an absent voting member of a SWCD join a meeting by phone in order to achieve a quorum?

NO. As a subdivision of the Commonwealth, a quorum of district directors must be “physically assembled at one location” before any additional directors may join the meeting by phone (except in the case of an emergency as declared by the Governor).

Code § 2.2-3708 and § 2.2-3708.1

MINUTES

Are recorded minutes required at all district meetings (including committee meetings)?

YES. “Minutes shall be recorded at all open meetings”. This includes all committee meetings.

All other records of open meetings including draft minutes and audio recorded records are also considered public records.

Code § 2.2-3707(I)

A blue scroll graphic with a white border and a small blue circle at the top right corner. The word "MINUTES" is written in white, bold, serif capital letters in the center.

MINUTES

“Minutes, including draft minutes, and all other records of open meetings, including audio/visual records shall be deemed public records and subject to the provisions of this chapter.”

Code § 2.2-3707(I)

PUBLIC RECORDS

“Public records means all writings and recordings which consist of letters, words or numbers...set down by handwriting, typewriting, printing,...mechanical or electronic recording or other form of data compilation...prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

Code § 2.2-3701 (Emphasis added.)

PUBLIC RECORDS

A document that does not exist does not have to be created in order to fulfill a FOIA request. For example, if someone requests a list that does not exist, then the list would not have to be compiled in order to fulfill the request.

However, if the information that would make up the list exists in a variety of documents, then the documents would have to be released unless the documents are exempt.

It is also important to note that FOIA allows a public body to abstract or summarize information in this situation as long as this action is taken under such terms and conditions as agreed between the requester and the public body.

Code § 2.2-3704(D)

What records may the public see? Are there any exclusions?

 The Act states that “all public records shall be open to inspection and copying by any citizens of the Commonwealth during regular office hours.”

Code § 2.2-3704(A)

 There are over 100 exclusion categories listed under **Code §§ 2.2-3705.1 through 2.2-3706**. Examples include medical records, personnel records, and records containing information on site specific location information about rare, threatened, endangered or imperiled plant and animal species, natural communities, caves and significant historic and archaeological sites.

Does the public have access to information collected for the purpose of a resource management plan?

❖ **NO.** “Any personal or proprietary information collected pursuant to this article shall be exempt from the Freedom of Information Act (§2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information.”

Code § 10.1-104.7(E)

❖ **NO.** “Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.”

Code § 2.2-3705.6(25)

What Does This Mean for SWCDs?

- Information pertaining to a RMP may not be released to the public by a district or by a district's Technical Review Committee (TRC). This includes any information contained in meeting packets. As per the Code of Virginia in § 10.1-104.7(E), information may only be released by DCR's Director in a statistical or aggregate form.
- RMP information handed out as part of a SWCD's closed meeting session should be collected at the end of the closed meeting.
- A RMP should be referenced only by a "plan number" when discussed in an open meeting or recorded in SWCD meeting minutes.
- A cover page or header should be attached to each RMP reminding the TRC that disclosure of identifying information is prohibited by law pursuant to § 10.1-104.7(E).

Are SWCD employee salaries open to public access?

YES. The “records of the position, job classification, official salary or rate of pay of...any officer, official or employee of a public body” are open to the public as long as the employee makes more than \$10,000 a year.

Code § 2.2-3705.8(A)

Is one employee allowed to know the official salary of another?

YES.

Code § 2.2-3704(A)

PUBLIC RECORDS 5-DAY RESPONSE TIME

A district must respond to a requester within five working days of receiving the request. There are several different responses a district may make.

Code §2.2-3704(B) (Emphasis added.)

Is a district allowed to ask the requester
why records are needed?

The Virginia Supreme court ruled that the motive for a record request is irrelevant. The requester is not obligated to reveal why records are needed.

PUBLIC RECORDS RESPONSE OPTIONS

🦁 Make records available as requested. Any other response is required to be in writing and there are four other options;

- 1) Deny the request. If this option is taken, the district must give the volume and subject matter of documents withheld and cite the specific exemption in the FOIA.
 - 2) Release part of the documents or release documents with portions redacted (marked out). Again, the subject and a specific citation must be addressed.
 - 3) State that the documents do not exist or cannot be found. If the district knows that another public body has the records, then the district must provide contact information for the other public body.
 - 4) Notify the requestor that more time is needed, state the reason why and that the seven business day extension provided by the act is being taken.
- 🦁 No response is not an option and is deemed a denial and a violation of the act.

ELECTRONIC RECORDS

Is the district required to process a request for records stored on the computer?

Yes, the district must provide electronic records unless the records are considered “exempt”.

Code § 2.2-3704(G)

RECORD FEES

“A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records...Any duplicating fee charged...shall not exceed the actual cost of duplication.”

Code § 2.2-3704(F)

The duplication cost can include staff time. For example, say the documents you need to release total 200 pages and it took a staff person two hours to do the file search and copying. You may charge a per page duplicating fee and the hourly rate of the person doing the search and copying.

RECORD FEES

If the district has a request for records and the total cost will be over \$200 may they ask for money up front?

Yes. “In any case where a public body determines in advance that the charges...are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination.”

Code § 2.2-3704(H)

If the charge is going to be \$200 or more, you need to contact the requestor and notify them of the cost prior to making the charge.

In addition, “Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.”

Code § 2.2-3704(I)

FOIA REMEDIES

“Any person denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys’ fees from the public body if the petitioner substantially prevails on the merits of the case.”

Code § 2.2-3713

A single violation, including a procedural violation, is enough for a petition to be brought.

FOIA PENALTIES

If the court finds that a member of a public body “willfully and knowingly” was in violation of this act, “...shall impose upon such member in his individual capacity...a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid to the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.”

Code § 2.2-3714

The End.



Any Questions?

The Virginia Freedom of Information Act (FOIA)

General Overview

❖ **What is the Virginia Freedom of Information Act?**

The Code of Virginia, hereafter referenced as “Code”, provides in § 2.2-3700:

“By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted...This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.”

❖ **Are Soil and Water Conservation Districts (SWCDs or districts) subject to the Act?**

Yes, SWCDs are considered a “public body” covered by FOIA.

Code § 2.2-3701:

“Public body means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any *political subdivision of the Commonwealth*.” (Emphasis added)

❖ **Do newly elected SWCD Directors need to be familiar with FOIA?**

Yes, the Act states that people elected and appointed to a public body need to become familiar with FOIA.

Code § 2.2-3702:

“Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished...with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.”

❖ **Who is guaranteed access to records of public bodies?**

Code § 2.2-3704(A):

“Access...shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth.”

Public Meetings

Code § 2.2-3701 (emphasis added):

“Open meeting or public meeting means a meeting at which the public may be present.”

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❖ **If three directors get together to discuss business, is their gathering considered an “open meeting”? What about district employee/ staff meetings?**

A gathering of three or more SWCD directors (or a quorum if less than three) to discuss district business is considered an open meeting.

“Neither the gathering of employees of a public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

Code § 2.2-3701.

❖ **Is a social event attended by two or more directors considered an “open meeting”?**

No, as long as no district business is discussed at the event *and* as long as the event or attendance at the event was not orchestrated for the purpose of transacting district business, it is not considered an open meeting.

“Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

Code § 2.2-3701.

❖ **Are SWCD committee meetings considered “open meetings”?**

Yes, committee meetings are subject to the same requirements; “any committee, subcommittee or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body” must comply with provisions of this Act.

Code § 2.2-3701.

❖ **If there are fewer than three directors but several associate directors and an SWCD staff member appointed to a committee, would the committee meeting still be considered an “open meeting”?**

The number of elected or appointed directors selected to serve on a committee does not change its status as a “public body” subject to FOIA under the definition cited in the question above (“any committee, subcommittee or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body”). The Code goes a step further to say “It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members”.

The constituent membership of a committee is comprised of those who are appointed to the committee by the SWCD board. It may include but is not limited to directors, associate directors, staff of partnering agencies and even employees of the SWCD as long as employees are appointed to the committee by the SWCD board.

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Code § 2.2-3701.

Note: The threshold number of three members (or a quorum) referenced in the question comes from the definition of “meeting” in the same section, which is referenced below: ““Meeting” or “meetings” means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to Code § 2.2-3708 or § 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body...shall be deemed a “meeting” subject to the provisions of this chapter.”

Code § 2.2-3701.

❖ **Does that mean that SWCD employees may count toward the constituent membership of the committee?**

SWCD employees only count toward the constituent membership of a committee if they are appointed to the committee by the board. If they are not appointed to the committee but are assisting with the committee as a part of their duties as employees then they do not count toward the constituent membership of the committee.

Closed Meetings

Code § 2.2-3701:

“Closed meeting means a meeting from which the public is excluded.” (Emphasis added)

❖ **When are closed meetings allowed?**

Closed meetings may be held only for certain purposes as designated by the Act. Examples include discussion of personnel matters, consultation with legal counsel, discussion of special awards and review of certain exempt records related to resource management plans. A complete list of the 46 closed meeting purposes is found in the Code § 2.2-3711(A).

❖ **How does a district hold a closed meeting?**

There is a specific closed meeting procedure outlined in the Code § 2.2-3712. The district must hold an open public meeting at which a director makes an appropriate motion to go into a closed session.

❖ **Is there any procedure for making a closed meeting motion?**

Yes, to be a lawful closed meeting the motion must do three things § 2.2-3712(A):

1. Identify the subject matter.
2. State the purpose of the closed meeting.

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3. Refer to the specific purpose (from the list of 46) that allows the closed meeting.

❖ **What are the rules the district must follow while in a closed meeting?**

Among many important provisions within § 2.2-3712., discussion in the closed meeting must be restricted to items identified in the closed meeting motion.
Code § 2.2-3712(A-H).

❖ **May non-board members be present in a closed meeting?**

Yes. If additional people are considered necessary for the discussion, or if their presence will reasonably aid the public body's discussion, they are allowed.
Code § 2.2-3712(F).

❖ **Is the board allowed to vote on items during the closed meeting?**

No. The Act is very specific about limiting action taken during closed meetings. All determinations must be made in an open meeting setting.

"Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by §2.2-3707." Code § 2.2-3712(H).

"No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting." Code § 2.2-3711(B).

❖ **What procedure is followed to conclude a closed meeting and reconvene an open meeting?**

The public body "shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge:"

1. Only one or more of the 46 closed meeting purposes were discussed.

2. Only matters identified in the closed meeting motion were discussed.

If a director believes there was a departure from requirements of the two items above, they must state their reasons prior to the referenced vote, to be recorded in the minutes of the open meeting.

Code § 2.2-3712(D).

Meeting Notices

❖ **What does the Act require in terms of meeting notices?**

Code § 2.2-3707(C):

"Every public body shall give notice of the *date*, *time*, and *location* of its meetings by placing the notice in a prominent public location at which notices are regularly posted

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and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. Publication of meeting notices by electronic means shall be encouraged. The notice shall be posted at least three working days prior to the meeting.” (Emphasis added.)

❖ **Must a district send meeting notices to every person individually?**

Yes, if the person files a written request for direct notice of meetings.

Code § 2.2-3707(E):

“Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.”

❖ **If the monthly meeting is held on the same day, time and place every month must the district give monthly notice?**

No, as long as the district publishes written notice of the set meeting dates, the Act is satisfied. However, if any changes are made to the regular day, time and place, supplementary notice of the change(s) must be published and sent to those requesters who requested direct notice at least three working days prior to the meeting.

❖ **What if the district changes its meeting date or holds an emergency meeting and there are less than three working days prior to the meeting?**

Code § 2.2-3707(D):

“Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.”

The citizens who filed a written request for direct notice and district directors must be notified at the same time. If the meeting will be conducted in really short notice and mail cannot be delivered in time, district directors and the citizen requesters will be contacted by phone.

Meeting Agendas

Code § 2.2-3707(F):

“At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.”

In the above statement all agenda materials, (with the exception of “exempt” materials) should be made available for public scrutiny. Some examples of exempt materials

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include tax returns, medical records, personnel records, personal or proprietary information supplied relating to a resource management plan as per § 10.1-104.7(E), and site specific location information about rare, threatened, endangered or imperiled plant and animal species, natural communities, caves and significant historic and archaeological sites if that release would jeopardize the existence or integrity of the resource. A complete listing of exempt items is found in Code §§ 2.2-3705.1. through 2.2-3706.

Electronic Communication Meetings

❖ **If a district board meets and there isn't a quorum of directors present to vote on items, may an absent voting member be called so they may join the meeting by telephone to obtain an additional vote?**

No. This is a direct violation of the Act unless permitted by §2.2-3708(G). In the rare case that the Act may allow for an electronic communication meeting, one of the three requirements is "A quorum of the public body is physically assembled at the primary or central meeting location".

Code § 2.2-3708.1(B)(2).

As a political subdivision of the Commonwealth, a quorum of district directors must be "physically assembled at one location" before any additional directors may join the meeting by phone. The public body must also "make arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location."

Code § 2.2-3708.1(B)(3).

❖ **Is there any situation that would allow for a SWCD to hold an electronic communication meeting without a quorum physically assembled?**

Yes, but only in an emergency situation where two conditions must be met. "Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impractical or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency."

Code § 2.2-3708(G).

Minutes

❖ **Are recorded minutes required at all district meetings (including committee meetings)?**

Yes. "Minutes shall be recorded at all open meetings". Committee meetings are considered "open meetings". Therefore, minutes are required at such meetings. Draft minutes and all other records of open meetings including, but not limited to audio or audio/visual recorded records are also considered public records.

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“Minutes shall include, but are not limited to, (i) the date, time and location of the meeting, (ii) the members of the public body recorded as present and absent, and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken.”

Code § 2.2-3707(I).

Public Records

Code § 2.2-3701:

““Public records” means all writings and recordings that consist of letters, words or numbers, or their equivalent...however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.”

❖ What records may the public see? Are there any exceptions?

Unless a record is deemed an exception in this Act or another Virginia or federal statute, it shall be made available to the public. The Act states that “all public records shall be open to inspection and copying by any citizens of the Commonwealth during regular office hours...”.

There are over 100 exemptions listed in the Act found under Code §§ 2.2-3705.1 through 2.2-3706. The district may choose not to disclose these excluded items. Examples include tax returns, medical records, personnel records, information supplied for the purpose of a resource management plan (as per § 10.1-104.7(E)) and site specific location information about rare, threatened, endangered or imperiled plant and animal species, natural communities, caves and significant historic and archaeological sites if that released would jeopardize the existence or integrity of the resource.

❖ Are district employee salaries open to public access?

Yes. The “records of the position, job classification, official salary or rate of pay of...any officer, official or employee of a public body” are open to the public as long as the employee makes more than \$10,000 a year.

Code § 2.2-3705.8(A)

❖ Is one employee allowed to know the official salary of another?

Yes. Government employees and officials have the same FOIA rights as any other citizen.

Code § 2.2-3704(A).

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Resource Management Plans and FOIA

❖ Are resource management plan records exempt from FOIA?

Yes. Resource management plans and information provided by an individual for the purpose of a resource management plan are listed in FOIA as records that are exempt from public access.

“Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency or board of the Commonwealth pursuant to §§10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.”

Code § 2.2-3705.6(25)

❖ Can an open meeting be closed to discuss resource management plans?

Yes. An open meeting may be closed to allow for discussion of resource management plans and associated material as authorized by FOIA. The bill provides that this exemption shall not apply, however, to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or for information that has been transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

“Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.”

Code § 2.2-3711(A)(46)

5-day Response Time for Public Records

❖ What procedure does the district follow when it is asked for records?

The district must respond to the requester in writing within five working days of the request. There are several responses the district can make:

1. The records are made available as requested.
2. The records are entirely withheld as permitted by the Act or another statute. In this case the district must put in writing the volume and subject matter of the records and what specific section(s) of the Code exempt the records from disclosure.

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3. The records are provided in part and withheld in part. As stated above, the district must put in writing the volume and specific section(s) of the Code that exempts the withheld portion(s) of the request.
4. State that the records could not be found or do not exist. If the district knows that another public body has the records, then the district must provide contact information for the other public body.
5. State that it isn't practically possible to provide all the requested records or to determine whether they are available within five working days. This response must be provided in writing and specify the conditions which make a response impossible. As long as the district lets the requester know this within five working days of the request, then the SWCD shall have an additional seven working days to provide one of the four previous responses.

Code § 2.2-3704(B).

*Failing to respond is deemed a denial of the request and is a violation of FOIA.

Code § 2.2-3704(E).

❖ **What if there isn't enough time to respond to a request within 12 working days?**

The district can petition the appropriate court for an extension if the request is of a large volume or requires a lengthy search and the district cannot fulfill its operational duties. However, the district first must make "reasonable efforts to reach an agreement with the requester concerning the production of the records requested" before proceeding with the petition.

Code § 2.2-3704(C).

❖ **Is the district allowed to ask why the records are needed?**

The Virginia Supreme court ruled that the motive for a record request is irrelevant. The requester is not obligated to tell the district why the records are being requested.

Associated Tax Service, Inc. v. Fitzpatrick, 236 Va.181,372 S.E.2d 625 (1988).

Electronic Records

❖ **Is the district required to process a request for records stored on a computer?**

What if exempt and nonexempt records are present on the same database?

Yes, the district must process a request for electronic records unless the records are exempt under the Act or another statute. The district can charge for this service as stated in the next section entitled "Record Fees". If portions of a database are exempt and others must be disclosed, then only the exempt portions would be redacted. Removing exempt fields from a database is not considered the creation of a new record.

Code § 2.2-3704(F and G).

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Record Fees

Code § 2.2-3704(F):

“A public body may make reasonable charges for its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records...Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.”

❖ If the district has a request for records and the cost to access and duplicate them will be over \$200 may they ask for some money up front?

Yes. “In any case where a public body determines in advance that the charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records.”

Code § 2.2-3704(H).

FOIA Remedies

A person who feels his or her FOIA rights have been violated may file a petition for mandamus or injunction against the public body. Stated simply, a petition asks the court to order the public body to do something (mandamus) or not to do something (injunction). A single violation, including a procedural violation, is enough for a petition to be brought. If the petitioner substantially prevails, FOIA requires the public body to pay his or her court costs, attorney fees, and any expert witness fees, unless there are special circumstances that would make the award unjust.

Code § 2.2-3713.

FOIA Penalties

If the court finds that a member of a public body “willfully and knowingly” was in violation of this Act, then it “shall impose upon such member...a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid to the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.”

Code § 2.2-3714.

Virginia Freedom of Information Advisory Council

Website- <http://foiacouncil.dls.virginia.gov/> Phone- 1-866-448-4100 or 804-225-3056

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Chapter 37 of Title 2.2
The Virginia Freedom of Information Act
(Effective July 1, 2015)

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2.2-3714.	Violations and penalties.

§ 2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

§ 2.2-3701. Definitions.

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

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or

function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

§ 2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. The Virginia State Crime Commission; and

5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 2.2-3703.1. Disclosure pursuant to court order or subpoena.

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a

response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed

between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on their respective public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and

avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

3. A general description, summary, list, or index of the types of public records maintained by such state public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;

5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and

6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request. 2004, c. 730; 2009, c. 626; 2014, c. 421.

§ 2.2-3705. Repealed.

Repealed by Acts 2004, c. 690.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

9. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes,

correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

12. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. Those portions of records that contain account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the record. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems,

telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Plans and information to prevent or respond to terrorist activity or cyber attacks, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building structure, information technology system, or software program. The same categories of records of any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism or cybersecurity planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

8. [Expired.]

9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.

10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

12. Records of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in

Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

13. Documentation or other information as determined by the State Comptroller that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, the disclosure of which would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

14. Documentation or other information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or any other similar local or regional public safety communications system; those portions of engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, the disclosure of which would reveal surveillance techniques, personnel

deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building, or structure or the safety of any person.

15. Records of a salaried or volunteer Fire/EMS company or Fire/EMS department, to the extent that the records disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

16. Records of hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health, to the extent such records reveal the disaster recovery plans or the evacuation plans for such facilities in the event of fire, explosion, natural disaster, or other catastrophic event. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. (Effective until July 1, 2018) Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

1. (Effective July 1, 2018) Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not

reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Records of studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda,

correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

11. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.

13. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of

charging parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern

Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

7. Records maintained in connection with fundraising activities by or for a public institution of higher education to the extent that such records reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. Records of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, the records of such threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such records shall remove information identifying any person who provided information to the threat assessment team under a promise of confidentiality.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1.

However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent made confidential by § 32.1-283.6.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant

to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

19. Records of certain health care committees and entities, to the extent that they reveal information that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to § 3.2-1215.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain

proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the records or portions thereof for which protection is sought, and (c) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Records submitted as a grant application, or accompanying a grant application, to the Tobacco Region Revitalization Commission to the extent such records contain (i) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (ii) financial records of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (iii) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other records prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data, records or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial records or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Records of the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if public disclosure would adversely affect the financial interest or bargaining position of the Authority or a private entity providing records to the Authority; or

b. Records provided by a private entity to the Commercial Space Flight Authority, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public, the financial interest or bargaining position of the Authority or private entity would be adversely affected.

In order for the records specified in clauses (i), (ii), and (iii) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Documents and other information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if the records were made public, the financial interest of the public-use airport would be adversely affected.

In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.
2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.
4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.
7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.
8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.
9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.
10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.
11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or

copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such data, records or information have not been publicly released, published, copyrighted or patented. This exemption shall also apply when such records are in the possession of the Virginia Commonwealth University.

16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.

21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or

denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the record may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Records of the Department of Corrections made confidential by § 53.1-233.

27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the record.

29. Records maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such records are not otherwise available to the public and the release of such records would reveal confidential strategies, methods or procedures to be employed in law-enforcement activities, or materials created for the investigation and prosecution of a criminal case.

32. Records provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft, where the records would not be subject to disclosure by the entity providing the records. The entity providing the records to the Department of Aviation

shall identify the specific portion of the records to be protected and the applicable provision of this chapter that exempts the record or portions thereof from mandatory disclosure.

33. Records created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

34. (Effective July 1, 2018) Records of the Virginia Alcoholic Beverage Control Authority to the extent such records contain (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial records of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

In order for the records identified in clauses (i) through (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

- a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- b. Identifying with specificity the data or other materials for which protection is sought; and
- c. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such records of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

§ 2.2-3705.8. Limitation on record exclusions.

A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.

The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

§ 2.2-3706. Disclosure of criminal records; limitations.

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

- (1) A general description of the criminal activity reported;
- (2) The date the alleged crime was committed;
- (3) The general location where the alleged crime was committed;
- (4) The identity of the investigating officer or other point of contact; and
- (5) A general description of any injuries suffered or property damaged or stolen.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision a.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

b. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation; and

c. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest;

2. Discretionary releases. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

- a. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;
- b. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
- c. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;
- d. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
- e. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;
- f. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;
- g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;
- h. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;
- i. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

j. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § 19.2-11.2; and

k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913; and

3. Prohibited releases. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

B. Noncriminal records. Records (i) required to be maintained by law-enforcement agencies pursuant to § 15.2-1722 or (ii) maintained by other public bodies engaged in criminal law-enforcement activities shall be subject to the provisions of this chapter except that those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable.

C. Records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter.

D. Conflict resolution. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

1999, cc. 703, 726, § 2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830; 2004, cc. 685, 735; 2006, cc. 857, 914; 2007, c. 133; 2010, c. 627; 2011, cc. 798, 871; 2013, c. 695.

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar.

Publication of meeting notices by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the

discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

§ 2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.
2004, c. 768; 2005, c. 352.

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website, if any, and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency meetings through electronic communication means shall

comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. A copy of the agenda for the meeting;
4. The number of sites for each meeting;
5. The types of electronic communication means by which the meetings were held;
6. The number of participants, including members of the public, at each meeting location;
7. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
8. A summary of any public comment received about the electronic communication meetings; and
9. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

In addition, any authorized public body shall make available to the public at any meeting conducted in accordance with this section a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

G. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

H. [Expired].

§ 2.2-3708.1. Participation in meetings in event of emergency or personal matter; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency or personal matter and identifies with specificity the nature of the emergency or personal matter, and the public body holding the meeting records in its minutes the specific nature of the emergency or personal matter and the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at the primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

§ 2.2-3709. Expired.

Expired.

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.
9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.
10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.
12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.
14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.
15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.
16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.
17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.
18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.
19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of records excluded from this chapter pursuant to subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any

governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal,

owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This exemption shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding

preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of records excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Tobacco Region Revitalization Commission of records excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of records excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

47. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such

member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity.

Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

CLOSED MEETING GUIDELINES

Closed Meetings of public bodies are permitted only for one or more of the purposes specified in the Virginia Freedom of Information Act (FOIA), § 2.2-3711(A). Any exemption from public access to meetings or records shall be narrowly construed.

GOING INTO CLOSED MEETINGS:

1. A motion by a public body to hold a Closed Meeting must consist of three specific items. The motion must: (1) identify the subject matter, (2) state the purpose(s) of the closed meeting, and (3) make specific reference to the statutory authority for the Closed Meeting. § 2.2-3712(A) of the *Code of Virginia*. *See “Sample Motions for Going into Closed Meetings” below.
2. Only matters specifically noted in the closed meeting motion may be discussed during a Closed Meeting. § 2.2-3712(C) of the *Code of Virginia*.
3. Minutes are not required to be taken during a Closed Meeting. Any minutes taken during a Closed Meeting are not subject to mandatory public disclosure under FOIA. § 2.2-3712(I) of the *Code of Virginia*.
4. Only directors and those invited by the public body shall be included in the Closed Meeting. § 2.2-3712(F) of the *Code of Virginia*.
5. Though not specifically required by law, an estimated time to reconvene should be announced or included in the motion so that the public will know when to return.

*Sample Motions for Going into Closed Meetings

- 1) “I move that the {*name of public body*} go into Closed Meeting in accordance with the Virginia Freedom of Information Act § 2.2-3711(A)(1) to discuss merit pay increases for {named individual employee(s)}.”
- 2) “I move that the {*name of public body*} go into Closed Meeting in accordance with the Virginia Freedom of Information Act § 2.2-3711(A)(3) to discuss possible purchase of the property, known as Stumpy Hill.”
- 3) “I move that the {*name of public body*} go into Closed Meeting pursuant to the Virginia Freedom of Information Act § 2.2-3711(A)(10) to discuss possible recipients of the Virginia Clean Water Farm Award.”
- 4) “I move that the {*name of public body*} go into Closed Meeting pursuant to the Code of Virginia § 2.2-3711(A)(46) for discussion or consideration of personal and proprietary information excluded from the provisions of this chapter pursuant to (i) § 2.2-3705.6.25, or (ii) § 10.1-104.7(E), Review of a Resource Management Plan.”

This information was prepared by staff of the Virginia Department of Conservation and Recreation for members of the Commonwealth’s Soil and Water Conservation Districts as a means of raising awareness and understanding about certain provisions of the Virginia Freedom of Information Act. It should be used as a companion reference to the Code of Virginia. It is not intended to serve as a legally binding interpretation of the act or its provisions. Should an interpretation be needed, contact the VA FOIA Advisory Council (foiacouncil@dls.virginia.gov or 1-866-448-4100) or your OAG representative. You may also visit the FOIA Advisory Council’s website at <http://foiacouncil.dls.virginia.gov/> for additional information.

January, 2016

COMING OUT OF CLOSED MEETINGS:

1. At the conclusion of any closed meeting, the public body must immediately reconvene into an open meeting. § 2.2-3712(D) of the *Code of Virginia*.
2. The public body must have a roll call or other recorded vote to be included in the minutes that states that the members in the Closed Meeting discussed only:

(1) Public business matters lawfully exempted from open meeting requirements,

AND

(2) Public business matters specifically identified in the original motion to convene into Closed Meeting § 2.2-3712(D) of the Code of Virginia.

*See “Sample Motions for Certifying Closed Meetings” below.

3. A Certification of Closed Meeting that becomes a part of the official minutes must be adopted when the open meeting reconvenes. This resolution assures the public body fulfills the obligations set forth in FOIA. (See certification document example on page 3).
4. Any resolution or decision made during the Closed Meeting must be presented and voted on during an open meeting of the public body. §§ 2.2-3711(B) and 2.2-3712(H) of the *Code of Virginia*.
5. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii) as outlined above shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body. § 2.2-3712(D) of the *Code of Virginia*.

*Sample Motions for Certifying Closed Meetings

- 1) “Pursuant to the *Code of Virginia* § 2.2-3712(D), I move to certify that, to the best of each member’s knowledge, only matters lawfully exempted and as identified in the motion by which the Closed Meeting was convened were heard or discussed by this {*name of public body*} during the Closed Meeting.” (This motion is considered a Certification of a Closed Meeting and can be used in lieu of a roll call vote. Please note that if there are any abstentions or dissenting votes on this motion, then a roll call vote must be taken and the protocol outlined in § 2.2-3712(D) must be followed.)
- 2) “I move for the adoption of resolution #{X}, “Certification of Closed Meeting”, which confirms that only those matters that were identified and lawfully exempted were discussed during the Closed Meeting.” (A sample certification document is included on page 3).

This information was prepared by staff of the Virginia Department of Conservation and Recreation for members of the Commonwealth’s Soil and Water Conservation Districts as a means of raising awareness and understanding about certain provisions of the Virginia Freedom of Information Act. It should be used as a companion reference to the [Code of Virginia](#). It is not intended to serve as a legally binding interpretation of the act or its provisions. Should an interpretation be needed, contact the VA FOIA Advisory Council (foiacouncil@dls.virginia.gov or 1-866-448-4100) or your OAG representative. You may also visit the FOIA Advisory Council’s website at <http://foiacouncil.dls.virginia.gov/> for additional information.

January, 2016

RESOLUTION #: _____

MEETING DATE: _____

CERTIFICATION OF CLOSED MEETING

WHEREAS, the {*Public Body*} has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 of the Code of Virginia requires a certification by the {*Public Body*} that a closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the {*Public Body*} hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as identified in the motion convening the closed meeting were heard, discussed or considered by the {*public body*}.

MOTION BY: _____

SECOND BY: _____

VOTES (Requires Roll Call Vote):

AYES:

NAYS:

[For each nay vote, the substance of the departure from the requirements of the Act should be described]

ABSENT DURING VOTE:

ABSENT DURING MEETING:

Secretary of {*Public Body*}

This information was prepared by staff of the Virginia Department of Conservation and Recreation for members of the Commonwealth's Soil and Water Conservation Districts as a means of raising awareness and understanding about certain provisions of the Virginia Freedom of Information Act. It should be used as a companion reference to the Code of Virginia. It is not intended to serve as a legally binding interpretation of the act or its provisions. Should an interpretation be needed, contact the VA FOIA Advisory Council (foiacouncil@dls.virginia.gov or 1-866-448-4100) or your OAG representative. You may also visit the FOIA Advisory Council's website at <http://foiacouncil.dls.virginia.gov/> for additional information.

January, 2016



VIRGINIA SOIL AND WATER CONSERVATION BOARD

GUIDANCE DOCUMENT ON FREEDOM OF INFORMATION ACT REQUIREMENTS FOR RESOURCE MANAGEMENT PLANS PROGRAM IMPLEMENTATION BY SOIL AND WATER CONSERVATION DISTRICT BOARDS AND TECHNICAL REVIEW COMMITTEES

(Approved May 20, 2015)
(Effective July 1, 2015)

Summary:

This document serves to provide guidance to Resource Management Plan (RMP) review authorities regarding the review of RMPs in a manner which protects personal, proprietary, and confidential information while also remaining in compliance with Virginia Freedom of Information Act (FOIA) (§2.2-3700 et seq. of the *Code of Virginia*) requirements. The document outlines procedures to be utilized in accordance with closed meeting allowances provided for in § 2.2-3711 (A) (46) and referenced in § 10.1-104.7 (E) of the *Code of Virginia* in order to protect such information.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Regulatory Town Hall under the Virginia Soil and Water Conservation Board at <http://townhall.virginia.gov/L/GDocs.cfm>.

Contact Information:

Please contact the Department of Conservation and Recreation's Division of Soil and Water at rmp@dcr.virginia.gov or by calling 804-371-0297 with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for Virginia's Soil and Water Conservation Districts (Districts) and their Technical Review Committees (TRCs) that administer the RMP Program on behalf of the Virginia Soil and Water Conservation Board (VSWCB) and the Department of Conservation and Recreation (Department). This guidance provides a general interpretation of the applicable Code and Regulations but is not meant to be exhaustive in nature. Each situation may differ and may require additional interpretation of the Resource Management Plans Act and attendant regulations.

FOIA Requirements for RMP Review by District Boards and TRCs

I. Background:

The RMP program provides a voluntary way to promote the use of conservation practices that improve farming operations and water quality. RMPs can help farm owners and operators take advantage of all the conservation measures at their disposal. The plans are designed to encourage farmers, either the farm owner or operator, to use a high level of best management practices (BMPs) that reduce runoff pollution to local waters and, in many cases, improve the farmer's financial bottom line.

Section 4VAC50-70-70 (A) of the RMP regulations stipulates that "[u]pon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority."

Section 4VAC50-70-70 (B) of the RMP regulations stipulates that "[e]ach soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50."

The definition of Technical Review Committee set out in 4VAC50-70-10 specifies that a TRC is a committee established by a Soil and Water Conservation District Board to review RMPs and provide recommendations to the Soil and Water Conservation District Board regarding RMPs.

FOIA [§ 2.2-3705.6 (25) of the *Code of Virginia*] provides an exemption for information of a proprietary nature furnished pursuant to an RMP, and the Resource Management Plans Act [§ 10.1-104.7 (E) of the *Code of Virginia*] specifies that any personal or proprietary information collected pursuant to the Act shall be exempt from FOIA, except where specifically permitted in accordance with the section. Further, § 2.2-220.3 of the *Code of Virginia* specifies that information collected pursuant to voluntary actions taken by the agricultural and silvicultural sectors shall be maintained as confidential and is also exempt from FOIA.

As it relates to RMP review and discussion, TRCs and District Boards are by definition public bodies, and meetings of the TRC or the District Board are required to be open meetings, unless the subject of the RMP item being discussed would result in the disclosure of personal or proprietary information which allows for such information to be discussed in a closed meeting as provided for in § 2.2-3711 (A) (46) and referenced in § 10.1-104.7 (E) of the *Code of Virginia*.

This guidance serves to clarify procedures that TRCs and District Boards as public bodies should follow regarding the management and discussion of personal, proprietary, and confidential information associated with RMPs and the RMP program.

II. Definitions

"Closed meeting" means a meeting from which the public is excluded. (Pursuant to § 2.2-3701 of the *Code of Virginia*)

"Department" means the Department of Conservation and Recreation.

"Director" means the officially appointed individual who directs, and is ultimately responsible for, the overall operations of the Department of Conservation and Recreation.

"Meeting" or "Meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter. (Pursuant to § 2.2-3701 of the *Code of Virginia*)

"Open meeting" or "public meeting" means a meeting at which the public may be present. (Pursuant to § 2.2-3701 of the *Code of Virginia*)

"Operator" means a person who exercises managerial control over the management unit. (Pursuant to 4VAC50-70-10)

"Owner" means a person who owns land included in a management unit. (Pursuant to 4VAC50-70-10)

"Public bodies" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include ... (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. ... (Pursuant to § 2.2-3701 of the *Code of Virginia*)

"Review authority" means a soil and water conservation district or the department where applicable that is authorized under this chapter [the RMP Regulations] to determine the adequacy of a resource management plan and perform other duties specified by this chapter. (Pursuant to 4VAC50-70-10)

"RMP developer" means an individual who meets the qualifications established by this chapter to prepare or revise a resource management plan. (Pursuant to 4VAC50-70-10)

"Soil and water conservation district" or "district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia. (Pursuant to 4VAC50-70-10)

"Technical Review Committee" or "TRC" means a committee established by a soil and water conservation district board to review RMPs and provide recommendations to the soil and water conservation district board regarding RMPs. A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel; Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district. (Pursuant to 4VAC50-70-10)

III. Authority:

The Resource Management Plan Act (§ 10.1-104.7 et seq. of the *Code of Virginia*) contains the following authorities applicable to this guidance:

§ 10.1-104.7 Resource Management Plans; effect of implementation; exclusions.

E. Any personal or proprietary information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions. Pursuant to subdivision A 46 of § 2.2-3711, public bodies may hold closed meetings for discussion or consideration of certain records excluded from the provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

The FOIA Act (§ 2.2-3700 et seq. of the *Code of Virginia*) contains the following authorities applicable to this guidance:

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

25. Documents and other information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

Consideration for maintaining the confidentiality of information included in an RMP regarding voluntary actions taken by the agricultural and silvicultural sectors must also be made.

§ 2.2-220.3. Development of strategies to collect land use and conservation information.

The Secretary of Natural Resources, with assistance from the Secretary of Agriculture and Forestry, shall establish and maintain a database of the critical data attributes for onsite best management practices implemented in the Commonwealth that limit the amount of nutrients and sediment entering state waters. The database shall document voluntary actions taken by the agricultural and silvicultural sectors and should enable the application of the collected data towards projections of progress towards Virginia's water quality goals by sharing the data with the appropriate federal or state agencies. To the extent possible or appropriate, the database shall (i) be uniform in content and format to applications in the other states of the Chesapeake Bay watershed, (ii) maintain the confidentiality of information, and (iii) use existing methods of data collection including reports to the U.S. Department of Agriculture's Farm Service Agency, soil and water conservation districts, and localities for the purpose of land use valuation. Any information collected pursuant to this section shall be exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

The Resource Management Plans Regulations contain the following authorities applicable to this guidance:

4VAC50-70-70. Review of a Resource Management Plan.

A. Upon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority. If the RMP developer is a district employee or district board member of the district that is the designated review authority, the department shall serve as the review authority for that RMP.

B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. [Following review, the TRC provides recommendations to the soil and water conservation district board regarding RMPs.] ...

IV. Discussion and Interpretation:

The Department's RMP regulations (4VAC50-70-10 et seq.) require a District Board to set up a TRC, which will review the RMPs and provide recommendations to the District Board. The District board votes on the RMP. While conducting the review and associated meetings, the TRC and District Board must protect personal and proprietary information associated with an RMP.

FOIA [§ 2.2-3705.6 (25) of the *Code of Virginia*] provides an exemption for information of a proprietary nature furnished pursuant to an RMP and the Resource Management Plans Act [§ 10.1-104.7 (E) of the *Code of Virginia*] specifies that any personal or proprietary information collected pursuant to the Act shall be exempt from FOIA, except where specifically permitted in accordance with the section. Further, § 2.2-220.3 of the *Code of Virginia* specifies that information collected pursuant to voluntary actions taken by the agricultural and silvicultural sectors shall be maintained as confidential and is also exempt from FOIA.

In order to prevent public disclosure of such protected information, a closed meeting to discuss such information as it relates to RMPs is provided for in § 2.2-3711 (A) (46) and referenced in § 10.1-104.7 (E) of the *Code of Virginia*.

For the purposes of the closed meeting exemption, "personal information" should be understood as information that reveals the identity of the applicant or location of the tract: for example, any and all maps or geographic references. The applicant's suite of BMPs (including the specifics of each component) is not "proprietary information" so long as those BMPs, and any associated soil studies and other information, are not linked to the applicant or the tract's location thus the release of such information would not inhibit a business or have an economic impact on it should such information be generally disclosed. Where a FOIA question arises, the Districts should consult with legal counsel at the Office of the Attorney General.

Documents furnished by an owner or operator are excluded from FOIA and should not be released. Other documents (not furnished by an owner or operator) that contain personal or proprietary information should not be released or should be redacted. Districts should contact legal counsel as questions arise regarding what can be disclosed and in what manner.

Below is a list of items not subject to FOIA:

General Information

- Any 1619 information (farm, tract, and field) [available as a USDA Section 1619 Cooperator]; and
- Social security numbers and tax id numbers.

Specific RMP Information

- RMP-1 and RMP-2 BMP applications/approvals/contracts;
- RMPs and associated documents and plans;
- Farm assessment for an RMP;
- Attachments (pdf, pics, etc) to an RMP;
- Maps developed for an RMP; and
- RMP data contained in the Conservation Planning and RMP Modules.

Below is a list of items that will contain protected personal or proprietary information and which must be redacted if released:

- RMP inspection documents;
- RMP corrective action agreements;
- E-mails and letters associated with a specific RMP regarding RMP development, review, Certificate issuance, modification, and revocation;
- RMP developer applications; and
- Any information regarding an RMP developer except information released on the Department's website.

Because the law specifies a permissible way to release the RMP gathered information (i.e., in statistical or aggregate form) by the Director or upon the certification for release by the person who is the subject of the information, release in other forms is prohibited by law. Thus, if a District receives a FOIA request for an RMP or list of applicants, it should, pursuant to § 2.2-3704 (B) (1) and (B) (3) of the *Code of Virginia*, timely respond that the District is prohibited by law from releasing the RMP information and refer the requester to the Department.

FOIA also requires that all meetings of public bodies shall be open, unless otherwise exempted. A District Board falls within the FOIA definition of a public body. Additionally, a TRC also qualifies as a public body under FOIA, as it is a committee created to advise a public body (despite including citizen members).

However, in accordance with § 2.2-3711 (A) (46) of the Code of Virginia, the discussion or consideration of personal and proprietary information that are excluded from the provisions of FOIA pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7 by a TRC or District Board may be handled in a closed meeting, or other options to protect the disclosure of personal and proprietary information may also be considered.

A TRC or District Board may utilize either one or a combination of the following three options to discuss the RMP. It is important to realize; however, that the TRC or District Board must always conduct the recommendation for approval or RMP approval vote, respectively, in an open meeting. This document will provide further guidance regarding each of the options listed below:

1. A TRC or District Board may go into closed session to discuss personal and proprietary information regarding an RMP. (This option will provide for the most streamlined process and create the least opportunity for the accidental disclosure of personal, proprietary, or confidential information.)
2. A TRC or District Board may redact personal, proprietary, and otherwise confidential information from the discussion packet and conduct the entire meeting in an open meeting. In an open meeting, the plan must be referenced only by a plan number.
3. A District Board may delegate RMP approval (following TRC review and recommendation) to a single individual who would approve the RMP outside of a meeting. [It is strongly recommended that such actions should be reported back to the District Board and be reflected in District Board minutes to ensure continuity of RMP records.]

1) CLOSED MEETING GUIDELINES FOR DISCUSSION OF PERSONAL AND PROPRIETARY INFORMATION ASSOCIATED WITH A RESOURCE MANAGEMENT PLAN

Closed meetings of public bodies are permitted only for one or more of the purposes specified in the Virginia Freedom of Information Act (FOIA), § 2.2-3711 (A). Any exemption from public access to meetings or records shall be narrowly construed.

A TRC or District Board may go into closed session to discuss personal and proprietary information regarding an RMP. Section 2.2-3711 of the *Code of Virginia* authorizes a closed meeting for discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of Code § 2.2-3705.6 or (ii) subsection E of Code § 10.1-104.7. This exemption shall not apply to the discussion or consideration of records that contain information that has been authorized for release by the person who is the subject of the information. It also does not apply to information that has been transformed into statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

This amendment will allow the TRC or District Board to go into closed session to discuss only the portions of an RMP that are considered personal and proprietary information. Any motion to recommend a plan or decline a plan by the TRC, or to approve or decline a plan by the District Board, must happen in open session. The vote must also occur in open session. Members may state on the record why they voted the way they did, but may not reveal any personal or proprietary information. The meeting minutes must be in writing and must capture: (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated, or decided, and a record of any votes taken (§ 2.2-3707 (I) of the *Code of Virginia*). When the meeting becomes open, the plan should be referenced by the plan number. Only redacted plans should be allowed in the open meeting. If the person who is subject of the information has authorized release of such information, the exemption no longer applies.

Going Into Closed Meetings:

1. A motion by a public body to hold a Closed Meeting must specifically state the purpose(s) for the session and reasonably identify the subject matters to be discussed. Specific reference must be made to the statutory authority for the Closed Meeting. A general reference alone is not sufficient. § 2.2-3712 (A) of the *Code of Virginia*.
*See sample motion 1 below.
2. Nothing may be discussed in the Closed Meeting except matters included in the motion to go into Closed Meeting. § 2.2-3712 (C) of the *Code of Virginia*.
3. Minutes during a Closed Meeting are not required, and if taken are not subject to public disclosure. § 2.2-3712 (H) of the *Code of Virginia*.

4. Only public body members and those individuals with relevant information useful in the plan review process invited by the public body shall be included in the session. § 2.2-3712 (F) of the *Code of Virginia*.
5. Though not specifically required by law, an estimated time to reconvene should be announced or included in the motion so that the public will know when to return.

*Sample Motion 1

I move the [public body] go into Closed Meeting in accordance with the Virginia Freedom of Information Act § 2.2-3711 (A) (46) for discussion or consideration of personal and proprietary information excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of §10.1-104.7, Review of a Resource Management Plan.

This closed meeting will be attended only by members of the [public body]. However, pursuant to § 2.2-3712 (F), the [public body] requests [ex. the RMP developer for plan # XXX] to also attend this meeting, as it believes their presence will reasonably aid the [public body] in its consideration of topics that are the subject of the meeting.

Coming Out of Closed Meetings:

1. At the conclusion of any closed meeting, the public body must reconvene into the open meeting. § 2.2-3712 (D) of the *Code of Virginia*.
2. The public body must have a roll call and recorded vote of a motion that states the members in the Closed Meeting discussed only:
**See sample motion 2 below

(1) Business matters specifically identified in the original motion to convene into Closed Meeting

AND

(2) Business matters lawfully exempted from open meeting requirements. § 2.2-3712 (D) of the *Code of Virginia*.

3. A Certification of Closed Meeting that becomes a part of the official minutes must be adopted when the open meeting reconvenes. This resolution assures the public body fulfills the obligations set forth in FOIA. (See attached Certification example.)
4. Any resolution, motion, or decision made during the Closed Meeting must be presented and voted on during an open meeting of the public body. §§ 2.2-3711(B) and 2.2-3712(G) of the *Code of Virginia*.
5. Any member of the public body who believes that there was a departure from the requirements of clauses 2. (1) and (2) outlined above shall so state prior to the

vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body. § 2.2-3712 (D) of the *Code of Virginia*. [The Certification of Closed Meeting document included below may be used to certify the meeting].

*Sample Motion 2

Pursuant to the § 2.2-3712 (D) of the *Code of Virginia*, I move to certify that, to the best of each member's knowledge, only matters lawfully exempted and identified in the motion by which the Closed Meeting was convened were heard or discussed by this [public body] during the Closed Meeting. (This motion is considered a Certification of a Closed Meeting)

I move for the adoption of resolution #[X], Certification of Closed Meeting, which confirms that we only discussed those matters in Closed Meeting that were identified and lawfully exempted. (A sample Certification is included below.)

Certification of Closed Meeting

MEETING DATE: _____

RESOLUTION # _____

MOTION:

WHEREAS, the [public body] has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 of the Code of Virginia requires a certification by the [public body] that a closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the [public body] hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as identified in the motion convening the closed meeting were heard, discussed or considered by the [public body].

MOTION BY: _____

SECOND BY: _____

VOTES (requires roll call vote)

AYES:

NAYS:

[For each nay vote, the substance of the departure from the requirements of the Act should be described]

ABSENT DURING VOTE:

ABSENT DURING MEETING:

Secretary of [public body]

2) OPEN MEETING GUIDELINES FOR DISCUSSION OF A RESOURCE MANAGEMENT PLAN

A TRC or District Board may redact personal information from the information packet and conduct the entire meeting in an open meeting. Confidential information regarding voluntary BMPs must also be redacted. In an open meeting, the RMP must be referenced only by a plan number and personal and proprietary information must be protected from disclosure to the public.

If the TRC or District Board reviews or discusses personal or proprietary RMP information in an open meeting, District staff should mask or otherwise redact personal information (name, address, etc.) from the RMP packet before it is copied and provided to the TRC. To the extent it is possible to redact other identifying information without compromising the TRC's ability to evaluate the RMP, District staff should do so.

Each RMP should have an assigned plan number to be referenced in public meetings of the TRC and District Board.

Staff should attach a cover page or header reminding the TRC or District Board that disclosure of identifying information is prohibited by law.

TRC and District Board members should be reminded at the meeting that personal and proprietary information is protected from disclosure and that they should tailor their discussion accordingly. The following announcement, or one like it, would be appropriate: "It is prohibited by law to disclose personal or proprietary identifying information of an RMP applicant. Members are reminded to take care to ensure that identifying information is not disclosed."

In open meetings where the public is present, reference should be made to page/line numbers ("the BMP identified on page 4, line 10" or "the acreage identified on page 7 line 2", etc.) to the extent reasonably possible. Common sense should be utilized to discuss each RMP in a fashion that will not reveal personal or proprietary information of the protected individuals.

3) DELEGATION OF RMP APPROVAL TO A SINGLE INDIVIDUAL

Following development of a recommendation by the TRC, and in lieu of action by the full District Board, a District Board may delegate RMP approval to a single individual who would approve the RMP outside of a meeting. District directors "may delegate to their chairman or to one or more district directors, agents or employees such powers and duties as they may deem proper." § 10.1-533 of the *Code of Virginia*. A District Board is therefore empowered to

delegate to one director, agent, or employee the power and duty of RMP approval. [It is strongly recommended that such actions should be reported back to the District Board and be reflected in District Board minutes, in accordance with the delegation charge, to ensure continuity of RMP records.]

MEETING PACKETS

FOIA requires that "[a]t least one copy of all agenda packets and, **unless exempt**, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body." (§ 2.2-3707 of the *Code of Virginia*). However, the protected RMP documents printed for the TRC and District Board (unless properly redacted) **need not be provided to the public**. Because the information remains protected after a meeting, it is also advisable that the packets provided to the members be collected at the close of a meeting.

V Adoption, Amendments, and Repeals:

This document was adopted by the Virginia Soil and Water Conservation Board on May 20, 2015 and may be amended or repealed as necessary by the Board.

Herbert L. Dunford
Chair

Clyde E. Cristman
DCR Director

May 20, 2015
Date

SECTION II

ORGANIZATIONAL STRUCTURE

District Organizational Structure



January 2016



The Soil and Water Conservation District

⌘ What is it?

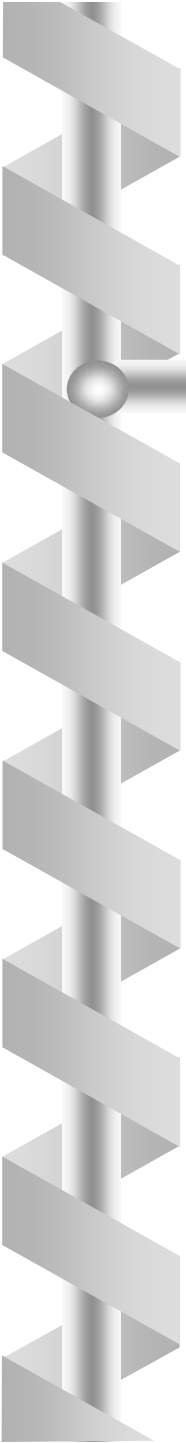
A political subdivision of the Commonwealth of Virginia that provides a democratic means for local conservation leadership

10.1-538



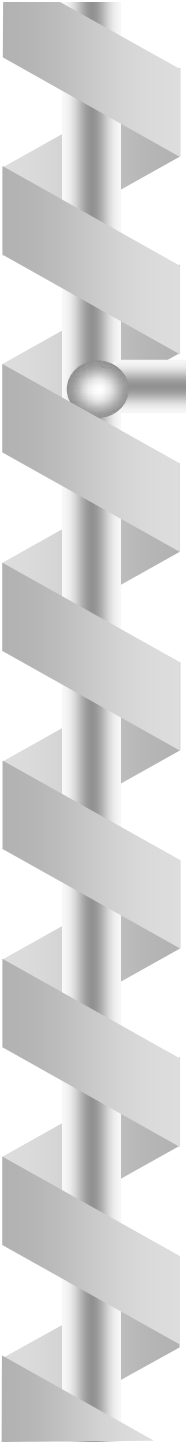
What does it do?

- ⌚ Provides two-way communication between citizens and government
- ⌚ Focuses attention on local land, water and related natural resource problems
- ⌚ Develops programs to solve natural resource problems
- ⌚ Coordinates sources of help – public and private
- ⌚ Provides cost-share assistance for BMPs
- ⌚ Serves as a source for general conservation and natural resource information.



What does it do? continued

- ⌚ Approves soil and water conservation plans required by the Chesapeake Bay Act, Tax Credit Programs, CREP and other programs
- ⌚ Approves Resource Management Plans
- ⌚ Develops and implements soil & water conservation programs
- ⌚ Provides grants and cost-share, rents equipment and enters into cooperative agreements



Structure ~~~

Elected Directors

- Elected in general election (1st Tuesday in November)
- All elected directors across the state are elected in the same year
- Post public notice in a prominent location accessible to the public at each district office at least 30 days before the filing date (2nd Tuesday in June)
- DCR correspondence to elected directors
 - Notifies SWCD of upcoming elections

Structure ~~~

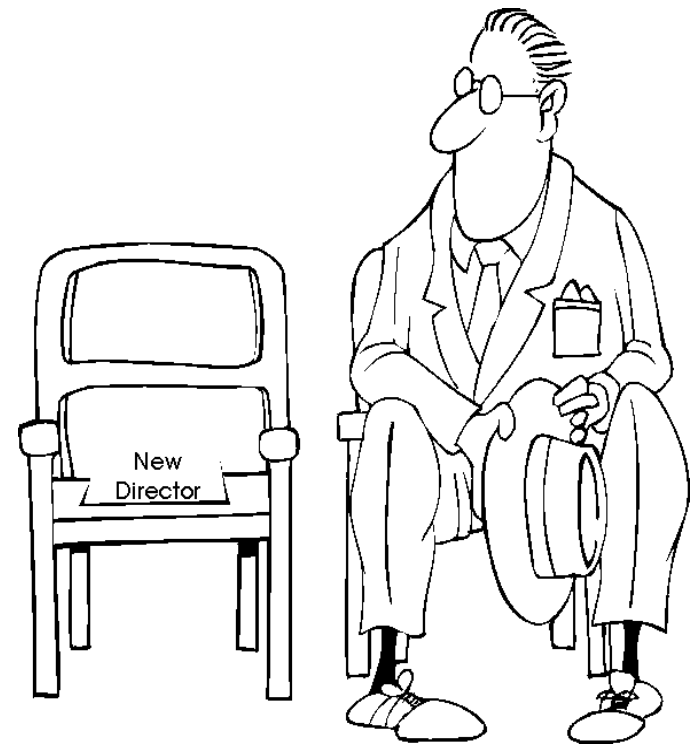
Appointed Directors

- VA Soil & Water Conservation Board appoints two directors in each district on non-election years

- >At Large director nominated by local SWCD

- >VCE Agent director nominated by VCE in consult with local SWCD

- Forms – DCR-DSWC 199-014, 199-015, 199-066 (Oath of Office)

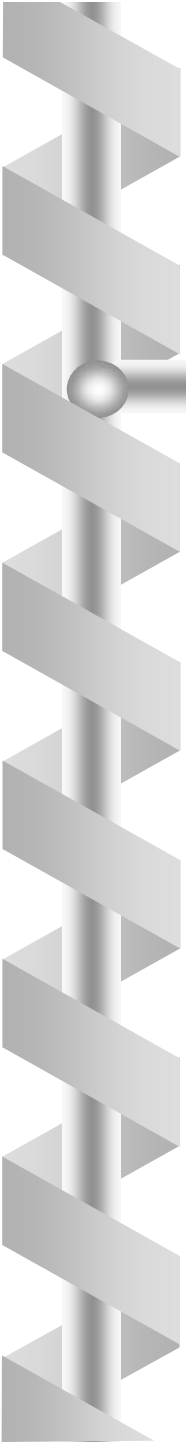




Structure ~~~

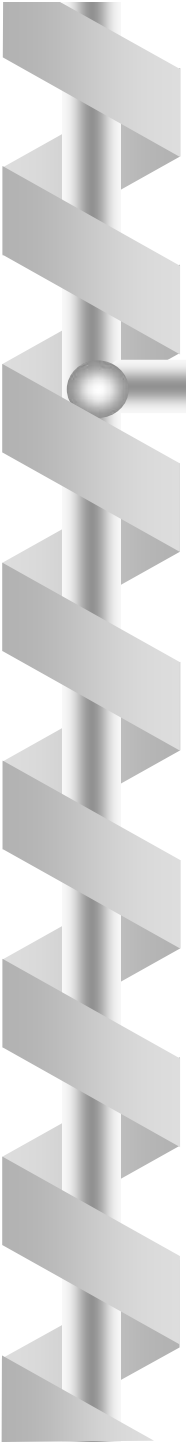
Associate Directors

- ⌚ Appointed by the Board to serve as advisors to the SWCD and representatives of the SWCD
- ⌚ Should support conservation efforts
- ⌚ Associate Directors do not vote, but should provide their knowledge to the Directors
- ⌚ Should serve on district committees and attend 75% of meetings
- ⌚ May receive reimbursement for travel-related expenditures



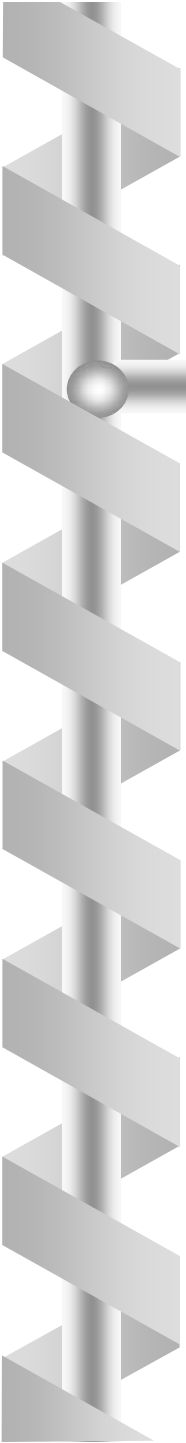
Structure ~~~ Officers

- ⌚ Chairman – provides leadership, appoints committees, conducts meetings
- ⌚ Vice Chairman – assists chairman as needed
- ⌚ Secretary- keeps official minutes, maintains district files, handles correspondence
- ⌚ Treasurer - oversees finances, leads budget planning, maintains records & presents financial statements to board.
- ⌚ *Election of officers should be held annually in Nov. – Jan.*



Structure ~~~ Committees

- Chairman makes committee assignments annually
 - Typical committees:
 - Personnel
 - Budget & Finance
 - Technical Review (TRC)
 - Technical/Ag/Cost-share
 - Education & Publicity
 - Legislative



Typical Office Structure

SWCD employees may be supervised by a District Manager or by the District Board (often delegated to the Personnel Committee)

- District Manager/Conservation Manager
- Administrative Asst./Administrator
- Conservation Technician/Specialist
- TMDL Technician/Specialist
- Education Coordinator/Specialist
- Other

VIRGINIA SOIL & WATER CONSERVATION BOARD (VSWCB)

The Virginia Soil and Water Conservation Board (board) was established by the General Assembly to help guide the delivery of soil and water conservation services to citizens of the commonwealth. The board is supported mainly by DCR staff for programs covering soil and water conservation and dam safety.

Composition:

- Nine voting members and one non-voting member (DCR director).
- All voting members are appointed by the governor.
- Three are at-large, four are farmers and two are farmers or Soil and Water Conservation District (SWCD) directors. Two of the at-large members must have a demonstrated interest in natural resource conservation with a background or knowledge in dam safety, soil conservation, or water quality protection.
- Members serve staggered four-year terms and no more than two consecutive full terms.

See § 10.1-502 of the *Code of Virginia* for a full description.

Duties include: Provide oversight and support of SWCD programs, including financial support, coordination, information exchange, the formation of districts, adjustments to their boundaries, as well as other specified duties.

Establish policies governing the distribution of appropriated funds for the delivery of the Virginia Agricultural Best Management Practices Cost-Share Program and for the administrative, operational, and technical assistance support for SWCDs.

Approve appointments of SWCD directors (two per entity and as needed to fill vacancies).

Keep district SWCD directors informed of the activities and experience of all other districts, and facilitate an interchange of advice and experience between the districts.

Provide oversight and enforcement of the commonwealth's dam safety program and regulations.

Approve the distribution of loans and grants from the Dam Safety, Flood Prevention and Protection Assistance Fund to local governments and private entities.

Adopt regulations for the voluntary nutrient management training and certification program and for the voluntary resource management plan program.

Approve the Virginia Agricultural Cost-Share (VACS) BMP manual as Board Guidance.

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

The Role of the Attorney General's Office in Soil & Water Conservation Districts

Assistant Attorney General assigned to Soil and Water Conservation Districts:

Kelci Block, Assistant Attorney General

Office of the Attorney General, 900 East Main Street, Richmond, VA 23229

Telephone: (804) 786-3890 E-mail: KBlock@oag.state.va.us

Basic Roles:

- Advice for civil legal matters
- Representation in litigation

There are three statutes that address the Attorney General's Office's representation of SWCDs:

- **Va. Code § 2.2-507(A)– Legal Service in Civil Matters** (see below for additional information)
The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, **upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters** for such district directors or districts.
- **Va. Code § 10.1-501 - Duty of the Attorney General** (see below for additional information)
The **Attorney General shall represent and provide consultation and legal advice in suits or actions** under this chapter upon request of the district directors or districts.
- **Va. Code § 10.1-501.1- Defense of Claims** (see below for additional information)
The **Attorney General shall provide the legal defense** against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

Seeking Advice Va. Code § 2.2-507(A):

- Who may seek advice?
Soil and Water Conservation District Directors OR Soil and Water Conservation Districts
- Who may districts seek legal advice from:
 - (1) local, public, or private sources
 - (2) **upon request**, the Attorney General shall provide legal service in civil matters
- What may you seek advice about?
The business of the Soil & Water Conservation District

Representation and legal defense Va. Code § 10.1-501.1:

The District's role in litigation is limited to these things:

- You are suing
- You are being sued
- You are required to provide information for a lawsuit

The role of the Office of the Attorney General when SWCD is involved in litigation:

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts. Va. Code § 10.1-501

Key Points for Va. Code § 10.1-501.1:

- (1) “The Attorney General **shall provide the legal defense** against any claim made against any soil and water conservation district, director, officer, agent or employee thereof . . .”
 - (a) If the claim is against any soil and water conservation district, director, officer, agent or employee thereof and it meets the limitation set forth in subparagraph (i) or (ii), the Attorney General’s Office must provide the defense
 - (b) The representation is limited to responding to lawsuits; it does not include bringing suits
- (2) There are two classes of actions this Office will defend:
 - (a) Those “(i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment” and
 - (b) Those “(ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.”

Legal Service Va. Code § 2.2-507(A)

Upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

Key Points for Va. Code § 2.2-507(A):

- (1) It limits the services provided to civil matters
- (2) Because the term “legal services” is broad, it may include bringing suits

Attorney-Client Privilege

- The attorney-client privilege protects communications between an attorney and a client from disclosure where the communication concerns rendering legal advice.
- The communication must be made with the expectation of confidentiality.
- The privilege does not apply where the communication involves the furtherance of a crime or a tort.
- Here, the privilege does not apply where the communication does not pertain to the business of a SWCD.
- Records that are protected under the attorney-client privilege are excluded from the provisions of the Freedom of Information Act in that records protected under attorney-client privilege do not have to be released to the public (§ 2.2-3705.1(2)). Also, an open meeting may be closed to the public as per FOIA in order to discuss communications protected by the attorney-client privilege (§ 2.2-3711(7)). These exclusions to FOIA remain in place until the privilege is waived.
- The privilege belongs to the client (SWCD) and can only be waived by the SWCD. Waiver occurs when the communication is disclosed to someone other than the SWCD and its attorney. Once waived, the privilege cannot be restored.

SAMPLE DIRECTOR JOB DESCRIPTION

_____ SOIL AND WATER CONSERVATION DISTRICT

Purpose of the Position

A District Director is a non-partisan local official, elected in the general election process or appointed by the Virginia Soil and Water Conservation Board to assess local conservation needs and to develop conservation programs to address these needs.

Legal Authority

- < 10.538 of the Code of Virginia defines a soil and water conservation district as a political subdivision of the Commonwealth of Virginia.

Term of Office

- < 4 years (10.1-530)

Duties and Responsibilities

Duties of district directors (10.1-529.1) “district directors shall:

1. Identify soil and water issues and opportunities within the district or related to the district and establish priorities for addressing these issues;
2. Seek a comprehensive understanding of the complex issues that impact soil and water, and assist in resolving the identified issues at the watershed, local, regional, state, and national levels;
3. Engage in actions that will improve soil and water stewardship by use of locally led programs;
4. Increase understanding among community leaders, including elected officials and others, of their role in soil and water quality protection and improvement;
5. Foster discussion and advancement within the community of positions and programs by their district;
6. Actively participate in the activities of the district and ensure district resources are used effectively and managed wisely; and
7. Support and promote the advancement of districts and their capabilities.

(2005, c. [73](#).)

SAMPLE DIRECTOR JOB DESCRIPTION

SOIL AND WATER CONSERVATION DISTRICT

Duties and Responsibilities continued

- < Participate in District policy and program development.
 - a. Prepare multi-year and annual plans.
 - b. Establish and implement District policies regarding natural resource conservation issues, as well as personnel and office matters.
 - c. Develop and/or implement conservation programs (educational and/or technical) to meet the needs of the District.
- < Provide financial direction.
 - a. Be responsible for the proper expenditure and management of public funds.
 - b. Review and approve annual budget and grant agreements.
 - c. Review monthly treasurer reports.
 - d. Maintain a working knowledge of the budgetary process and keep local officials informed about SWCD programs.
- < Participate in public and community relations activities/programs.
 - a. Maintain an active public information and educational program so that citizens and local officials will be informed about conservation issues and district programs.
 - b. Make presentations and provide testimony at public hearings about conservation issues.
- < Participate in personnel management.
 - a. Provide guidance and direction to staff and maintain fair and legal personnel policies.
 - b. Maintain an open working relationship between staff/directors.
 - c. Serve on personnel committee and participate in all aspects of personnel management to include hiring, personnel reviews, etc.

Minimum Job Requirements

- < Attend monthly District meetings.
- < Participate on District committees and in work groups.
- < Represent the citizens of _____ County/City on conservation issues.
- < Work with a multitude of agencies and approach resolution of problems through teamwork.

SAMPLE DIRECTOR JOB DESCRIPTION

SOIL AND WATER CONSERVATION DISTRICT

Minimum Job Requirements continued

- < Adhere to state law (Conflict of Interest Act, Freedom of Information Act, etc.) and policies of the Virginia Soil & Water Conservation Board.
- < Establish and implement District policies and procedures.
- < Foster positive relationships with local, state and federal officials to promote the District's mission.
- < Practice conservation ethics.

Desired Qualifications

- < Experience with agriculture, rural land use issues and associated conservation practices.
- < Knowledge of urban development issues and associated conservation needs.
- < Understanding of local, state and national legislative processes.
- < Technical background in environmental sciences, agriculture and engineering.
- < Working knowledge of parliamentary procedures.
- < Willingness to listen, learn and work with others.
- < Willingness to cultivate and recruit potential Directors and Associate Directors.
- < Experience with personnel management.

Time Requirements

- < Approximately 9 hours per month.
 - a. Monthly board meeting: 3 hours
 - b. Review of materials, reading and prep time: 3 hours
 - c. Committee work: 3 hours

Reimbursement

- < Directors are volunteers and receive no compensation; they are reimbursed for travel to meetings, registration, meals and other associated expenses when conducting work of the District.

SAMPLE DIRECTOR JOB DESCRIPTION

SOIL AND WATER CONSERVATION DISTRICT

Training Requirements

- < Learn District policy and procedures.
- < Meet training criteria as set forth by the District.
- < Attend 1 Area Meeting and 1 state-wide meeting per year.
- < Participate in workshops and seminars related to soil and water conservation.
- < Keep informed on current natural resource/conservation issues by reviewing district correspondence, documents and technical literature and relevant program manuals.

A training program for new directors might include such tasks as:

- a. Review the working documents of the District.
- b. Meet with the Conservation District Coordinator (CDC) of the Department of Conservation and Recreation (DCR) for basic director orientation.
- c. Attend Regional Director Orientation.
- d. Meet with representatives of cooperating agencies (Natural Resources Conservation Service (NRCS), Farm Services Agency (FSA), Virginia Cooperative Extension (VCE), the Virginia Department of Forestry, etc.) to further the understanding of cooperative programs and relationships.
- e. Participate in field inspection of best management practices with district staff and CDC.

January 2016

SAMPLE ASSOCIATE DIRECTOR JOB DESCRIPTION

Purpose of the Position

An Associate District Director provides advice and support to the SWCD Board of Directors (BOD) on local conservation issues, but has no official vote. The Associate Directors are appointed for a specific term determined by the BOD and may be reappointed.

Legal Authority

10.538 of the Code of Virginia defines a soil and water conservation district as a political subdivision of the Commonwealth of Virginia.

Minimum Job Requirements

- < Interest in natural resource conservation
- < Attend 75% of regularly scheduled District board meetings
- < Participate on District committees
- < Willing to listen, learn and work with others
- < Practice conservation ethics
- < Keep informed on current conservation issues of importance to the District

Desirable Background:

- < Knowledge of agriculture, rural land uses and associated conservation needs.
- < Knowledge of urban development issues and associated conservation needs.
- < Knowledge of general conservation needs in the area served by the district.

Training Requirements

- < Meet with the Conservation District Coordinator (CDC) of the Department of Conservation and Recreation (DCR) for basic director orientation
- < Become familiar with the policies and procedures of the District
- < Attend workshops and seminars related to soil and water conservation

Time Commitment

- < Approximately 7 hours per month
 - a. Monthly board meetings: 3 hours per month
 - b. District activities and committee work: 3 hours per month
 - c. Reviewing correspondence and other written materials: 1 hours per month

Reimbursement

- < Associate Directors are volunteers and receive no compensation; they are reimbursed for travel to meetings, registration, meals and other associated expenses when conducting work of the District.

January 2016

Code of Virginia

Title 2.2 - ADMINISTRATION OF GOVERNMENT.

Chapter 31 - State and Local Government Conflict of Interests Act

Background and explanation: For the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of **conflict of interests**, the General Assembly enacts the State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

In its entirety, the Act consists of provisions specified within § 2.2-3100 through 2.2-3131 (of the above Title and Chapter of the Code of Virginia). It is important that public officials and employees gain a full understanding of the Act which includes the sections that follow pertaining to prohibited conduct § 2.2-3103, an overall explanation of the Act's purpose and intent as conveyed through § 2.2-3100, and an understanding of terms used in the Act as they are defined within 2.2-3101.

Article 1. General Provisions

- 2.2-3100** Policy; application; construction
- 2.2-3100.1** Copy of chapter; review by officers and employees
- 2.2-3101** (Effective until January 1, 2016) Definitions
- 2.2-3101** (Effective January 1, 2016) Definitions

Article 2. Generally Prohibited and Unlawful Conduct

- 2.2-3102** Application
- 2.2-3103** Prohibited conduct
- 2.2-3103.1** (Effective until January 1, 2016) Certain gifts prohibited
- 2.2-3103.1** (Effective January 1, 2016) Certain gifts prohibited
- 2.2-3103.2** (Effective January 1, 2016) Return of gifts
- 2.2-3104** (Effective until January 1, 2016) Prohibited conduct for certain officers and employees of state government
- 2.2-3104.01** (Effective until January 1, 2016) Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act
- 2.2-3104.01** (Effective January 1, 2016) Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth's Development Opportunity Fund
- 2.2-3104.02** Prohibited conduct for constitutional officers
- 2.2-3104.1** Exclusion of certain awards from scope of chapter
- 2.2-3104.2** Ordinance regulating receipt of gifts
- 2.2-3104** (Effective January 1, 2016) Prohibited conduct for certain officers and employees of state government

Article 3. Prohibited Conduct Relating to Contracts

- 2.2-3105 Application
- 2.2-3106 Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School
- 2.2-3107 Prohibited contracts by members of county boards of supervisors, city councils and town councils
- 2.2-3108 Prohibited contracts by members of school boards
- 2.2-3109 Prohibited contracts by other officers and employees of local governmental agencies
- 2.2-3109.1 Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities
- 2.2-3110 Further exceptions

Article 4. Prohibited Conduct Relating to Transactions

- 2.2-3111 Application
- 2.2-3112 Prohibited conduct concerning personal interest in a transaction; exceptions

Article 5. Disclosure Statements Required to be Filed

- 2.2-3113 Application
- 2.2-3114 (See Editor's Note) Disclosure by state officers and employees
- 2.2-3114.1 (Effective until January 1, 2016) Filings of statements of economic interests by General Assembly members
- 2.2-3114.1 (Effective January 1, 2016) Filings of statements of economic interests by General Assembly members
- 2.2-3115 (Effective until January 1, 2016) Disclosure by local government officers and employees
- 2.2-3115 (Effective January 1, 2016) Disclosure by local government officers and employees
- 2.2-3116 (Effective until January 1, 2016) Disclosure by certain constitutional officers
- 2.2-3116 (Effective from January 1, 2016, until July 1, 2016) Disclosure by certain constitutional officers
- 2.2-3116 (Effective July 1, 2016) Disclosure by certain constitutional officers
- 2.2-3117 (Effective until January 1, 2016) Disclosure form
- 2.2-3117 (Effective January 1, 2016) Disclosure form
- 2.2-3118 (Effective until January 1, 2016) Disclosure form; certain citizen members
- 2.2-3118 (Effective January 1, 2016) Disclosure form; certain citizen members
- 2.2-3118.1 Special provisions for individuals serving in or seeking multiple positions or offices; reappointees

Article 6. School Boards and Employees of School Boards

- 2.2-3119 Additional provisions applicable to school boards and employees of school boards; exceptions

Article 7. Penalties and Remedies

- 2.2-3120 Knowing violation of chapter a misdemeanor

2.2-3121	(Effective until January 1, 2016) Advisory opinions
2.2-3121	(Effective January 1, 2016) Advisory opinions
2.2-3122	Knowing violation of chapter constitutes malfeasance in office or employment
2.2-3123	Invalidation of contract; rescission of sales
2.2-3124	(Effective until January 1, 2016) Civil penalty from violation of this chapter
2.2-3124	(Effective January 1, 2016) Civil penalty from violation of this chapter
2.2-3125	Limitation of actions
2.2-3126	Enforcement
2.2-3127	Venue

Article 8. Orientation for State Filers

2.2-3128	Semiannual orientation course
2.2-3129	Records of attendance
2.2-3130	Attendance requirements
2.2-3131	Exemptions

Article 1. General Provisions.

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ [15.2-852](#), [15.2-2287](#), [15.2-2287.1](#), and [15.2-2289](#) and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ [2.2-4367](#) et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § [2.2-3104.2](#) regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § [18.2-438](#) et seq.) and 3 (Bribery of Public Servants and Party Officials, § [18.2-446](#) et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. [844](#); 2003, c. [694](#); 2008, c. [532](#); 2014, cc. [792](#), [804](#).

§ 2.2-3100.1. Copy of chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

2004, cc. 134, 392.

§ 2.2-3101. (Effective January 1, 2016) Definitions.

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

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § [2.2-3114](#).

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. 74, 724; 1995, c. 495; 1996, c. 77; 1997, c. 641; 2001, c. 844; 2003, c. 694; 2004, cc. 134, 392; 2012, cc. 345, 771; 2013, c. 475; 2014, cc. 792, 804; 2015, cc. 763, 777.

Article 2. Generally Prohibited and Unlawful Conduct.

§ 2.2-3103. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;
6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;
8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;
9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or
10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take

disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. **663**, **815**, **851**; 2001, c. **844**; 2006, cc. **787**, **892**; 2015, c. **574**.

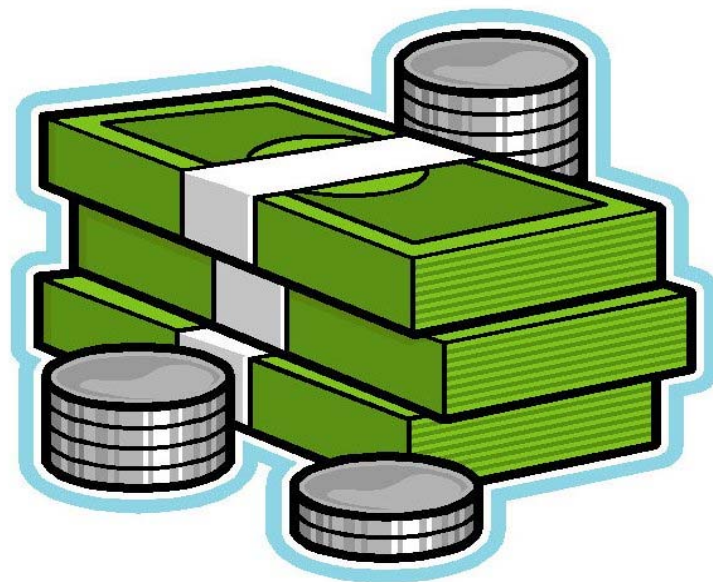
SECTION III

SWCD FUNDING

Director Orientation-Phase I-Section III

SOIL & WATER CONSERVATION DISTRICT

FUNDING



“Funding” Objectives

- Recognize financial responsibilities of SWCD Directors.
- ID sources of SWCD funding.
- Discuss state law pertaining to SWCD finances.
- ID fundamental financial management practices for SWCD.

Financial Accountability

- Directors are accountable for all funds, property, & equipment belonging to SWCD.
- Ensure that the SWCD is applying all funds in a manner that serves the public's interest.

Source: Desktop Guide for District Fiscal Operations, 10/2014

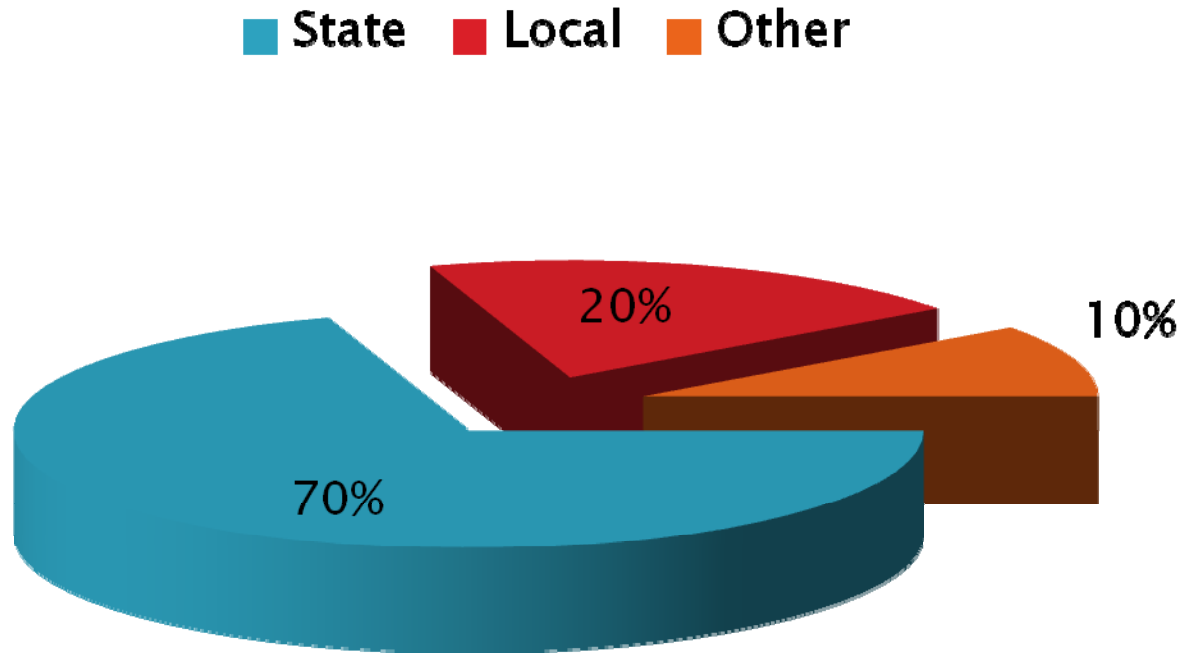


Sources of Annual Operating Funds

- **State Government**
- **Local Government(s)**
- **Other**
 - Grants
 - Donations
 - Revenue Generating
 - Technical Services
 - Sales
 - Rental Programs



Statewide SWCD Operating Funds



- FY 2016 State Appropriation = \$6,841,091

State Funding: Type 1 of 2



► Administration and Operations Funding

- Line item in DCR Budget
- VSWCB Policy (*Reference copy of VSWCB's Admin. & Ops Policy*)
- Core Administrative & Ops Expenses: personnel, training, travel, rent, utilities, office support, equipment
- Director Allowance = \$500/director/yr.
- Dam Maintenance = \$3000/dam (FY 2016)
- Funds administered through a Grant Agreement and related deliverables (*Reference copy of Admin. & Ops. Grant Agreement*)

State Funding: Type 2 of 2

▶ **Program Related Funds (Cost-Share)**

- Defined purpose
- Typically used for water quality improvement projects
- Funds administered through a Grant Agreement
(Provide copy of Cost-Share & Tech. Assist. Grant Agreement)

Attachment D – Budget Template

- Developed 2012 by stakeholder advisory group
- Purpose: Provide budgetary decision makers at the Department, Secretariat, Gubernatorial, and General Assembly levels w/ district programmatic cost-estimates to implement a range of SWCD programs
- Excel spreadsheet; Template has 4 major funded program areas: Central Ops, Dam Management, Agricultural Program Implementation, and Environmental Education

Local Government Support

- Local Donors: Counties, Cities, Towns
- Varies among SWCDs



Other Funding Sources

- Grants – Ex. TMDL Grants
- Conservation Equipment Rental Programs
- Sales
- Donations
- Interest Income
- Other Services – Ex. Easements



How Are SWCD Funds Utilized?

- “Core” Funding used for SWCD operations:
 - Employee Salaries & Fringe Benefits
 - Rent, Utilities, Office Supplies & Equipment
 - Conservation Equipment & Purchases
 - Educational Activities
 - Training, Meetings, & Publicity

- Cost-Share Funding & Grants
 - Designated use for specific programs and activities.

State Law Requirements

§10.1-535 Code of VA-Bonds of officers and employees; records and accounts: *The district directors shall (i) provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; (ii) provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and (iii) provide for an annual audit of the accounts of receipts and disbursements by the Auditor of Public Accounts or a certified public accountant approved by him.*

Meeting Legal Requirements — Slide 1 of 2

■ Fidelity Bonding

- SWCD officials & employees are covered under a fidelity bond administered by the VA Department of the Treasury Division of Risk Management
- Fidelity Bond: form of insurance protection that covers policy holders for losses that they incur as a result of fraudulent acts by specified individuals.
- Provides a limit of \$500,000 for all officials & employees
- Included in the annual Fidelity Bond premium paid by DCR

Meeting Legal Requirements — Slide 2 of 2

- Plans and Reports

- Minutes

- Annual Plan of Work & Annual Report

- Financial Reports: Annual Budget, Attachment D, Treasurer's Report (monthly), Quarterly Report- Attachment E (*Reference example*)

- Inventory Lists: Updated at least annually

- Audits: At least once every 2 years

Division of Risk Management (DRM) Services Provided/Available to SWCDs

- Fidelity Bonding: Reference Slide #13
- Liability Insurance: Covered for tort liability under Commonwealth Risk Management Plan for SWCDs, officials, employees, & agents; Coverage limits of \$2M/occurrence; Included in annual General Liability premium paid by DCR; Automatic coverage, no application required; No deductible; Claims reported directly to DRM by individual SWCD
- Automobile Liability: Available program, but SWCD must enroll directly w/ DRM; Limit of \$1M; Premium billed directly to SWCD

DRM Contact Information

- **Mailing Address**

VA Division of Risk Management

P.O. Box 1879

Richmond, VA 23218-1879

- **Physical Address**

James Monroe Building, 3rd Floor

101 North 14th Street 23219

Richmond, VA 23219

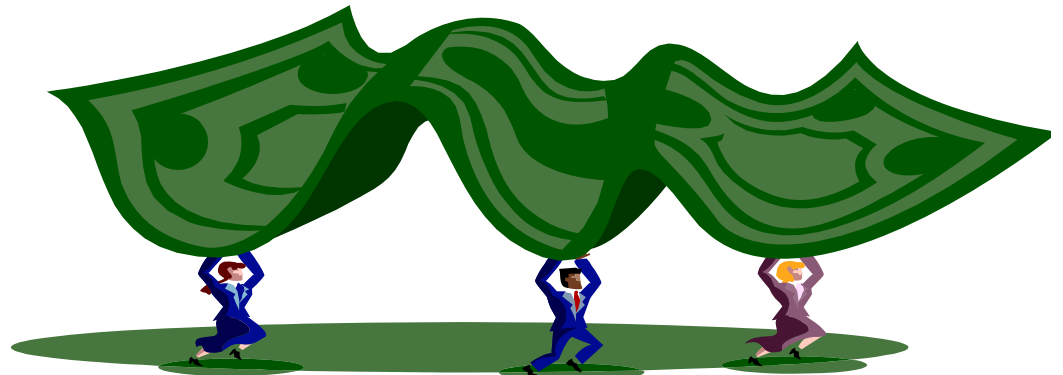
- Telephone - General: 1-804-786-3152, Opt. 2
- Telephone – Claims: 1-804-786-3152, Opt. 1
- Website: <https://www.trs.virginia.gov/Drm/>

Financial Management Practices

- ▶ Desktop Guide for District Fiscal Operations
- ▶ Basic understanding of financial accounts
- ▶ Develop & Adhere to Annual Budget
 - Consideration of Unexpended Funds
 - Projected revenue & expenses
 - Detail of actual income & expenditures for the last year
 - Estimate of staff and costs to accomplish proposed activities
 - Narrative summary
- ▶ Approved Purchasing Policy *(Example in Desktop Guide)*

Financial Management Practices

- Approved Credit Card Policy *(Example in Desktop Guide)*
- Review of Treasurer's Reports
- Compliance w/ Audit Findings
- Team Approach to Account Management



“Funding” – Final Thoughts

- #1 Responsibility = Financial Accountability

- Refer to supplemental documents provided:
 - Desktop Guide for District Fiscal Operations
 - SWCD Administration and Operations Funding Allocation Policy
 - Cost-Share and TA Funding Allocation Policy
 - DCR-SWCD Administration & Operations Grant Agreement
 - DCR-SWCD Cost-Share & TA Grant Agreement
 - DCR Budget Template – Attachment D
 - DCR Attachment E

Test Your Knowledge

- Answer the 10 multiple choice questions
(*Handout*)
- Using your SWCD's current FY budget answer the following:
 - What are your SWCD's sources of income?
 - What are the top 5 expenses for your SWCD?
 - Please list management techniques your SWCD practices to ensure financial accountability. Are there any needs for improvements? If so, what?

Soil and Water Conservation District (SWCD) Funding

1. State funding for Virginia's SWCDs is administered by what state agency?
 - a. Virginia Department of Conservation and Recreation
 - b. Virginia Department of Environmental Quality
 - c. Virginia Association of Soil and Water Conservation Districts
2. What are the two types of SWCD funding available from the state that require annual grant agreements?
 - a. General and TMDL
 - b. Operating and Cost-Share and Technical Assistance Funds
 - c. CREP and VACS
3. All SWCDs receive the same amount of funding from their respective localities.
 - a. True
 - b. False
4. Examples of other sources of revenue for SWCDs include which of the following?
 - a. Equipment Rental Programs
 - b. Grants
 - c. Interest Income
 - d. All of the above
5. Districts are not required by law to be bonded.
 - a. True
 - b. False
6. What is the most important tool for the board to use when deciding how to allocate SWCD operating funds?
 - a. Annual Report
 - b. Annual Budget
 - c. Purchasing Policy
7. What is the name of the financial reference manual specifically designed for SWCDs?
 - a. Desktop Guide for SWCD Fiscal Operations
 - b. Director's Handbook
 - c. Financial Planning Guide for SWCD Operations
8. How often does the VA Department of Conservation and Recreation require SWCDs to be audited?
 - a. Annually
 - b. At least every 2 years
 - c. At least every 7 years
9. Cost-share funds may be used to pay employee salaries and office rent.
 - a. True
 - b. False
10. It is advisable to give the Administrative Secretary total control of the accounts with no oversight by a fellow staff member and/or board member.
 - a. True
 - b. False

Answers (Soil and Water Conservation Districts FUNDING):

1. A
2. B
3. B
4. D
5. B
6. B
7. A
8. B
9. B
10. B

DEPARTMENT OF CONSERVATION AND RECREATION AND VIRGINIA SOIL AND WATER
CONSERVATION DISTRICT (Department/ District) GRANT AGREEMENT:

[04-06-15 DRAFT]

Administrative and Operational Support from the Commonwealth of Virginia

Agreement Number «AgreementN»

This Agreement becomes effective as of the 1st day of July, 2015, between the Virginia Department of Conservation and Recreation (Department), herein referred to as the Department and the «SWCD» Soil and Water Conservation District (District), herein referred to as the District.

The parties of this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

(1) SCOPE OF SERVICE:

The District shall provide the services set forth in **Attachment A (Fiscal Year 2015 Performance “Deliverables”)**, the terms of which are incorporated herein. The Department, as directed by the Board, shall assess at the end of Fiscal Year 2016 each District’s success in meeting the deliverables utilizing an A (fully satisfied), B (partially fulfilled), and C (did not fulfill) evaluation scale and to provide the results to the Board for review and appropriate action (**Attachment C**). Failure to meet performance deliverables contained in **Attachment A** may result in funding adjustments to the District’s future fiscal year’s funding allocations. In the event the District fails to comply with the provisions of this Agreement, the Board reserves the right to require repayment of previously issued funds and/or direct further appropriate actions based upon noncompliance circumstances. Should an issue arise that impacts funding, the District will be apprised of the issue(s) and provided an opportunity to address the concerns of the Board prior to Board action.

(2) TIME OF PERFORMANCE:

The services of the District shall commence on July 1, 2015 and shall terminate on June 30, 2016. All time limits stated are of the essence of this Agreement.

(3) COMPENSATION:

The District shall be funded by the Department for services as set forth in **Attachment A** and per the compensation agreement outlined in **Attachment B**. The Department’s fiscal obligation under this Agreement is set forth in **Attachment B**. The Department’s fulfillment of funding to the District which is specified within this Agreement is contingent upon appropriations by the Virginia General Assembly. Should a reduction of funds occur during the course of Fiscal Year 2016, after the Department has utilized all unallocated and unobligated balances it may have available, every District will receive an equal percent reduction which will be calculated and deducted from each District’s total approved administrative and operational funding specified within the Department/District Grant Agreement. If additional direction is necessary, the Department shall consult with the Board. Should a reduction of funds occur, every District must return funding within 30 days of receiving notice of such reduction from the Department.

The District shall spend the funds according to the specified categories as referenced in **Attachment B**. Completion of **Attachment E (Project Financial Report)** by deadlines established within this Agreement is required.

(4) MATCHING FUNDS:

The use of funds made available through this Agreement by the Department as a match commitment for other funding opportunities the District may pursue, must be approved by the Department in writing, in advance of any binding commitment entered into by the District. This requirement must be fulfilled to avoid double counting of match commitments against these funds. Match commitment requests will be considered on a case-by-case basis. The final decision is at the sole discretion of the Department.

(5) ASSISTANCE:

The Department agrees upon request of the District, to furnish or otherwise make available to the District copies of existing non-proprietary materials in the possession of the Department that are reasonably related to the subject matter of this Agreement and are necessary to the District for completion of performance under this Agreement.

(6) GENERAL PROVISIONS:

The District is expected to comply with generally accepted financial accounting principles; to follow guidance contained within the current version of **DCR's Desktop Guide for SWCD Fiscal Operations**; to modify existing accounting procedures to comply with the auditor recommendations; to abide by laws and standards applicable to employment of staff; to develop and comply with internal policies regarding Conflict of Interest that comport with State law; and to operate under a system of reasonable, adequate internal controls that provide integrity to all facets of district management and delivery of programs and services for the public good.

The District is encouraged to use the web-based purchasing system eVA, especially to announce District bid opportunities, invite bidders, receive quotes, and place orders for goods and services. Furthermore, all Districts are encouraged to participate in the Commonwealth of Virginia's Financial Electronic Data Interchange (FEDI) program by the end of the term of this contract.

Expenditure of District funds, regardless of source, will be made without regard to any person's race, color, religion, sex, age, national origin, handicap, or political affiliation.

Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the Fiscal Year 2016 Performance Deliverables contained herein. The schedule of service set forth in **Attachment A** shall be deemed to have been consented to upon the execution of this Grant Agreement by the Department.

(7) TERMINATION:

This Agreement is established in the spirit of a conservation partnership. Either party may terminate this Agreement with cause, upon sixty (60) days written notice to the other party. The District shall not expend state funding awarded under this Agreement for services rendered or expenses incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of work under this Agreement. From the date of such notice, the District shall within 30 days refund a pro-rated amount based on a monthly value, minus any documented fees and expenses referenced above, to the Department.

In the event of breach by either party of this Agreement, either party shall have the right immediately to rescind, revoke, or terminate the Agreement. In such event either party will give written notice to the other specifying the manner in which the Agreement has been breached. When such a breach occurs, either party may be provided opportunity to correct the breach within sixty (60) days of receipt of the written notice. If acceptable corrections have not occurred by the close of that period, either party shall have the right to terminate this Agreement.

In the event of rescission, revocation, or termination, all documents and other materials related to the performance of this Agreement shall become the property of the Department.

(8) FINANCIAL RECORDS AVAILABILITY:

The District agrees to retain all books, records, and other documents relative to this Agreement for three (3) fiscal years from the end of Fiscal Year 2016. The Department, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.

All funds received by Districts are public funds and provision of the Freedom of Information Act shall apply to financial records, unless otherwise specified within the Act or elsewhere in the *Code of Virginia*. Each District shall safeguard, provide accountability, and expend funds only for approved purposes.

(9) PARTNERSHIP ACKNOWLEDGMENTS AND REPORTS:

In the spirit of the conservation partnership, the Board and Department work with, and make available support and assistance to, each District in a variety of ways. The conservation partnership will be enhanced through District recognition of its primary partner agencies within certain printed documents produced by the District. Specifically, the District's Strategic Plan (or SWCD 4 year Program and Resource Plan), Annual Plan, and Annual Report will acknowledge Board and Department support and financial assistance by written acknowledgment in the following format:

The Commonwealth of Virginia supports the (Name of district) Soil and Water Conservation District through financial and administrative assistance provided by the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation.

Acknowledgment of the Board's and Department's support within other publications and products is encouraged.

(10) REPORTS

The District agrees to provide to the Department timely and accurate reports as specified within this Agreement by the dates contained herein. Reports shall be submitted to the Department's Conservation District Coordinator (CDC) by the District on or before the following deadlines:

Quarters	Report Period	Report Deadline (due to CDC)
First Quarter*	07/01/15 thru 09/30/15	October 15, 2015
Second Quarter*	10/01/15 thru 12/31/15	January 15, 2016
Third Quarter*	01/01/16 thru 03/31/16	April 15, 2016
Fourth Quarter*	04/01/16 thru 06/30/16	July 15, 2016

*Fiscal Year 2016 funds will not be disbursed until the Fourth Quarter Fiscal Year 2015 report has been submitted (including the District's Cash Balance Report, Carry Over Report, and SL-6 Pending Reports) and until the complete execution of the Grant Agreement and the return of an original signed Agreement to the District's assigned Department CDC. Disbursements to Districts of second, third, and fourth quarter funds will be executed within 45 calendar days following the beginning of a quarter contingent upon the satisfactory completion of database updates and the receipt of complete and accurate reports.

In witness whereof the parties have caused this Agreement to be executed by the following duly authorized officials:

SOIL AND WATER CONSERVATION
DISTRICT

DEPARTMENT OF CONSERVATION
AND RECREATION

By: _____

By: _____
Clyde E. Cristman, Director
Department of Conservation and Recreation

Title: _____

Date: _____

Date: _____

ATTACHMENT A
Soil and Water Conservation District (District)
Fiscal Year 2016 Performance “Deliverables”
For Acceptance of Department Funds to Administer This Agreement
and for Operating Expenses to the Extent that Funding Permits

- Demonstrates leadership by promoting nonpoint source pollution reduction and related conservation efforts through support of, reporting for, and/or implementation of the following programs:
 - The Virginia Agricultural BMP Cost-Share program
 - The Virginia Agricultural BMPs Tax Credit Program
 - BMP Revolving Loan Program
 - Conservation Reserve Enhancement Program (CREP)
 - Voluntary BMP installation
 - TMDL (Total Maximum Daily Load) development and implementation processes
 - Agricultural Stewardship Act
 - Nutrient Management Training and Certification Program
 - Support for Resource Management Plans (RMPs)
- **Wherever applicable**, actively participate in the local development and implementation of the following programs and initiatives:
 - The Virginia Water Quality Improvement Act
 - Chesapeake Bay and Virginia Waters Clean-Up Plan (§62.1-44.117 of the Code of Virginia) actions
 - The Chesapeake Bay Total Maximum Daily Load (TMDL)
 - Virginia’s Healthy Waters initiatives
 - Local TMDL development and implementation processes
 - Land conservation initiatives consistent with any state-identified priorities
 - Sound land use and watershed planning approaches
 - Environmental Education programs
- Actively support and foster partnerships to deliver natural resource conservation programs with consideration to resource needs and issues with local governments, the agricultural community, agencies, organizations, councils, roundtables, and others to protect soil resources, improve water quality, and further natural resource conservation.
- Hold monthly meetings with a quorum of District board members present.
- Develop and maintain a long-term plan that enhances District capabilities, on a 4-year cycle through a facilitated process with participation by District stakeholders. Review of the plan is expected at least annually during a scheduled meeting of the District Board. This plan should contain, at a minimum, a discussion of district goals and/or objectives and include strategies or action items to achieve each of those goals in order to implement the applicable programs covered in this Agreement.
- Prepare and follow an annual plan of work that demonstrates how the District will implement specific strategies or action items in support of its long-term plan.
- Submit meeting minutes from all routine and special meetings of the District Board and a copy of District publications (including an annual plan of work, an annual report, and the long-term 4-year plan) to the District’s assigned Conservation District Coordinator (CDC).
- Submit a District Board approved, completed Attachment D (Itemized District Budget Request Form) for Fiscal Year 2018 to the Department by the latter of June 15, 2016, or 45 days after receipt of the budget template information from DCR.
- Submit complete and accurate quarterly financial reports to the District’s assigned CDC utilizing the Fiscal

Year 2016 electronic copy of the **Attachment E (Project Financial Report)**.

- *DCR's Desktop Guide for SWCD Fiscal Operations* (Guide) is annually reviewed by the District Board or their Finance Committee and documented in official minutes.
- Annually review and maintain personnel documents including employee position descriptions, performance expectations, and the District personnel policy; also document Pay Action Authorizations and conduct annual employee evaluations. Provide the District's assigned CDC with a copy of employee position descriptions and the District personnel policy once documents are annually reviewed and updated.
- Provide data and other information needed for preparation of legislative studies and reports that pertain to programs and services delivered by Districts, as requested by the Department to support nonpoint source pollution reduction initiatives that improve water quality including information necessary to fulfill reporting specified within the Virginia Natural Resources Commitment Fund [§ 10.1-2128.1 of the Code of Virginia.]
- Perform District Dam Maintenance as needed (if applicable to your District) with allocated funding.
- A Total of \$150,000 for Fiscal Year 2016 for Small Repairs to District Dams has been allocated for statewide use. To be eligible for the funding, Districts shall submit a letter of request to the Department requesting funding based on known or suspected impounding structure deficiencies. Such request shall include a repair cost estimate prepared by the Department, NRCS, or local contractor. For consideration, all requests for funding must be received in writing by August 1, 2015 unless Districts are otherwise notified by the Department of a later deadline. The Department shall prioritize the requests based on hazard considerations and issue a letter of commitment to the selected project(s). The Department is authorized to provide the District with up to half of the project's authorized funding up front. Subsequent payments shall be released only as reimbursements to paid invoices for work performed. Purchasing procedures consistent with the Virginia Public Procurement Act shall be followed. At the end of the project, should final costs be less than the amount provided to the District, the balance shall be repaid to the Department within 30 days of final invoice receipt by the District. The Department is not responsible for costs that exceed the authorized project funding allocation.

NOTE: To enable the completion of projects that may not be able to be finished by the end of the Fiscal Year, language was added to the 2015 Appropriation Act to allow the amount appropriated for small dam repairs of known or suspected deficiencies in Fiscal Year 2016 to be transfer to the Soil and Water Conservation District Dam Maintenance, Repair, and Rehabilitation Fund. Unspent funds appropriated for small dam repairs in Fiscal Year 2015 are also authorized to be retained and transferred to the Fund. This will allow for the continuation of projects across Fiscal Years.

ATTACHMENT B

COMPENSATION

I. OPERATIONAL

The total grant award by the Department to the District to support specific operational purposes shall be \$«TOTAL» to support District actions that address the Commonwealth's water quality and natural resource conservation needs and to meet state and federal nutrient and sediment reduction requirements.

Description of Funding	Amount
Administration and Operations Core Funding (total to be evenly distributed on a quarterly basis)	\$ «ESSENTIAL»
Dam Maintenance (to be distributed the first quarter)	\$ «DAM_MAINT»
Total Administrative and Operational Support	\$ «TOTAL»

II. DISBURSEMENT OF FUNDS

Disbursements to Districts shall be conducted on a quarterly basis.

Quarters	Period
First Quarter	07/01/15 thru 09/30/15
Second Quarter	10/01/15 thru 12/31/15
Third Quarter	01/01/16 thru 03/31/16
Fourth Quarter	04/01/16 thru 06/30/16

The first quarterly disbursement of Fiscal Year 2016 funds will not be disbursed until the Fourth Quarter Fiscal Year 2015 report has been submitted (including the District's Cash Balance Report, Carry Over Report, and SL-6 Pending Reports) and until the complete execution of the Grant Agreement and the return of an original Agreement to the District's assigned Department CDC.

Except due to extenuating circumstances or as otherwise set out in the Grant Agreement, disbursements to Districts will be executed within 45 calendar days following the beginning of a quarter contingent upon the satisfactory completion of database updates and the receipt of complete and accurate reports required under this Agreement.

Correspondence to the District from the Department will specify funding amounts and approved purposes of all funds disbursed. These letters constitute the Department's record of funding to the District.

Any cost overruns incurred by the District during the time of performance shall be the responsibility of the District.

ATTACHMENT C (Evaluation Guidance for Department/District Fiscal Year 2016 Grant Agreement Performance Deliverables)

Grant Agreement Performance Deliverable	Fully Satisfied “A”	Partially Fulfilled “B”*	Did Not Fulfill “C”*
1. Demonstrates leadership by promoting nonpoint source pollution reduction and related conservation efforts through support of, reporting for, and/or implementation of the following programs: • The Virginia Agricultural BMP Cost-Share program • The Virginia Agricultural BMPs Tax Credit Program • BMP Revolving Loan Program • Conservation Reserve Enhancement Program (CREP) • Voluntary BMP installation • Agricultural Stewardship Act • Nutrient Management Training and Certification Program • Support for Resource Management Plans (RMPs)	Demonstrates implementation of all but one listed programs applicable to the District. Demonstrates leadership in the conservation of soil and water resources.	Implements and supports conservation programs and initiatives applicable to the District but fails to effectively carry out or support two programs.	Fails to deliver and/or support programs and initiatives applicable to the District with multiple deficiencies demonstrated. Leadership in the conservation of soil and water resources is lacking or nonexistent.
2. Wherever applicable, actively participate in the local development and implementation of the following programs and initiatives: • The Water Quality Improvement Act • Chesapeake Bay and Virginia Waters Clean-Up Plan (§62.1-44.117 of the Code of Virginia) actions • The Chesapeake Bay Total Maximum Daily Load (TMDL) • The Chesapeake Bay Preservation Act • Virginia’s Healthy Waters initiatives • Local TMDL development and implementation processes • Land conservation initiatives consistent with any state-identified priorities • Sound land use and watershed planning approaches • Environmental Education programs	Demonstrates implementation of all but one listed programs and initiatives applicable to the District.	Implements and supports programs and initiatives applicable to the District but fails to effectively carry out or support two programs.	Fails to deliver and/or support programs and initiatives applicable to the District when funding is made available, with multiple deficiencies demonstrated by the District.
3. Actively support and foster partnerships to deliver natural resource conservation programs with consideration to resource needs and issues with local governments, the agricultural community, agencies, organizations, councils, roundtables, and others to protect soil resources, improve water quality, and further natural resource conservation.	District is proactive and provides leadership in accomplishment of this goal.	District responsive to crisis situations after problem has developed.	District passive and reluctant or lacks commitment in forming relationships with other conservation groups. Fails to keep abreast of current events that impact soil and water resources locally.
4. Hold monthly meetings with a quorum of District board members present.	10 or more meetings.	8 or 9 meetings	7 meetings and fewer.
5. Develop and maintain a long-term plan that enhances District capabilities, on a 4-year cycle through a facilitated process with participation by District stakeholders. Review of the plan is expected at least annually during a scheduled meeting of the District Board. This plan should contain, at a minimum, a discussion of district goals and/or objectives and include strategies or action items to achieve each of those goals in order to implement the applicable programs covered in this Agreement.	A current plan (reviewed during this fiscal year) exists that contains applicable District goals, objectives, strategies, and/or action items.	Where a lapsed plan exists, a new plan is actively under development.	The current plan has lapsed, and no action is underway for plan development.

6. Prepare and follow an annual plan of work that demonstrates how the District will implement specific strategies or action items in support of its long-term plan.	An annual plan of work was prepared and substantially followed, with Board progress reviews conducted and documented at least twice annually.	An annual plan of work was prepared, but not referenced or substantially followed or only partially completed.	An annual plan of work was not prepared, is substantially incomplete or was not followed.
7. Submit meeting minutes from all routine and special meetings of the District Board and a copy of District publications (including an annual plan of work, an annual report, and the long-term 4-year plan) to the District's assigned Conservation District Coordinator (CDC).	Received all minutes and a copy of an Annual Plan and Annual Report.	Received some portion of minutes and other documents.	CDC received no minutes or documents.
8. Submit a District Board approved, completed <u>Attachment D (Itemized District Budget Request Form)</u> for Fiscal Year 2018 to the Department by the latter of June 15, 2016, or 45 days after receipt of the budget template information from DCR.	Completed Attachment D received by due date and was complete.	Some portion of required Attachment D was late and/or incomplete.	The entire Attachment D was late and/or incomplete.
9. Submit complete and accurate quarterly financial reports to the District's assigned CDC utilizing the Fiscal Year 2016 electronic copy of the <u>Attachment E (Project Financial Report)</u> .	Three or more reports were on time, complete, and accurate.	Two reports were on time, complete, and accurate.	One or fewer reports were on time, complete, and accurate.
10. <i>DCR's Desktop Guide for SWCD Fiscal Operations</i> (Guide) is annually reviewed by the District Board or their Finance Committee and documented in official minutes.	A current copy of the Guide is maintained in the District Office and was reviewed by the Board or Finance Committee once during the fiscal year.	A current copy of the Guide is maintained in the District Office; however, the Guide was not reviewed by the Board or Finance Committee during the fiscal year.	A current copy of the Guide was not maintained in the District Office nor was the Guide reviewed by the Board or Finance Committee during the fiscal year.
11. Annually review and maintain employee personnel documents including position descriptions, performance expectations, and the District personnel policy; also document Pay Action Authorizations and conduct annual employee evaluations. Provide the District's assigned CDC with a copy of employee position descriptions and the District personnel policy once documents are annually reviewed and updated.	All personnel documents and annual review/evaluation processes are current and/or complete.	Some portion of personnel documents and annual review/evaluation processes are current and/or complete.	No personnel documents and review/evaluation processes are current and/or complete. Annual personnel document reviews, Pay Action Authorizations, and evaluations are not occurring.
12. Provide data and other information needed for preparation of legislative studies and reports that pertain to programs and services delivered by Districts, as requested by the Department to support nonpoint source pollution reduction initiatives that improve water quality including information necessary to fulfill reporting specified within the Virginia Natural Resources Commitment Fund [§ 10.1-2128.1 of the Code of Virginia.]	All Department and/or the Virginia Soil and Water Conservation Board requests for information/assistance were fully addressed.	The Department's and/or the Virginia Soil and Water Conservation Board's requests were partially addressed with shortcomings that could include incomplete information; response delays, and other factors.	No cooperation and/or assistance provided when requested by the Department and/or the Virginia Soil and Water Conservation Board.

* The basis for the ratings that are scored "Partially Fulfilled" or "Did Not Fulfill" will be documented through written comments by the CDC and discussed during a meeting of the District Board and staff. Such results will be shared with the Virginia Soil and Water Conservation Board for their review and consideration.

ATTACHMENT D (Itemized District Budget Request Form)
(Fillable Form Available from the Department)

Attachment D (Itemized District Budget Request Form)

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	ATTACHMENT D (Itemized District Budget Request Form)												
2	ITEMIZED BUDGET FOR THE YEAR BEGINNING JULY 1, 2016												
3													
4		SWCD Name		# of Localities		Current FTEs				Base General Assembly Funds	DCR Program Funding (VNRCP) LEVEL FUNDING	DCR Program Funding (VNRCP) INCREASED FUNDING	TOTAL
5	Central Operations												
6	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							\$ -
7	Rent & Utilities												\$ -
8	Directors' Travel, Training, and Meetings					# of Directors							\$ -
9	Equipment (field gear, computers, copiers, phones, etc.)												\$ -
10	Support Expenses (info systems, dues, postage, supplies, website, communications, etc.)												\$ -
11	Staff - Training and Meetings												\$ -
12	Vehicles - Federal Rate \$.575 per mile												\$ -
13	Other Expenses												\$ -
14	TOTAL CENTRAL OPERATIONS									\$ -			\$ -
15													
16	Dam Management												
17	Dam Maintenance - Annual					# of Dams							\$ -
18	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							\$ -
19	Staff - Training and Meetings												\$ -
20	Vehicle - Federal Rate \$.575 per mile												\$ -
21	Dam Repair -Small												\$ -
22	TOTAL DAM MANAGEMENT									\$ -			\$ -
23													
24	Agricultural Program Implementation												
25	Chesapeake Bay Ag BMP Cost Share & Tax Credits					Forecasted BMP Funds (Level funding & Increased funding) =	Level	Increased			\$ -	\$ -	
26	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							
27	Staff - Training and Meetings												
28	Vehicle - Federal Rate \$.575 per mile												
29	Outside the Chesapeake Bay Ag BMP Cost Share & Tax Credits					Forecasted BMP Funds (Level funding & Increased funding) =				\$ -	\$ -		
30	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							
31	Staff - Training and Meetings												
32	Vehicle - Federal Rate \$.575 per mile												
33	Resource Management Plans					Forecasted RMP Acres =							\$ -
34	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							\$ -
35	Staff - Training and Meetings												\$ -
36	Vehicle - Federal Rate \$.575 per mile												\$ -
37	CREP					Forecasted CREP Funds =							\$ -
38	Personnel and Fringe Benefits (FICA, retirement, health)					FTE							\$ -
39	Staff Training and Meetings												\$ -
40	Vehicle - Federal Rate \$.575 per mile												\$ -
41	TOTAL AGRICULTURAL PROGRAM IMPLEMENTATION									\$ -	\$ -	\$ -	\$ -

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	ATTACHMENT D (Itemized District Budget Request Form)												
2	ITEMIZED BUDGET FOR THE YEAR BEGINNING JULY 1, 2016												
3			SWCD Name		# of Localities		Current FTEs			Base General Assembly Funds	DCR Program Funding (VNRCP) LEVEL FUNDING	DCR Program Funding (VNRCP) INCREASED FUNDING	TOTAL
4													
42													
43	Environmental Education (List Activities)												
44													
45													
46	Personnel and Fringe Benefits (FICA, retirement, health)						FTE						\$ -
47	Staff Training and Meetings												\$ -
48	Vehicles - Federal Rate \$.575 per mile												\$ -
49	Program Costs												\$ -
50	TOTAL ENVIRONMENTAL EDUCATION								\$ -				\$ -
51													
52	Other Programs/Projects (Non-DCR Funded) - For Information Only - (List Activities)												
53													
54													
55							FTE						
56													
57	GRAND TOTALS						Level	Increased					
58	Personnel and Fringe Benefits (FICA, retirement, health)						FTE 0.00	0.00	\$0	\$0	\$0		
59	Rent & Utilities								\$0				
60	Directors' Travel, Training, and Meetings								\$0				
61	Equipment (field gear, computers, copiers, phones, etc.)								\$0				
62	Support Expenses (info systems, dues, postage, supplies, website, communications, etc.)								\$0				
63	Staff - Training and Meetings								\$0	\$0	\$0		
64	Vehicles - Federal Rate \$.575 per mile								\$0	\$0	\$0		
65	Other Expenses								\$0				
66	Program Costs (Environmental Education Only)								\$0				
67	LEVEL FUNDING GRAND TOTAL								\$ -	\$0		\$ -	
68	INCREASED FUNDING GRAND TOTAL										\$0	\$ -	
69	District Point of Contact								Contact Number				
70	Reviewed by (SWCD Board or Director)								Date				

ATTACHMENT E (Project Financial Report)
(Fillable Form Available from the Department)

Example of 1st Quarter Report)

1st Quarter

Attachment E

*****OFFICIAL FISCAL YEAR 2016 FORM*****

Department of Conservation and Recreation
Virginia Nonpoint Source Management Program
Project Financial Report

SWCD: Agreement Number:

Contact: **Phone Number:**

Address:

Reporting Quarter Dates: **7/1/2015** thru **9/30/2015**
(beginning) (closing)

NOTE: Only the Yellow fields are unprotected and capable of having data entered into them. Please remember to enter a negative sign (-) when you enter Exenditures or Transfers Out. Thanks!

[illegible]

* - The beginning balance is the amount of funds on hand at the start of the report period. The ending balance from the previous report period will become the beginning balance for the new report period. This figure will automatically carry forward to the next report period.

Prepared by:

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Approved by:

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Completed reports should be directed to the district's assigned DCR Conservation District Coordinator by the deadlines established in this agreement.

Effective Date: 7/1/2015

**DEPARTMENT OF CONSERVATION AND RECREATION AND VIRGINIA SOIL AND WATER
CONSERVATION DISTRICT (Department/ District) GRANT AGREEMENT:
[04-06-15 DRAFT]
Cost-share and Technical Assistance from the Commonwealth of Virginia**

Agreement Number «AgreementN»

This Agreement becomes effective as of the **1st day of July, 2015**, between the Virginia Department of Conservation and Recreation (Department), herein referred to as the Department and the «SWCD» Soil and Water Conservation District (District), herein referred to as the District.

The parties of this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

(1) SCOPE OF SERVICE:

The District shall provide the services set forth in **Attachment A (Fiscal Year 2016 Performance “Deliverables”)**, the terms of which are incorporated herein. The Department shall assess at the end of Fiscal Year 2016 (FY16) each District’s success in meeting the deliverables utilizing an A (fully satisfied), B (partially fulfilled), and C (did not fulfill) evaluation scale and consult with the Virginia Soil and Water Conservation Board regarding the results and appropriate action (**Attachment C**). Failure to meet performance deliverables contained in **Attachment A** may result in the withholding of funding granted by the Department to the District set out in this Grant Agreement, either temporarily, or permanently, and/ or result in funding adjustments to the District’s future fiscal year’s funding allocations. In the event the District fails to comply with the provisions of this Agreement, the Department reserves the right to require repayment of previously issued funds and/or direct further appropriate actions based upon noncompliance circumstances. Should an issue arise that impacts funding, the District will be apprised of the issue(s) and provided an opportunity to address the concerns of the Department or Board prior to Department action.

(2) TIME OF PERFORMANCE:

The services of the District shall commence on **July 1, 2015** and shall terminate on **June 30, 2016** unless extended or superseded by a renewed grant agreement during this contract period.

(3) COMPENSATION:

The District shall be funded, in accordance with the provisions of this Agreement, by the Department for services as set forth in **Attachment A** and in the amounts set out in **Attachment B**. The Department’s fulfillment of cost-share and technical assistance funding to the District which is specified within this Agreement is contingent upon appropriations by the Virginia General Assembly. Should funding availability fall short of appropriation projections during the course of FY16, after the Department has utilized all unallocated and unobligated balances it may have available (such as CTI), every District will receive an equal percent reduction which will be calculated and deducted from each District’s unobligated total approved cost-share and technical assistance funding specified within the Department/District Grant Agreement. When a reduction of funds is necessary, the Department will make reductions from available unobligated cost-share first and reduce technical assistance last. Should a reduction of funds occur, every District must return funding within 30 days of receiving notice of such reduction from the Department. Should all cost-share and technical assistance funding within a District be obligated and it becomes necessary to reduce such funds, then adjustments will be made to the next fiscal year’s spending plan to honor existing commitments from the prior fiscal year first or during reallocation as determined by the Department.

The District shall spend the funds according to the specified categories as referenced in **Attachment B**. Any cost overruns incurred by the District during the time of performance shall be the responsibility of the District.

(4) MATCHING FUNDS:

The use of funds made available through this Agreement by the Department as a match commitment for other funding opportunities the District may pursue, must be approved by the Department in writing, in advance of any binding commitment entered into by the District. This requirement must be fulfilled to avoid double counting of match commitments against these funds. Match commitment requests will be considered on a case-by-case basis. The final decision is at the sole discretion of the Department.

(5) INFORMATION REQUESTS:

The Department agrees upon request of the District, to furnish or otherwise make available to the District copies of existing non-proprietary materials in the possession of the Department that are reasonably related to the subject matter of this Agreement and are necessary to the District for completion of performance under this Agreement.

(6) GENERAL PROVISIONS:

The District is expected to comply with generally accepted financial accounting principles; to follow guidance contained within the current version of **DCR's Desktop Guide for SWCD Fiscal Operations**; to modify existing accounting procedures to comply with the auditor recommendations; to abide by laws and standards applicable to employment of staff; to develop and comply with internal policies regarding Conflict of Interest that comport with State law; and to operate under a system of reasonable, adequate internal controls that provide integrity to all facets of District management and delivery of programs and services for the public good.

The District is encouraged to use the web-based purchasing system eVA, especially to announce District bid opportunities, invite bidders, receive quotes, and place orders for goods and services. Furthermore, all Districts are encouraged to participate in the Commonwealth of Virginia's Financial Electronic Data Interchange (FEDI) program by the end of the term of this contract.

Expenditure of District funds, regardless of source, will be made without regard to any person's race, color, religion, sex, age, national origin, handicap, or political affiliation.

Nothing in this Agreement shall be construed as authority for either party to make commitments which will bind the other party beyond the FY16 Performance Deliverables contained herein. The schedule of service set forth in **Attachment A** shall be deemed to have been consented to upon the execution of this Grant Agreement by the Department.

(7) TERMINATION:

This Agreement is established in the spirit of a conservation partnership. Either party may terminate this Agreement with cause, upon sixty (60) days written notice to the other party. The District shall not expend state funding awarded under this Agreement for services rendered or expenses incurred after receipt of such notice except such fees and expenses incurred prior to the effective date of termination that are necessary for curtailment of work under this Agreement. From the date of such notice, the District shall within sixty (60) days refund a pro-rated amount based on a monthly value, minus any documented fees and expenses referenced above, to the Department.

In the event of breach by either party of this Agreement, either party shall have the right immediately to rescind, revoke, or terminate the Agreement. In such event either party will give written notice to the other specifying the manner in which the Agreement has been breached. When such a breach occurs, either party may be provided opportunity to correct the breach within sixty (60) days of receipt of the written notice. If acceptable corrections have not occurred by the close of that period, either party shall have the right to terminate this Agreement.

In the event of rescission, revocation, or termination, all documents and other materials related to the performance of this Agreement shall become the property of the Department.

(8) FINANCIAL RECORDS AVAILABILITY:

The District agrees to retain all books, records, and other documents relative to this Agreement for three (3) fiscal years from the end of FY16. The Department, its authorized agents and/or State auditors shall have full access to and the right to examine any of said materials during said period.

All funds received by Districts are public funds and provisions of the Freedom of Information Act shall apply to financial records, unless otherwise specified within the Act or elsewhere in the *Code of Virginia*. Each District shall safeguard, provide accountability, and expend funds only for approved purposes.

(9) PARTNERSHIP ACKNOWLEDGMENTS:

In the spirit of conservation partnership, the Board and Department work with and make available support and assistance to each District in a variety of ways. The conservation partnership will be enhanced through District recognition of its primary partner agencies within certain printed documents produced by the District. Specifically, the District's Strategic Plan (or SWCD 4 year Program and Resource Plan), Annual Plan, and Annual Report will acknowledge Board and Department support and financial assistance by written acknowledgment in the following format:

The Commonwealth of Virginia supports the (Name of district) Soil and Water Conservation District through financial and administrative assistance provided by the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation.

Acknowledgment of the Board's and Department's support within other publications and products is encouraged.

(10) COST-SHARE ALLOCATION AND DISTRIBUTION

Cost-share shall be allocated to Districts in accordance with the POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016) and shall be disbursed in accordance with the provisions of this Agreement and in the amounts set out in **Attachment B**. Department personnel will confer with District staff at least quarterly to determine their projected needs for cost-share payments for completed and certified BMPs. Department personnel will generate a disbursement letter based upon the projected needs entered into the Agricultural BMP Tracking program data showing approved and completed practices. Cost-share payments to applicants shall be conducted in accordance with the *Program Year 2016 Virginia Agricultural Cost Share (VACS) BMP Manual*. Any application must meet appropriate technical agency standards and specifications of that practice before cost-share payment is made. Payment is issued after the participant and technical representative have certified practice installation in their Virginia BMP Incentives Contract.

Information regarding cost-share payments made by Districts shall be entered into the BMP cost-share tracking database within one month of payments being rendered.

(11) TECHNICAL ASSISTANCE ALLOCATION AND DISTRIBUTION

Technical Assistance shall be allocated to Districts in accordance with the POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016) and shall be disbursed in accordance with the provisions of this Agreement and in the amounts set out in **Attachment B**.

FY16 Technical Assistance allocations shall be disbursed to Districts in accordance with the following procedures. During the first quarter of FY16 after the Fourth Quarter FY15 reports have been submitted (including the District's Cash Balance Report, Carry Over Report, and SL-6 Pending Reports) to the Department (due by July 15th) and the Grant Agreement has been executed and the original signed Agreement returned to the Department, twenty-five percent of the Technical Assistance allocations shall be awarded; with an additional twenty-five percent awarded in each of the second, third, and fourth quarters provided updates to the BMP cost-share tracking database are being made monthly to the satisfaction of the Department. Except due to extenuating circumstances or as otherwise set out in the Grant Agreement, disbursements to Districts will be executed within 45 calendar days following the beginning of a quarter contingent upon the satisfactory completion of database updates and the receipt of complete and accurate reports.

During the March 31st cost-share reallocation outlined in Part 14, unexpended technical assistance shall remain in the District to which it was first allocated and shall not be subject to reallocation.

(12) DIRECTOR APPROVAL OF TRANSFER OF COST-SHARE PRIOR TO REALLOCATION

After Grant Agreement issuance but prior to reallocation, Districts may choose to work with the Department to determine if cost-share allocations should be transferred from one District to another District to maximize water quality improvements. Cost-share shall not be transferred between drainage allocations. Recommended adjustments shall be advanced by Department field personnel through the Division's Central Office to the Director or his designee for consideration as District contract adjustments. Written correspondence from the affected Districts will be required to document their approval of the recommended transaction. Adjustments should await the March 31, 2016 reallocation process unless lack of technical delivery staffing, limited cost-

share award opportunities, or other beneficial water quality objectives within a District or between Districts merits an earlier allocation transfer. Written correspondence regarding reallocations/transfers shall be routed to the Comptroller to update the Department's records. For amounts already distributed to Districts, funds shall be reverted back to the Department for redistribution to the approved receiving District (accordingly such funds shall not be directly sent between Districts). Additionally, should a District decline a recommended cost-share allocation, technical assistance allocations may also be reduced accordingly if such an allocation has been recommended. Otherwise, no other movements of cost-share or technical assistance funding may occur between Districts.

(13) TARGETING THE EXPENDITURE OF COST-SHARE FUNDS IN EACH DISTRICT TO MAXIMIZE WATER QUALITY IMPROVEMENTS

Once cost-share has been allocated to Districts, cost-share expenditures within Districts should be utilized to solve water quality problems by fixing the worst problems first on a field by field basis. Priority Considerations (statewide water quality considerations) shall be used by all Districts to qualify cost-share applications for District Board consideration for funding. Any application that does not meet at least one of the priority considerations set out in the POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016) shall not receive funding.

A further set of Secondary considerations that identify the local District Board's water quality improvement focus shall be developed by the District Board and shall be approved by the Department prior to the beginning of the fiscal year. Districts should prioritize the implementation of appropriate BMPs that will reduce the greatest amount of nutrient and sediment contamination while utilizing the least amount of cost-share funds to address site-specific water quality problems in identified high priority watersheds with all program cost-share funds. One key secondary consideration that shall be considered by each District when comparing projects for cost-share funding as a component of their decision process is the Conservation Efficiency Factor (CEF). Districts shall be prepared to verify and document that their cost-share allocations are being spent in accordance with the priority and their secondary considerations and in accordance with the *Program Year 2016 Virginia Agricultural Cost Share (VACS) BMP Manual*.

Additionally, for Districts within the Chesapeake Bay basin, Districts shall give priority to BMPs addressed within the Virginia Chesapeake Bay Watershed Implementation Plan and for Districts outside of the Chesapeake Bay basin, priority shall be given to BMPs in the highest priority agricultural TMDL watersheds (as ranked by the Department; high, medium, and low).

(14) REALLOCATION OF COST-SHARE FUNDS

On April 1, 2016, following the end of the third quarter, the Department shall reallocate (redistribute) unobligated VACS allocations (keeping cost-share within the drainage basin it was originally allocated within) in an effort to satisfy existing unfunded cost-share applications statewide. VACS funds that have not been approved by the District's Board of Directors at the end of the third quarter of the fiscal year (March 31, 2016) to fund an existing cost-share application are considered to be unobligated.

Data collected from the budget summary page of the Virginia Agricultural BMP Tracking Program (Tracking Program) on April 1, 2016 will be analyzed to identify those Districts that have obligated ninety percent (90%) or more of their Total VACS allocation. The percent of their VACS allocation obligated will be identified by dividing the "Approved" amount by the "Allocation" amount. For those Districts that did not obligate at least ninety percent (90%) of their Total VACS allocation by April 1, 2016, unobligated cost-share funds will be summed and all of a District's unobligated VACS funds will be reallocated, except that 10% of the unobligated balance shall remain with the District to approve small practices or to make adjustments to existing cost-share practices. This includes amounts already distributed to Districts for which a project has since been discontinued (which shall be reverted back to the Department; such funds shall not be directly sent between Districts) as well as VACS funds still being held by the Department for which there are no pending obligations against it. Technical assistance funding shall not be reallocated and shall remain with the District to which it was originally allocated. Accordingly, reallocated cost-share will not have technical assistance attached. Cost-share shall be redistributed in accordance with procedures set out in the POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016).

(15) UNEXPENDED STATE FUNDS MAINTAINED BY DISTRICTS

Cost-share funds issued to Districts that remain unobligated at the close of FY15 will remain in the District's account(s). FY16 cost-share distributions to a District shall be reduced by the amount of unobligated cost-share and the resulting balance shall become available during FY16 reallocation or through other addendum agreements. FY15 Technical Assistance shall not be subject to reversion or reallocation. However, it is inadvisable for any District to accumulate more than six months of Technical Assistance funds in accordance with advice from District auditors. Public funds from local, state, and federal sources are provided to Districts not for savings, but strictly for performance of conservation. The Department will monitor the growth of unexpended funds through audit reports and other fiscal reports generated by or at the request of the Department. The Department may reduce future funding to Districts that fail to act upon guidance and recommendations from auditors and the Department. Decisions and Department actions will be addressed on a case-by-case basis working with the affected District.

In witness whereof the parties have caused this Agreement to be executed by the following duly authorized officials:

SOIL AND WATER CONSERVATION
DISTRICT

DEPARTMENT OF CONSERVATION
AND RECREATION

By: _____

By: _____
Clyde E. Cristman, Director
Department of Conservation and Recreation

Title: _____

Date: _____

Date: _____

ATTACHMENT A
Soil and Water Conservation District (District)
FY16 Performance “Deliverables”
For Acceptance of Department Virginia Agricultural BMP Cost-Share Program Funds for Cost-share
and Technical Assistance

- Locally deliver the Commonwealth’s Agricultural BMP Cost-Share Assistance Program as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department’s nonpoint source pollution management program. (§10.1-546.1 Code of Virginia):
 - Implement the Virginia Agricultural BMP Cost-Share program in accordance with the provisions of:
 - The POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016);
 - This Grant Agreement; and
 - The *Program Year 2016 Virginia Agricultural Cost Share (VACS) BMP Manual*.
- Submit reports (including Quarterly Reports, District’s Cash Balance Report, Carry Over Report, and SL-6 Pending Reports) and database updates according to established deadlines and special needs, as requested by the Department, to support Virginia’s nonpoint source pollution reduction initiatives, including information necessary to fulfill reporting specified within the Virginia Natural Resources Commitment Fund [§10.1-2128.1.]. (Note: This is an existing expectation within the Operational Support Grant Agreement and it is applicable to this Agreement).

ATTACHMENT B

COMPENSATION

I. COST-SHARE PROGRAM

Funding provided by the Board and Department to the District to support the Virginia Agricultural BMP Cost-Share Program is addressed through this Agreement. Funds made available to the District set out in the POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016) are summarized as follows:

Total available SWCD allocation for July 1, 2015 through June 30, 2016 is: **\$«TOTAL»**

To be managed as follows:

A total of **\$«TotalCB»** for the portion of the District within the Chesapeake Bay (CB) to implement agricultural best management practices.

A total of **\$«TotalOCB»** for the portion of the District outside of the Chesapeake Bay (OCB) to implement agricultural best management practices.

These amounts include a total of **\$«TotalSL6CB»** in the CB and **\$«TotalSL6OCB»** in the OCB for retiring SL-6 FY14 “Pending” applications.

A total of **\$«TotalTA»** has been allocated for Technical Assistance funding for the implementation of agricultural best management program and for retiring SL-6 “Pending” applications through the Virginia Natural Resources Commitment Fund.

The amounts set out above may be amended during the grant period only in accordance with the provisions of this Grant Agreement.

II. DISBURSEMENT OF FUNDS

Cost-share program funds will be disbursed only in accordance with the provisions of this Grant Agreement.

ATTACHMENT C (Evaluation Guidance for Department/District Fiscal Year 2016 Grant Agreement Performance Deliverables)

Grant Agreement Performance Deliverable	Fully Satisfied “A”	Partially Fulfilled “B”*	Did Not Fulfill “C”*
1. Did the District implement the Virginia Agricultural BMP Cost-Share program (§10.1-546.1 Code of Virginia) in accordance with the provisions of: - The POLICY AND PROCEDURES ON SOIL AND WATER CONSERVATION DISTRICT COST-SHARE AND TECHNICAL ASSISTANCE FUNDING ALLOCATIONS (FISCAL YEAR 2016); - This Grant Agreement; and - The <i>Program Year 2016 Virginia Agricultural Cost Share (VACS) BMP Manual</i>.	Effectively delivers the Agricultural BMP Cost-Share Assistance Program in accordance with program requirements.	Generally delivers the Agricultural BMP Cost-Share Assistance Program in accordance with program requirements.	Fails to deliver the Agricultural BMP Cost-Share Assistance Program in accordance with program requirements, with multiple deficiencies demonstrated by the District.
2. Did the District submit secondary considerations and receive Department approval prior to the District approving cost-share applications?	Yes	Score of Partially Fulfilled N/A	No
3. Did the District act consistently with both primary and secondary considerations and act consistently with VSWC Board policies while also demonstrating the following priorities during the program year: - For Districts within the Chesapeake Bay basin, Districts shall give priority to BMPs addressed within the Virginia Chesapeake Bay Watershed Implementation Plan and; - For Districts in basins outside the Chesapeake Bay, priority shall be given to BMPs in the highest priority agricultural TMDL watersheds (as ranked by the Department; high, medium, and low).	100% District ranked all cost share applications consistent with primary and secondary considerations and other applicable program priorities.	< 100% > 75% District ranked all cost share applications consistent with primary and secondary considerations and was generally consistent with other applicable program priorities.	≤ 75% District ranked some cost share applications inconsistent with primary and/or secondary considerations and/or was generally inconsistent with other applicable program priorities.

4. What percentage of the District's VACS (cost-share) allocation for this fiscal year was obligated to participants?	> 90%	< 90% >75%	≤ 75%
5. Did the District take appropriate action within 180 days to address all spot check issues once identified?	100%	< 100% > 75%	≤ 75%
6. Did the District maintain the Agricultural BMP tracking program within one month of payments being rendered and other records no less than monthly throughout the program year?	Yes	Score of Partially Fulfilled N/A	No
7. Did the District submit Cash Balance Reports, Carry Over Reports, and SL-6 Pending Reports by the July 15 th reporting deadline?	Yes	Score of Partially Fulfilled N/A	No
8. Were IRS Form 1099s issued to cost-share recipients on or before January 31 st ?	Yes	Score of Partially Fulfilled N/A	No
9. Were tax credit certificates approved in the calendar year in which the BMP was completed and was a District Board approved conservation plan on file?	Yes	Score of Partially Fulfilled N/A	No
10. Were applications for cost-share and tax credits approved by District Board action and individually documented in their District Board minutes (identified by contract/ instance #)?	Yes	Score of Partially Fulfilled N/A	No
11. Was the District represented at an annual VACS training sponsored by the Department?	Yes	Score of Partially Fulfilled N/A	No

Does the District have documentation to explain any measures in their Grant Agreements that were not fully met? If so, please provide to CDC.

Attachment E

*****OFFICIAL FISCAL YEAR 2016 FORM*****

Department of Conservation and Recreation
Virginia Nonpoint Source Management Program
Project Financial Report

SWCD: Agreement Number:

Contact: Phone Number:

Address:

Reporting Quarter Dates:	7/1/2015	thru	9/30/2015
	(beginning)		(closing)

NOTE: Only the Yellow fields are unprotected and capable of having data entered into them. Please remember to enter a negative sign (-) when you enter Exenditures or Transfers Out. Thanks!

[illegible]

Federal Sources	(1)	(2)	(3)	(4)	(5)	(6)
Other: (Specify)			\$0.00			\$0.00
Other: (Specify)			\$0.00			\$0.00
Other: (Specify)			\$0.00			\$0.00
Other: (Specify)			\$0.00			\$0.00

[illegible]

TOTAL (All Sources)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
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* - The beginning balance is the amount of funds on hand at the start of the report period. The ending balance from the previous report period will become the beginning balance for the new report period. This figure will automatically carry forward to the next report period.

Prepared by:

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Approved by:

Print Name	Signature	Date

Completed reports should be directed to the district's assigned DCR Conservation District Coordinator by the deadlines established in this agreement.

Effective Date: 7/1/2015

SOIL AND WATER CONSERVATION DISTRICTS

Desktop Guide for District Fiscal Operations

Effective Date
October 2014

Issued by:
The Virginia Department of Conservation and Recreation

Soil and Water Conservation Districts
Desktop Guide for District Fiscal Operations

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Desktop Guide for District Fiscal Operations

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Soil and Water Conservation Districts
Desktop Guide for District Fiscal Operations

Section I – Introduction

The Desktop Guide for District Fiscal Operations (Guide) is provided to assist Soil and Water Conservation District (SWCD or district) directors and staff in the execution of their fiscal operations. The Guide is also recommended as a training aid for the SWCD Board of Directors and new staff so they may obtain a full and rapid understanding of their fiscal duties and responsibilities.

The Virginia Department of Conservation and Recreation (DCR), Division of Soil and Water Conservation, contracted with professional staff of private accounting organizations to develop and later, refine the contents of this Guide. It is the intention of DCR to continue to revise the Guide as needed and share these revisions with each district.

Previous versions of this guide were released in August 1998, December 2001, and December 2003 and July 2006. Any questions regarding the information in the Guide should be directed to the DCR Conservation District Coordinators (CDC).

Section II - Administrative Requirements

Directors

Each district is required to have a Board of Directors, which is comprised of local citizens elected or appointed to a four-year term of office. The directors are not public employees and do not receive a salary for their district work. However, directors may receive reimbursement for expenses associated with performance of their district functions. The district board may appoint associate directors who do not have voting capabilities, but augment the directors' knowledge and experience. Associate directors may serve on district committees when requested, are encouraged to attend 75 percent of the monthly Board meetings and may receive reimbursement for district related expenses.

Responsibilities of Board members include, but are not limited to, the following:

- Identify local conservation needs;
- Represent local citizens in conservation issues;
- Educate others about conservation issues and programs;
- Work effectively with local, state and federal agencies to resolve conservation problems;
- Attend regularly scheduled board meetings and meetings of allied organizations; and,
- Serve on standing and ad-hoc district committees.

The Virginia Department of Conservation and Recreation has produced a Soil and Water Conservation District Director's Handbook. All new directors should obtain this handbook and read it thoroughly. It provides guidance that should be helpful in performing the responsibilities of directors including the following:

- Roles and Responsibilities of Directors;
- Administration of the Districts;
- District Issues; and,
- Conservation Programs.

In order to be adequately prepared to serve the district, all new directors are expected to attend a regional orientation training session provided by DCR during their first year of service as a member of the board.

As an elected or appointed official, directors are required to take an oath of office and make a personal commitment to fulfill the responsibilities of the position. Further, as public officials, directors must uphold laws of the Commonwealth. Among the many state laws and regulations that are directly applicable to districts and their boards of directors, the Virginia Freedom of Information Act (FOIA) has particular significance to the ways districts as "Public Bodies" must conduct business. Newly elected and/or appointed directors should receive a copy of the current FOIA within two weeks following their election or appointment. Familiarity with provisions of this law is expected of every district director.

Soil and Water Conservation Districts Desktop Guide for District Fiscal Operations

Employees

All employees should receive an initial orientation from their district when they begin employment with the district and should receive additional training as considered necessary to perform their duties. The initial orientation should include:

- Training in specific district policies;
- Strengthening understanding of conservation issues;
- Communicating precise job duties, as determined by their district board; and,
- Assuring a mutual understanding between the board and staff as to the roles and responsibilities of each.

Each district should establish a Personnel Policy that addresses the personnel administration policies of the district. This policy should cover the conditions of employment, work hours, fringe benefits including leave policies, personnel management including job descriptions and grievance policies, travel policies and other pertinent policies of the district. Personnel policies should be approved by the district board of directors and be reviewed and updated at least annually and when employment conditions change.

Each district personnel policy should specifically address the provisions of the Fair Labor Standards Act (FLSA) as well. The FLSA governs whether individual employees are compensated for over-time hours worked based on their employment agreement. Employees are required to be notified when they are hired whether their positions are exempt or non-exempt from the provisions of the FLSA. For further information on the FLSA refer to the Department of Labor's website: <http://www.dol.gov/elaws/flsa.htm>

One district director, usually the personnel committee chairman, should be identified to serve as the liaison between the staff and the Board.

Meetings

The board of directors should meet on a monthly basis and minutes of each meeting must be prepared and maintained by the district. Minutes should capture the essence of the meeting and the decisions reached - not the content of every conversation. The minutes should document when a motion is made and seconded and by whom and the final vote. The minutes must be signed by either the Secretary and/or Chair and approved by the district board at the following meeting.

Each district is expected to have a Finance Committee (or group charged to fulfill this function) and a Treasurer to oversee all financial aspects of the district and advise the Board in financial matters. Some of the responsibilities of the Finance Committee (or designated group) include:

- Review all sources of funding and develop reliable acquisition strategies;
- Develop budgets and budget reports;

Soil and Water Conservation Districts Desktop Guide for District Fiscal Operations

- Ensure finances are handled according to sound accounting principles;
- Arrange for required audits;
- Check the reliability of financial information;
- Formulate and recommend policies for consideration by the district board (such as a purchasing policy);
- Establish a system to ensure prompt, accurate payment of invoices and other financial obligations; and,
- Ensure compliance with surety bond requirements

The Finance Committee (or designated group) should meet a minimum of twice a year to establish a budget and to review the financial statements. Minutes of these meetings should be prepared and maintained by the district. Again, minutes should capture the essence of the meeting and the decisions reached - not the content of every conversation. The Chair of the Finance Committee should sign the minutes.

Audits

All districts are required to accommodate an audit of accounts of receipts and disbursements on an annual basis in accordance with the Code of Virginia Section 10.1-535, which states, “The district directors shall...provide for an annual audit of the accounts of receipts and disbursements by the Auditor of Public Accounts or a certified public accountant approved by him.” The Department of Conservation and Recreation has currently contracted to have each SWCD audited on a two-year rotating basis. Prior to the beginning of an audit, each district should have completed and have available the following items:

- Board member listing
- Signed Board meeting minutes
- Lease agreements
- Debt agreements
- Property (inventory) listing
- Financial statements that roll forward by line item (i.e. (beginning balance) + (receipts) – (disbursements) = (ending balance)). The current year beginning balance must equal the prior year ending balance in total and by financial statement line item. The statements must agree in total and by line item to the general ledger (e.g. Quick Books, Quicken, etc).
- Reports submitted to DCR should agree to the financial statements and to the general ledger.
- Detailed listing of cash receipts that agree in total and by line item to the financial statements.
- Detailed listing of cash disbursements that agree in total and by line item to the financial statements.
- Bank reconciliations with the bank balance agreeing to the bank statement and the checkbook balance agreeing to the general ledger.

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- Supporting documentation for all transactions within the audit period (cancelled checks, receipts, letters, invoices, etc.). If cancelled checks are not returned to the SWCD the District should request printed or electronic bank copies of the cancelled checks.
- Documentation of funds as to their source (i.e. local, state, and federal).
- Payroll tax returns and personnel records (IRS Form 941), timesheets, W-4s, personnel files, W-2s and 1099s issued).

Record Retention

To be in compliance with State and Federal recordkeeping requirements, all supporting documentation of receipts and disbursements, including bank statements, must be maintained for the longer of seven years or until they are audited (3 years on-site, remaining years can be off-site). External audit reports should be retained permanently. All payroll information and supporting documentation, including time sheets and personnel files, should be maintained indefinitely. For specific guidance, follow the Library of Virginia schedule for each type of document. Soil and Water Conservation Districts are considered as Local Governments http://www.lva.virginia.gov/agencies/records/sched_local/index.htm

Electronic files, including the general ledger system (i.e. QuickBooks, Quicken, etc.) should be backed-up on a regular basis (most auditors would recommend at least weekly, preferably daily). The backup should be maintained either in a fireproof cabinet/safe at the district or at an off-site location (e.g. bank lock box, post office box, etc).

Additionally, supporting documentation should be maintained, organized, and easily accessible until after the audit for the most recent years. Supporting documentation includes:

- General ledger reports at the summary and detail levels
- Cancelled checks
- Check registers
- Invoices or other support as applicable for disbursements
- Receipt logs
- Check copies for receipts
- Letters or other support as applicable for receipts
- Personnel folders including salary approvals

Debt/Leases

The board of directors must approve any debt or lease agreement entered into by the district *prior to obtaining the commitment*. The approval should be documented in district minutes. The district should maintain any debt or lease agreements.

Other

All employees and board members with access to district funds must be bonded. A bonding insurance policy provided through the Department of Conservation and Recreation presently

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covers all Soil and Water Conservation District directors and employees that handle district monies. Bonding guidelines require that most of the practices enumerated in this handbook be complied with.

In dealing with both clients and employees, the district must comply with all federal and state laws established to protect citizens' civil rights and employment opportunities.

Section III - Accountability

District Directors are accountable for all funds, property and equipment belonging to the district. Accountability requires documentation, as well as ensuring that the district is applying all funds in a manner that serves the public's interest.

District directors are not permitted to decide or vote on matters where they have a personal or professional stake. Directors with potential conflicts of interest should abstain from voting and such action noted in the district's minutes. Specific questions pertaining to conflicts of interest should be directed to the district's assigned Assistant Attorney General.. District Directors should take care to maintain their professional independence in both fact AND appearance.

As stated in Section II, the Finance Committee should develop a budget for each fiscal year. The budget should include:

- Consideration of unexpended funds from the previous year as presented in the financial statements and plans for their use;
- Projected revenue and expense;
- A detail of actual revenue and expense of the previous year;
- An estimate of staff and volunteer time and costs to accomplish proposed activities; and,
- A narrative summary that ties planned expenditures to the district's annual plan of work.

The budget should be reviewed and approved by the district board of directors and included as part of minutes. The Treasurer should review the budget on a monthly basis and any significant variances between budget and actual revenue and expenses should be researched and reconciled.

Monthly Directors should be provided a Treasurer's Report that, at a minimum, communicates significant variances between budget and actual revenue and expenses for the year to date and changes in the cash balance of the district from the previous month end.

Quarterly and annual reporting to the Department of Conservation and Recreation is also required. The Treasurer should review and sign (and/or initial) all financial reports that are forwarded to DCR.

Annual reports should be developed and provided as public record for information regarding accomplishments, financial status and volunteer support. All supporting documentation (such as records and reports documenting volunteer time and match requirements) must be maintained on file by the district.

As mentioned in Section II, state law requires audits of each SWCD. The Code of Virginia Section 10.1-535 states, "The district directors shall...provide for an annual audit of the accounts of receipts and disbursements by the Auditor of Public Accounts or a certified public accountant approved by him."

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Compliance with shortcomings and findings identified through an audit is expected. DCR currently contracts for this auditing service to be provided to the Soil and Water Conservation Districts. Auditing staff will conduct an exit interview with the District to report recommended corrections and any outstanding compliance issues. DCR will provide to Districts the auditors management letter and matrix of areas of discussion and the specific exit interview notes to each audited district individually. The CDC will review audit reports with the Board of Directors and facilitate discussion about ways financial controls may be improved. The District Board of Directors should approve the report and indicate what corrective actions will be taken to address audit finding issues and recommendations.

Section IV - Cash Management

All funds should be maintained in fully insured bank accounts. Generally, the Federal Deposit Insurance Corporation (FDIC), through your local bank, provides such insurance coverage. Each bank with which the SWCD does business should be informed that the district accounts contain public funds and should be insured accordingly. All accounts should be interest bearing to the extent possible. The district should maintain a separate bank account for the Ag BMP Cost-Share Program funds. Interest earned from that account must be applied to additional program practices and expenses.

Petty cash accounts should contain not more than \$100 at any time. Petty cash should only be used for small purchases of supplies, food, postage, etc. Use of the petty cash fund should be limited as much as possible. All withdrawals from petty cash must be supported by a receipt or invoice. A person independent of the petty cash function should perform surprise counts of the petty cash at least twice a year and document their counts to ensure funds are intact. Another option is establishing a system for an individual independent of the petty cash account to be responsible for reconciling the account monthly. This arrangement can replace the petty cash surprise counts, since counting the cash on hand and the supporting receipts is part of the monthly reconciliation process.

Each district should limit its level of un-obligated reserve funds. Un-obligated funds are monies maintained in the district account(s) that have no restricted, limited use and may be spent on any reasonable business related purpose by the district. As a guideline, districts should not maintain total reserve or emergency funds in excess of three to six months of routine annual operating expenditures. Funds beyond this level may be accumulated for specific purposes as directed by an action of the board and recorded in the official minutes of the district. Federal funds should only be requested when needed and spent within a reasonable period of time (six months) after receipt. Each district should monitor expected versus actual cash disbursements of Federal awards to ensure timely expenditure of funds. At the end of each fiscal year the district should review their reserve funds and determine which funds are to be dedicated for specific future expenses. A list should be maintained of these dedicated reserves which should be reviewed and updated annually.

When transfers are made between bank accounts, these amounts should not be reflected as receipts or disbursements for any financial reporting purpose. On the Attachment E these transfer should be shown in the transfer in/out column.

All cash of the districts should be maintained in accounts collateralized in accordance with the Virginia Security for Public Deposits Act, Section 2.2-4400 et.seq. of the Code of Virginia and/or covered by Federal Depository insurance. (The following website may be helpful with addressing questions that pertain to the Virginia Security for Public Deposits Act: <http://www.trs.state.va.us>). Under the Act, banks holding public deposits in excess of the amounts insured by FDIC (\$250,000) must pledge collateral in the amount of 50% of excess deposits to a collateral pool in the name of the State Treasury Board. The State Treasury Board is responsible for monitoring compliance with the collateralization and reporting requirements of the Act and for notifying Districts of compliance by banks. Accounts maintained in National

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Credit Union Accounts (NCUA) should be also be insured up to \$250,000. Districts that maintain investment funds with a broker should be insured by SIPC, Securities Investor Protections Corporations, up to \$500,000.

Online Bill Paying - Generally, authorizing an individual to make a direct withdrawal from the bank account to settle a claim provides an opportunity for abuse of the payment system. Given the limited number of personnel and the limited opportunities for segregation of duties and internal control, we would discourage the use of online bill payment. If the circumstances dictate that there is no other viable option, the controls surrounding this type of transaction should be carefully considered. Important elements of the control system should include:

- Two approvals on the invoice prior to initiating the online payment;
- Processing/transmitting of the online payment by a third individual; and
- Careful review of all bank statements with special scrutiny given to the propriety of any direct withdrawals from the bank account.

Larger organizations that utilize online payments typically have one person initializing the payment of the transaction and another individual reviewing the online transaction using the bank's software prior to actually releasing or transmitting the payment transaction. Banks may provide a chip or electronic token that offers a dynamic code to enter prior to releasing a transaction. Banks may "call back" to an authorized individual prior to releasing larger online payments. While sound internal controls can be implemented around online payments, building adequate controls in a local district with limited staff might be challenging.

Section V - Cash Control

The opening of all bank accounts, as well as a list of check signatories, should be authorized by the board of directors and recorded in the district minutes. Check signatories should be updated whenever one signatory is added or deleted.

All checks should be pre-numbered and contain the name and address of the district.

The supply of unused checks should be maintained in a locked cabinet/desk at the district. Only an individual who does not have check signing capabilities should maintain access to the supply of unused checks to safeguard against theft. Individuals with check signing capabilities should not have access to the supply of unused checks.

Checks should never be signed prior to completion of the check.

A check that has been outstanding for an extended period of time (such as three months, or as determined by the Finance Committee) should be researched and a stop payment should be placed on the check. Per the Commonwealth of Virginia's Unclaimed Property Act, a check that is outstanding for greater than one year is required to be tracked in a liability account and the amount of the check must be remitted to the Commonwealth of Virginia per Section 55-210.0 of the Code of Virginia.

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Voided checks should have “VOID” either written or stamped on them. The signatures on voided checks should be torn off the checks as well. Normal procedures require a voided check to be appropriately marked and stapled back into the check register (or maintained in a voided checks file, if checks are printed from a printer and a check register is not maintained.) This allows any review of the records to clearly indicate a check was indeed voided.

Bank statements should be reconciled to the district’s accounting records on a monthly basis. The bank reconciliations should be prepared by the individual authorized by the district to perform this task, and should be initialed and dated when prepared. Any bank differences resulting from the bank reconciliation that require recording in the accounting records (e.g., interest earned, service charges, etc.) should be posted in a timely manner (i.e., prior to the next bank statement being received). Periodically, cancelled checks returned with the bank statement should be reviewed for proper signatures and authority. **A second individual other than the preparer should review, initial and date the reconciliation.**

Section VI – Sales

When cash/checks are received from the various receipt sources by the districts, they should be documented in a pre-numbered receipt book immediately. The receipt book serves to document the amount received, payee, reason for receipt and date of receipt. All cash and checks received by the district must be documented in the receipt book.

Any documentation (i.e., letter, check stub) received with the cash/check should be date stamped when received and maintained in a cash receipts folder. The receipt number should be noted on the supporting documentation.

All checks received by the district should be endorsed (i.e., For Deposit Only, Example Soil and Water Conservation District) immediately upon receipt. Cash/checks should be secured in a locked cabinet/desk at the district until deposited in the bank. Deposits should be made once a week or when the district has collected \$500, whichever occurs first.

Deposits should be recorded in the checkbook on the day of deposit. Individual receipts should be recorded in the general ledger (i.e., Quicken, QuickBooks, etc.) on a weekly basis.

Collection of State Retail Sales and Use Tax

Concerning collection of state sales tax, as political subdivisions of the Commonwealth, districts must collect the tax on sales of their tangible personal property unless such property is otherwise exempt. The Code of Virginia and Virginia regulations provide for certain exemptions.

Questions concerning the collection of the tax and specific instances that may provide exemptions should be directed to the Department of Taxation, Office of Tax Policy, (804) 367-8037.

Section VII – Procurement

All purchases made by districts should be made as a result of a competitive and open process that encourages participation by all qualified vendors. All district procurements should be in accordance with the Virginia Public Procurement Act, Code of Virginia Section 11-35.
<http://www.eva.virginia.gov/pages/eva-vppa.htm>

Every district should have a purchasing policy. The Finance Committee of each district should abide by a policy for competitive procurement based upon dollar amounts of purchases and periodically (at least annually) review and recommend changes to such policy to the district board. It should be intended that the lowest cost quotation be accepted; however, in some instances, the district may believe that the least costly price is not in the district's best interest. In this case, a written justification for accepting other than the low bid shall be maintained with the quotations.

The following is an *example* to serve as a guideline for procurement of goods and services:

- *Purchases less than \$500* - District personnel will procure goods and services using sound business practices and endeavor to obtain the best product available for the lowest cost. While no formal bid or quotation process is required, quotations should be obtained if district personnel deem it to be in the district's best interest.
- *Purchases between \$500 and \$1,000* - Quotations shall be obtained from at least three vendors. These quotations may either be in writing or by telephone. In either case, all quotations shall be maintained on file for subsequent review and inspection. The district board of directors (or the Finance Committee) shall make the purchasing decision.
- *Purchases between \$1,000 and \$5,000* - At the direction of the board, written quotations or sealed bids shall be obtained. The decision to purchase shall be made by the board of directors.
- *Purchases greater than \$5,000* - Sealed bids shall be obtained for these purchases. The district board or a committee of the board shall review the bids. The decision to purchase shall be made by the district board of directors.

Section VIII - Expenditure Processing (Non-Payroll)

Disbursements are to be made only with proper supporting documentation, such as invoices, receipts and/or receiving slips. All documentation should be originals and not copies to prevent double payments of balances.

A voucher system (or invoice approval system) should be used requiring an invoice to be vouched (or approved) before the district issues any payment. Prior to issuing payments, invoices must be endorsed by two individuals (ideally, the person requesting the disbursement in order to verify the invoice is legitimate, and that person's supervisor (or other authorized individual), in order to verify the requestor has authority to make the request). The Virginia Agricultural BMP Incentives Programs Contract Parts I, II, III serves as the invoice for payments issued to farmers participating in the Virginia Agricultural BMP Cost-Share Program. An employee expense report with attached receipts serves as an invoice for payment when submitted with appropriate signatures and documentation.

Invoices should be mathematically verified before payment.

A check signing policy should be developed and adopted by the board and reviewed annually. All authorized check signers should be approved by the Board. The check signer should only sign checks that match a vouched invoice. Check signers should be presented with vouched invoices at the time the checks are presented for signature.

To prevent duplicate payment of expenses, invoices should be stamped "PAID" upon payment. In addition, the check number and check date should be written on the invoice.

Ideally, the individual who accounts for cash disbursements (i.e., records the disbursement in the accounting records and/or signs the checks) should not prepare and mail the checks.

A district employee should **never** make personal purchases with the use of district funds.

Disbursements should be recorded in the checkbook when the check is written. Individual disbursements should be recorded in the general ledger (i.e., Quicken, QuickBooks, etc.) on a weekly basis.

Section IX – Credit Card Usage

District Credit Cards

Districts issuing credit cards to district staff or directors for business purposes must adhere to the following:

- The Board of Directors must approve the issuance of any credit card to be used by staff and/or board member(s).
- Districts should adopt a written credit card policy to establish guidelines for users.
- A reputable credit card company with “no annual fee” and a reasonable and competitive interest rate should be used.
- Credit card statements must be mailed directly to the SWCD district office.
- Receipts for all expenditures must be turned into the SWCD district office and will be matched with the line items on the credit card statement before payment can be made.
- The voucher system described in Section VIII will be used to authorize payment of the credit card. Each attached receipt/invoice should be reviewed for accuracy and appropriateness before payment can be made.
- Expenditures should be made in accordance with procurement guidelines.
- No personal usage of the credit card will be allowed or tolerated.
- Payment of the balance of the credit card will be made by the due date, in order to avoid unnecessary finance charges or late payment fees
- Non-compliance with the above will result in, at a minimum, termination of credit card privileges for the abusing staff member or director.

Use of Personal Credit Cards

Use of personal credit cards for business expenses:

- Staff or director use of a personal credit card for business expenses is permissible, but payment or reimbursement of such expenses will only be made by proper submission of an employee/director expense report with attached original invoices (not credit card statements)
- Nothing will be reimbursed for incurred interest, late charges, or other credit card fees charged to the statement. It is the responsibility of the employee or director to request reimbursement thru proper channels prior to incurring such fees.
- Expenditures should be made in accordance with procurement guidelines.
- Receipts for all expenditures must be attached to the employee/director expense report and submitted to the SWCD district office in a timely manner.
- The voucher system described in Section VIII will be used to authorize payment of the employee/director expense report. Each attached receipt should be reviewed for accuracy and appropriateness before payment is made.

Section X – Employee/Director Expense Reports

All personally incurred SWCD expenses shall be reimbursed to the employee or director through the use of an employee/director expense report. At a minimum, the expense report format used by the district should include the individual's name, date of submission, signature and approvals. The body of the form should be multi-lined and columnar so that several incidences of expenses may be recorded. Columns should include the date of the incurrence, description, and business reason for the expense, columns for mileage, rate and dollar amount of mileage reimbursement, meals, and other expenses. The last column should indicate a total of the expenditures for that day with a grand total at the bottom to indicate the total to be reimbursed.

Each employee or director submitting an expense report for reimbursement should adhere to the following:

- Staff or director expenditures for business expenses is permissible, but payment or reimbursement of such expenses will only be made by proper submission of an expense report with attached original invoices (not credit card statements)
- Expenditures should be made in accordance with procurement guidelines.
- Receipts for all expenditures must be attached to the employee/director expense report and turned into the SWCD district office in a timely manner. No reimbursement will be made without a proper receipt.
- The voucher system described in Section VIII will be used to authorize payment of the expense report. Each attached receipt should be reviewed for accuracy and appropriateness before payment can be made.
- Only business expenses will be reimbursed.
- Abuse of any of the above may result in termination of staff; loss of director use of employee/director expense reports for reimbursement; and/or further actions that are appropriate for violations.

Section XI – Employees and Payroll Processing

Establishment of new employee positions, as well as approval of new hires, should be approved by the district board of directors and recorded in the minutes. Pay rates of each employee should be discussed and approved by the board of directors and recorded in the district minutes. The district should maintain a personnel file for each district employee containing essential data. The ultimate responsibility for hiring/firing and increases/decreases in salary rests with the board of directors. Use of an Employee Pay Action Approval Form is encouraged.

All individuals applying for a job at the district should complete an application. Once the board selects the individual it desires to employ, a letter stating the position, job description and salary should be prepared and sent to the individual. The district should maintain a copy of the letter sent to the individual. The letter should include a signature line for the individual to sign indicating acceptance of the position and the stated salary. If the individual accepts the position, the district should include the signed original in the employee's personnel file.

Written evaluations of each district employee's performance should be prepared, ideally, on a quarterly or semi annual basis, but , at a minimum, annually. The Personnel Committee or the employee's immediate supervisor should complete the evaluations. The Chair of the Personnel Committee or other authorized individual,, and the employee being evaluated should both sign the evaluation. The Personnel Committee should recommend raises/dismissals (based on the evaluations) to the board of directors. The raises/dismissals should be approved/denied at an official board meeting and included in the minutes. The evaluations as well as the minutes from the board meeting where the raise/dismissal was approved/denied should be maintained in the appropriate employee's personnel file.

When a salary increase or decrease is approved, it is essential that a "Personnel Action Notification/Form" or something similar be completed showing the previous rate of pay, the new rate of pay and the effective date. This form should be signed by the Chairman of the Board or another designated Board member and filed in the personnel files of the affected employee.

Personnel files should also include a signed W-4, VA-4, and I-9 (with required documentation attached). These documents should be obtained prior to 1st day of employment. W-4's and VA-4's should be updated at least annually for each employee, or upon employee request. All new hires must be reported to the Virginia New Hire Reporting Center. Information can be found at <https://va-newhire.com/>.

Timesheets should be prepared and signed by each district employee and approved by his/her immediate supervisor (or an individual designated by the Finance Committee) for each pay period. The timesheet should serve as the required documentation for payment of salary. The district should maintain the timesheet (or a copy of the timesheet, if a local county processes the district's payroll).

If a local governmental entity pays the district employee salaries and does not require reimbursement from the district, this is not a cash receipt nor disbursement. This transaction has

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no impact on the accounting records or financial statements and thus no accounting entry is required.

Districts are responsible for filing all required Federal and State tax forms and making applicable tax deposits. The 941 (Federal withholdings) should be filed on a quarterly basis and tax deposits should be made on a monthly basis. State withholdings information and deposits should be submitted on a monthly basis, unless the withholdings are less than \$100, in which case, on a quarterly basis, unless otherwise specified by the Virginia Department of Taxation. State unemployment taxes should be remitted to the Virginia Employment Commission on a quarterly basis. The District should be cognizant that the taxing authority may change the timing of these filings and deposits.

All applicable processing policies and procedures apply to payroll processing. It is the responsibility of each district to ensure proper tax withholding occurs, as well as proper withholding and tax application of various voluntary deductions (such as pensions, cafeteria plans, health insurance, dental insurance and garnishments).

The processing and handling of payroll checks should be in a manner similar to that described in Section VIII – Expenditure Processing.

Section XII – Fixed Assets Inventory

An inventory listing, including the detail of all fixed assets (e.g., computers, vehicles, equipment, copiers, etc.) owned and/or controlled by the district, should be maintained and updated on an annual basis. All inventory items should be tagged and the sequential tag number included on the inventory listing. The district may wish to establish a minimum value for items maintained on an inventory list. For example, items valued greater than \$100.00 will be inventoried. It is recommended that a list be maintained in a safe, secure location where risk of damage or alteration is reduced.

The listing should include a description of the asset, serial number or VIN number if applicable, the date purchased, the cost of the asset, and an estimated useful life of the asset for budgeting purposes. The SWCD can maintain other information if it is deemed of value, such as from whom the asset was purchased, warranty information, replacement value, etc.

Section XIII – Reporting (general guidance)

Individuals, agencies and organizations that contribute resources (monetary or other) to a district generally have reporting requirements and expectations. Districts are advised to fully understand and accept reporting requirements prior to entering into any contract and/or agreement with any individual or organization. Reporting expectations (such as reporting frequency, amount of information required and the related details) often vary widely between organizations.

Reporting Expenditures of SWCD Discretionary Funds

Districts receive financial resources from many diverse sources. Funds may be received through government appropriations, endowments, corporate contributions, revenue generating programs and many other sources. Funds provided for specific purposes must be accurately tracked and reported according to requirements of the contributing source, and sufficient documentation must be maintained to support revenues, expenditures and remaining balances.

However, some contributors allow great latitude in the use of resources provided to a district. When several sources of “discretionary” funds are combined in a single account to cover operating costs of a district, it becomes difficult to resolve what balance remains for any particular source of funds at the close of a report period. If a funding contributor has not specifically advised the district as to how their contribution must be spent, districts should adopt an expenditure process or procedure they can document and apply consistently.

Examples of procedures a district may adopt to assign costs from discretionary funds (depending on requirements of their funding sources) are as follows:

- Spend funds appropriated by state sources first, until depletion.
- Spend funds appropriated by the local government(s) first, until depletion.
- Spend revenues generated by district rental/sales programs first, until depletion.
- Split expenditures equally among fund sources (for any given report period).
- Assign disbursement amounts to funding sources based upon the relative amount of funds contributed (for example, if state contributions are twice the amounts contributed by local governments, the relative amount of disbursements would be assigned accordingly to state and local sources).

In fact, any allocation method may be used to allocate costs between operational funding sources, as long as the method is documented so the auditors can recreate the final results reported by the SWCD.

With regards to operational funds issued to each district by DCR, districts have significant latitude with the approach taken as costs are assigned to those funds. It is an acceptable practice to spend state funds first, until that state source is depleted, before assigning remaining costs to other fund sources. It is also appropriate to assign costs to all operational funding sources based on their respective contributions to the SWCD.

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However, here is a word of caution to every SWCD regarding assignment of expenses. Contributors, regardless of the individual or organization, want assurance that their contribution is used in an appropriate, productive manner. Districts that may adopt procedures of expending state funds first for discretionary operational expenses will generally reflect remaining balances in other sources –such as local government contributions, which may accumulate over time. Using this example, local government representatives may reasonably question why their contributions are not being expended and, more fundamentally, whether they should continue appropriations to the district. The example is intended to illustrate the need for careful planning and adoption of procedures that are appropriate for each particular district and satisfy those that contribute to its programs and services.

SWCD Completion of DCR reporting form “Attachment E” [from annual DCR/SWCD Grant Agreements for operational and administrative as well as cost-share program financial support]

According to guidance contained within annual agreements between DCR and each SWCD for financial assistance to support district operational and administrative expenses and delivery of the VA Ag. BMP Cost-Share (VACS) program, districts must complete a financial report on a quarterly schedule. The report is contained within each DCR/SWCD grant agreement as Attachment E.

It is the expectation of DCR that financial information contained within the Attachment E report correlate with district financial records in ways that provide consistency with all other district records and financial reports. For example, should a district receive a unique award of a special grant which has unique financial reporting requirements, that amount of funds received, expended and remaining would be consistently reported on electronic Attachment E and any other required financial report for the same time periods. This expectation applies to all funds made available to a district from various sources.

It is also an expectation of DCR that the flow of financial information from the electronic Attachment E last quarterly report to the next is consistent. This means that ending balances reported at the close of any quarter, become beginning balances for the start of the quarter that follows. The electronic Attachment E that combines the 4 quarterly reports for a fiscal year should provide an accurate statement of the receipts, expenditures and remaining balances in a manner that is consistent with other financial records maintained by a district.

Section XIV - Federal Funds Requirements

Districts and the Federal government enter into grant agreements when districts receive Federal funds related to a specific grant. Districts must abide by and follow Federal requirements when they receive Federal funds from any grantor. Each grant agreement should be reviewed and signed by the chairman of the district board. An individual at the district should be responsible for reviewing the grant agreement and understanding the requirements the district must adhere to as a result of receiving the grant. This same individual should be responsible for ensuring that all requirements are met and the district is in compliance with the grant agreement.

There are 14 compliance requirements that an entity must adhere to if it is a recipient of Federal funds. However, in the case of the Soil and Water Conservation Districts, only nine of the compliance requirements apply. The district should document its compliance with each compliance requirement. The applicable compliance requirements are as follows:

Activities Allowed or Not Allowed

Requirement

- Federal funds are expended only for allowable activities

Control Activities

- Review the grant agreement to determine activities that are allowable under the grant
- Adequate segregation of duties in review and authorization of costs

Allowable Costs/Cost Principles

Requirement

- Costs of goods and services charged to grants are allowable and in accordance with the applicable cost principles

Control Activities

- Review the grant agreement and cost principles circulars (OMB Circular A-87) to determine allowable costs
- Per OMB Circular A-87, typical direct costs chargeable to Federal awards include:
 - Compensation of employees for the time devoted and identified specifically to performance of those awards
 - Costs of materials acquired, consumed or expended specifically for the purpose of those awards
 - Equipment and other approved capital expenditures
 - Travel expenses incurred specifically to carry out the award
 - Adequate segregation of duties in review and authorization of costs

Cash Management

Requirements

- Funds are requested only when needed and are spent within a reasonable period of time after receipt
- Interest earned on an advance is reported/remitted as required

Control Activities

- Monitor expected versus actual cash disbursements of Federal awards
- Ensure any interest earned on Federal funds is recorded in the applicable program and spent in accordance with the requirements of the applicable program or returned to the granting agency

Equipment and Real Property Management

Requirement

- Proper records are maintained for equipment acquired with Federal awards, equipment is adequately safeguarded and maintained, and disposition of any equipment or real property is in accordance with Federal requirements, and the Federal awarding agency is appropriately compensated for its share of any property sold or converted to non-Federal use.

Control Activities

- Maintain accurate records on all acquisitions and dispositions of property acquired with Federal awards
- Place property tags on all equipment
- Property records contain description, source, titleholder, acquisition date, cost, percentage of Federal participation in the costs, location, condition and disposition data

Matching

Requirement

- Matching requirements are met using only allowable funds or costs which are properly calculated and valued

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Desktop Guide for District Fiscal Operations

Control Activities

- Review the grant agreement to determine the matching requirements related to the grant and the what funds are allowed to be used as a match

Period of Availability of Funds

Requirement

- Federal funds are used only during the authorized period of availability

Control Activities

- Review the grant agreement to determine the period during which funds must be used

Procurement

Requirement

- Procurement of goods and services are made in compliance with the provisions of the A-102 Common Rule

Control Activities

- Review A-102 Common Rule to become aware of the various requirements
- A-102 Common Rule states that grantees are required to specify in any announcement of the awarding of contracts with an aggregate value of \$500,000 or more, the amount of Federal funds that will be used to finance the acquisitions

Program Income

Requirement

- Program income is correctly earned, recorded and used in accordance with program requirements. Program income is gross income received that is directly generated by a federally funded project.
- Per OMB Circular A-133 Compliance Supplement (May 1998), program income includes, but is not limited to, income from: fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items produced under a grant agreement, and payments of principal and interest on loans made with grant funds. Program income does not include: interest on grant funds, rebates, credits, discounts, refunds or proceeds from the sale of equipment or real property.

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Control Activities

- Identify generators of program income through inquiry of granting agency and the grant agreement
- Ensure program income is properly recorded as earned and either: deducted from outlays, added to the project budget, or used to meet matching requirements. Unless specified in the Federal agency regulations or in the grant agreement, program income shall be deducted from program outlays.
- Generally, program income requires a program income plan that details how the funds will be spent in accordance with the federal grant regulations under the Catalog of Federal Domestic Assistance. Information can be found at <https://www.cfda.gov/>

Reporting

Requirement

- Reports of Federal awards submitted to the Federal awarding agency or pass-through entity include all activity of the reporting period, are supported by underlying accounting or performance records, and are fairly presented in accordance with program requirements

Control Activities

- The accounting ledger is the basis for all reports
- Supervisory review of reports is performed to ensure accuracy and completeness of data and information included in the reports
- Submit an annual report to the Department of Conservation and Recreation by July 31 indicating the total amount of Federal funds expended during the prior fiscal year if this is not captured on the Attachment E Financial form. This information is needed to address the Single Audit requirement of disbursements of \$500,000 or greater.

Section XV – Segregation of Duties

Segregation of duties is an important aspect of a sound internal control system. Proper segregation of duties provides for a system of checks and balances such that the functions of one member (employee, director or other empowered individual) of the district are subject to review through the performance of interrelated functions of another member. The following list provides examples of adequate segregation of duties:

- Check signers should not have access to the unused check supply
- One individual should not be responsible for opening, recording and depositing receipts.
- One individual should not be responsible for recording, preparing and mailing disbursements
- Bank reconciliations should be performed monthly and reviewed by someone other than the preparer

Due to the small size of the districts, ultimate segregation of duties may not be reasonable. Districts should keep in mind that just the bookkeeper and board members need not perform these procedures, but that the conservation specialists and district managers (“program personnel”) may also play a key role in the internal control structure. For example:

- The bookkeeper and the program person sign all checks below \$1,000 and the bookkeeper and the Treasurer sign all checks greater than \$1,000
- Bank reconciliations may be reviewed by a program person

The size of the District’s administrative staff, and other staff, precludes certain internal controls, including proper segregation of duties. This situation dictates that often the Board of Directors needs to be involved in the financial affairs of the District to provide oversight and independent review functions.

XIV – Appendix A

The following pages contain sample policies that Soil and Water Conservation Districts are encouraged to adopt and implement. The policies are only a template and should be customized to better fit the unique nature of your District. It should be noted that there is no requirement by DCR or the State of Virginia that these policies be adopted.

Soil and Water Conservation Districts Desktop Guide for District Fiscal Operations

Sample – Purchasing Policy

It is the intent of the District that all purchases be made as the result of a competitive and open process that encourages participation by all qualified vendors. It is also the District's intent that all District procurement be in accordance with the Virginia Public Procurement Act, Code of Virginia, Section 11-35.

The following guidelines set forth the District's policy for competitive procurement, based on the dollar amount of the anticipated purchase. It is intended that the lowest cost quotation will be accepted. However, should the District determine that acceptance of the least costly price is not in the District's best interest, a written justification for accepting an offer other than the low bid shall be prepared and maintained as the record of district action with the quotations.

The District's annual budget is developed to cover anticipated purchases. If sufficient funds do not remain in a particular budget sub-category to cover a purchase, this shall be brought to the attention of the board by providing them with a copy of the "budget vs. actual" report. If sufficient funds do not remain under the main category heading (i.e. total budget for Educ, PR & Youth) the Board must first authorize the purchase and/or amend its annual budget.

Accounting Procedures: All District checks greater than \$_____ must have two signatures. Two individuals must approve each invoice (Director and employee other than one who prepares the payment/check).

Credit Card Policy: All purchases shall be made in accordance with the limitations of this policy. District credit card(s) shall only be used by District staff for the purchase of the necessary items needed for operations and to carry out District programs. Credit card(s) may be provided for use to the Office Administrator, Conservation Specialist and/or Education Specialist. Credit card purchases will be consistent with the approved budget. Non-budgeted purchases will be made in accordance with the District's purchasing policy.

No personal items will be purchased using the District's credit card.

Receipts for all purchases must be turned in to the Office Administrator when the purchase is made. This is the responsibility of the staff member making the purchase.

When the credit card statement is received, the Office Administrator or designated staff member shall check each charge against the receipt and code each purchase according to the chart of accounts. A District Director and an employee other than the one reconciling the statement shall also review and initial each credit card statement, with receipts attached.

The following serve as guidelines for procurement of goods and services:

- **Purchases less than \$600** – District officials and/or staff will procure goods and services using sound business practices and will endeavor to obtain the best product available for the lowest cost.
- **Purchases between \$600 and \$1,000** – Quotations shall be sought, where practical and available, from at least three (3) vendors. These quotations may either be in writing or by telephone. In either case, all quotations shall be maintained on file for subsequent review and inspection. If three (3) quotations are not available, circumstances shall be documented and retained on file.
- **Purchases greater than \$1,000** – At least three (3) written quotations (or sealed bids) shall be obtained for these purchases. If three (3) quotations (or sealed bids) are not obtained, circumstances must be documented and retained on file. The Board or a committee, or those authorized by the Board shall review quotations or bids. The decision to purchase shall be recorded in the minutes.

In the case of an emergency (i.e. securing contractor for work on a flood control dam, etc.) when obtaining three (3) written quotations (or sealed bids) is not possible, the employee or other individual(s) securing the

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service/purchase shall contact one or more directors for permission to proceed, followed by written documentation of circumstances involved in securing said service/purchase. This action shall be brought to the attention of the board at its subsequent meeting and recorded in the minutes.

Inventory – An inventory list shall be developed and updated on an annual basis. This list shall be maintained in a safe, secure location where risk of damage or alteration is reduced.

The inventory list should be a detail of all fixed assets (e.g., computers, vehicles, equipment, etc.) owned and/or controlled by the District whose purchase price is \$500 or more. Any item with a purchase price of \$500 or more shall be maintained on the inventory list until its useful life expires. All inventory items should be tagged and the tag number included on the inventory listing. The net asset should be included for each item on the inventory list.

Disposal of District Property – The following serve as guidelines for the disposal and removal from inventory of District property:

- Trade in on a replacement or acquisition of similar property.
- Advertisement for sale by receiving bids.
- Advertised public auction.
- Donation to a non-profit organization.
- Other method as declared by the Board.

No tangible property of the District with a value greater than \$_____ shall be sold or otherwise disposed by the District without authorization by the Board of Directors, taken and recorded by an action of the board during a monthly or other public meeting of the District.

Chair

Date

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Sample – Vehicle Use Policy

Purpose

The purpose of this policy is to set guidelines for the use of District-owned vehicles. The District (SWCD) maintains an interest in providing for the official transportation needs of District personnel and/or directors. The District seeks to maintain quality, safe transportation for such uses. In order to do that, proper use, care and supervision of District-owned vehicles are required. Drivers must be licensed to operate vehicles they use; Only properly maintained vehicles will be made available for such uses and the transportation program will be supervised and administered by both the District manager (or other designated individual(s)) and the District Board of Directors.

Policy

A. Licensure: Persons operating a District-owned vehicle must be licensed in Virginia to operate the type of vehicle they are using.

- Vehicle operators must show a valid license to the District Manager or Board of Directors prior to obtaining initial authorization to use any vehicle owned by the District.
- Vehicle operators must read and sign the Vehicle-Use Policy prior to obtaining initial authorization to use any vehicle owned by the District.
- Authorized vehicle operators must immediately notify the District Manager and/or District Board of Directors if their license has been suspended or revoked.
- During June of each year the District Manager or Board of Directors will review the driver authorization list to ensure it is current and to ensure all vehicle operators are driving under a valid license.

B. Conditions of Use: Persons violating conditions of use may be subject to disciplinary action. The District Manager and/or District Board of Directors will monitor all conditions of use.

1. District-owned vehicles are to be used for official business only.

- Relatives – Relatives of District employees who are not on official District business may not operate or ride in a District-owned vehicle at any time, unless authorized by the District Board or their designee(s).
- Hitchhikers – Hitchhikers may not be transported in District-owned vehicles at any time.
- Use for Obtaining Meals and Other Necessities – District-owned vehicles may be used to obtain meals and/or other necessities while on official travel.
- Out-of-State Travel – The District Board of Directors must approve all out-of-state travel using a District-owned vehicle.

2. General Vehicle Operating Rules

- Drivers must obey all traffic regulations, including posted speed limits.
- All operators and passengers must wear seat belts at all times while traveling.
- Alcohol and Drug Use – Alcohol and illegal drug-use is prohibited while traveling in a District-owned vehicle. Persons found in violation of this rule are subject to immediate termination. (Also authorized vehicle users are advised to carefully consider whether or not to drive a District-owned vehicle when taking certain prescription drugs.)
- Smoking – Smoking in a District-owned vehicle is strictly prohibited.
- Adverse Weather Conditions – Weather conditions must be evaluated and travel should be postponed when conditions are hazardous. (This includes, but not limited to: fog, heavy rain, snow, ice, high winds, etc.)
- Keys/Credit Cards – Under no circumstances should keys be left in a District-owned vehicle when not in operation. District credit cards should not be left where they are visible inside the vehicle, but rather maintained in the glove compartment.
- Parking/Security Considerations – District-owned vehicles should not be left on non-residential streets or highways overnight, unless required due to mechanical failure. Towing costs for improper parking are the responsibility of the driver.

Soil and Water Conservation Districts Desktop Guide for District Fiscal Operations

- Fines/Parking Citations – Any fines and parking citations incurred by the driver are the responsibility of the driver and not the District. Persons incurring fines for traffic violations must report such circumstances to their supervisor, as soon as is practically feasible for conveyance to the District Board and may be subject to disciplinary action by the District which could include loss of privileges to use District-owned vehicles.
- Personal Property – Personal property left in District-owned vehicles when not in operation is the responsibility of the operator/passenger. Loss or damage to personal items is the responsibility of the operator/passenger

3. Maintenance and Care of District-owned vehicle

- The District Manager and/or Board of Directors will be responsible for the monitoring and control of the routine maintenance and repair of vehicle(s).
- It is the responsibility of all vehicle operators to routinely check the vehicle(s) to ensure proper oil level, water and antifreeze for radiators, battery, wear on belts, proper inflation of tires, etc. This service should be performed at time of fueling.
- If maintenance repairs are required the District Manager and/or District Board of Directors should be notified and consulted as to the procedure for maintenance.
- When returning the District-owned vehicle, all garbage shall be removed from the vehicle including both the cab and bed areas.
- Personnel will share the following cleaning responsibilities: the exterior of the vehicle will be washed on an as needed basis, the interior will be vacuumed on an as needed basis and windows will be cleaned as often as needed.

4. Insurance

- The District maintains vehicle insurance coverage through _____.
- Insurance information can be found in the vehicle's glove compartment and on file in the District office.

5. Vehicle Accidents

- Any driver using a District-owned vehicle who is involved in an accident should contact the police immediately.
- The driver should obtain the name, address, phone number and operator's license number of all parties involved in the accident or witnesses to the accident.
- The driver should refer to the insurance card found in the glove compartment of the vehicle. Refer to instructions on the back of the insurance card and the agent name and contact number found on the front of the card.
- If the vehicle is safely operable, it should be driven to the District office, the District Board of Directors will be responsible for determining a procedure for estimates and repairs.
- If the vehicle is not safely operable, with guidance from the police, the vehicle should be towed to a nearby service facility. The District Board of Directors should be notified and will be ultimately responsible for determining a procedure for estimates and repairs.

6. Driving a Privately Owned Vehicle

- A privately owned vehicle may be used on official business if no District-owned vehicle is available or in other special circumstances with the approval of the District Manager and/or District Board of Directors.
- An official *Travel Expense Reimbursement Voucher* must be submitted with appropriate receipts attached with 30 days of accrual to the designated District staff member for payment.

7. Carpooling Related to Trips

- If a number of individuals will be attending a workshop, conference or other activity, the District expects that, barring unusual circumstances, District employees attending will car pool using the District-owned vehicle. The District Manager and/or Board of Directors will consider any exceptions to this policy.

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Desktop Guide for District Fiscal Operations

Chair

Date

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Sample – Credit Card Policy

All purchases shall be made in accordance with the limitations of this policy. District credit card(s) shall only be used by District staff (or other authorized individual(s)) for the purchase of the necessary items needed for district operations and to carry out District programs. Credit card(s) may be provided for use to the Office Administrator, Conservation Specialist and/or Education Specialist. Credit card purchases must be consistent with the approved budget. Non-budgeted purchases must be made in accordance with the District's purchasing policy.

No personal items will be purchased using the District's credit card.

Original receipts for all purchases must be turned in to the Office Administrator when the purchase is made. This is the responsibility of the authorized individual making the purchase.

When the credit card statement is received, the Office Administrator or designated staff member shall check each charge against the receipt and code each purchase according to the chart of accounts. A District Director and an employee, other than the one reconciling the statement, shall also review and initial each credit card statement, with receipts attached.

Chair

Date

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Sample Pay Action Authorization Form

_____ Soil and Water Conservation District
Employee Pay Action Approval Form

Employee Name:

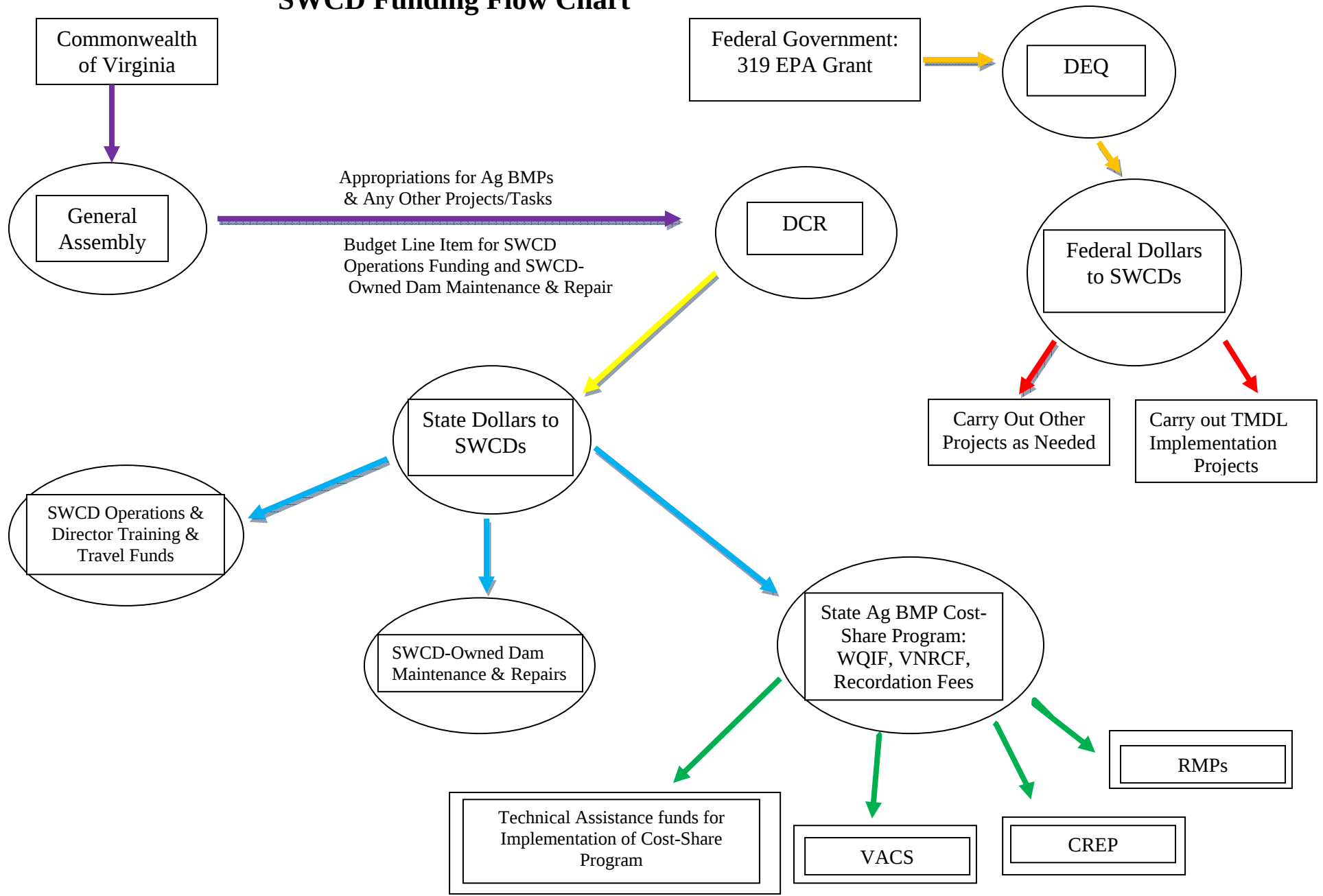
Position title:

Initial Employment Date: ____/____/____ Exempt or Non-Exempt status: _____

SWCD Board Meeting Approval Date ____/____/____

Date	Description of Pay Action	Amount of Pay Action	Employee Current Pay Rate	Employee New Pay Rate	Signature (Chair or Personnel Comm. Chair)

SWCD Funding Flow Chart



Adopted October 15, 2003

Virginia Soil & Water Conservation Board (Board) Policy

Title: Financial Commitments For Establishment of a New Soil & Water Conservation District (SWCD/district), or Realignment of an Existing District

Purpose:

To preserve the annual appropriation for SWCD funding made by the General Assembly so that the creation of a new district or realignment of an existing district does not adversely impact the financial resources of existing districts as specified by the Board's Policy entitled: Financial Assistance for Soil & Water Conservation Districts (districts).

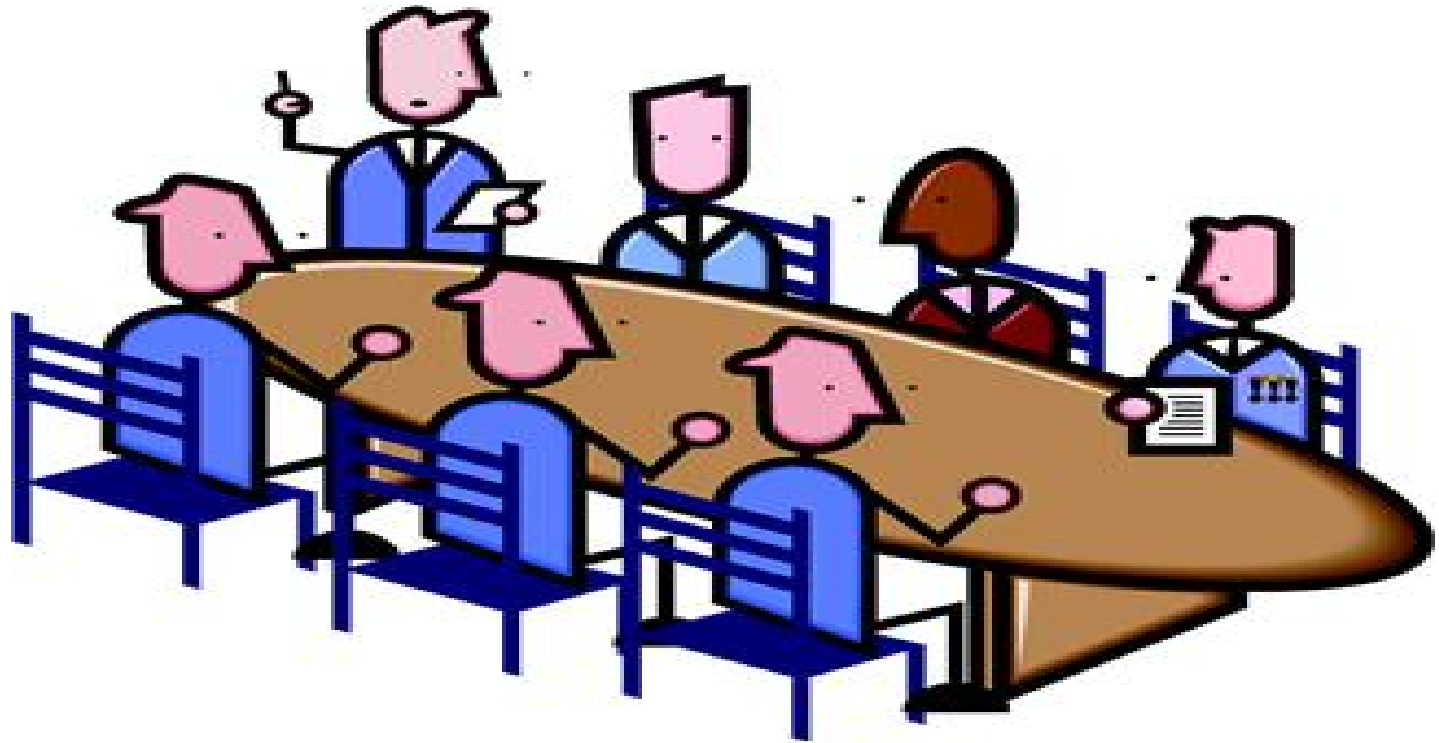
To achieve this purpose:

- The Board hereby establishes a position of supporting inclusion of every county and/or city of the Commonwealth in an SWCD (solely, or in partnership with one or more localities). The Board also recognizes that creating or realigning districts can adversely impact the financial resources the Board administers.
- Given authority established by § 10.1-512. and § 10.1-514. of the Code of Virginia, the Board will require commitments of financial support from the locality(ies) of the newly created or realigned SWCD in situations where the creation of a new district, or realignment of an existing district will result in a reduction of funding to all other districts.
- This commitment shall be required as a condition of approval for establishment of a new district or realignment of an existing district.
- When a county or city not within an existing district is added to a district or is established as a new district; or an existing district's boundaries are realigned, the newly added or established locality(ies) must commit resources (cash and/or in kind assistance) in amounts no less than the appropriate portions that comprise the essential funding level specified in the Board's Policy entitled: Financial Assistance for Soil & Water Conservation Districts (districts) to provide for the technical and administrative needs for the district and its board of directors.
- This commitment must continue annually until an equal increase is established within state funds administered by the Board to support SWCD operational expenses, or until otherwise notified by the Board in writing.

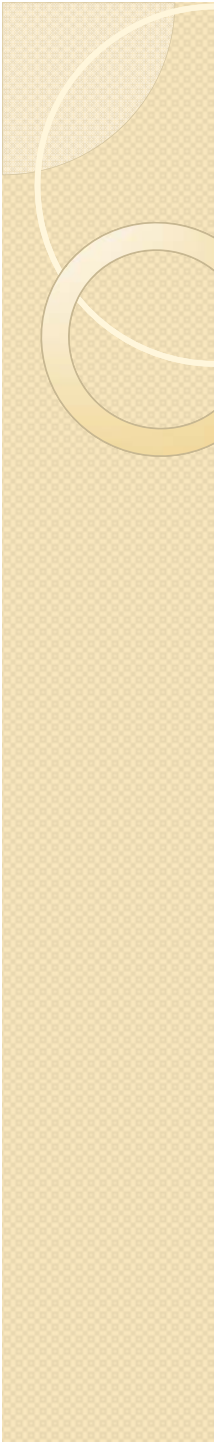
SECTION IV

PERSONNEL MANAGEMENT

Personnel Management for SWCD Directors



January 2016



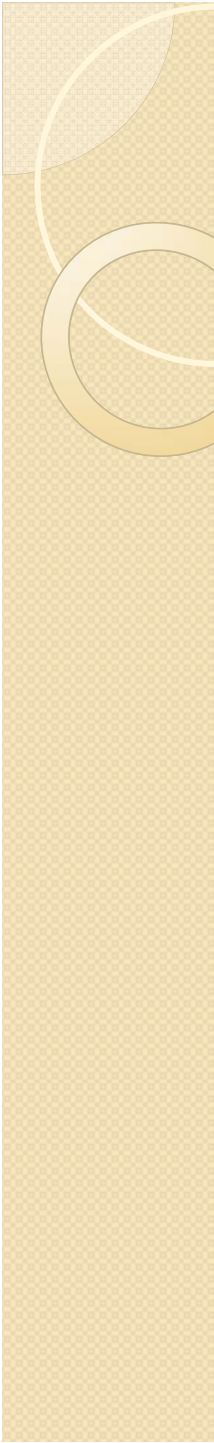
Personnel Management Responsibilities

- Responsibilities of District Directors:
 - Oversee and manage employees fairly and equitably.
 - Provide for staff development and training.
 - Establish written Personnel Policies and review annually.
 - Develop and review performance expectations with employees **at least annually**.
 - Perform performance evaluations **at least annually**.
 - Maintain employee personnel files.
 - Understand and comply with **all** federal and state labor laws.



Personnel Management Responsibilities

- Staff Responsibilities:
 - Vary from District to District.
 - Staff are responsible for implementing policy set by the District Board.
 - Staff carry out the work of the District through professional expertise, input and data.
 - Staff serve as positive representatives of the District to the citizens they serve.



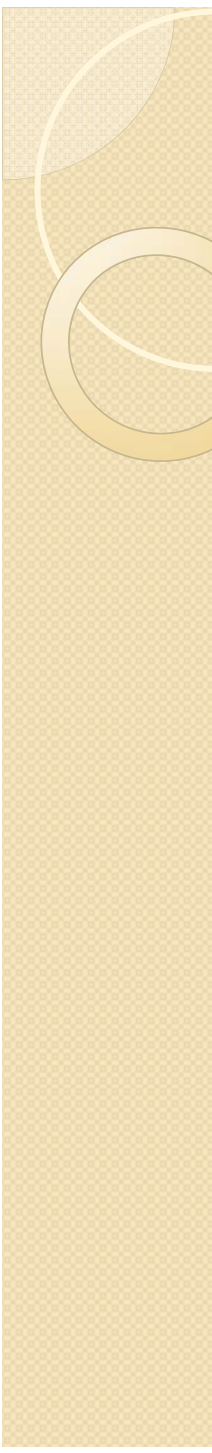
District Personnel Supervision

- Direct supervision of staff may be handled several different ways, but the final supervisory responsibility rests with each and every District BOARD.
- The District Board should establish work schedules, telework agreements (if applicable), and employee reporting criteria prior to the beginning of employment.

Personnel Committees

- Many District Boards appoint a personnel committee to handle personnel matters rather than handling personnel matters as a Board.
- As a result, the personnel committee has many roles and responsibilities.





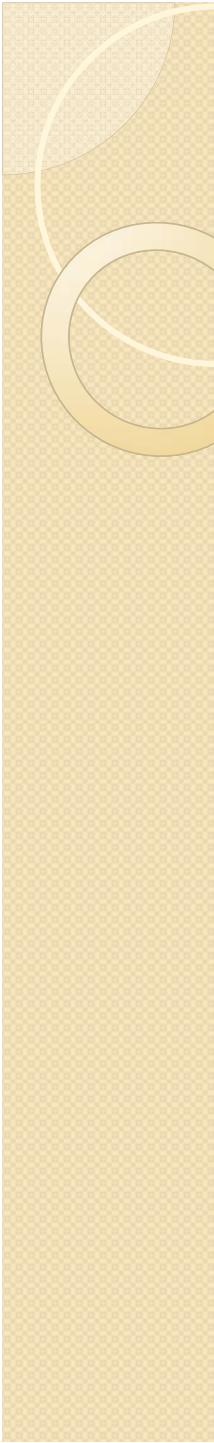
Roles of Personnel Committees

- Serve as a liaison between staff and the SWCD board.
- Assure mutual understanding between the SWCD board and staff concerning roles and responsibilities.
- Communicate precise job duties to staff as determined by the SWCD board.
- Maintain an awareness of employee concerns.
- Handle employee concerns and grievances in a professional manner.



Roles of Personnel Committees Continued...

- Respect employee confidentiality.
- Oversee any personnel actions and maintain current Personnel Policies.
- Develop job descriptions for each employee and review/update annually.
- Perform recruitment and selection of new employees.
- Distribute and review the Employee Checklist with newly hired staff.
- Conduct evaluations and make recommendations for position or salary adjustments.



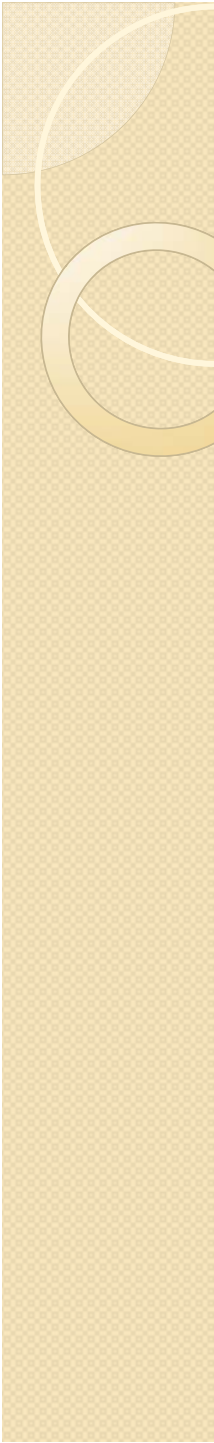
Roles of Personnel Committees Continued...

- Personnel committees are responsible for advertisement of positions as well as new employee application review, interviewing, hiring, overseeing, disciplinary actions, and termination.
- Identify and support (including financially) appropriate training, certification and continuing education classes for certifications held
- It is crucial that personnel committees become familiar with, and assure compliance with, all applicable labor laws.

District Personnel Policy

- Each District should develop and adhere to its own Personnel Policy.
- Personnel Policies should be reviewed annually.
- Every Director should review and become familiar with their district's personnel policy.





Essential Elements of a Personnel Policy

Should include:

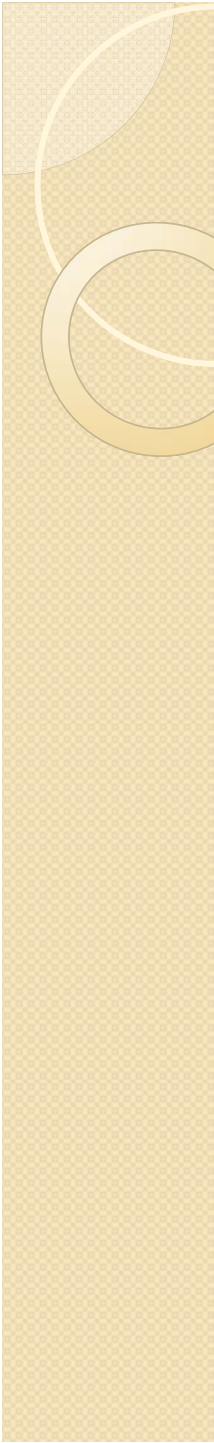
- **Definitions of Employees and Status**
- **Work hours, Holidays, Types of Leave**
- **Leave Earned & Used Procedures, Maternity/Paternity Leave, Disability, etc.**
- **Benefits Descriptions**
- **Travel Reimbursement Procedures & Rates**
- **Grievance Procedures**
- **Probationary period, Resignation & Termination**
- **Statement of nondiscrimination**
- **Illustrated compliance with labor laws including but not limited to the Fair Labor Standards Act and the Family and Medical Leave Act**



Fair Labor Standards Act

- Federal law governing wages, work schedules, and benefits.
- Classifies all covered positions as “exempt” or “non-exempt” - *Currently under regulatory review*
 - “Non-Exempt”: Covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one and one-half times the regular rate of pay. The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days.
 - “Exempt”: An employee does not qualify for overtime pay. Employment must meet certain qualifications in order to be classified “exempt”.
- Tests are available to determine if your district positions are exempt or non-exempt.
- Violations carry fines (\$\$\$).
- For more detailed information,
- please visit: www.dol.gov/whd/flsa/





Family and Medical Leave Act

- Federal law governing provision of job-protected, unpaid leave for covered employees.
- Provides 12 workweeks of unpaid leave in a 12-month period for the birth of a child, the adoption/foster care placement of a child, the care of an immediate family member with a serious health condition, and the care of an employee's own serious health condition.
- Provides 26 workweeks of unpaid leave in a 12-month period to permit a spouse, son, daughter, parent, or next of kin to care for a member of the Armed Forces, including a member of the National Guard or Reserves, due to injury or illness.
- For more detailed information, please visit:
www.dol.gov/compliance/laws/comp-fmla.htm

General Types of District Positions



- Technical Position:
 - Implements components of Virginia's Nonpoint Source Pollution Control Program such as the Ag. BMP Cost Share & Tax Credit Program as well as CREP, TMDL cost-share programs and erosion & sediment control programs (as needed).
 - Works with producers to write farm conservation plans, provides technical assistance and evaluates conservation practices.
 - Manages district conservation equipment.
 - Carries out other duties assigned by the district and as described in the technical position description.

General Types of District Positions Continued...

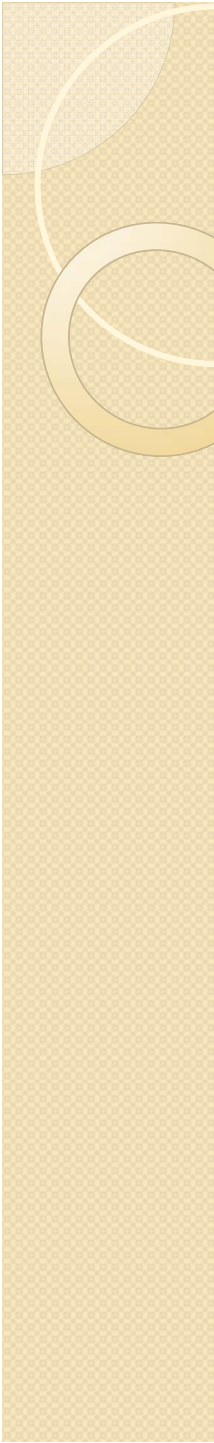


- Administrative Position:
 - Performs administrative and fiscal duties as required.
 - Types and files paperwork for the District.
 - Answers the telephone, keeps schedules, orders supplies, etc.
 - Circulates meeting notices, agendas, and minutes.
 - Transcribes SWCD board meeting minutes.
 - Works closely with SWCD bank accounts.
 - Carries out other duties assigned by the district and as defined in the administrative position description.

General Types of District Positions Continued...

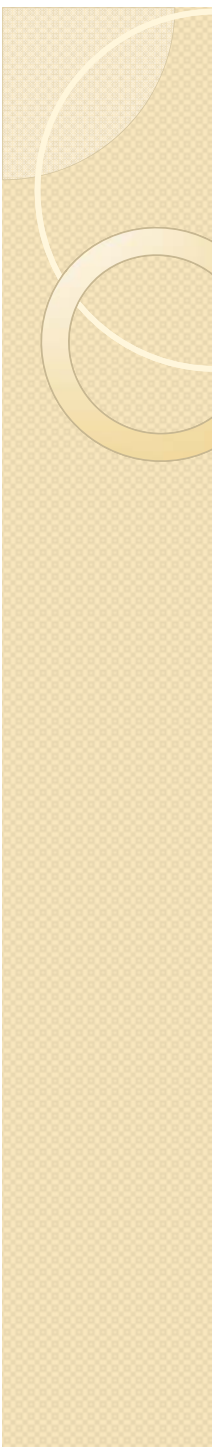


- Education/Information Position:
 - Performs citizen outreach.
 - Manages SWCD public relations efforts (newsletters, press releases).
 - Carries out youth and adult education programming.
 - Coordinates awards programs.
 - Applies for project-related grants.
 - Carries out other duties assigned by the district and as described in the education/information position description.



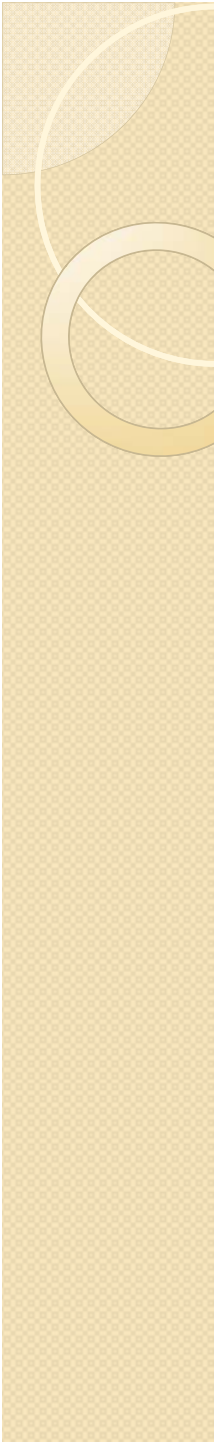
General Types of District Positions Continued...

- District Manager:
 - Oversees day-to-day activities of other district employees (training, travel, problems, schedules, performance, etc.).
 - Provides guidance and advice to other employees, particularly new employees.
 - Provides input to the district personnel committee/board regarding employee performance and evaluations.
 - Position is typically combined with other district positions.



Position Descriptions

- A position description should be developed for each employee and approved by the SWCD Board.
- The position description should include all expectations, qualifications, roles and responsibilities, benefits, salary scale and supervision.
- Position descriptions should be reviewed annually and updated as needed.
- When possible, the SWCD should solicit employee input when reviewing and updating job descriptions. This promotes employee buy-in and increases general job satisfaction.



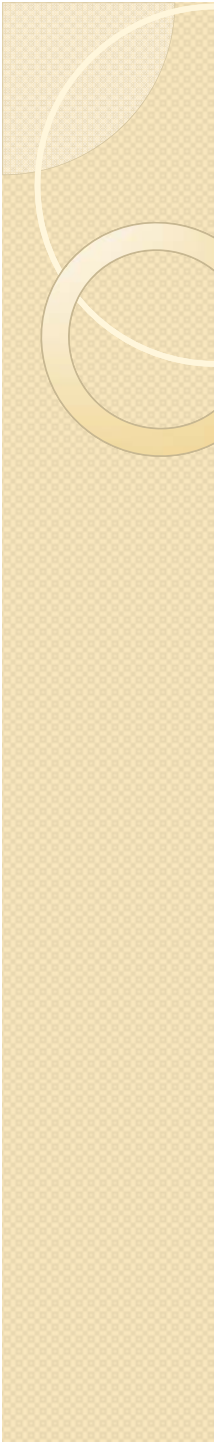
Individual Development Plan (IDP)

- An assessment tool and training schedule created jointly between the employee and employer.
- This plan is a guideline for employee growth and development.
- Allows district directors to set measurable goals for staff.
- Allows staff to plan ahead to achieve goals outlined in position descriptions.
- Can be particularly beneficial in guiding technical employees toward achievement of certifications.
- Useful in evaluating progress when conducting annual personnel evaluations.



Personnel Evaluations

- Personnel evaluations can be viewed as a two-way street. Not only should the SWCD be evaluating the progress of staff, staff should have a chance to provide feedback regarding the position and its associated duties.
- During evaluations, give staff an opportunity to voice concerns in an attentive, non-threatening environment.
- Interview employees: ask questions that allow you, as a director, to seek out features employees enjoy most about their jobs.
- Based on staff input, it's up to directors (you!) to find ways to challenge staff so they don't get bored with their positions.
- Remember: Showing staff that you care enough to gain their input can boost their job satisfaction and self-esteem, leading to increased employee retention- a win-win situation for everyone involved!



And as District Directors, Remember to Always...

- Get to know staff on a personal level and let them get to know you. This is important in building trust.
- Check in with staff at least once a month to see how things are going: Ask for their input as well as any concerns that they might have.
- Trust staff to do their jobs- it's okay to voice concerns when necessary but remember why you hired them.
- Treat all staff in a consistent, professional manner.
- Thank staff frequently for the great work that they do. A simple “thank you” goes a long way in making an employee feel appreciated.



Personnel References & Sources of Assistance

- U.S. Department of Labor: www.dol.gov
- Code of Virginia: <http://leg1.state.va.us/>
- State or Federal Human Resources Offices
- U.S. Office of Personnel Management:
<http://www.opm.gov/> or (404) 331-3459
- National Association of Soil & Water Conservation Districts (NACD): <http://www.nacdnet.org/>
- VASWCD Personnel Management Handbook:
<http://vaswcd.org/personnel-management>

Your DCR Conservation District Coordinator may provide help and assist in obtaining needed materials.

CHECKLIST FOR NEW SWCD EMPLOYEE

Recognizing that training is a continuous process, this checklist is designed as a guide for the orientation of new employees. The form is meant to act as an outline of the minimum information that should be discussed with the employee within the first few days of employment. Both employee and supervisor sign and date upon completion.

Employee Name _____ Id # or
SS # _____

Position Title _____

SWCD _____ Location _____

Effective Date of _____
Title and Name of _____
Supervisor _____

Current Home Address _____

Current Home Telephone _____

Current Email Address _____

In Case of Emergency Contact Person and Telephone Number:

When approved, eligible for overtime compensation? Yes _____ No _____

Emergency or Essential Personnel? Yes _____ No _____

Employee Status Full Time _____ Part Time _____ # hrs/week _____

The following checklists are designed as a guide for the orientation of new full and part-time employees. The form is not meant to limit the supervisor in the training of the new employee, but rather to act as an outline of pertinent information to be discussed during the first few days of employment. The checklist should be completed on all new employees. All items should be discussed, the boxes provided beside each item should be checked when complete.

Mark each box as the item is completed!

PRIOR TO EMPLOYEE'S FIRST DAY

- ☐ Evaluate office supplies, furniture and equipment needs. (See if they are immediately available or need to be ordered, i.e. business cards, computer software/hardware, etc.)
- ☐ Contact employee. (Address any questions concerning directions to office, dress code, arrival time, etc.)
- ☐ Receive from employee signed letter of employment that includes starting salary and date/time to begin employment.

FIRST DAY OR AS SOON AS POSSIBLE

- ☐ Provide "Check List For New SWCD Employee".

WORK SCHEDULE

- ☐ Work Hours. (Specify days, starting and quitting times. Explain any exceptions and reasons for them.) Discuss probationary period.
- ☐ Overtime/Compensatory Time. (Explain policy, include night and weekend work.)
- ☐ Travel Requirements. (Explain nature, frequency, regulations, and reimbursement policies)
- ☐ Lunch. (Explain length of period, time schedule, and what most of the other employees do for lunch, i.e., go out - suggest places, or bring lunch.)
- ☐ Non-work Related SWCD Activities (Include office parties, social funds, informal gatherings, etc.)

WORK ENVIRONMENT

- ☐ Review SWCD Personnel Policy. (Clarify supervisor's responsibilities.)
- ☐ Introduce Workers. (Explanation of their work relationship with new employee, including NRCS staff and explain duties of each.)
- ☐ Work Area Tour. (Tour area noting employee's specific work area and other pertinent areas, normal employee entrance and exit, after hours entrance and exit, provide keys as required.)
- ☐ Emergency exits and equipment. (Show the location of emergency exits, emergency meeting places, fire extinguishers, first aid kits, evacuation procedures, also review reporting accidents and emergencies, etc.)
- ☐ Parking. (Explain parking facilities for personal and government/SWCD vehicles, employee's role in fueling and periodically cleaning vehicles.)
- ☐ Leave. (Explain types of leave, how it is requested, how it is received, i.e., orally, written notice, leave slip; length of leave period; and from whom to request the leave.)

- ☐ Leave Forms. (Explain completion and submission.)
- ☐ SWCD Holidays. (Explain office policy regarding staffing on those days and compensatory leave.)
- ☐ Inclement Weather. (Explain policy.)
- ☐ Paycheck. (Explain when and where the employees will receive their paycheck.)
- ☐ Training Opportunities. (Explain the Joint Employment Development Program, Conservation Planner Certification Program, and Engineering Job Approval Authority including any conference travel opportunities and training programs and continuing education available to the employee.)
- ☐ General Office Procedures. (Staff Meetings, Telephone, FAX Machine, Copy Machine, Supplies, Mail, Email & Internet, etc.)
- ☐ Travel. (Explain availability and proper use of government/SWCD vehicles, field equipment and checkout procedures, and mileage reporting and vehicle safety procedures.)
- ☐ Travel Reimbursement Procedures.

PROVIDE A COPY OF THE FOLLOWING ITEMS:

- | | |
|--|--|
| ☐ I-9 Form | ☐ SWCD Mission and Vision Statement |
| ☐ Forms W-4/VA-4 Tax Withholding Certificates | ☐ SWCD Annual Plan |
| ☐ Health Benefits and Extended Coverage Information | ☐ SWCD Annual Report |
| ☐ Retirement Information | ☐ SWCD Strategic Plan |
| ☐ Life Insurance Information | ☐ VA Soil and Water Conservation Law (VA Code 10.1 Chapter 5) |
| ☐ Personnel Policy | ☐ VA Freedom Of Information Act (FOIA) (VA Code 2.2 Chapter 37) |
| ☐ Holidays and Paydays Schedule | ☐ VA Conflict of Interest Act (COIA) (VA Code 2.2 Chapter 31) |
| ☐ Grievance Procedure Policy | ☐ SWCD Director's Handbook |
| ☐ Internet Use Policy | ☐ VSWCB Policy on SWCD Financial Assistance |
| ☐ Drug and Alcohol Abuse Policy | ☐ SWCD Directory |
| ☐ SWCD Travel Regulations | ☐ DCR Grant Agreements |
| ☐ Sample Leave Form | ☐ DCR/DSWM Personnel Directory |
| ☐ Sample Travel Voucher | ☐ NRCS 1619 Form |
| ☐ Job Description | ☐ NRCS Directory |
| ☐ Draft Performance Expectations | |
| ☐ Individual Development Plans (IDPs) | |

The preceding information has been provided and/or explained.

Employee Signature

Date

Supervisor Signature

Date

FLSA Fair Pay Exemption Questionnaire

Note to Employers: This questionnaire serves as a basic outline for an employer's initial analysis of positions being considered for exemption under the FLSA and is meant to serve as one of several tools in an employer's analysis. Job titles are insufficient to determine exempt status.

Position: _____

Employee: _____

Date: _____

Completed by: _____

Completion of this questionnaire helps determine the exemption status of a position. Check the appropriate exemption (Executive, Administrative, Professional, Computer-Related, Outside Sales and Highly Compensated). Then check all boxes under the selected exemption that are applicable. To qualify for an exemption, all boxes must be checked for that exemption. To access the Department of Labor (DOL) online resources for FairPay (CFR 29, Part 541), here is the website:
<http://www.dol.gov/esa/whd/regs/compliance/fairpay/main.htm>

EXECUTIVE (examples: chief executive officer, controller, vice president, director)

- ☐ Regularly receives a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed.
- ☐ Is paid at least \$23,660 annually (\$455 weekly).
- ☐ Primary duty consists of managing the enterprise or a customarily recognized department or subdivision of the enterprise.
- ☐ Customarily and regularly directs the work of two or more full-time employees or their equivalents (for example, one full-time employee and two half-time employees).
- ☐ Has the authority to hire or fire other employees **OR** makes recommendations that carry particular weight as to the hiring, firing, advancement, promotion or any other change in status of other employees.

ADMINISTRATIVE (examples: manager, supervisor, administrator)

- ☐ Regularly receives a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed.
- ☐ Is paid at least \$23,660 annually (\$455 weekly).
- ☐ Primary duty consists of performing office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers.
- ☐ Work includes the exercise of discretion and independent judgment with respect to matters of significance.

PROFESSIONAL: LEARNED AND CREATIVE (examples: accountant, nurse, engineer, composer, singer, graphic designer)

☐ Regularly receives a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed.

☐ Is paid at least \$23,660 annually (\$455 weekly). Note: For teachers, licensed or certified practitioners of law and medicine, medical interns and residents covered under this exemption, the salary basis and salary requirements do **NOT** apply.

Learned Professional

☐ Primary duty consists of the performance of work that requires advanced knowledge (beyond high school) and that is predominantly intellectual in character and consistently includes the exercise of discretion and independent judgment.

☐ The advanced knowledge is in a field of science or learning.

☐ The advanced knowledge was acquired by a prolonged course of specialized intellectual instruction (position possesses the appropriate academic degree or has substantially the same knowledge level and performs substantially the same work as degreed employees but possesses advanced knowledge only through a combination of work experience and intellectual instruction).

Creative Professional

☐ Primary duty consists of the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work.

COMPUTER-RELATED (examples: network or database analyst, developer, programmer, software engineer)

☐ Is paid at least \$23,660 annually (\$455 weekly) **OR** \$27.63 per hour. That is, this exemption does **NOT** have to meet the salary basis requirement to regularly receive a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed **IF** paid at least \$27.63 on an hourly basis.)

☐ Primary duty consists of:

- The application of system-analyst techniques and procedures, including consulting with users to determine hardware, software or systems functional specifications, OR
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, OR
- The design, documentation, testing, creation or modification of computer programs related to machine-operating systems, OR
- A combination of these duties which requires the same level of skills.

OUTSIDE SALES (examples: salespersons, contract negotiators)

The salary basis and salary requirements do **NOT** apply for this exemption. That is, this exemption does **NOT** have the salary basis requirement to regularly receive a predetermined amount constituting all or part of the employee's salary, which is not subject to reduction because of variations in the quality or quantity of work performed, **AND** this exemption does **NOT** have to be paid \$23,660 annually (\$455 weekly).

☐ Primary duty consists of making sales or obtaining orders for contracts for services or for the use of facilities for which consideration will be paid by the client or customer.

☐ Customarily and regularly is engaged away from the employer's place or places of business.

HIGHLY COMPENSATED EMPLOYEES PERFORMING EXECUTIVE, PROFESSIONAL OR ADMINISTRATIVE DUTIES

☐ Is paid an annual total compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis. The required total annual compensation of \$100,000 or more may consist of commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include credit for board or lodging, payments for medical or life insurance, or contributions to retirement plans or other fringe benefits.

☐ Primary duty consists of performing office, nonmanual work. Note: No matter how highly paid, manual workers or other "blue-collar" workers, including nonmanagement construction workers, who perform work involving repetitive operations with their hands, physical skill and energy are not eligible for this exemption.

☐ Customarily and regularly performs at least one of the exempt duties or responsibilities of the Executive, Professional or Administrative Exemption.



**U.S. Department Of Labor
Wage and Hour Division**



**FACT SHEET: PROPOSED RULEMAKING TO UPDATE
THE REGULATIONS DEFINING AND DELIMITING THE EXEMPTIONS FOR
“WHITE COLLAR” EMPLOYEES**

The Department is proposing to update the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act’s minimum wage and overtime pay protections. The Department last updated these regulations in 2004, and the current salary threshold for exemption is \$455 per week (\$23,660 per year). With this proposed rule, the Department seeks to update the salary level required for exemption to ensure that the FLSA’s intended overtime protections are fully implemented, and to simplify the identification of nonexempt employees, thus making the executive, administrative and professional employee exemption easier for employers and workers to understand and apply.

Key Provisions of the Proposed Rule

The Notice of Proposed Rulemaking (NPRM) focuses primarily on updating the salary and compensation levels needed for white collar workers to be exempt. Specifically, the Department proposes to:

- (1) set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers (\$921 per week, or \$47,892 annually);
- (2) increase the total annual compensation requirement needed to exempt highly compensated employees (HCEs) to the annualized value of the 90th percentile of weekly earnings of full-time salaried workers (\$122,148 annually); and
- (3) establish a mechanism for automatically updating the salary and compensation levels going forward to ensure that they will continue to provide a useful and effective test for exemption.

The Department’s proposal to set the standard salary level at the 40th percentile of weekly earnings for full-time salaried workers represents the most appropriate line of demarcation between exempt and nonexempt employees. This salary level minimizes the risk that employees legally entitled to overtime will be subject to misclassification based solely on the salaries they receive, without excluding from exemption an unacceptably high number of employees who meet the duties test. As proposed, this would raise the salary threshold from \$455 a week (the equivalent of \$23,660 a year) to about \$970 a week (\$50,440 a year) in 2016.¹

¹ The Department of Labor relied upon 2013 data in the development of the NPRM, under which the 40th percentile of weekly earnings for full-time salaried workers was \$921 per week. These figures project what the salary level would likely be in 2016 based on the proposed rule. The

The Department is also proposing to automatically update the standard salary and HCE total annual compensation requirements to ensure that they remain meaningful tests for distinguishing between bona fide executive, administrative, and professional workers who are not entitled to overtime and overtime-protected white collar workers. Experience has shown that the salary level test is an effective measure of exempt status only if it is up to date.

In addition, the Department discusses the current duties test and solicits suggestions for additional occupation examples and requests comments on the current requirements. Similarly, the Department seeks comment on the possibility of including nondiscretionary bonuses to satisfy a portion of the standard salary requirement. The Department is not proposing specific regulatory changes on either of these issues.

Background

Since 1940, the Department's regulations have generally required each of three tests to be met for one of the FLSA's white collar exemptions to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.

Certain highly compensated employees are exempt from the overtime pay requirement if they are paid total annual compensation of at least \$100,000 (which must include at least \$455 per week paid on a salary or fee basis) and if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in the standard tests for exemption.

How to Comment

The Department encourages interested parties to submit comments on the NPRM. The full text of the NPRM, as well as information on the deadline for submitting comments and the procedures for submitting comments, can be found at the Wage and Hour Division's [Proposed Rule website](#).

Department will consider all comments received on this proposal in determining the salary level for the Final Rule.

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to [minimum wage](#) and [overtime](#) premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

Instructions For Completing An Individual Development Plan

Introduction

It is the intent of the primary conservation partner agencies (DCR, NRCS and the VASWCD) to make available to SWCDs and others, a format that captures fundamental, essential information in order to assess an employee's training and development needs—as they relate to the individual's specific job activities. This approach complements (and in no way substitutes) other essential personnel resource documents that include an employee's position description and performance expectations or standards.

1. Job Priority: Work tasks/activities are often prioritized. Completion of this category should be consistent with an employee's performance expectations or standards. Work tasks/activities may be numerically ranked using number one (1) as the highest priority, through the remaining number of identified tasks/activities. Another option may be identification of priorities through appropriate ratings of "high", "medium" or "low".

2. Task/Activity: A brief description of the essence of the work task or activity is needed. The form accommodates subdividing tasks as needed and appropriate, and may necessitate further listings of sub categories.

3. Standard/Measure: To the extent possible, the expected standard for completion of work tasks should be captured. This may relate to:

- An established standard (such as levels of competency or certification),
- A quantity of tasks to be completed
- Designation of deadlines or completion times (for example: "within one week", "by June 30", etc...)
- Incorporation of some or all of the above

4. Current Proficiency: Using the following key, enter one of the following (note: the employee and supervisor must agree on the assessment of current proficiency for the work task/activity):

- | | |
|------------------------------|---|
| (1) Awareness | (4) Apply independently |
| (2) Understanding | (5) Expert, may be capable of training others |
| (3) Perform with supervision | |

5. Needed Proficiency: Using the same key above (item 4), enter the needed degree of proficiency. It is essential that the employer, supervisor and employee seek consensus on the needed proficiency; however, the employer and supervisor may resolve this designation without employee concurrence.

6. Identified Training Need: Use the following key as a guide:

Extensive: A margin of 2 or more levels between an employee's current proficiency and the needed skill level

Intermediate: A margin of approximately 2 skill levels between current and needed proficiency levels.

Minimal: Indicates the employee lacks the needed level of skill by a narrow margin, as reflected by a narrow gap of 1 level between the current and needed proficiency levels.

7. Method of Training: Completion of specific, time bound, measurable actions (e.g. specifying the approach such as a formal classroom course, on-the-job training, informal mentoring ...etc., with inclusion of dates and deadlines to the maximum extent possible) that designate responsibilities of the employee, as well as the supervisor and when appropriate the employer, will lead to the desired outcome—staff that are proficient with completion of work tasks and activities.

Individual Development Plan (IDP)

For the Period: _____ to _____
(Beginning) (Ending)

Agency/Organization:		Employee Signature:			Supervisor Name:			
Office:		Date:		(Date final IDP prepared and approved)		Supervisors Title:		
Employee Name:		Employee Comments:				Supervisor Signature:		
Title:				Date:		(Date final IDP prepared and approved)		
Work Address:				Supervisors Comments:				
Work Phone:								
Fax:								
Email:								
1* Job Priority	2* Task/Activity			3* Standard/Measure	4* Current Proficiency	5* Needed Proficiency	6* Identified Training Need	7* Method of Training
	Task:							
	Sub-task:							
	Task:							
	Sub-task:							
	Task:							
	Sub-task:							

*See separate sheet of instructions for items 1 through 7

(continue on additional pages as needed..)

Individual Development Plan For: _____

 (employee name) _____
 (date)

1* Job Priority	2* Task/Activity	3* Standard/Measure	4* Current Proficiency	5* Needed Proficiency	6* Identified Training Need	7* Method of Training
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					
	Task:					
	Sub-task:					

(continue on additional pages as needed... once the performance period ends, complete the IDP evaluation on the final page)

Individual Development Plan For: _____
(employee name) (date)

IDP Evaluation

To be completed by the employee's supervisor:

Specify identified training activities not fully completed during the IDP performance period (also specify unmet needs and recommended approaches for the upcoming IDP)

Additional comments (including factors beyond the employee's control..., things that went well..., things that did not go well..., other...)

Supervisor Signature: _____ Date: _____

To be completed by the employee:

Employee comments (issues, problems, things that worked well, recommendations for development of the upcoming IDP, other)

Employee Signature: _____ Date: _____

Instructions For Completing An Individual Development Plan

Introduction

It is the intent of the primary conservation partner agencies (DCR, NRCS and the VASWCD) to make available to SWCDs and others, a format that captures fundamental, essential information in order to assess an employee's training and development needs—as they relate to the individual's specific job activities. This approach complements (and in no way substitutes) other essential personnel resource documents that include an employee's position description and performance expectations or standards.

1. Job Priority:

Work tasks/activities are often prioritized. Completion of this category should be consistent with an employee's performance expectations or standards. Work tasks/activities may be numerically ranked using number one (1) as the highest priority, through the remaining number of identified tasks/activities. Another option may be identification of priorities through appropriate ratings of "high", "medium" or "low".

2. Task/Activity:

A brief description of the essence of the work task or activity is needed. The form accommodates subdividing tasks as needed and appropriate, and may necessitate further listings of sub categories.

3. Standard/Measure:

To the extent possible, the expected standard for completion of work tasks should be captured. This may relate to:

- An established standard (such as levels of competency or certification),
- A quantity of tasks to be completed
- Designation of deadlines or completion times (for example: "within one week", "by June 30", etc.)
- Incorporation of some or all of the above

4. Current Proficiency:

Using the following key, enter one of the following (note: the employee and supervisor must agree on the assessment of current proficiency for the work task/activity):

- | | |
|-----------------------------|--|
| -1 Awareness | -4 Apply independently |
| -2 Understanding | -5 Expert, may be capable of training others |
| -3 Perform with supervision | |

5. Needed Proficiency:

Using the same key above (item 4), enter the needed degree of proficiency. It is essential that the employer, supervisor and employee seek consensus on the needed proficiency; however, the employer and supervisor may resolve this designation without employee concurrence.

6. Identified Training Need: Use the following key as a guide:

Extensive: A margin of 2 or more levels between an employee's current proficiency and the needed skill level

Intermediate: A margin of approximately 2 skill levels between current and needed proficiency levels.

Minimal: Indicates the employee lacks the needed level of skill by a narrow margin, as reflected by a narrow gap of 1 level between the current and needed proficiency levels.

7. Method of Training:

Completion of specific, time bound, measurable actions (e.g. specifying the approach such as a formal classroom course, on-the-job training, informal mentoring ...etc., with inclusion of dates and deadlines to the maximum extent possible) that designate responsibilities of the employee, as well as the supervisor and when appropriate the employer, will lead to the desired outcome—staff that are proficient with completion of work tasks and activities.

[Home](#) [About Us](#) [News & Mtgs.](#) [Districts](#) [District Services](#) [K-12 Education](#) [SWCD Resources](#) [Policy](#)

Personnel Management

The Virginia Association of Soil & Water Conservation Districts working with a committed group of SWCD staff and stakeholders has created the [Personnel Management Resource Guide](#) to serve as a resource to local Soil & Water Conservation District.

While this resource guide is by no means intended to serve as legal counsel it does provide critical personnel management materials including recruitment and hiring information, new employee on-boarding, performance management forms, separation/termination details, as well as sample policies shared by soil and water conservation districts across the Commonwealth. This resource can also help ensure that districts have what they need, and that they are effectively matching skills and competencies to specific tasks, requirements, and outcomes.

In addition to the resources available within this guide, the VASWCD website serves as a repository of information on both personnel and human resource topics as well as all items vital for district official training. Visit the [Leadership Course](#) page to review these materials.

As you review the reference materials and recognize a need for further training on a topic don't hesitate to reach out to your Association leadership and staff. Annual trainings sponsored/hosted by the Association are tailored based on district need. Your Association can better serve you through trainings and staff support if made aware of the areas of growth needed at your district level.

We believe this resource is a strong starting point to strong personnel management practices within your local soil and water conservation district.

Recruiting

This portion reinforces the importance of recruiting and provides practical tips to help you organize and begin the recruiting process.

The following are covered in this section:

- Job Posting/ Advertising
- The Fair Labor Standards Act
- Equal Employment Opportunity
- Recruitment
- Tips for writing a job description
- FLSA Checklist: Exempt vs nonexempt status
- Job Description Samples
- Full Hiring Packet/Position Announcement Sample

Hiring

This portion reinforces the importance of interviewing and provides practical tips to help you organize and begin the hiring process.

The following are covered in this section:

- Pre-Interview
- Interview Process
- Application sample
- Conducting an interview
- Protection against discrimination in employment practices
- Interview worksheet samples
- Offer/No Offer letter samples

New Employee



This portion is to explain the hiring process and to provide a proactive approach to hiring new employees so they have as much as possible setup prior to their work assignment.

The following is covered in this section:

- Onboarding
- Assimilation Process
- Successful Employee Orientation, checklists, and forms

Performance Evaluations

With the rise in the number of lawsuits brought on by former employees, evaluations must be handled carefully to ensure that the organization is not opening itself to legal complications.

The following is covered in this section:

- Practical and legal criteria
- Steps in the formal evaluation
- Performance evaluation definitions
- Common rater errors
- Probationary Progress Review
- Performance evaluation samples based on job title
- Notice of improvement needed

Termination/Separation

In order to ensure uniform and consistent procedures for employee termination, it is important to have established rules applicable to each termination.

The following is covered in this section:

- 5 steps to help prevent lawsuits
- Incident & Action Report sample
- Written Notice sample
- Employee Termination Checklist sample

Supporting Documents/Miscellaneous

The following is covered in this section:

- Personnel Policy Review by the VASWCD
- Sample SWCD Personnel Policy
- Grievance Resolution
- Grievance Form
- Drug-Free Workplace
- Biosecurity Policy
- Job Descriptions for Director and Associate Director
- Internships
- Volunteers
- Earth Team
- Potential SWCD Resources for HR

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Chapter 7: Personal Training Materials & Information



Virginia Association of Soil and Water Conservation Districts
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December 2014

Dear SWCD Directors, Associate Directors & Staff:

The Virginia Association of Soil & Water Conservation Districts working with a committed group of SWCD staff and stakeholders has created this Personnel Management Resource Guide to serve as a resource to your local Soil & Water Conservation District.

While this resource guide is by no means intended to serve as legal counsel it does provide critical personnel management materials including recruitment and hiring information, new employee on-boarding, performance management forms, separation/termination details, as well as sample policies shared by soil and water conservation districts across the Commonwealth. This resource can also help ensure that districts have what they need, and that they are effectively matching skills and competencies to specific tasks, requirements, and outcomes.

In addition to the resources available within this guide, your VASWCD website serves as a repository of information on both personnel and human resource topics as well as all items vital for district official training. Visit the Association website at <http://www.vaswcd.org/leadership-course> to review these materials.

Your VASWCD serves you. As you review the enclosed reference materials and recognize a need for further training on a topic don't hesitate to reach out to your Association leadership and staff. Annual trainings sponsored/hosted by the Association are tailored based on district need. Your Association can better serve you through trainings and staff support if made aware of the areas of growth needed at your district level.

We believe the attached resource is a strong starting point to strong personnel management practices within your local soil and water conservation district.

Sincerely,

Lou Ann Wallace
VASWCD President
Director, Clinch Valley SWCD

Thank you to the following SWCD members and supporting members for your time, involvement, and assistance in the creation of the Personnel Management Resource Guide to benefit our 47 soil and water conservation districts across the commonwealth.

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SECTION V

SWCD LAW & HISTORY

History of Soil and Water Conservation Districts

JANUARY 2016

The roots of Conservation Districts in the U.S.

The economy and natural resources collide.

A national crisis begins...

1929 October 24, 1929 “Black Thursday”, the stock market crashes, sending the country into an economic depression lasting over a decade.

1931 Severe drought hits the Midwestern and southern plains. Crops die, the 'black blizzards' begin. Dust from over-plowed and over-grazed land begins to blow.



The Dust Bowl

May, 1934

Great dust storms spread from the Dust Bowl area. The drought is the worst ever in U.S. history, covering more than 75 percent of the country and affecting 27 states severely.



The Dust Bowl



The Dust Bowl (continued...)

1934

The "Yearbook of Agriculture" for 1934 announces, "Approximately 35 million acres of formerly cultivated land have essentially been destroyed for crop production. . . . 100 million acres now in crops have lost all or most of the topsoil; 125 million acres of land now in crops are rapidly losing topsoil... "



From the Dust Bowl...

Hugh Hammond Bennett

A member of Roosevelt's administration realizes the average American's fate is closely tied to Dust Bowl farmers. Hugh Hammond Bennett comes to be known as "the father of soil conservation".

Bennett gained the support of Congress with the help of a providentially timed storm from the plains that hit Washington, D.C. in May 1934, while he was testifying before a congressional committee. Experiencing a debilitating dust storm for the first time in the Capital, Congress was moved to begin action on legislation to address national erosion problems through a focus on improving farming techniques.

Soil Erosion Service Established

April 14, 1935

Black Sunday. The worst "black blizzard" of the Dust Bowl occurs.

April 27, 1935

**Congress declares soil erosion "a national menace" in an act establishing the Soil Erosion Service in the U.S.
Department of Interior.**



Creation of SWCDs begins

1935

Under the direction of Hugh H. Bennett, the SES develops extensive conservation programs that retain topsoil and prevent irreparable damage to the land. Farming techniques such as strip cropping, terracing, crop rotation, contour plowing, and cover crops are advocated.



Standard State Soil Conservation Districts Law

A standard “district” law is developed in 1936 for adoption by individual states.

President Roosevelt urged states to create conservation districts.

By 1947 Conservation Districts covered 1 billion acres.

One of the few grassroots organizations set up by the New Deal that is still in operation, the soil conservation district program recognizes that new farming methods must be accepted and enforced by the farmers on the land.

Conservation in Virginia

November 3, 1938, on a post card ballot the purpose of Virginia's first district (Tidewater SWCD) is stated:

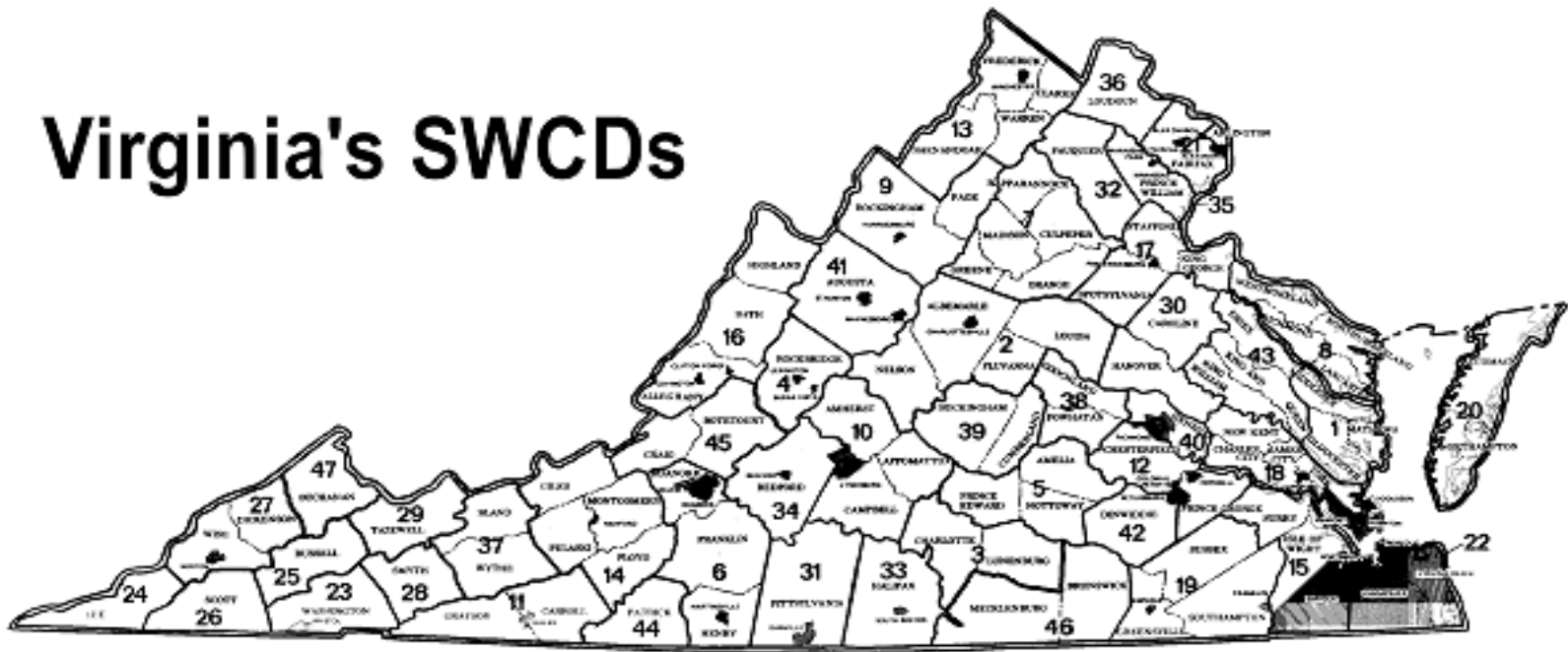
“The purpose of a Soil Conservation District is for organization under local management to build and maintain the fertility of the soil and prevent the serious losses of farm land by erosion. The district is managed by the people through a locally elected board of supervisors. Cooperation in the District program is voluntary, there is no cost to the farmer in the District other than changes in farming practice he may desire to make.”



Virginia Soil Conservation Districts Law

Virginia enacts the Soil Conservation District Law in 1938 (Title 10.1 Conservation, Chapter 5 Soil & Water Conservation, Code of Virginia)

Virginia's SWCDs



What does history teach us?

Assignment:

As we look from our creation to the present... what has changed? Are we facing the same issues? How has our mission changed? What is our future? Which challenges should we address?



Code of Virginia

Title 10.1. CONSERVATION.

Subtitle I. Activities Administered By the Department of Conservation and Recreation

Chapter 1. General Provisions

Article 1. Department of Conservation and Recreation

10.1-104.1 Department to assist in the nonpoint source pollution management program

10.1-104.3 Clean Water Farm Award Program

§ 10.1-104.1. Department to assist in the nonpoint source pollution management program.

A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public as appropriate, shall assist in the Commonwealth's nonpoint source pollution management program.

B. The Department shall be assisted in performing its nonpoint source pollution management responsibilities by Virginia's soil and water conservation districts. Assistance by the soil and water conservation districts in the delivery of local programs and services may include (i) the provision of technical assistance to advance adoption of conservation management services, (ii) delivery of educational initiatives targeted at youth and adult groups to further awareness and understanding of water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by landowners and land managers in order to minimize nonpoint source pollution contributions to state waters.

The provisions of this section shall not limit the powers and duties of other state agencies.

1993, cc. 19, 830; 2004, c. 474; 2013, cc. 756, 793.

§ 10.1-104.3. Clean Water Farm Award Program.

The Director shall establish the Clean Water Farm Award Program to recognize farms in the Commonwealth which utilize practices designed to protect water quality and soil resources. A farm shall be eligible for recognition upon application from the farmer or the local soil and water

conservation district, if the district concurs that the farmer is implementing conservation practices that effectively address agricultural nonpoint source pollutants. Such practices may include vegetative riparian buffers, cover crops, conservation tillage, livestock exclusion from waterways, and nutrient management plans. The Director may establish guidelines for limiting the quantity of annual recipients, receiving and ranking applications, ensuring geographical representation of awards from the major watersheds of the Commonwealth including the Chesapeake Bay watershed, providing local farm recognition through the local soil and water conservation districts, and providing special statewide recognition to select farms. Recognition under this program shall not be a requirement under any other state program.

1998, c. [93](#); 2009, c. [349](#).

Code of Virginia

Title 10.1. CONSERVATION.

Subtitle I. Activities Administered By the Department of Conservation and Recreation

Chapter 1. General Provisions

Article 1.1. Resource Management Plans

§ 10.1-104.7 Resource management plans; effect of implementation; exclusions

§ 10.1-104.8 Resource management plans; criteria

§ 10.1-104.9 Regulations under this article

10.1-104.7 Resource Management Plans; Effect Of Implementation; Exclusions

A. Notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

B. The presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

C. Landowners or operators who implement and maintain a resource management plan in accordance with this article shall be eligible for matching grants for agricultural best management practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department in accordance with program eligibility rules and requirements. Such landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2.

E. Any personal or proprietary information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions. Pursuant to subdivision A 46 of § 2.2-3711, public bodies may hold closed meetings for discussion or consideration of certain records excluded from the provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2011, c. 781; 2015, cc. 27, 169.

10.1-104.8 Resource Management Plans; Criteria

A. The Soil and Water Conservation Board shall by regulation, and in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality, specify the criteria to be included in a resource management plan.

B. The regulations shall:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;

2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified total maximum daily load (TMDL) implementation plan for the Chesapeake Bay or other local total maximum daily load water quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting and verification;

3. Provide for a process by which an on-farm assessment of all reportable best management practices currently in place, whether as part of a cost-share program or through voluntary implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient, sediment, and bacteria reductions;

4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth; and

5. Specify that the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

a. For all cropland or specialty crops such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications;

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service; and

(4) Cover crops meeting best management practice specifications as determined by the Natural Resources Conservation Service or the Virginia Agricultural Best Management Practices Cost-Share Program.

b. For all hayland, such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications; and

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

c. For all pasture, such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A system that limits or prevents livestock access to perennial streams; and

(3) A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

2011, c. 781.

10.1-104.9 Regulations Under This Article

Regulations adopted by the Board for the enforcement of this article shall be subject to the requirements set out in §§ [2.2-4007.03](#), [2.2-4007.04](#), [2.2-4007.05](#), and [2.2-4026](#) through [2.2-4030](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.), and shall be published in the Virginia Register of Regulations. The Board shall convene a stakeholder group to assist in development of these regulations, with representation from agricultural and environmental interests as well as Soil and Water Conservation Districts. All other provisions of the Administrative Process Act shall not apply to the adoption of any regulation pursuant to this article. After the close of the 60-day comment period, the Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15 days after publication in the Virginia Register of Regulations, unless the Board has withdrawn or suspended the regulation or a later date has been set by the Board. The Board shall also hold at least one public hearing on the proposed regulation during the 60-day comment period. The notice for such public hearing shall include the date, time, and place of the hearing.

2011, c. 781.

Virginia Administrative Code (Regulations)

Title 4. Conservation and Natural Resources

Agency 50. Virginia Soil and Water Conservation Board

Chapter 70. Resource Management Plans

Section 10 Definitions

Section 20 Purpose and Authority

Section 30 Applicability of other laws and regulations

Section 40 Minimum standards of a resource management plan

Section 50 Components of a resource management plan

Section 60 Revisions to a resource management plan

Section 70 Review of a resource management plan

Section 80 Issuance of a Certificate of Resource Management Plan Implementation

Section 90 Inspections

Section 100 Compliance

Section 110 Appeals

Section 120 Reporting

Section 130 Review of duties performed by soil and water conservation districts

Section 140 RMP developer qualifications and certification

Section 150 Advancing the adoption of RMPs

4VAC50-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Assessment" means an onsite review of a management unit.

"Best management practice" or "BMP" means structural and nonstructural practices that manage soil loss, nutrient losses, or other pollutant sources to minimize pollution of water resources and improve water quality.

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

"Corrective action agreement" means a written agreement that guides the owner or operator in the steps needed and the specific remedies required to return to compliance with the minimum standards of a resource management plan.

"Department" means the Department of Conservation and Recreation.

"Management unit" means one or more agricultural fields or United States Department of Agriculture Farm Service Agency tracts under the control of the owner or operator and identified as the appropriate unit for RMP implementation. The management unit may consist of multiple fields and tracts or an entire agricultural operation.

"NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"Operator" means a person who exercises managerial control over the management unit.

"Owner" means a person who owns land included in a management unit.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

"Perennial stream" means water bodies depicted as solid blue lines on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle map (scale 1:24,000); or a body of water that flows in a natural or man-made channel year-round during a year of normal precipitation as a result of groundwater discharge or surface runoff. Such stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water. However, determinations based on site-specific characteristics shall be made or confirmed by the RMP developer.

"Resource management plan" or "RMP" means a plan developed and implemented pursuant to the standards established by this chapter.

"Review authority" means a soil and water conservation district or the department where applicable that is authorized under this chapter to determine the adequacy of a resource management plan and perform other duties specified by this chapter.

"RMP developer" means an individual who meets the qualifications established by this chapter to prepare or revise a resource management plan.

"Soil and water conservation district" or "district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia.

"Technical Review Committee" or "TRC" means a committee established by a soil and water conservation district board to review RMPs and provide recommendations to the soil and water conservation district board regarding RMPs. A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel;

Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations for point source discharges and load allocations for nonpoint sources or natural background, or both, and must include a margin of safety and account for seasonal variations.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-20. Purpose and authority.

Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, this chapter is adopted to clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained. Except as provided for in 4VAC50-70-30, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plans, in accordance with the criteria for such plans set out in § 10.1-104.8 of the Code of Virginia and any requirements of this chapter, shall be deemed to be in full compliance with any load allocation contained in a TMDL established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-30. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability or preventing or precluding the enforcement of other laws, regulations, or permits.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-40. Minimum standards of a resource management plan.

A. Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, a resource management plan requires the implementation of BMPs sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth. Pursuant to subdivision B 5 of § 10.1-104.8 of the Code of Virginia, an RMP shall address all of the following BMP requirements when applicable to the management unit and needed based upon an on-farm assessment of the following land uses:

1. For all cropland or specialty crops:

- a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);
- b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives;
- c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and
- d. Cover crops, when needed to address nutrient management or soil loss requirements, or both, that provide for reportable practices which meet best management practice specifications as determined by NRCS or the Virginia Agricultural Best Management Practices Cost-Share Program.

2. For all hayland:

- a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);
- b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives; and

- c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions.

3. For all pasture:

- a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);
- b. A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and
- c. A system that limits or prevents livestock access to perennial streams requires that:
 - (1) Any fencing or exclusion system provides year-round livestock restriction to perennial streams; and
 - (2) Provisions that are made for limited access through stream crossings and livestock watering systems are designed to NRCS standards and specifications and such limited access is determined to be necessary by the RMP developer.

B. Other BMPs approved by the board may be applied to achieve the minimum standards of this section once they have been identified by NRCS or included within the Virginia Agricultural Best Management Practices Cost-Share Program. Additionally, BMPs identified in the Chesapeake Bay Watershed Model or the Chesapeake Bay TMDL Watershed Implementation Plan may be utilized where found to achieve the minimum standards of this section. The department shall annually evaluate such BMPs through decision support tools to determine whether they achieve the minimum standards and are authorized for use in the RMP program as a component of an RMP.

C. The department shall evaluate the minimum standards of this section no later than the end of 2017 as part of the Chesapeake Bay mid-point assessment to determine their adequacy in meeting load allocations contained in revisions to existing TMDL(s) or established in new TMDL(s) developed under § 303(d) of the federal Clean Water Act to address benthic, bacteria, nutrient, or sediment impairments; requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment. Changes to the minimum standards by the board may result in the use of BMPs identified in the Chesapeake Bay Watershed Model, identified in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, or approved by the board.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-50. Components of a resource management plan.

A. Pursuant to subdivision B 3 of § 10.1-104.8 of the Code of Virginia, an assessment shall be performed by the RMP developer or by an individual authorized by the RMP developer to perform work on his behalf and shall gather and evaluate the following information:

1. Information on the location of the management unit, including geographic coordinates, United States Department of Agriculture Farm Service Agency tract number or numbers, if applicable, or the locality tax parcel identification number or numbers;
2. Description of the management unit, including acreage, water features, environmentally sensitive features, erosion issues, and agricultural activity;
3. Contact information for the owner or operator who has requested the RMP, including name, address, and telephone number;
4. Authorization from the owner or operator for the RMP developer, or his designee, for right of entry and access to property specified within the management unit and authorization to obtain copies of any conservation or water quality plans necessary for the assessment;
5. Copies of nutrient management plans, soil conservation plans from NRCS, RMPs, and any other conservation or water quality plan that includes the implementation of BMPs; and
6. Information on the location and status of all BMPs and other alternative measures applicable to the management unit that are currently implemented.

B. Following the assessment provided in subsection A of this section, the RMP developer shall prepare the RMP in a format established by the department or in a format approved by the board as equivalent that contains the following components:

1. A determination of the adequacy of existing BMPs, conservation plans, and water quality plans in meeting the minimum standards set out in 4VAC50-70-40;
2. A complete list of BMPs, developed as a result of the assessment required in subsection A of this section, that may be utilized to meet the minimum standards set out in 4VAC50-70-40;

3. A complete list of the BMPs that the owner or operator agrees to implement or maintain to meet the minimum standards set out in 4VAC50-70-40;
4. A confirmation of BMPs that achieve the minimum standards set out in 4VAC50-70-40;
5. A schedule for the implementation of the BMPs;
6. An inclusion of any current nutrient management plans, soil conservation plans, and any other conservation or water quality plans that include the implementation of BMPs; and
7. Other information collected pursuant to subsection A of this section.

C. Certification.

1. The RMP developer must certify that the RMP is true and correct in his professional judgment.
2. The RMP must be signed by the owner or operator affirming that he:
 - a. Is the responsible individual to be implementing the RMP;
 - b. Shall adhere to the RMP components necessary to meet the minimum standards set out in 4VAC50-70-40;
 - c. Shall allow the review authority to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70;
 - d. Shall notify the RMP developer within 60 days of potential material changes to the management unit that may require revision of the plan pursuant to 4VAC50-70-60; and
 - e. Shall notify the review authority of a complete change in owner or operator of the management unit or units under the RMP. If a management unit falls within one or more soil and water conservation districts, the owner or operator shall contact the district containing the greatest land area of the management unit.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-60. Revisions to a resource management plan.

A. Upon notification of the review authority by an owner or operator of a change in owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C 2 e, where it involves the complete transfer of one or more RMPs and any Certificate or Certificates of RMP Implementation previously issued by the department for such RMPs:

1. The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.
2. Following consultation with the review authority, the new owner or operator may elect to:
 - a. Implement and maintain the provisions of the existing RMP. The new owner or operator must sign the RMP in accordance with 4VAC50-70-50 C. If a Certificate of RMP Implementation has been issued to the prior owner or operator, the certificate shall be transferred by the department to the new owner or operator upon notification by the review authority. The transferred certificate shall be valid for the balance of time remaining since it was originally issued by the department;
 - b. Contact the RMP developer when changes in the operation are planned by the new owner or operator or are otherwise required by this chapter. The new owner or operator may request the RMP developer to revise the RMP as necessary to fulfill BMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection F of this section; or
 - c. Choose not to continue implementing the RMP. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

B. Upon notification of the RMP developer by the owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C, that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP within 30 days to determine if material changes to the management unit require a revision of the RMP in accordance with the following:

1. Material changes to the management unit that may require a revision of the RMP include:
 - a. A conversion from one type of agricultural operation to another;

- b. A change in the schedule and type of BMPs implemented pursuant to 4VAC50-70-50;
 - c. An increase or decrease in production acreage that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40;
 - d. An increase or decrease in livestock population that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40; or
 - e. Any other change the RMP developer identifies that would materially impact the management unit's ability to meet the minimum standards set out in 4VAC50-70-40.
- 2. The RMP developer will determine if revision of the RMP is required. When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing. Such documentation shall be available upon inspection by the review authority. When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:
 - a. Request the RMP developer to revise the RMP as necessary to fulfill RMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection F of this section; or
 - b. Choose not to continue implementing an RMP whereupon the RMP for the management unit shall no longer be valid. The RMP developer shall notify the review authority and the department in writing of this decision by the owner or operator. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.
- C. When an owner or operator does not hold a Certificate of RMP Implementation for an RMP that has been approved by the review authority, revision of the RMP is required when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued that assigns a load to agricultural uses. An RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or operator agrees to implement the revised RMP, except as provided in subsection D of this section.
- D. When an owner or operator holds a Certificate of RMP Implementation that has not expired, revision of the RMP specified in subsection C of this section is not required. In this case the owner or operator may continue operation of the RMP without revision due to a new or modified

watershed implementation plan for the Chesapeake Bay or a new or modified local approved TMDL for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

E. When an owner or operator with a revised RMP fulfills all requirements pursuant to this section and 4VAC50-70-70, and the owner or operator holds a Certificate of RMP Implementation that has not expired for the management unit addressed by the revised RMP, the owner or operator may request that the department revoke the existing Certificate of RMP Implementation and issue a new Certificate of RMP Implementation. The department shall evaluate and respond to all requests. Upon verification that all requirements have been satisfied, the department shall issue a new Certificate of RMP Implementation in a timely manner and ensure that no owner or operator is found out of compliance with any requirements of this chapter due to any delays in the department's issuance of a new Certificate of RMP Implementation pursuant to this subsection even if the original certificate expires during this issuance time period.

F. Revision of an RMP by an RMP developer requires:

1. If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all review requirements set out in 4VAC50-70-70 and shall be subject to the requirements for issuance of a Certificate of RMP Implementation pursuant to 4VAC50-70-80.
2. If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate in accordance with subsection E of this section.
3. An existing or new owner or operator shall sign a revised RMP pursuant to 4VAC50-70-50 C.
4. When a valid Certificate of RMP Implementation has been issued by the department for the management unit, the RMP developer shall provide the review authority and the department with a copy of a revised RMP within 30 days of completion of the revised plan.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-70. Review of a resource management plan.

A. Upon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority. If the RMP developer is a district employee or district board member of the district that is the designated review authority, the department shall serve as the review authority for that RMP.

B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. Within 90 days of receipt of the RMP, the soil and water conservation district shall notify the owner or operator and the RMP developer in writing if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

C. If an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other. The soil and water conservation district with the largest amount of acreage under the RMP has lead responsibility for (i) coordinating the review among multiple districts; (ii) resolving disputes; (iii) corresponding with the owner or operator and RMP developer regarding the RMP review; and (iv) when appropriate, submitting required documentation to the department to support issuance of a Certificate of RMP Implementation.

D. RMPs received by the department where no local soil and water conservation district exists, or where the RMP developer is a district employee or district board member of the district that would have been the designated review authority, must fully meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50 and shall be reviewed by the department. Within 90 days of receipt of the RMP, the department shall notify the owner or operator and the RMP developer if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

E. When an RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50, such review authority shall work with the owner or operator and the RMP developer to revise the RMP.

F. Where an RMP is deemed sufficient, the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation in accordance with subsection B or D of this section, whichever is applicable.

G. When an owner or operator is aggrieved by an action of the review authority pursuant to this section, the owner or operator shall have a right to appeal in accordance with 4VAC50-70-110.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

A. Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that the plan meets the requirements of subsections B and C of 4VAC50-70-50 and that no revision of the RMP is required in accordance with 4VAC50-70-60 and as such is adequate, and verification of the full implementation of the RMP shall be completed. The owner or operator shall request the verification of RMP implementation by the review authority.

B. The request to the review authority for verification in a format provided by the department shall include the following:

1. A complete copy of the RMP including any referenced plans;
2. Authorization for review authority employees to conduct an onsite inspection of the management unit to ensure the RMP is fully implemented; and
3. Authorization upon the issuance of a Certificate of RMP Implementation for review authority employees and the department to conduct onsite inspections of the management unit to ensure the continued implementation of, maintenance of, and compliance with the current RMP in accordance with 4VAC50-70-90.

C. If based on onsite verification and a review of referenced plans by the local soil and water conservation district where the district is the review authority the RMP is determined to be adequate and fully implemented in accordance with subsection A of this section, the soil and water conservation district board shall affirm such adequacy and implementation and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

D. Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP in accordance with subsection A of this section through onsite verification and a review of referenced plans. If based on the onsite verification and a review of referenced plans, the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.

E. If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP within 30 days following the field review of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.

F. A Certificate of RMP Implementation shall be valid for a period of nine years.

G. An owner or operator who holds a Certificate of RMP Implementation that has not expired shall not be required to revise the RMP when the issuance of a new or modified watershed implementation plan for the Chesapeake Bay TMDL or a new or modified local approved TMDL impacts any portion of the management unit during the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

H. Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP complies with requirements set forth in 4VAC50-70-40.

I. The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with the provisions of subsection E of § 10.1-104.7 of the Code of Virginia.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-90. Inspections.

A. Each management unit that has been issued a Certificate of RMP Implementation shall be subject to periodic onsite inspections to be performed by the review authority. In addition the department, when it is not the review authority but deems it appropriate, can conduct inspections

to ensure the continued implementation of, maintenance of, and compliance with the RMP components necessary to meet the minimum standards set out in 4VAC50-70-40.

B. Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted pursuant to this section that may require more frequent inspections or re-inspections.

C. As part of an inspection, an owner or operator shall provide any documents needed to verify the implementation of the RMP components necessary to meet the minimum standards set out in 4VAC50-70-40, any documents pertaining to revision of the RMP when applicable, and any other referenced plans as applicable.

D. Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department to document the implementation of the current RMP on the management unit. A copy of the inspection report shall be provided to the department within 10 business days following the date of inspection with a copy to the owner or operator when inspections are performed by a soil and water conservation district. The inspection report shall include:

1. Confirmation of all BMPs implemented, operated, and maintained with a notation of changes in the operation of any BMPs included in the RMP; and
2. Any identified deficiencies that may include any components of the RMP necessary to meet the minimum standards set out in 4VAC50-70-40 that have not been satisfactorily implemented, components that need to be renewed, and any changes to the management unit that may need to be addressed through revision of the RMP.

E. If deficiencies are noted based upon the inspection, the department shall proceed pursuant to 4VAC50-70-100.

F. All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-100. Compliance.

A. If deficiencies are identified during an inspection conducted in accordance with 4VAC50-70-90, following review of such deficiencies the department shall provide a written notice to the owner or operator within 30 days of receipt of the inspection report. The written notice shall include a list of the noted deficiencies that need to be addressed to meet full implementation of the RMP.

B. Within 90 days of the written notice being issued to the owner or operator, a corrective action agreement in a format provided by the department, that may include revisions to the RMP, shall be developed by the RMP developer in consultation with the owner or operator, signed by the owner or operator, and submitted to the department for consideration. The corrective action agreement shall include an implementation schedule to correct the deficiencies found during the inspection. The department shall review the corrective action agreement including any revisions to the RMP within 30 days following receipt. The department shall consult with the review authority. If the corrective action agreement, including any revisions to the RMP, is determined by the department to be reasonable and satisfactory, the department shall convey such determination to the owner or operator in writing within 30 days following receipt.

C. If the department determines that the corrective action agreement, including any revisions to the RMP, does not satisfactorily address deficiencies documented from an inspection conducted pursuant to 4VAC50-70-90, the department shall document such deficiencies in writing to the owner or operator within 30 days following receipt of the corrective action agreement. A revised corrective action agreement may be submitted once the noted deficiencies have been satisfactorily addressed.

D. If the department and the owner or operator are unable to concur on a final corrective action agreement within 90 days of the submission of the initial corrective action agreement to the department or such additional time that is acceptable to the department, the department shall revoke the owner's or operator's Certificate of RMP Implementation after an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia.

E. If it is determined by the department through a re-inspection that an owner or operator has failed to fully implement the agreed upon corrective action agreement, the department shall revoke the owner's or operator's Certificate of RMP Implementation for the corrective action agreement. Such re-inspection shall be performed by the department or by the review authority when directed by the department.

F. At any time, the owner or operator may provide written notice to the department requesting that the Certificate of RMP Implementation be revoked.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-110. Appeals.

A. An owner or operator that has been aggrieved by any action of a soil and water conservation district shall have a right to appeal to the department within 30 days of issuance of the district's decision. The department shall make its decision on an appeal in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the department will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

B. Any party, including but not limited to a district, an owner or operator, or an RMP developer aggrieved by and claiming the unlawfulness of a case decision of the department shall have a right to appeal to the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the board will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

C. Any party, including but not limited to a district, an owner or operator, or an RMP developer, aggrieved by and claiming the unlawfulness of a case decision of the board shall have a right to appeal to a court of competent jurisdiction in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Revocation of a Certificate of RMP Implementation issued pursuant to 4VAC50-70-80 shall be suspended pending any appeals.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-120. Reporting.

A. BMP data collection and reporting shall occur:

1. When data is made available to the review authority by an owner or operator following an assessment performed by an RMP developer or individual authorized by them to perform an assessment pursuant to 4VAC50-70-50;
2. Upon changes or revisions to an RMP pursuant to 4VAC50-70-60;

3. Upon verification of the full implementation of the RMP as required by 4VAC50-70-80;
4. When inspections are conducted pursuant to 4VAC50-70-90; and
5. Upon any other opportunities when verification of BMP implementation becomes available.

B. BMP data collected in accordance with subsection A of this section shall be entered in the Virginia Agricultural BMP Tracking Program or any subsequent automated tracking systems made available to soil and water conservation districts by the department.

C. BMP data entry by soil and water conservation districts shall occur throughout the year; however, the annual reporting period shall begin July 1 of one year and end June 30 of the following year. Districts shall ensure all collected data is fully entered in the data collection system by July 31 following the close of the annual reporting period.

D. Any personal or proprietary information collected pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and fully comply with all provisions of § 10.1-104.7 of the Code of Virginia.

E. The department, in accordance with subsection D of this section, shall make use of RMP BMP data for purposes that include progress reporting for the Chesapeake Bay TMDL Watershed Implementation Plan; other local approved TMDLs; inclusion in the report required by § 2.2-220 of the Code of Virginia; and other reports required of the department or generated by the agency.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-130. Review of duties performed by soil and water conservation districts.

A. The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled. The department shall develop a schedule for conducting periodic reviews and evaluations. Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause. Such reviews where applicable shall be coordinated with those being implemented by agency staff for other purposes that may include annual spot checks of BMPs implemented by districts through the Virginia Agricultural BMP Cost Share Program.

B. If a review conducted by the department indicates that the soil and water conservation district has not administered, enforced where authorized to do so, or conducted its duties in a manner that satisfies the requirements set forth within this chapter, the department shall document such deficiencies and convey the needed corrective actions in writing to the soil and water conservation district's board of directors within 30 days following the review.

C. When the department determines:

1. The deficiencies are due to the district's failure to satisfactorily perform the required duties with the resources at its disposal, the department shall provide close oversight, guidance, and training as appropriate to enable the district to fully perform the duties required by this chapter. If after such actions there remains one or more deficiencies that cannot be resolved to the satisfaction of the department, the department may delay or withhold RMP allocated funding under its authority and control from the district that is not satisfactorily performing its RMP duties. Such duties may be assigned to another soil and water conservation district. Funds withheld from the district with deficiencies may be directed to the district that is performing the additional RMP duties.
2. The deficiencies are due to a work demand generated by the duties required by this chapter that exceed the district's existing resources, the department shall endeavor to assist the district in the performance of its duties and in finding a solution to the shortage of resources.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-140. RMP developer qualifications and certification.

A. An individual shall be qualified to serve as an RMP developer if the individual:

1. Is certified as a conservation planner by the NRCS and is certified as a nutrient management planner by the department; or
2. Is certified as a nutrient management planner by the department and demonstrates academic and applied proficiencies with and an understanding of all of the following:
 - a. Agricultural conservation planning;
 - b. State and federal environmental laws and regulations and local ordinances;

- c. State and federal laws and regulations that address the identification and preservation of historic resources;
- d. Standards and specifications for agricultural conservation practices utilized in Virginia and the ability to plan and implement such practices;
- e. Soil erosion processes and skill in applying approved erosion prediction technologies including the applicable current United States Department of Agriculture Revised Universal Soil Loss Equation and the Wind Erosion Equation;
- f. The fundamentals of water quality and nonpoint source pollution, pest management, and fire management;
- g. Site vulnerability assessment tools; and
- h. Other proficiencies and understandings identified by the department in consultation with the board.

B. In a format established by the department, such individual shall submit documentation to the department for verification that the requirements of subsection A of this section have been met.

1. Upon receipt, the department shall review the documentation and issue its notification within 60 days. During its review the department shall determine:
 - a. If all required documentation is complete. If incomplete the applicant shall be notified.
 - b. If all requirements have been satisfied. If deficiencies exist the applicant shall be notified.
2. Applicants with deficiencies may submit additional documentation in support of their request to be certified. The department shall review the documentation provided within 30 days to determine its sufficiency.
3. When all requirements of this subsection have been met, the department shall issue to the applicant a Resource Management Plan Developer Certificate.

C. In the event that an individual's proficiency skills or the quality of technical work no longer meet the criteria for RMP developer certification, the individual's certification may be revoked by the department following a seven-day advance notification of the pending action and the holding of an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia. The department shall consider any action by NRCS to decertify a certified conservation planner. An RMP developer may appeal a decision of the department to the board in accordance with 4VAC50-70-110.

D. When an individual's RMP developer certificate has been revoked by the department, the basis for the revocation will be provided to the individual by the department. The individual will be informed of the steps necessary to address the deficiencies that led to the revocation and to re-establish certification.

E. Revocation of an individual's RMP developer certificate shall not result in revocation of a Certificate of RMP Implementation of which the RMP developer was party to.

F. The department shall maintain a public registry on the agency's website of all individuals issued an RMP developer certificate and shall note any subsequent revocations or other changes to the status of RMP developers.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

4VAC50-70-150. Advancing the adoption of RMPs.

The department and districts shall encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth.

Statutory Authority

§ 10.1-104.8 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 18, eff. July 1, 2014.

Code of Virginia

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Article 3.1 Agricultural Stewardship Act

10.1-559.1 through 10.1-559.11 (Repealed)

Article 4. Erosion and Sediment Control Law

10.1-560 through 10.1-571 (Repealed)

Article 5. Soil Survey

10.1-572 through 10.1-573 (Repealed)

§ 10.1-500. Definitions.

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

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

"County" includes towns.

"City" includes all cities chartered under the Commonwealth.

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

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

"Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation is available, by posting at a reasonable number of conspicuous places within the appropriate area. Such posting shall include, where possible, posting at public places where it is customary to post notices concerning county or municipal affairs. Hearings held pursuant to such notice, at the time and

place designated in the notice, may be adjourned from time to time without renewing the notice for the adjourned dates.

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

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

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

"Locality" means a county, city or town.

Code 1950, § 21-3; 1950, p. 76; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1985, c. 448; 1988, c. 891.

§ 10.1-500.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board or the Director is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board or the Director may be sent by regular mail.

2011, c. [566](#).

§ 10.1-501. Duty of the Attorney General.

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts.

Code 1950, § 21-89; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2005, c. [236](#); 2008, c. [577](#).

§ 10.1-501.1. Defense of claims.

The Attorney General shall provide the legal defense against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature

while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

1988, cc. 763, 780, 891.

§ 10.1-502. Soil and Water Conservation Board; composition.

The Virginia Soil and Water Conservation Board is continued and shall perform the functions conferred upon it in this chapter. The Board shall consist of nine voting members. The Director of the Department of Conservation and Recreation, or his designee, shall be a nonvoting ex officio member of the Board. Three at-large members of the Board shall be appointed by the Governor. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. At least two members shall be appointed by the Governor as at-large members and shall have a demonstrated interest in natural resource conservation with a background or knowledge in dam safety, soil conservation, or water quality protection. Additionally, four members shall be farmers at the time of their appointment and two members shall be farmers or district directors, appointed by the Governor from a list of two qualified nominees for each vacancy jointly submitted by the Board of Directors of the Virginia Association of Soil and Water Conservation Districts, in consultation with the Virginia Farm Bureau Federation and the Virginia Agribusiness Council, and the Virginia Soil and Water Conservation Board, each for a term of four years. All appointed members shall not serve more than two consecutive full terms. Appointments to fill vacancies shall be made in the same manner as the original appointments, except that such appointments shall be for the unexpired terms only. The Board may invite the Virginia State Conservationist, Natural Resources Conservation Service, to serve as an advisory nonvoting member. The Board shall keep a record of its official actions, shall adopt a seal and may perform acts, hold public hearings, and promulgate regulations necessary for the execution of its functions under this chapter.

Code 1950, § 21-6; 1950, p. 77; 1954, c. 670; 1956, c. 654; 1960, c. 208; 1964, c. 512; 1968, c. 149; 1970, c. 480; 1984, c. 750; 1985, c. 448; 1988, c. 891; 1989, c. 656; 1991, c. 188; 1992, c. 121; 2003, c. [128](#); 2005, c. [102](#); 2011, cc. [213](#), [228](#); 2013, cc. [756](#), [793](#).

§ 10.1-503. Administrative officer and other employees; executive committee.

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

Code 1950, § 21-7; 1964, c. 512; 1984, cc. 444, 750; 1988, c. 891; 2003, c. [128](#).

§ 10.1-504. Chairman; quorum.

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

Code 1950, § 21-8; 1964, c. 512; 1988, c. 891; 2013, cc. [756](#), [793](#).

§ 10.1-505. Duties of Board.

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

1. To give or loan appropriate financial and other assistance to district directors in carrying out any of their powers and programs.
2. To keep district directors informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between the districts.
3. To oversee the programs of the districts.
4. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of the Commonwealth, in the work of the districts.
5. To disseminate information throughout the Commonwealth concerning the activities and programs of the districts, and to encourage the formation of such districts in areas where their organization is desirable.
6. To assist persons, associations, and corporations engaged in furthering the programs of the districts; to encourage and assist in the establishment and operation of such associations and corporations, and to authorize financial assistance to the officers and members of such associations and corporations in the discharge of their duties.
7. To receive, review, approve or disapprove applications for assistance in planning and carrying out works of improvement under the Watershed Protection and Flood Prevention Act (Public Law 566 -- 83rd Congress, as amended), and to receive, review and approve or disapprove applications for any other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require such action by a state agency.
8. To advise and recommend to the Governor approval or disapproval of all work plans developed under Public Law 83-566 and Public Law 78-535 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs

provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.

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

10. To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § 10.1-104.1 and (ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § 10.1-104.2:1.

11. To provide, from such funds appropriated for districts, financial assistance for the administrative, operational and technical support of districts.

Code 1950, § 21-10; 1956, c. 654; 1958, c. 410; 1962, c. 213; 1964, c. 512; 1970, c. 480; 1972, c. 557; 1988, c. 891; 2013, cc. 593, 658.

§ 10.1-506. Power to create new districts and to relocate or define district boundaries; composition of districts.

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

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

Code 1950, § 21-2; 1956, c. 654; 1970, c. 480, § 21-12.1; 1988, c. 891.

§ 10.1-507. Petitions filed with the Board.

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

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

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

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

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

1970, c. 480, § 21-12.2; 1988, c. 891.

§ 10.1-508. Contents and form of petition.

The petition shall set forth:

1. The proposed name of the district;
2. That there is need, in the interest of the public health, safety, and welfare, for the proposed district to function in the territory described in the petition, and a brief statement of the grounds upon which this conclusion is based;
3. A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivision, but shall be deemed sufficient if generally accurate;
4. A request that the Board define the boundaries for such district; that a hearing be held within the territory so defined on the question of the creation of a district in such territory; and that the Board determine that such a district be created.

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

The Board shall prescribe the petition form.

Code 1950, § 21-13; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-509. Disapproval of petition.

If the Board disapproves the petition, its determination shall be recorded, and if the petitioners are the governing body of a district, county or city or a part of a county or city, the governing

body shall be notified in writing. If the petitioners are the requisite number of registered voters prescribed by subdivision 4 of § [10.1-507](#), notification shall be by a notice printed once in a newspaper of general circulation within the area designated in the petition.

1970, c. 480, § 21-13.1; 1988, c. 891.

§ 10.1-510. Petition approved; Board to give notice of hearing.

If the Board approves the petition, within sixty days after such determination, the Board shall provide due notice of the approval in a newspaper of general circulation in each county or city involved. The notice shall include notice of a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the action proposed by the petition upon (i) the question of the appropriate boundaries to be assigned to such district, (ii) the propriety of the petition and other proceedings taken under this chapter, and (iii) all questions relevant to such inquiries.

Code 1950, § 21-14; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-511. Adjournment of hearing when additional territory appears desirable.

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

Code 1950, § 21-16; 1988, c. 891.

§ 10.1-512. Determination of need for district.

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

Code 1950, § 21-17; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2002, c. [192](#).

§ 10.1-513. Determination that district not needed.

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

Code 1950, § 21-18; 1964, c. 512; 1988, c. 891.

§ 10.1-514. Determination of feasibility of operation.

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

Code 1950, § 21-20; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-515. Composition of governing body.

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

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

Code 1950, § 21-27; 1964, c. 512; 1970, c. 480; 1978, c. 763; 1988, c. 891; 2002, cc. [143](#), [236](#).

§ 10.1-516. Status of district directors in event of transfer, merger, or division of districts.

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

1. The composition of an existing district board of a district to which territory is transferred shall remain in effect until the terms of office of the present elected members expire. Upon the transfer of a county or city, or parts thereof, from one district to another district, (i) elected district directors residing within the territory transferred shall be appointed as directors of the district to which the territory is transferred for a term of office to coincide with that of the elected directors of the district to which the territory is transferred; and (ii) appointed district directors residing within the territory transferred shall be appointed as directors of the district to which the territory is transferred for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district to which the territory is transferred. At the option of the petitioners, a petition may request that a proposed transfer be treated as a merger or division for the purpose of this section, and the Board at its discretion may grant or refuse such request.

2. Upon the merger of existing districts, or upon the separation from two or more existing districts of a county or city, or parts thereof, which merge to create a new district, all district directors residing within the territory merged shall be appointed as directors of the new district. Following the merger, (i) elected district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of elected directors as provided in § 10.1-529; and (ii) appointed district directors residing within the new district shall be appointed as directors of the new district for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district as provided in § 10.1-529.

3. Upon the division of an existing district, to create a new district, all elected or appointed district directors residing within the territory to be divided from the existing district shall be appointed as directors of the new district. Following the division, (i) elected district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of elected directors as provided in § 10.1-529; and (ii) appointed district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district as provided in § 10.1-529.

This section shall not be construed as broadening or limiting the size of a governing body of a district as prescribed by § 10.1-515. If the operation of this section results in a governing body larger or smaller than the appropriate size permitted by § 10.1-515, then such a variation, if not otherwise corrected by operation of this section, shall be cured by appropriate appointments by the Board and with the next general election after the transfer, merger, or division in which all those elected directors prescribed by § 10.1-515 may be elected.

1970, c. 480, § 21-27.2; 1988, c. 891; 2002, cc. 143, 236.

§ 10.1-517. Application and statement to the Secretary of the Commonwealth.

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

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

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

Code 1950, § 21-28; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-518. Action of Secretary on the application and statement; change of name of district.

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

Code 1950, § 21-29; 1954, c. 670; 1958, c. 409; 1960, c. 208; 1962, c. 212; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-518.1. Secretary to send copies of certificates to State Board of Elections.

Whenever the Secretary issues a certificate creating, dissolving, or changing the name or composition of a district, the Secretary shall promptly send a certified copy of such certificate to the State Board of Elections.

2001, c. [53](#).

§ 10.1-519. Renewal of petition after disapproval or denial.

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

Code 1950, § 21-30; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-520. Contracts to remain in force; succession to rights and obligations.

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

1970, c. 480, § 21-31.2; 1988, c. 891.

§ 10.1-521. Determination of status of district boundaries upon annexation or consolidation.

Notwithstanding the provisions of § [10.1-507](#), the Board may, in its discretion, relocate or redefine district boundaries on its own motion pending or subsequent to any annexation or consolidation.

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

1970, c. 480, § 21-31.3; 1988, c. 891.

§ 10.1-522. Certificate of Secretary of Commonwealth as evidence.

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

Code 1950, § 21-32; 1954, c. 670; 1988, c. 891.

§ 10.1-523. Nominating petitions; posting of notice.

A. Beginning 30 days after the date of issuance by the Secretary of the Commonwealth of a certificate of organization of a district, but not later than the filing date specified in § 24.2-507 for the November 2003 general election and each fourth year thereafter, nominating petitions, statements of qualifications, and declarations of candidacy shall be filed with the general registrar of the county or city where the candidate resides, pursuant to §§ 24.2-501, 24.2-503, 24.2-505, 24.2-506, and 24.2-507, to nominate candidates for elected directors of such districts. Nominating petitions, statements of qualifications, and declarations of candidacy for elected directors of existing districts shall be filed with the general registrar of the county or city where the candidate resides, pursuant to §§ 24.2-501, 24.2-503, 24.2-505, 24.2-506, and 24.2-507. Notice of the date for filing such petitions and the time of the election shall be posted in a prominent location accessible to the public at each district office at least 30 days before the filing date. In addition, districts may use newsletters, websites, public service announcements, and other notices to advise the public of elections of district directors.

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

C. The Virginia Soil and Water Conservation Board shall notify each district of the requirement (i) to post notice of the dates for filing such petitions and the election and (ii) that the posting shall be in a prominent location accessible to the public at each district office at least 30 days before the filing date.

D. Beginning in the year 2003, elections shall be held only at the November general election in 2003 and at the November general election in each fourth year thereafter.

Code 1950, §§ 21-33 to 21-36; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2001, c. 53; 2002, cc. 143, 236; 2009, cc. 370, 629.

§ 10.1-524. Names of nominees furnished electoral board; how ballots printed, etc.

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

Code 1950, § 21-37; 1960, c. 208; 1970, c. 480; 1988, c. 891.

§ 10.1-525. Canvassing returns.

The result of the election shall be canvassed and certified by the electoral board for the county or city in which the candidate resides pursuant to §§ 24.2-671 through 24.2-678. The State Board of Elections shall, promptly after the meeting required by § 24.2-679, certify to the Director of the

Department of Conservation and Recreation a list of the candidates elected and certified as Directors of Soil and Water Conservation Districts, as reported pursuant to § 24.2-675.

Code 1950, § 21-38; 1960, c. 208; 1964, c. 512; 1988, c. 891; 2001, c. 53; 2002, cc. 143, 236.

§ 10.1-526. Persons eligible to vote.

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

Code 1950, § 21-39; 1970, c. 480; 1988, c. 891.

§ 10.1-527. Determination of candidates elected.

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

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

Code 1950, § 21-40; 1970, c. 480; 1988, c. 891.

§ 10.1-528. Expenses and publication of results.

The expenses of such elections shall be paid by the counties or cities concerned. The State Board of Elections shall publish, or have published within the district, the results of the election.

Code 1950, § 21-41; 1960, c. 208; 1964, c. 512; 1988, c. 891; 2002, cc. 143, 236.

§ 10.1-529. District directors constitute governing body; qualifications.

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

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

Code 1950, §§ 21-42, 21-43; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-529.1. Duties of district directors.

In addition to other duties and powers, district directors shall:

1. Identify soil and water issues and opportunities within the district or related to the district and establish priorities for addressing these issues;
2. Seek a comprehensive understanding of the complex issues that impact soil and water, and assist in resolving the identified issues at the watershed, local, regional, state, and national levels;
3. Engage in actions that will improve soil and water stewardship by use of locally led programs;
4. Increase understanding among community leaders, including elected officials and others, of their role in soil and water quality protection and improvement;
5. Foster discussion and advancement within the community of positions and programs by their district;
6. Actively participate in the activities of the district and ensure district resources are used effectively and managed wisely; and
7. Support and promote the advancement of districts and their capabilities.

2005, c. 73.

§ 10.1-530. Designation of chairman; terms of office; filling vacancies.

A. The district directors shall designate a chairman from the elected members, or from the Board-appointed members, of the district board and may change such designation.

B. The term of office of each district director shall be four years. A district director shall hold office until his successor has been elected or appointed and has qualified. The selection of successors to fill a full term shall be made in accordance with the provisions of this article. Beginning in the year 2003, the election of district directors shall be held at the November 2003 general election and each fourth year thereafter. The terms of office of elected district directors shall begin on January 1 following the November general election. The term of office of any district director elected in November 1999 shall be extended to the January 1 following the November 2003 general election. The term of office of any district director elected in November 2000 shall expire on the January 1 following the November 2003 general election. The term of office of any district director elected in November 2001 or 2002 shall be extended to expire on the January 1 following the November general election in 2007. Appointments made by the Board to the at-large position held by an extension agent shall be made to commence January 1, 2005, and each fourth year thereafter. Appointments made by the Board to the other at-large position shall be made to commence January 1, 2007, and each fourth year thereafter. Any appointment made by the Board prior to January 1, 2005, to an at-large position held by an

extension agent shall be made to expire January 1, 2005; and any appointment made by the Board prior to January 1, 2007, to the other at-large position shall be made to expire January 1, 2007.

C. A vacancy shall exist in the event of the death, resignation or removal of residence from the district of any director or the elimination or detachment from the district of the territory in which a director resides, or by the removal of a director from office by the Board. Any vacancy in an elected or appointed director's position shall be filled by an appointment made by the Board for the unexpired term. In the event of the creation of a new district, the transfer of territory from an existing district to an existing district, or the addition of territory not previously within an existing district to an existing district, the Board may appoint directors to fill the vacancies of elected directors prescribed by § 10.1-515 in the newly created district or in the territory added to an existing district. Such appointed directors shall serve in office until the elected directors prescribed by § 10.1-515 take office after the next general election at which directors for the entire district are selected.

Code 1950, §§ 21-44, 21-45; 1954, c. 670; 1956, c. 654; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2001, c. 54; 2002, cc. 143, 236.

§ 10.1-531. Quorum and expenses.

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

Code 1950, § 21-46; 1970, c. 480; 1988, c. 891; 2003, c. 616.

§ 10.1-532. Employment of officers, agents and employees.

The district directors may employ a secretary-treasurer, whose qualifications shall be approved by the Board, technical experts, and such other officers, agents and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation.

Code 1950, § 21-47; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-533. Delegation of powers.

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

Code 1950, § 21-48; 1970, c. 480; 1988, c. 891.

§ 10.1-534. Information furnished Board.

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

Code 1950, § 21-49; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-535. Bonds of officers and employees; records and accounts.

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

Code 1950, § 21-50; 1970, c. 480; 1988, c. 891.

§ 10.1-536. Removal from office.

Any district director may be removed by the Board for neglect of duty or malfeasance in office, or may be removed in accordance with the provisions of general law. Upon receipt of a sworn complaint against a director filed by a majority of the directors of that same district, the Board shall (i) notify the district director that a complaint has been filed against him and (ii) hold a hearing to determine whether the district director's conduct constitutes neglect of duty or malfeasance in office.

Code 1950, § 21-51; 1964, c. 512; 1970, c. 480; 1988, c. 891; 1996, c. [493](#).

§ 10.1-537. Representatives of governing bodies to be invited to consult with directors.

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

Code 1950, § 21-52; 1970, c. 480; 1988, c. 891.

§ 10.1-538. District is political subdivision.

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

Code 1950, § 21-53; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-539. Surveys and dissemination of information.

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

Code 1950, § 21-54; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-540. Demonstrational projects.

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

Code 1950, § 21-55; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-541. Preventive and control measures.

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

Code 1950, § 21-56; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-542. Financial aid to agencies and occupiers.

Districts are authorized to enter into agreements, within the limits of available appropriations, to give, lend or otherwise furnish financial or other aid to any governmental or other agency, or any

occupier of lands within the district, to provide erosion-control and prevention operations and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Agreements shall be subject to such conditions as the directors may deem necessary to advance the purposes of this chapter.

Code 1950, § 21-57; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-543. Acquisition, improvement and disposition of property.

Districts are authorized to (i) obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; (ii) maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and (iii) sell, lease, or otherwise dispose of any of their property or interests therein in furtherance of the provisions of this chapter.

Code 1950, § 21-58; 1988, c. 891.

§ 10.1-544. Making material and equipment available.

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

Code 1950, § 21-59; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-545. Construction, improvement, operation and maintenance of structures.

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

Code 1950, § 21-60; 1956, c. 654; 1988, c. 891.

§ 10.1-546. Development of programs and plans.

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

programs and plans have been approved by the Board, districts are authorized to publish such programs and plans, and information, and bring them to the attention of occupiers of lands within the district.

Code 1950, § 21-61; 1956, c. 654; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-546.1. Delivery of Agricultural Best Management Practices Cost-Share Program.

Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § 10.1-2128.1, under the direction of the Board, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.

2004, c. 474; 2009, cc. 209, 263; 2013, cc. 593, 658.

§ 10.1-547. Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.

Districts shall have the following additional authority:

1. To acquire by purchase, lease, or other similar means, and to administer, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by the Commonwealth or any of its agencies;
2. To manage, as agent of the United States or any of its agencies, or of the Commonwealth or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control or erosion prevention project, or combinations thereof, within its boundaries;
3. To act as agent for the United States or any of its agencies, or for the Commonwealth or any of its agencies, in connection with the acquisition, construction, maintenance, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries;
4. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from the Commonwealth or any of its agencies or from any other source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

Code 1950, § 21-62; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-548. Contracts; rules.

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

Code 1950, § 21-63; 1988, c. 891.

§ 10.1-549. Cooperation between districts.

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

Code 1950, § 21-4; 1970, c. 480; 1988, c. 891.

§ 10.1-549.1. Virginia Envirothon.

Districts in partnership with other districts, agencies, organizations, and associations are authorized to coordinate and implement the Virginia Envirothon Program, administered by the Virginia Association of Soil and Water Conservation Districts, which enables learning experiences for high school students through competitive events focusing on natural resource conservation.

2003, c. [402](#).

§ 10.1-550. State agencies to cooperate.

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

Code 1950, § 21-5; 1970, c. 480; 1988, c. 891.

§ 10.1-551. Conditions for extension of benefits.

As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by the Commonwealth or any of its agencies, the district directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands that will tend to prevent or control erosion and prevent floodwaters and sediment damages thereon.

Code 1950, § 21-64; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-552. Renting machinery and equipment.

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

Code 1950, § 21-65; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-553. Petition by landowners.

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

Code 1950, § 21-106; 1964, c. 512; 1988, c. 891.

§ 10.1-554. Hearings.

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

Code 1950, § 21-107; 1964, c. 512; 1988, c. 891.

§ 10.1-555. Referendum.

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

☐ Yes

☐ No"

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

Code 1950, § 21-108; 1964, c. 512; 1988, c. 891.

§ 10.1-556. Determination of Board.

The Board shall publish the result of the referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively

practicable and feasible. If the Board determines that the continued operation of the district is administratively practicable and feasible, it shall record the determination and deny the petition. If the Board determines that the continued operation of the district is not administratively practicable and feasible, it shall record its determination and certify the determination to the district directors. In making its determination the Board shall consider the proportion of the votes cast in favor of the discontinuance of the district to the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and other relevant economic and social factors. However, the Board shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum have been cast in favor of the continuance of such district.

Code 1950, § 21-109; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-557. Duty of directors after certification of Board.

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

Code 1950, § 21-110; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-558. Effect of issuance of certificate of dissolution.

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

Code 1950, § 21-111; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-559. Petitions limited to once in five years.

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

Code 1950, § 21-112; 1964, c. 512; 1988, c. 891.

§§ 10.1-559.1. through 10.1-559.11.

Repealed by Acts 2008, c. [860](#), cl. 9, effective October 1, 2008.

§§ 10.1-560. through 10.1-571.

Repealed by Acts 2013, cc. [756](#) and [793](#), cl. 2.

§§ 10.1-572. , 10.1-573.

Repealed by Acts 2012, cc. [785](#) and [819](#), cl. 2.

Code of Virginia

Title 10.1. CONSERVATION

Subtitle I. Activities Administered By the Department of Conservation and Recreation

Chapter 6. Flood Protection and Dam Safety

Article 3. Watershed Improvements Districts

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- 10.1-615** Petition for establishment; what to set forth
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10.1-634.1 Conduct of referenda

10.1-635 Power of eminent domain

§ 10.1-614. Establishment within soil and water conservation district authorized.

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

1956, c. 668, § 21-112.1; 1964, c. 512; 1973, c. 35; 1977, c. 40; 1988, c. 891.

§ 10.1-615. Petition for establishment; what to set forth.

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

1. The proposed name of the watershed improvement district;
2. That there is need, in the interest of the public health, safety, and welfare, for a watershed improvement district to function in the territory described in the petition;
3. A description of the territory proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate;
4. That the territory described in the petition is contiguous and is the same watershed, or is two or more contiguous watersheds;
5. A request that the territory described in the petition be organized as a watershed improvement district;
6. The method for financing the proposed district, whether by means of a tax on all real estate in the proposed district or a service charge on the increase in the fair market value of all real estate in the proposed district caused by the district's project.

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

1956, c. 668, § 21-112.2; 1964, c. 512; 1970, c. 480; 1977, c. 40; 1981, c. 156; 1988, c. 891.

§ 10.1-616. Notice and hearing on petition; determination of need for district and defining boundaries.

Within thirty days after a petition has been filed with the directors of the soil and water conservation district or districts, they shall cause due notice to be given of a hearing upon the practicability and feasibility of creating the proposed watershed improvement district. All owners of land within the proposed watershed improvement district and all other interested parties shall have the right to attend such a hearing and to be heard. If the directors determine from the hearing that there is need, in the interest of the public health, safety, and welfare, for the organization of the proposed watershed improvement district, they shall record their determination and define the boundaries of the watershed improvement district. The provisions of Article 2 (§ 10.1-502 et seq.) of Chapter 5 of this title shall apply, mutatis mutandis, to such proceedings.

1956, c. 668, § 21-112.3; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-617. Determination of whether operation of proposed district is feasible; referendum.

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

1956, c. 668, § 21-112.4; 1964, c. 512; 1970, c. 480; 1988, c. 891; 1995, c. 654.

§ 10.1-618. Ballots used in such referendum.

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

[] Yes

[] No"

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

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

1956, c. 668, § 21-112.5; 1970, c. 480, § 21-112.4:1; 1977, c. 40; 1988, c. 891.

§ 10.1-619. Consideration of results of referendum; simple majority vote required.

The results of the referendum shall be considered by the district directors in determining whether the operation of the proposed watershed improvement district is administratively practicable and feasible. The district directors shall not be authorized to determine that operation of the proposed watershed improvement district is administratively practicable and feasible unless a simple majority of the votes cast in the referendum have been cast in favor of the creation of the watershed improvement district.

1956, c. 668, § 21-112.5; 1970, c. 480; 1977, c. 40; 1988, c. 891; 2005, c. [128](#).

§ 10.1-620. Declaration of organization of district; certification to Board.

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

1956, c. 668, § 21-112.6; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-621. Establishment of watershed improvement district situated in more than one soil and water conservation district.

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

1956, c. 668, § 21-112.7; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-622. Inclusion of additional territory.

Petitions for including additional territory within an existing watershed improvement district may be filed with directors of the soil and water conservation district or districts in which the

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

1956, c. 668, § 21-112.8; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-623. Governing body of district; trustees.

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

1956, c. 668, § 21-112.9; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-624. Officers, agents and employees; surety bonds; annual audit.

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

1956, c. 668, § 21-112.10; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-625. Status and general powers of district; power to levy tax or service charge; approval of landowners required.

A watershed improvement district shall have all of the powers of the soil and water conservation district or districts in which the watershed improvement district is situated, and in addition shall

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

1956, c. 668, § 21-112.11; 1964, c. 512; 1981, c. 156; 1988, c. 891; 1995, c. [654](#).

§ 10.1-626. Levy of tax or service charge; when district in two or more counties or cities; landbooks certified to treasurers.

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

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

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

C. For tax purposes under this article, the assessed valuation of all real estate located in a watershed improvement district shall be the same fair market valuation that appears in the most recent landbook for the county, city, or town wherein the subject property is located. However, in a watershed improvement district which is located in two or more counties or cities and in which there is a disparity of assessed valuations between the counties or cities, the governing body of the watershed improvement district may petition the judge or judges of the circuit courts in which the district is located to appoint one or more persons to assess all of the real estate in the

district. The compensation of such person or persons shall be prescribed by the governing body of the district and paid out of the funds of the district.

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

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

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

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

1981, c. 156, § 21-112.12:1; 1988, c. 891.

§ 10.1-627. Collection of tax or service charge; proceeds kept in special account; expenditures from such account.

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

1956, c. 668, § 21-112.13; 1964, c. 512; 1970, c. 480; 1981, c. 156; 1988, c. 891.

§ 10.1-628. Fiscal powers of governing body; may poll landowners on question of incurring indebtedness or issuing bonds.

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

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

1956, c. 668, §§ 21-112.14, 21-112.15; 1964, c. 512; 1988, c. 891; 1995, c. [654](#).

§ 10.1-629. Order authorizing governing body to incur indebtedness or issue bonds.

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

1956, c. 668, § 21-112.16; 1988, c. 891.

§ 10.1-630. Type of indebtedness incurred or bonds issued.

The type of indebtedness incurred or bonds issued shall be that adopted by the governing body of the watershed improvement district and approved by the Virginia Soil and Water Conservation Board.

1956, c. 668, § 21-112.17; 1964, c. 512; 1988, c. 891; 1996, cc. **105, 819**.

§ 10.1-631. Annual tax for payment of interest or to amortize indebtedness or bonds.

The governing body of the watershed improvement district shall, if necessary to pay the interest on the indebtedness or bonds or to amortize such indebtedness or bonds, levy an annual tax or service charge in the manner prescribed by § **10.1-626** on all the real estate in the watershed improvement district subject to local taxation, to satisfy such obligations. This tax, irrespective of any approvals required pursuant to § **10.1-614**, shall be sufficient to pay interest and to amortize such indebtedness or bonds at the times required.

1956, c. 668, § 21-112.18; 1973, c. 35; 1981, c. 156; 1988, c. 891; 1996, cc. **105, 819**.

§ 10.1-632. Powers granted additional to powers of soil and water conservation district; soil and water conservation district to continue to exercise its powers.

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

1956, c. 668, § 21-112.19; 1964, c. 512; 1988, c. 891.

§ 10.1-633. Power to incur debts and accept gifts, etc.; watershed improvement district to have same powers as soil and water conservation district.

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

1956, c. 668, § 21-112.20; 1964, c. 512; 1977, c. 40; 1988, c. 891.

§ 10.1-634. Question to be submitted to qualified voters; approval required.

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

1973, c. 35, § 21-112.20:1; 1988, c. 891.

§ 10.1-634.1. Conduct of referenda.

A. Except as provided in subsection B, the referenda authorized or required by this article shall be conducted pursuant to regulations prescribed by the Virginia Soil and Water Conservation Board and not as provided for under § 24.2-684.

B. Referenda authorized or required by this article prior to the regulations referred to in subsection A becoming effective shall be conducted by the district directors of the soil and water conservation district in which the watershed improvement district is situated pursuant to the provisions of this article as they were effective on January 1, 1995, and Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. The costs of holding referenda under this subsection shall be paid by the requesting landowners.

1995, c. 654; 1996, c. 983.

§ 10.1-635. Power of eminent domain.

In addition to any other powers conferred on it by law, any watershed improvement district organized under the provisions of this article shall be authorized to acquire by eminent domain any lands, property rights, franchises, rights-of-way, easements or other property deemed necessary or convenient for the efficient operation of the district. Such proceedings shall be in accordance with and subject to the provisions of the laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of a public service company and subject to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1.

1958, c. 411, § 21-112.21; 1988, c. 891; 2003, c. 940.

Code of Virginia

Title 3.2. AGRICULTURE, ANIMAL CARE, AND FOOD.

Subtitle I. General Provisions; Protection and Promotion of Agriculture

Chapter 4. Agricultural Stewardship

- 3.2-400** Definitions.
 - 3.2-401** Exclusions from chapter.
 - 3.2-402** Complaint; investigation; agricultural stewardship plan.
 - 3.2-403** Issuance of corrective orders.
 - 3.2-404** Right of entry; court enforcement.
 - 3.2-405** Appeal.
 - 3.2-406** Penalties; injunctions; enforcement actions.
 - 3.2-407** Liens.
 - 3.2-408** Guidelines to be published by Commissioner; report.
 - 3.2-409** Ordinances
 - 3.2-410** Construction of chapter
-

§ 3.2-400. Definitions.

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

"Agricultural activity" means any activity used in the production of food and fiber, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Board" means the Soil and Water Conservation Board.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 2.2-4019.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land where an agricultural activity occurs.

"Pollution" means any alteration of the physical, chemical, or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or "measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution that reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods, or other alternatives.

"Stewardship measures" or "measures" includes: (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management Practices Manual; and (ii) agricultural water quality protection management measures contained in the U.S. Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

1996, c. 773, § 10.1-559.1; 2000, c. 973; 2008, c. 860.

§ 3.2-401. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a permit issued by the State Water Control Board, applies.

1996, c. 773, § 10.1-559.2; 2008, c. 860.

§ 3.2-402. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district where the land lies determine the validity of the information within 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after

investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan that includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within 30 days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date that the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed 18 months from receipt of notice. The Commissioner may grant an extension of up to 180 days if: (i) a hardship exists; and (ii) the request for an extension was made not later than 60 days before the scheduled completion date. The Commissioner shall, within 30 days of receiving the request, inform the owner or operator whether or not an extension has been granted.

E. After implementing the approved plan according to the provisions of this chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.

F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health, or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

1996, c. [773](#), § 10.1-559.3; 2000, c. [973](#); 2008, c. [860](#).

§ 3.2-403. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 3.2-402 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 3.2-402, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the time, place, and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this chapter, if the Commissioner determines that a recurring polluting condition that is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity that is causing or is likely to cause an imminent or substantial danger to: (i) the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference, or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending, or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan that has been reviewed by the district where the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

1996, c. 773, § 10.1-559.4; 2000, c. 973; 2008, c. 860.

§ 3.2-404. Right of entry; court enforcement.

A. The district or the Commissioner may enter land that is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § 3.2-402, the Commissioner may present to the circuit court of the county or city where the land is located, a petition asking the court to require the owner or operator to allow the Commissioner entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner may enter the land involved and implement the measures. The Commissioner may recover the costs of implementing the stewardship measures from the owner or operator.

1996, c. 773, § 10.1-559.5; 2000, c. 973; 2008, c. 860.

§ 3.2-405. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

1996, c. 773, § 10.1-559.6; 2008, c. 860.

§ 3.2-406. Penalties; injunctions; enforcement actions.

A. Any person violating § 3.2-403 or 3.2-404 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner or Board. Each day the violation continues is a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this chapter.

1996, c. 773, § 10.1-559.7; 2008, c. 860.

§ 3.2-407. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties that are owed in the same manner as provided by law in respect to judgment of a circuit court.

1996, c. 773, § 10.1-559.8; 2008, c. 860.

§ 3.2-408. Guidelines to be published by Commissioner; report.

A. In consultation with the districts, the Department of Conservation and Recreation, and interested persons, the Commissioner shall develop guidelines for the implementation of this chapter. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within 90 days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least 30 days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties that may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall: (i) provide the report to the Board, the Department of

Conservation and Recreation, and to every district; (ii) publish notice in the Virginia Register that the report is available; and (iii) make the report available to the public upon request.

1996, c. 773, § 10.1-559.9; 2008, c. 860.

§ 3.2-409. Ordinances.

A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural stewardship plan development program. Ordinances adopted hereunder may contain only provisions that parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 3.2-402.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996 or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

1996, c. 773, § 10.1-559.10; 2008, c. 860; 2013, cc. 756, 793.

§ 3.2-410. Construction of chapter.

Nothing in this chapter shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

1996, c. 773, § 10.1-559.11; 2008, c. 860; 2013, cc. 756, 793.

SECTION VI

DIRECTOR ROLES

“So You’re a District Director? What do Directors do?”

District Board Member Responsibilities*

Wilkie Chaffin, Piedmont District Director

*These opinions are those of the presenter and do not necessarily represent the official position of DCR, the VASWCD, or anyone else.

Non-Point Soil and Water Conservation is Important.

- If you are going to be a director, you need to be serious about the job. It takes a commitment of your time, and sometimes some of your money, to do the job properly.
- It is a lot more than spending a few hours a month at a district meeting. If you went to the Annual Meeting or you are at this training, you must understand this.

You have a lot of responsibility.

- **If something goes wrong, you are going to get at least some of the blame. Here are a few examples:**
 - If district money is misused or missing,
 - If grant agreement terms are not satisfied,
 - If the district is accused of not treating all citizens the same,
 - If the district cannot operate properly because of lack of funds, or
 - If the district gets sued.

You are very important, but ...

- Much of the success of the district will be because of your employees.
- Even though you must make most important district decisions, take advantage of their expertise and listen to their opinions on district matters.
- Try to help them accomplish the goals of the district as well as possible.
- If you can't help them, please don't get in their way.

Better Use of Employee and Director Time by Having More Efficient and Effective Meetings

- **Parliamentary Procedures:**
 - The main benefit of using Parliamentary Procedures may be that they help insure that all members of the group are treated fairly and that the rights of minorities (in terms of attitudes) are protected.

However, the use of Parliamentary Procedures may also contribute greatly toward better meetings.

- 1. Productivity---Parliamentary procedures provide a system for accomplishing the objectives of the meeting.
- 2. Efficiency---Parliamentary procedures help the district to accomplish things more quickly, and insure that inordinate amounts of time are not spent in activities that will not lead to the accomplishment of meeting goals.

Try to get other groups and individuals to help you accomplish District Goals.

- Governmental Bodies
- Partner Agencies
- Local Groups and **Individuals**

Governmental Bodies

Local Government

- In some districts, local governments provide a great deal of money to districts, while in others little or no funds are provided.
- This is partly based on the general finances of the locality and/or the culture of the locality.
- In some cases it is based on how persistent, or even aggressive, directors are in trying to get help for the district.
- However, you need to be able to show that district activities benefit the locality directly. You cannot just show up once a year and ask for money.

Governmental Bodies

State Government

- In the last few years, the resources and other benefits coming to districts have increased dramatically.
- Much of that increase is the result of the lobbying activities of directors with the General Assembly or individual legislators.
- We need a lot more directors to be involved in this process.
- In most cases, you can have a lot more influence with your legislator than can I or some director from another part of the state.

Partner Agencies

Local Groups & Individuals

- Tell People who you are.
- Advertise your meetings as much as you can afford.
- Invite people to attend.
- See if you can get yourself invited to talk about what your district does.
- Don't try to prevent citizens from knowing nearly everything that you say or do.

■ FOIA Virginia Freedom of Information Act

What about a one sentence summary of Virginia FOIA?

- Citizens have a right to attend all meetings in which district business is discussed and to know what is written in all district documents.
- (There are a few logical exceptions to these rights.)

Why do Citizens have a right to know what the District is doing?

- We have the job of director or associate director because they elected us or elected people who appointed us.
- They provide nearly all the money that we spend through their taxes. They have a right to know how we spend it.
- Some citizens are very smart. They may be able to help us do a better job managing the District if they know what we are doing.
- It is the law.

Conflict of Interest

- **Legal Issues**

- You must disqualify yourself from participating in any transaction in which you have a personal interest.

- **Ethical/Moral Issues**

- Do not participate in any Board activity that might help you, family members, friends, etc.

Districts Are Changing

Directors must be willing to adjust to new district activities.

- Legislative Activities
- Fund Raising
- Urban BMPs
- Small horse operations
- Credit Trading
- Voluntary BMP Reporting
- Resource Management Plans

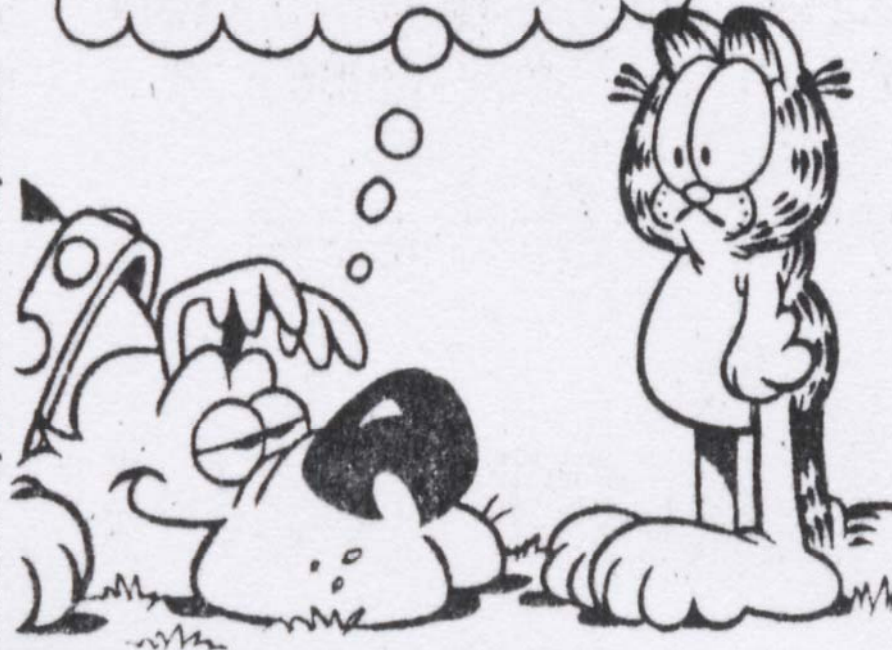
Sometimes change is difficult, but is necessary. In fact, change may be desirable.

GARFIELD • JIM DAVIS



PEOPLE WAIT ON ME HAND
AND FOOT, I GET THREE
BIG MEALS A DAY, AND
ALL I DO IS SLEEP

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JIM DAVIS 11-17

WOOF



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Questions?



SWCD Code & SWCD Programs (What a Director Needs to Know)

1 What you will learn:

- Information about SWCD Programs –and links to Code, what’s mandated and what’s authorized
- The role of Directors with SWCD programs
- Broad exposure to Info and References

2 What resources are available?

- SWCD staff
- Other district directors
- VASWCD
- Your DCR CDC
- Partners... NRCS, VCE and others

3 What’s covered:

- What’s mandated for districts to carry out through state law?
- What authorities “empowerments” are provided to districts thru state law that enable programs?
- Generally, what’s expected of directors “programmatically”?
- What’s a program?

What does the Code of Virginia empower SWCDs to do?
Understanding the distinctions between “SHALL vs. Authorized”

According to Virginia State Law, SWCDs SHALL:

§ 10.1-104.1 Department to assist in the nonpoint source pollution management program.	A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public as appropriate, shall assist in the Commonwealth’s nonpoint source pollution management program. B. The Department shall be assisted in performing its nonpoint source pollution management responsibilities by Virginia's soil and water conservation districts. Assistance by the soil and water conservation districts in the delivery of local programs and services may include (i) the provision of technical assistance to advance adoption of conservation management services, (ii) delivery of educational initiatives targeted at youth and adult groups to further awareness and understanding of water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by landowners and land managers in order to minimize nonpoint source pollution contributions to state waters. The provisions of this section shall not limit the powers and duties of other state agencies.
§ 10.1-546.1 Delivery of Agricultural Best Management Practices Cost-Share Program.	Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § 10.1-2182.1, under the direction of the Board, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department’s nonpoint source pollution management program.
§ 10.1-530 Designation of chairman; terms of office; filling vacancies	A. The district directors shall designate a chairman from the elected members, or from the Board-appointed members, of the district board and may change such designation. B. The term of office for each district director shall be four years. A district director shall hold office until his successor has been elected or appointed and has qualified. (section continues)
§ 10.1-531 Quorum and expenses.	A majority of the district directors currently in office shall constitute a quorum and the concurrence of a majority of those present and voting shall be required for all determinations. A district director shall receive no compensation for his services, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.
§ 10.1-534 Information furnished Board.	The district directors shall furnish to the Board or Department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, or other documents that they adopt or employ, or other information concerning their activities as the Board or Department may require in the performance of its duties under this chapter.

§ 10.1-535 Bonds of officers and employees; records and accounts	The district directors shall (i) provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; (ii) provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and (iii) provide for an annual audit of the accounts of receipts and disbursements by the Auditor of Public Accounts or a certified public accountant approved by him.
§ 10.1-537 Representatives of governing bodies to be invited to consult with directors.	The district directors shall invite the legislative body of any locality located near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such locality.
§ 3.2-402 Complaint; investigation; agricultural stewardship plan.	A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district where the land lies determine the validity of the information within 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint. B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint. C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan that includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within 30 days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date that the owner or operator received the notice that the agricultural activity is creating or will create pollution. (section continues)

SWCD Plan Approval Mandates:

§ 58.1-339.3 Agricultural best management practices tax credit.	A. For all taxable years beginning on and after January 1, 1998, any individual who is engaged in agricultural production for market, or has equines that create needs for agricultural best management practices to reduce nonpoint source pollutants, and has in place a soil conservation plan approved by the local Soil And Water Conservation District (SWCD), shall be allowed a credit against the tax imposed by § 58.1-320 of an amount equaling 25 percent of the first \$70,000 expended for agricultural best management practices by the individual.... B. Any practice approved by the local Soil and Water Conservation District Board shall be completed within the taxable year in which the credit is claimed. After the practice installation has been completed, the local SWCD Board shall certify the practice as approved and completed, and eligible for credit. The applicant shall forward the certification to the Department of Taxation on forms provided by the Department. The credit shall be allowed only for expenditures made by the taxpayer from funds of his own sources. (section continues)
§ 58.1-436 Tax credit for purchase of advanced technology pesticide and fertilizer application equipment.	A. Any corporation engaged in agricultural production for market which has in place a nutrient management plan approved by the local Soil and Water Conservation District by the required tax return filing date of the corporation shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty-five percent of all expenditures made by such corporation for the purchase of equipment certified by the Virginia Soil and Water Conservation Board as providing more precise pesticide and fertilizer application. (section continues)
§ 58.1-439.5 Agricultural best management practices tax credit.	A. For all taxable years beginning on and after January 1, 1998, any corporation engaged in agricultural production for market who has in place a soil conservation plan approved by the local Soil and Water Conservation District (SWCD) shall be allowed a credit against the tax imposed by § 58.1-400 of an amount equaling twenty-five percent of the first \$70,000 expended for agricultural best management practices by the corporation. (section continues)

Resource Management Plan Regulations:

<u>4VAC50-70-150</u> Advancing the adoption of RMPs.	The department and districts shall encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth.
<u>4VAC50-70-70</u> Review of a resource management plan	B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. Within 90 days of receipt of the RMP, the soil and water conservation district shall notify the owner or operator and the RMP developer in writing if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt. C. If an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other... F. Where an RMP is deemed sufficient, the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation in accordance with subsection B or D of this section, whichever is applicable.
<u>4VAC50-70-80</u> Issuance of a Certificate of Resource Management Plan Implementation	C. If based on onsite verification and a review of referenced plans by the local soil and water conservation district where the district is the review authority the RMP is determined to be adequate and fully implemented in accordance with subsection A of this section, the soil and water conservation district board shall affirm such adequacy and implementation and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

Other binding commitments...

Other binding commitments to carry out a program, project, service include:

- Contracts, commitments entered in to by a SWCD with other agencies and organizations (example: SWCD Dams)
- SWCD performance of tasks established through local ordinance (example: E & S site inspections)
- Others...

According to Virginia State Law, SWCDs have the Following Authorizations/Empowerments:

§ 10.1-532 . Employment of officers, agents and employees.	The district directors may employ a secretary-treasurer, whose qualifications shall be approved by the Board, technical experts, and such other officers, agents and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation.
§ 10.1-533 Delegation of powers.	The district directors may delegate to their chairman or to one or more district directors, agents or employees such powers and duties as they may deem proper.
§ 10.1-539 . Surveys and dissemination of information.	Districts are authorized to (i) conduct surveys, investigations, and research relating to soil erosion and floodwater and sediment damages, and to agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, and the preventive and control measures and works of improvement needed; (ii) publish the results of such surveys, investigations, or research; and (iii) disseminate information concerning preventive and control measures and works of improvement. However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the Commonwealth or the United States.
§ 10.1-540 . Demonstrational projects.	Districts are authorized to conduct demonstrational projects within the district on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands. The purpose of such projects is to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled, and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water may be carried out.
§ 10.1-541 . Preventive and control measures.	Districts are authorized to carry out preventive and control measures and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation and changes in use of land on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands.
§ 10.1-542 . Financial aid to agencies and occupiers.	Districts are authorized to enter into agreements, within the limits of available appropriations, to give, lend or otherwise furnish financial or other aid to any governmental or other agency, or any occupier of lands within the district, to provide erosion-control and prevention operations and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Agreements shall be subject to such conditions as the directors may deem necessary to advance the purposes of this chapter
§ 10.1-543 . Acquisition,	Districts are authorized to (i) obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or

improvement and disposition of property.	otherwise, any property, real or personal, or rights or interests therein; (ii) maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and (iii) sell, lease, or otherwise dispose of any of their property or interests therein in furtherance of the provisions of this chapter.
§ 10.1-544 . Making material and equipment available.	Districts are authorized to make available, on terms they prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and other material or equipment that will assist land occupiers to conserve soil resources, to prevent and control soil erosion and to prevent floods or to carry out the agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water.
§ 10.1-545 . Construction, improvement, operation and maintenance of structures.	Districts are authorized to construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.
§ 10.1-546 . Development of programs and plans.	Districts are authorized to develop comprehensive programs and plans for the conservation of soil resources, for the control and prevention of soil erosion, for flood prevention or for agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Such programs and plans shall specify the acts, procedures, performances, and avoidances which are necessary or desirable to effect such programs and plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land. After such programs and plans have been approved by the Board, districts are authorized to publish such programs and plans, and information, and bring them to the attention of occupiers of lands within the district.
§ 10.1-547 . Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.	Districts shall have the following additional authority : 1. To acquire by purchase, lease, or other similar means, and to administer, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by the Commonwealth or any of its agencies; 2. To manage, as agent of the United States or any of its agencies, or of the Commonwealth or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control or erosion prevention project, or combinations thereof, within its boundaries; 3. To act as agent for the United States or any of its agencies, or for the Commonwealth or any of its agencies, in connection with the acquisition, construction, maintenance, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries; 4. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from the Commonwealth or any of its agencies or from any other source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

§ 10.1-549 Cooperation between districts.	The directors of any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter.
§ 10.1-549.1 . Virginia Envirothon.	Districts in partnership with other districts, agencies, organizations, and associations are authorized to coordinate and implement the Virginia Envirothon Program, administered by the Virginia Association of Soil and Water Conservation Districts, which enables learning experiences for high school students through competitive events focusing on natural resource conservation.
§ 10.1-552 . Renting machinery and equipment.	Districts are authorized to rent the machinery and other equipment made available to them by the Department to governing bodies and, individuals, or groups of individuals to be used by them for the purpose of soil and water conservation upon such terms as the district directors deem proper.

“Programmatic” Roles of District Directors

§ [10.1-529.1](#). Duties of district directors. [enacted 2005]

In addition to other duties and powers, district directors shall:

1. Identify soil and water issues and opportunities within the district or related to the district and establish priorities for addressing these issues;
2. Seek a comprehensive understanding of the complex issues that impact soil and water, and assist in resolving the identified issues at the watershed, local, regional, state, and national levels;
3. Engage in actions that will improve soil and water stewardship by use of locally led programs;
4. Increase understanding among community leaders, including elected officials and others, of their role in soil and water quality protection and improvement;
5. Foster discussion and advancement within the community of positions and programs by their district;
6. Actively participate in the activities of the district and ensure district resources are used effectively and managed wisely; and
7. Support and promote the advancement of districts and their capabilities.

“Condensed” Roles of District Directors

1. Identify soil and water problems; address them
2. Become educated about soil and water problems, work to resolve problems at all levels
3. Improve soil and water stewardship by using locally led* programs
4. Educate decision makers about their responsibilities to soil and water conservation
5. Initiate local discussions and tell others about the district and what it does
6. Be active in the work of your district and manage your resources wisely
7. Support districts and tell others about them

* Locally led conservation brings together people and organizations in communities, to plan and work effectively to resolve long term solutions and plans

“PROGRAMS” What Is A Program?

A system of projects or services intended to meet a public need –a plan of activities to be done or things to be achieved.

[web definition]



SWCD Programs



Incentive Programs for the Implementation of Voluntary Agricultural BMPs

Incentive Program Categories

- Virginia Agricultural BMP Cost-Share
- Virginia Agricultural BMP Tax Credit
- Equipment Tax Credit Program
- Conservation Reserve Enhancement Program (CREP)
- Virginia Agricultural BMP Loan (DEQ Revolving Loan Fund)
- Resource Management Plans

BMP Cost-Share Program

- Administered by DCR thru local Soil and Water Conservation Districts (SWCDs).
- SWCDs recruit participants from areas that will make the greatest impact on water quality.

BMP Cost-Share Program...

- Cost-share rates
3 basic approaches:
 - flat per acre rate
 - 75% of the eligible cost
 - Combination of a flat rate and a percentage of the eligible cost.
- District Boards approve conservation plans that itemize components of cost share applications.



Conservation Planning

- May be generated by SWCD conservation technicians, or Natural Resources Conservation staff and identify practices to be implemented and a time line for doing so.
- Not all cost shared practices require a conservation plan, all practices approved for a VA state tax credit must have a SWCD approved conservation plan.

Programmatic cap of \$50,000 per individual per program year

Except:

- 1) Animal Waste system (WP-4),
- 2) Loafing Lot Management System (WP-4B)
- 3) Stream Exclusion with Grazing Land Management

**These may receive \$70,000 of cost-share
per applicant per year.**

100% Reimbursement for SL-6 if applied for in 2014 or 2015

- DCR committed to furnish 100% reimbursement for approved SL-6 practices when funds come available.
 - Applications must be made in program year 2014 or 2015
 - Applications will be funded based upon conservation effectiveness factor (CEF) when funds become available

PRACTICE LIFESPANS

- **Annual practices** are completed in one year like: Cover Crops, 4 types; specialty crops (SL-8), small grain for nutrient and residue management (SL-8B), harvestable (SL-8H), legume (WP-4).
- **Longer Lifespan practices** include a maintenance commitment usually 5 or 10 years; during which spot check are conducted to assure continued effectiveness.

Roles of District Directors

- Establish recruitment guidelines following priority considerations:
 - Priority given to lands in the SWCD's highest ranked Hydrologic Units (some practices are exceptions to this rule)
 - Fields that are at least 1/3 HEL
 - Lands within or upstream of an identified TMDL segment receive priority
 - Priority given to applications to implement BMPs included in an approved Resource Management Plan
- Establish (local) secondary considerations prior to the beginning of each program year.



BMP Tax Credit Program

- Administered by local SWCDs.
- 58 BMPs are eligible for Tax Credit.
- Applicable to any individual or corporation engaged in agricultural production for market.
 - Individuals with “... equines that create needs for agricultural best management practices to reduce Nonpoint source pollutants” became eligible for BMP tax credits in January 2007.
- Individuals seeking a tax credit must have a conservation plan **approved by the local SWCD Board.**

BMP Tax Credit Program

- BMP and estimated cost must be approved for tax credit **prior** to installation.
- Tax Credit is granted after the BMP is complete and certified.
- Tax Credit is equal to 25% of the cooperator's approved expenses not to exceed \$17,500 in any taxable year.
- A producer must use (apply against state tax obligation) in the tax credit in the tax year the BMP is completed.

Use of Tax Credit

- If the amount of a participants' tax liability in the tax year that the BMP is completed is less than that amount of the approved BMP tax credit the Dept. of Taxation will refund the difference to the tax payer.

Equipment Tax Credit Programs

- Credit can be up to 25% of the purchase cost of identified types of equipment
- Tax Credit must be utilized in the tax year the equipment is purchased.
- Tax credit above the individual's tax liability can be carried over for up to 5 years.

Tax Credit for Purchase of Conservation Tillage Equipment (§58.1-320)

- A maximum of a \$4,000 state tax credit for the purchase of conservation tillage equipment
- Tillage equipment such as: a planter, drill or other equipment used to reduce soil compaction including guidance systems used to control traffic patterns
- Applicable to any individual, partnership or small business corporation engaged in agricultural production

Tax Credit for Purchase of Precision Ag. Equipment (§58.1-337)

- A maximum of \$3,750 state tax credit for purchase of advanced technology pesticide and fertilizer application equipment such as:
- Sprayers, pneumatic applicators, monitors, computer regulators, height adjustable booms, manure applicators, tramline adaptors, starter fertilizer banding attachments for planters
- Producer must have a current nutrient management plan **approved by the local SWCD**

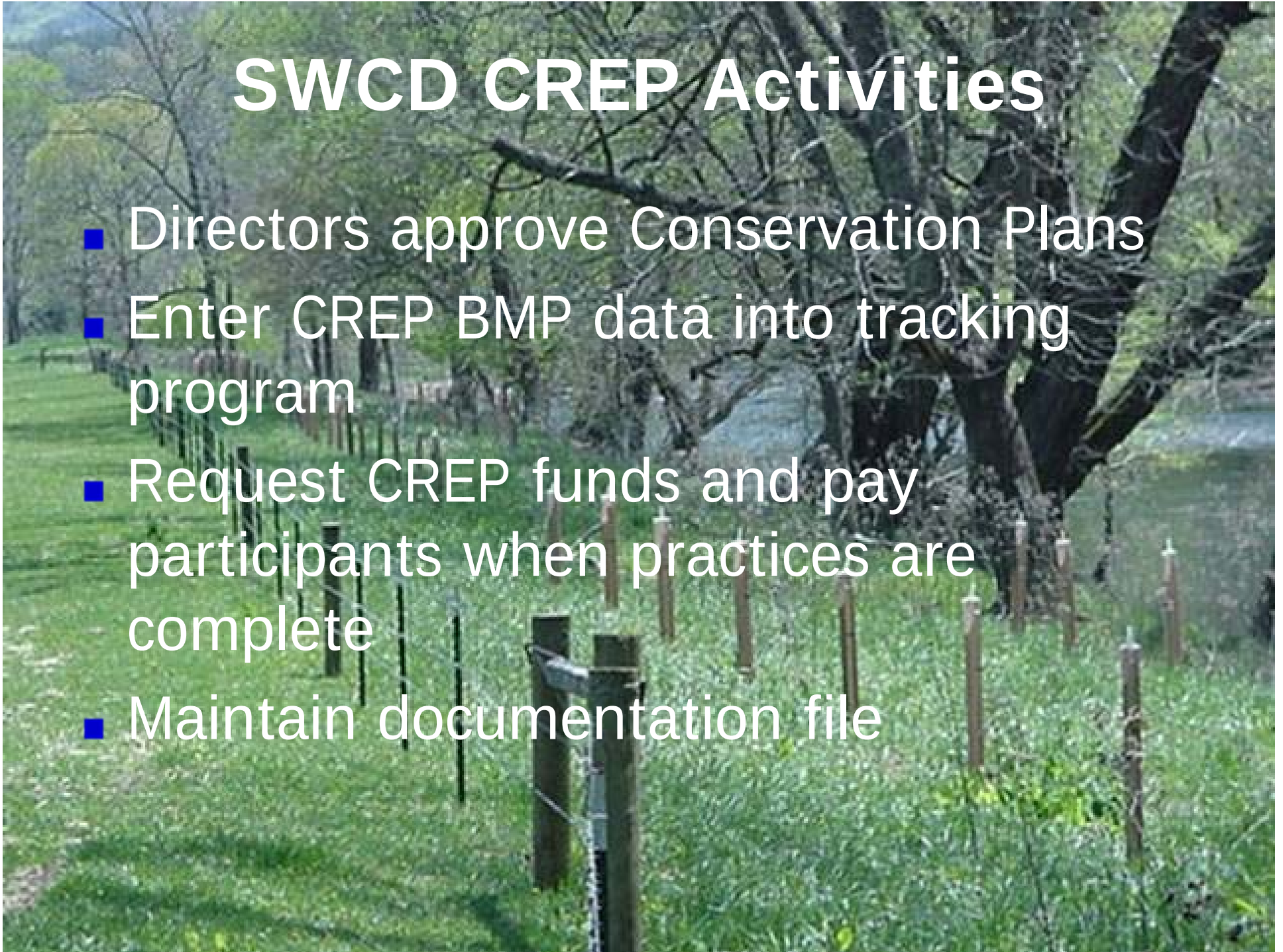


Conservation Reserve Enhancement Program (CREP)

- Farm Service Agency (FSA) Administers Contracts
- Natural Resources Conservation Service (NRCS) has technical authority
- VA Department of Forestry (DOF) recommends buffer plantings
- Soil and Water Conservation Districts (SWCD) disburse state funds and record BMP data

SWCD CREP Activities

- Directors approve Conservation Plans
- Enter CREP BMP data into tracking program
- Request CREP funds and pay participants when practices are complete
- Maintain documentation file



Agricultural BMP Loan Program

- Administered by the Department of Environmental Quality (DEQ) from Revolving loan fund.
- Applicable to any Virginia producer wishing to implement eligible BMPs in order to reduce the effect of polluted runoff entering Virginia waters.
- 22 BMPs and no-till planter/drill purchases are eligible for the loan program.

Agricultural BMP Loan Program

- Must have a conservation plan approved by the local SWCD Board.
- Interest rate is 3%.
- Minimum loan amount is \$5,000.
- Loan repayment period from 1 to 10 years. (repayment period on no-till equipment is 5 years)
- Individual loans will be administered by certain participating lending institutions.

Resource Management Plan

RMPs are designed to encourage farmers to use a high level of conservation best management practices to reduce runoff pollution to state waters and the Chesapeake Bay. In return for full implementation of these plans, farmers are insured a “**certainty**” from new state nutrient, sediment and bacterial-related water quality requirements.

The RMP program is completely voluntary – a participant may opt out at any time without penalty.

What is Certainty?

Agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan shall be deemed to be in full compliance with any new state regulations for nutrients, sediment, benthic, or bacteria to address:

- Any new requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; or
 - Any new load allocation contained in a local total maximum daily load (TMDL)
- Certificates of certainty are effective for nine years.

Certainty does not protect from:

- Federal permits
- Changes to federal regulations or requirements
- Chesapeake Bay Preservation Act requirements
- Pre-existing TMDLs
- VPA&VPDES permits
- Some local ordinances

Other RMP Benefits

- Certainty from new Chesapeake Bay WIP and local TMDL requirements
- Farmers can receive credit or recognition for practices already installed or implemented
- Agricultural industry representatives can speak with confidence about existing conservation practices
- Long-term farm planning will help cost-share program leaders to assess future funding needs to maintain existing practices and to install or implement planned practices
- Farmers with an RMP will be among other priority considerations for BMP cost-share funding
- If desired, the farmer may advertise or promote their status of having implemented an RMP

Requirements of an RMP

Cropland	Hayland	Pasture
Nutrient Management Plan	Nutrient Management Plan	Nutrient Management Plan
Soil Conservation Plan to “T”	Soil Conservation Plan to “T”	Pasture Management/ Soil Conservation Plan to “T”
35’ Buffer on Perennial Streams	35’ Buffer on Perennial Streams	Fencing on Perennial Streams
Cover Crop (When Needed)		

Program Contacts

Virginia Agricultural BMP Cost-Share, Ag. BMP Tax Credit,
and CREP Programs

- Gary Moore at (804) 692-0070 or
- Gary.Moore@dcr.virginia.gov

Resource Management Planning

- Scott Ambler at (540) 332-9231 or
- Scott.Ambler@dcr.virginia.gov

Agricultural BMP Loan Program

- Walter Gills at (804) 698-4133 or
waltergills@deq.virginia.gov



Department of Conservation & Recreation
[CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES](#)



Other Water Quality Programs that may impact SWCDs

- Agricultural Stewardship Act
- Chesapeake Bay Preservation Act
- Stormwater Management Programs
- Dam Safety
- District Equipment & Fundraising

Agricultural Stewardship Act (ASA)

- State law administered by the Virginia Department of Agriculture and Consumer Services (VDACS)
- Adopted by the General Assembly in 1996
- Object is to work with farmers and SWCDs to resolve water quality problems reported to VDACS concerning **nutrients**, **sediments** and **toxins** from agricultural activities

Agricultural Stewardship Act...

- Gives the farmer an opportunity to correct a water quality problem voluntarily before any enforcement action is taken
- Complaints are received by VDACS
- If complaint is founded, farmer is required to develop a plan to correct and then implement within a specified time period not to exceed eighteen months

Agricultural Stewardship Act

- The Act does not cover agricultural activities that are:
 - subject to permits from the DEQ
 - Forestry Activities
 - Air pollution
 - Odor concerns
 - Landfills
 - Waste problems that do not involve agricultural products
 - Waste problems that have no clear water quality impact

Agricultural Stewardship Act...

- Districts may assist with the investigation, provide technical assistance on correction of the problem(s), and may develop the plan, but are required by law to review the plan.
- Districts should contact landowners with founded complaints and offer assistance. Districts receive a copy of the Commissioner's decision.
 - For more information visit:
<http://www.vdacs.virginia.gov/stewardship/index.html>
or contact Darrell Marshall at (804) 786-3538

Chesapeake Bay Preservation Act...

- Agricultural land must have a Soil & Water Quality Conservation Assessment conducted and/or a Soil & Water Quality Conservation Plan in place that ensures water quality protection consistent with the Act and the Regulations.
- The findings and recommendations of such assessment and any resulting soil and water quality conservation plans will be submitted to the local SWCD Board, which is the plan-approving authority



Chesapeake Bay Preservation Act...

- Soil & Water Quality Conservation Assessment
 - Evaluates the effectiveness of existing Best Management Practices (BMPs) to protect water quality. Areas assessed include:
 - Nutrient Management
 - Erosion Control
 - Pesticide Management

Dam Safety and Maintenance Programs

Twelve SWCDs in VA own & operate
104 dams.

Blue Ridge (10)

Culpeper (11)

Hanover-Caroline (1)

Headwaters (11)

Lord Fairfax (2)

Mountain Castles (4)

Peter Francisco (17)

Piedmont (14)

Robert E. Lee (6)

Shenandoah Valley (8)

Southside (12)

Thomas Jefferson (8)

Dam Safety and Maintenance Programs

- Districts owning dams must provide for their operation and maintenance.
- Permit applications through DCR Dam Safety Division of Dam Safety.
- This may include:
 - Annual inspections
 - Mowing and fertilization program
 - Prepare and review Emergency Action Plans with county officials
 - Work with landowners, local government, and state to bring all dams in district into compliance

District Equipment & Fundraising Programs

- Many districts own and lease equipment as a service to their landowners and as a revenue generator.
- Districts sell tree seedlings, birdhouses, erosion and sediment control materials, etc.
- These programs are subject to the VA Sales Tax Laws and Districts are required to collect taxes unless the landowner is exempt.

Any Questions?

SECTION VII

PARTNERS

Partners in Local Conservation



National Association of Conservation Districts



Virginia Association of Soil and Water Conservation Districts



Virginia Cooperative Extension



National Association of State Conservation Agencies



Virginia Department of Game and Inland Fisheries



Virginia Department of Forestry



Virginia Department of Conservation and Recreation



Virginia Department of Environmental Quality



Virginia Department of Agriculture and Consumer Services

**Watershed organizations
(roundtables, councils
and commissions)**

Local governments

**Non-government and private
organizations, businesses,
foundations and associations**

**Virginia Soil and Water
Conservation Board**

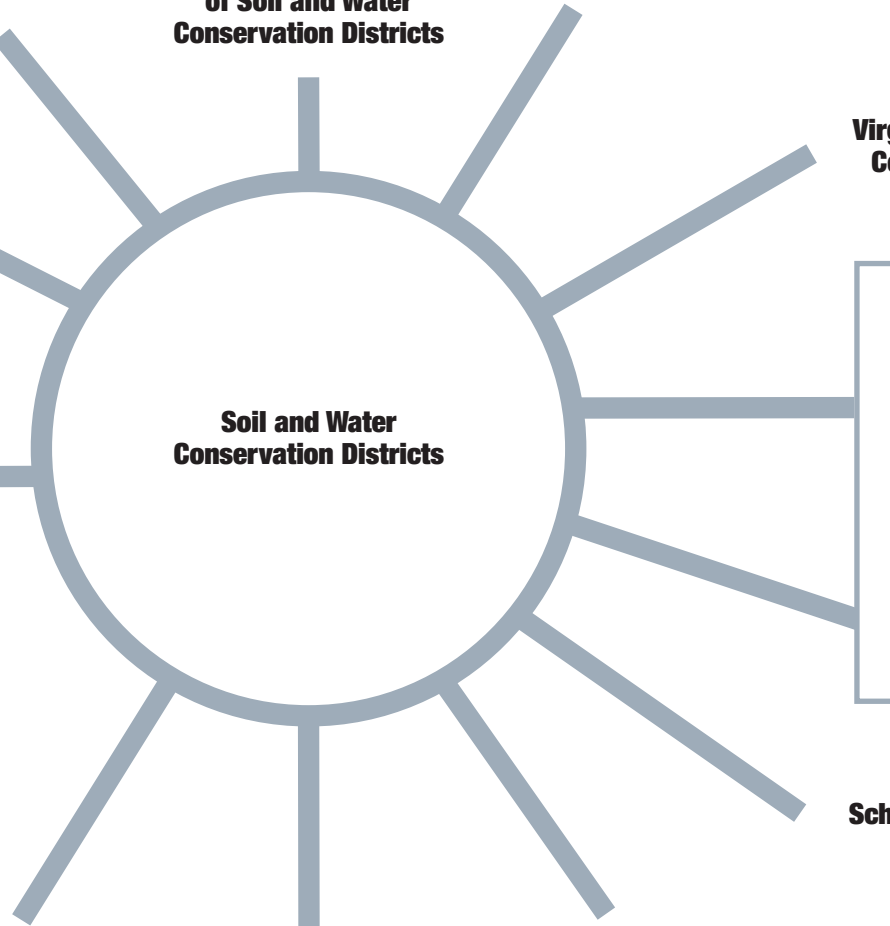


**USDA Natural Resources
Conservation Service**

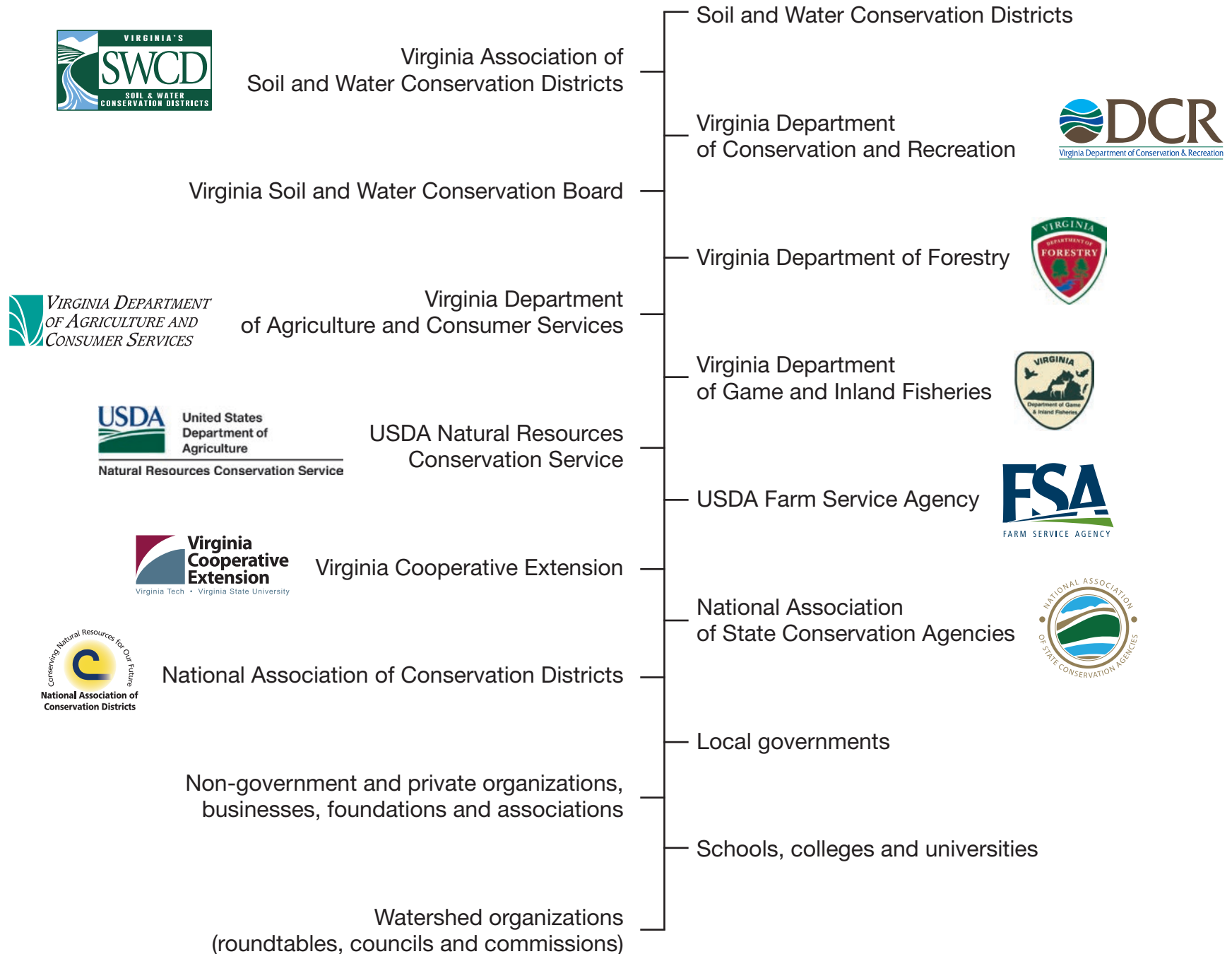


USDA Farm Service Agency

**Schools, colleges and
universities**



Partners in Local Conservation



The ‘Alphabet Soup’

Common Acronyms and Government Agencies

Common Terminology:

BMP – Best Management Practice

CB or Ches Bay – Chesapeake Bay, generally refers to the geographical area of Virginia draining to the Chesapeake Bay

CBPA- Chesapeake Bay Preservation Area, refers to a geographical area, east of I-95, mandated in Code and subject to regulations of the Chesapeake Bay Preservation Act

CDC – Conservation District Coordinator (state, within DCR assigned by region)

CREP – Conservation Reserve Enhancement Program, funding program federal and state dollars

CRP – Conservation Reserve Program, a federal funding source, FSA

CSP – Conservation Stewardship Program, a federal funding source, NRCS

DC – District Conservationist (federal, NRCS assigned by area offices)

EQIP – Environmental Quality Incentives Program, a federal funding source, NRCS

OCB – Outside the Chesapeake Bay, generally refers to the geographical area of Virginia that does not drain to the Chesapeake Bay.

RCPP – Regional Conservation Partnership Program, a federal funding source, NRCS partnership with state and non-government organizations.

RMP – Resource Management Plan

TMDL - Total Maximum Daily Load

VACS – Virginia Agricultural Cost Share, a state funding, primarily from DCR, provided to Districts for installation of Ag BMPs

Watershed Coordinator – state, within DEQ, assigned by watershed regions

WIP – Watershed Implementation Plan

WQIA – Water Quality Improvement Act

319 – A federal funding type for water quality grants and funds, issued by EPA to the Virginia DEQ and passed through to Districts through various grant processes

Government Agencies:

CBLAB – Chesapeake Bay Local Assistance Board (state, within DEQ)

COE, ACOE, or The Corps – United States Army Corps of Engineers (federal)

DCR – Virginia Department of Conservation and Recreation (state)

DEQ – Virginia Department of Environmental Quality (state)

DOF – Virginia Department of Forestry (state)

The ‘Alphabet Soup’

Common Acronyms and Government Agencies

DSWC or Division – DCR Division of Soil and Water Conservation

EPA –Environmental Protection Agency (federal, VA is in EPA Region 3)

FSA – Farm Service Agency (federal)

GA- General Assembly (state)

NACD – National Association of Conservation Districts (non-profit organization)

NRCS – Natural Resources Conservation Service (federal)

OAG – Office of Attorney General (state)

SEAS – Soil Erosion Advisory Service (state, within DCR)

SWCD – Soil and Water Conservation District (political subdivision of state government)

USDA – United States Department of Agriculture (federal)

USFS – United States Forest Service (federal)

USFWS – United States Fish and Wildlife Service (federal)

USGS – United States Geological Survey (federal)

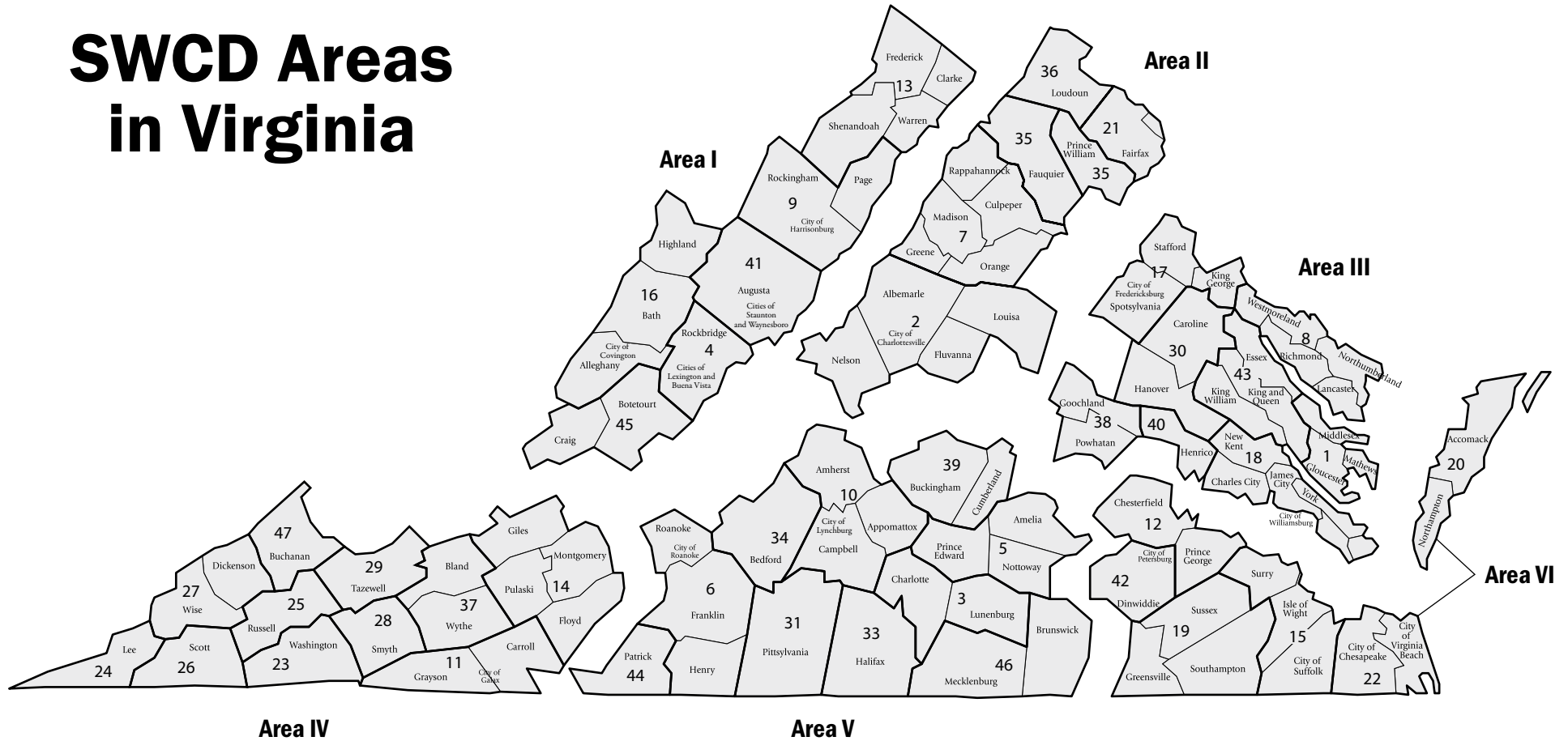
VASWCD – Virginia Association of Soil and Water Conservation Districts (non-profit organization)

VCE or Extension – Virginia Cooperative Extension (state, land grant universities)

VDACS – Virginia Department of Agriculture & Consumer Services (state)

VSWCB – Virginia Soil and Water Conservation Board (state, within DCR)

SWCD Areas in Virginia



SOIL AND WATER CONSERVATION DISTRICTS (Note: Cities within SWCDs are listed in parentheses after the appropriate district.)

Area I

- 4 Natural Bridge
(Buena Vista, Lexington)
- 9 Shenandoah Valley
(Harrisonburg)
- 13 Lord Fairfax
(Winchester)
- 16 Mountain (Covington)
- 41 Headwaters
(Staunton and Waynesboro)
- 45 Mountain Castles

Area II

- 2 Thomas Jefferson
(Charlottesville)
- 7 Culpepper
- 21 Northern Virginia
- 32 John Marshall
- 35 Prince William
- 36 Loudoun

Area III

- 1 Tidewater
- 8 Northern Neck
- 17 Tri-County/City
(Fredericksburg)
- 18 Colonial
(Williamsburg)
- 30 Hanover-Caroline
- 38 Monacan
- 40 Henricopolis
- 43 Three Rivers

Area IV

- 11 New River (Galax)
- 14 Skyline
- 23 Holston River
- 24 Daniel Boone
- 25 Clinch Valley
- 26 Scott County
- 27 Lonesome Pine
- 28 Evergreen
- 29 Tazewell
- 37 Big Walker
- 47 Big Sandy

Area V

- 3 Southside
- 5 Piedmont
- 6 Blue Ridge (Roanoke)
- 10 Robert E. Lee
(Lynchburg)
- 31 Pittsylvania
- 33 Halifax
- 34 Peaks of Otter
- 39 Peter Francisco
- 44 Patrick
- 46 Lake Country

Area VI

- 12 James River
- 15 Peanut (Suffolk)
- 19 Chowan Basin
- 20 Eastern Shore
- 22 Virginia Dare
(Chesapeake and
Virginia Beach)
- 42 Appomattox River
(Petersburg)

Virginia Department of Conservation and Recreation Conservation District Coordinator (CDC) Assignments

Abingdon R. O. – Phone: (276) 676-5562
CDC: Angela Ball
Blackberry: (276) 451-5821
e-mail: angela.ball@dcr.virginia.gov
355 Deadmore Street
Abingdon, Virginia 24210
Fax: (276) 676-5527

Big Sandy	Holston River
Clinch Valley	Lonesome Pine
Daniel Boone	Scott County
Evergreen	Tazewell

Christiansburg R. O. – Phone: (540) 394-2585
CDC: Stacy Horton
Blackberry: (540) 553-1945
e-mail: stacy.horton@dcr.virginia.gov
8 Radford Street, Ste. 102A
Christiansburg, Virginia 24073
Fax: (540) 394-2588

Big Walker	Patrick
Blue Ridge	Pittsylvania
Halifax	Skyline
New River	

Richmond R. O. – Phone (804) 887-8914
CDC: Blair Gordon
Blackberry: (804) 241-7169
e-mail: blair.gordon@dcr.virginia.gov
600 East Main Street, 24th Floor
Richmond, VA 23219
Fax: (804) 786-1798

Henricopolis	Piedmont
Monacan	Southside
Peter Francisco	Virginia Dare

Staunton R. O. – Phone: (540) 332-9235
CDC: Mark Hollberg
Blackberry: (540) 414-1278
e-mail: mark.hollberg@dcr.virginia.gov
P O Box 1
Verona, Virginia 24482
Fax: (540) 248-3069

Headwaters	Peaks of Otter
Mountain	Robert E. Lee
Mountain Castles	Shenandoah Valley
Natural Bridge	

Suffolk R. O. – Phone: (757) 925-3561
CDC: Art Kirkby
Blackberry: (757) 353-7973
e-mail: arthur.kirkby@dcr.virginia.gov
1548-A Holland Road, Suite 200
Suffolk, Virginia 23434
Fax: 757-925-2388

Appomattox River	James River
Chowan Basin	Lake Country
Eastern Shore	Peanut

Tappahannock R. O. – Phone: (804) 443-8246
CDC: Amy Walker
Blackberry: (804) 238-0952
e-mail: amy.walker@dcr.virginia.gov
P. O. Box 1425 (772 Richmond Beach Rd)
Tappahannock, Virginia 22560
Fax: (804) 443-4534

Colonial	Three Rivers
Hanover-Caroline	Tidewater
Northern Neck	Tri-County/City

Warrenton R.O. - Phone: (540) 351-1500
CDC: Debbie Cross
Blackberry: (540) 270-8780
e-mail: debbie.cross@dcr.virginia.gov
98 Alexandria Pike, Suite 33
Warrenton, Virginia 20186-2849
Fax: (540) 347-6423

Culpeper	Northern Virginia
John Marshall	Prince William
Lord Fairfax	Thomas Jefferson
Loudoun	

Richmond Central Office

DCR - Division of Soil and Water
Conservation
Division Director: Darryl Glover
e-mail : Darryl.Glover@dcr.virginia.gov

Mailing address: 600 East Main Street, 24th Floor
Physical location: 600 East Main Street, 4th Floor
Richmond, VA 23219-2094
Phone: (804) 786-7119 Mobile: (804) 627-3278
Fax: (804) 371-2630

(January, 2016)

Virginia Association of Soil & Water Conservation Districts

7308 Hanover Green Drive, Suite 100, Mechanicsville, VA 23111

(804) 559-0324 • Fax (804) 559-0325 • www.vaswcd.org

Articles & Bylaws

Since each Soil and Water Conservation district is “a political subdivision of this Commonwealth” under section 10.1-500 of the Soil and Water Conservation Districts Law of the Commonwealth of Virginia and “any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter”, Section 10.1-549, the Soil and Water Conservation Districts of the Commonwealth of Virginia establish this Association as a means of coordinating and enhancing their efforts to fulfill their constitutional responsibilities for the preservation of the Commonwealth’s soil and water resources necessary to protect and promote health, safety, and general welfare of its people.

The Virginia Association of Soil and Water Conservation Districts was organized and the first Constitution was approved February 5, 1946 . Although no formal state association was organized until 1946, informal annual meetings of districts had been conducted since the first meeting on February 15-16, 1940, at Lynchburg, Virginia.

ARTICLES OF INCORPORATION

In order to form a non-stock corporation under Chapter 10 of Title 13.1 of the Code of Virginia, as amended, the following Articles of Incorporation are hereby adopted and set forth.

ARTICLE I – Name

The name of the corporation (hereafter the “Association”) is Virginia Association of Soil and Water Conservation Districts.

ARTICLE II –Purpose

1. Each Soil and Water Conservation District is “a political subdivision of this Commonwealth” under Section 10.1-538 of the Soil and Water Conservation Districts Law of the Commonwealth of Virginia and “any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter,” under Section 10.1-549. The Soil and Water Conservation Districts of the Commonwealth of Virginia establish this Association as a means of coordinating and enhancing their efforts to fulfill their statutory responsibilities for the preservation of the Commonwealth’s soil and water resources necessary to protect and promote health, safety, and general welfare of Virginia’s citizens.
2. The Association will operate under Section 501(c)(5) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.
3. The Association shall have and shall exercise all of the corporate powers of a non-stock corporation as provided by the laws of the Commonwealth of Virginia, to the extent that such laws are not otherwise inconsistent with the provisions of these Articles of Incorporation.

ARTICLE III – Members

Each director of a district created under the provisions of the Virginia Soil and Water Conservation Districts Laws shall automatically become a voting member of this Association. All voting members shall have the right to vote on election of Officers of the Association and all matters referred to the membership for action and to hold any Association office except that they may not continue in or accept such office if they accept appointment as a member of the Virginia Soil and Water Conservation Board. All directors of the districts in a Geographic Area of Virginia, as defined by the Bylaws of this Association, shall have the right to vote on election of an Area Chair and Area Vice Chair of the Area.

ARTICLE IV – Directors

The Officers and the Area Chairs shall constitute the Board of Directors, with authority to act for the Association when it is not in regular session or between meetings of the Members. All actions taken by the Board of Directors must be ratified by the Members at the following annual meeting or at a special meeting called for the purpose of approving and ratifying specific actions previously taken by the Board of Directors. The names and addresses of the persons who are to serve as the initial Directors are:
The terms and replacement procedures for members of the Board of Directors to the extent not inconsistent with these Articles will be specified in the ByLaws of the Association.

ARTICLE V – Registered Office and Registered Agent

The initial registered agent of the corporation is **Edward T. Overton, Jr.**, who is a resident of Virginia and a Director of the Association and whose business address is the same as the address of the registered office of this Association and is in the County of Hanover, Virginia. The address of the initial registered office of this Corporation is
7308 Hanover Green Drive, Suite 100
Mechanicsville, VA 23111

ARTICLE VI – Indemnification

Each person now or hereafter a Director of the Association (and his/her heirs, executors, and administrators) shall be indemnified by the Association against all claims, liabilities, judgments, settlements, costs and expenses, including attorneys' fees, imposed upon reasonable expenses occurred by the director in connection with or resulting from any action suit, proceeding or claim to which the Director is or may be a party by reason of being or having been an Officer or an Area Chair of the Association (whether or not a director at the time of such costs or expenses are incurred by or imposed), except in relation to matters in which he/she shall have been fully adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of duties as a director. In the event of a settlement, the indemnification shall be made only if the Association shall be advised by the Board of Directors of the Association, and otherwise by independent counsel to be appointed by the Board of Directors, that in its or his/her opinion the Director was not guilty of gross negligence or willful misconduct in the performance of his/her duties, and that such settlement was or is in the best interest of the Association. If the determination is to be made by the Board of Directors, it may rely as to all questions of law on the advice of independent counsel. Such right of indemnification shall not be deemed exclusive of any rights to which the Director may be entitled under any by-law, agreement, or otherwise.

ARTICLE VII – Dissolution

Upon dissolution of the Association, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Association, dispose of all of the assets of the Association exclusively for the purposes of the Association in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code, as the Board of Directors shall determine and whose purposes are not inimical to those of the Association.

ARTICLE VIII – Amendments

All provisions of these Articles of Incorporation shall be subject to amendment, consistent with the laws of the Commonwealth of Virginia and Section 501(c)(5) of the Internal Revenue Code of 194, 86, as amended, or the corresponding section of any future federal tax code, by a vote of two-thirds of the members of the Board of Directors.

Adopted 12/6/2011

VA ASSOCIATION OF SOIL & WATER CONSERVATION DISTRICTS

BYLAWS

Article 1 – Name and Offices

The Corporation's name is the Virginia Association of Soil and Water Conservation Districts, and it may be referred to herein as the "Association." The Association may have offices and places of business at locations within the Commonwealth of Virginia as determined by the Association's Board of Directors.

Article 2 – Definitions

- a. "Association" shall mean Virginia Association of Soil and Water Conservation Districts.
- b. "Member" shall be all elected and appointed Directors of a District created under the provisions of the Virginia Soil and Water Conservation District Laws and who are currently serving. Members are entitled to vote with respect to all business of the Virginia Association of Soil and Water Conservation Districts.
- c. "Annual Meeting" means the multi-day educational meeting annually conducted at a central location.
- d. "Business Meeting" means the meeting of Members held for the purpose of conducting business of the Association. The "Annual Business Meeting" shall be held on the first or second day of the Annual Meeting, and Business Meetings shall be held at such times as permitted by Article 11 hereof. The Association shall give all Members at least 60 days Notice of Business Meetings.
- e. "Notice" shall mean a written notice to all Members and Districts, by e-mail. In the event the Member does not have e-mail, notice to the District shall be deemed sufficient. Such Notice shall state the time and place of the meeting, the general business to be conducted, and an Agenda listing all matters to be considered and voted on in the Meeting. Members and the Districts shall be responsible for providing the Association with correct addresses of all Directors.
- f. "Agenda" shall mean a separate listing of each item of business intended to be presented for action at forthcoming Business Meetings. It should be in sufficient detail to put all Members on notice of the matters to be considered.

Article 3 – Government

- a. The Association shall be governed by the Association's Articles of Incorporation, these Bylaws, and Robert's Rules of Order Newly Revised, when these Rules are not inconsistent with the Articles of Incorporation or the Bylaws.
- b. The Association shall be governed by a Board of Directors. The election procedure and duties of Association Directors are described in Article 6 and Article 7.

Article 4 – Association Purpose

- a. Each Soil and Water Conservation District is "a political subdivision of this Commonwealth" under Section 10.1-538 of the Soil and Water Conservation Districts Law of the Commonwealth of Virginia and "any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter," under Section 10.1-549. As set forth in the Articles of Incorporation, the Soil and Water Conservation Districts of the Commonwealth of Virginia establish this Association as a means of coordinating and enhancing their efforts to fulfill their constitutional responsibilities for the preservation of the Commonwealth's soil and water resources necessary to protect and promote health, safety, and general welfare of Virginia's citizens.
- b. The Association will operate under Section 501(c)(5) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.
- c. The Association shall have and shall exercise all of the corporate powers of a non-stock corporation as provided by the laws of the Commonwealth of Virginia, to the extent that such laws are not otherwise inconsistent with the provisions of these Bylaws.
- d. The Association's purposes shall also be to serve as a central means of determining and implementing the program objectives and financial requirements as determined by its constituent districts.
- e. The Association's further purposes shall be to study and evaluate the nature and scope of the total natural resource conservation program in the Commonwealth of Virginia and to give guidance to districts in developing plans of action for accomplishing each district's conservation goals.

Article 5 – Association Authority and Responsibility

- a. The Association shall provide leadership and assistance to Districts in achieving their natural resource conservation goals, including, but not limited to, the following areas:
 - 1) Administrative activities and representing districts in relationships with profit and non-profit organizations.
 - 2) Government Relations, including, but not limited to, representing districts before the General Assembly, Governor's Office, the Natural Resources Secretariat, Virginia Department of Environmental Quality, Virginia Department of Conservation and Recreation, members of Congress, the USDA Natural Resources Conservation Service (NRCS) and other agencies or offices.
 - 3) Educational, including, but not limited to, Envirothon, Youth Conservation Camp, staff training, and director training.
- b. The Association shall represent districts in all district-related matters that come before the Virginia Soil and Water Conservation Board (VSWCB) as described in Section 10.1-505 of the Code of Virginia. The Association President will meet with the Virginia Soil and Water Conservation Board at least annually to present information on district goals and programs to enable the VSWCB to determine appropriate district operational funding and support essential to support district programs. The Association President may utilize other Association officers or staff to assist in this presentation. The Association President, or his/her designee, will also normally attend VSWCB meetings that are held throughout the year.

Article 6 – Officers and Their Election

a. Officers

The Association shall have the following elective officers: President, 1st Vice President, 2nd Vice President, Secretary/Treasurer, and National Association of Conservation Districts (NACD) Board Representative, all of whom shall be elected at the Annual Meeting of the Association, as appropriate. The immediate past president, if eligible and available to serve, shall also be an officer, with the title of Immediate Past President

b. Terms of Office

1. The President shall serve a term of one year and may be re-elected for one additional consecutive term.
2. The 1st Vice President shall serve a term of one year and may be re-elected for one additional consecutive term.

3. The 2nd Vice President shall serve a term of one year and may be re-elected for one additional consecutive term.
 4. The Secretary/Treasurer shall be elected for a two-year term and may be re-elected.
 5. The NACD Board Representative shall be elected for a two-year term and may be re-elected.
 6. The Past President shall serve for such period of time as he/she is the immediate past president.
- A VASWCD officer must resign from the officer position if he/she no longer serves as a director of a soil and water conservation district.

c. Nomination and Election of Officers

At least three months prior to the annual meeting of the Association, the President shall appoint a nominating committee consisting of no less than three members each from a different Area. At least three months prior to *that Annual Meeting* notice should be given of the upcoming elections and invite persons interested in becoming candidates to submit a resume, to the Nominating Committee, no less than 60 days prior to the Annual Meeting. The resumes of the candidates advanced by the Nominating Committee shall be circulated by the Association no less than 45 days prior to the Annual Meeting, in accordance with the notice requirements of Article 2.e. At the Annual Meeting, said committee shall present a proposed slate of qualified candidates for the offices of President, 1st Vice President, 2nd Vice President, Secretary/Treasurer and NACD Board representative. Other nominations may be made from the floor. All Officers shall be Members.

d. Duties of Officers

1. The President shall be the executive head of the Association and shall preside at its meeting and at meetings of the Board of Directors.
2. The 1st Vice President shall perform the duties of the President in his/her absence, serve as coordinator of all Standing Committees, and shall perform such other duties the President or the Board of Directors may designate.
3. The 2nd Vice President shall perform the duties of the 1st Vice President and the President in their absence, shall coordinate with the Area Chairs, as needed for their activities, and shall perform such other duties as the President or the Board of Directors may designate.
4. The Secretary/Treasurer, in accordance with proper accounting procedures, shall be responsible for receiving all funds of the Association, making all disbursements as authorized by the Board, and investing the Association's monies as directed by the Board. The Secretary/Treasurer will also be responsible for maintaining all appropriate records for the Association.
5. The NACD Board Representative shall normally attend Regional and National NACD meetings and represent and act on behalf of the Association. The Board shall reserve the right to instruct the Board Representative with regard to any particular issue or position as it may determine or limit his/her authority to act on the issue or position until the Board has reviewed the alternatives. The Alternate NACD Board Representative shall be the Association's President or his/her designee.
6. The Past President shall provide support and assistance to the President, Association staff, Executive Committee, and Board of Directors based on his/her Association experience.

e. Line of Succession

In the event of disability or resignation of the President, the 1st Vice President, or 2nd Vice President in that order, shall accede automatically to the presidency. In the event of the disability or resignation of the 1st Vice President, then the 2nd Vice President will accede automatically to the 1st vice president position. In the event of the disability or resignation of the 2nd Vice President, Secretary/Treasurer, or NACD Representative, then the remaining members of the Board shall fill the vacancy from the Board or membership-at-large or may elect to hold a special election by mail or electronic communication.

Article 7 – Association Geographic Areas

- a. For appropriate representation of districts in the work of the Association, the Commonwealth of Virginia shall be divided into six geographic areas (the "Areas") generally recognized as follows:

Area I: Western Virginia (6 SWCDs): Natural Bridge SWCD, Shenandoah Valley SWCD, Lord Fairfax SWCD, Mountain SWCD, Headwaters SWCD, Mountain Castles SWCD	Area II: Northern Piedmont (6 SWCDs): Thomas Jefferson SWCD, Culpeper SWCD, Northern Virginia SWCD, John Marshall SWCD, Prince William SWCD, Loudoun SWCD
Area III: Central-Tidewater (8 SWCDs): Tidewater SWCD,	Area IV: Southwest Virginia (11 SWCDs): New River SWCD,

Northern Neck SWCD, Tri-County/City SWCD, Colonial SWCD, Hanover-Caroline SWCD, Monacan SWCD, Henricopolis SWCD, Three Rivers SWCD	Skyline SWCD, Holston River SWCD, Daniel Boone SWCD, Clinch Valley SWCD, Scott County SWCD, Lonesome Pine SWCD, Evergreen SWCD, Tazewell SWCD, Big Walker SWCD, Big Sandy SWCD
Area V: Southern Piedmont (10 SWCDs): Southside SWCD, Piedmont SWCD, Blue Ridge SWCD, Robert E. Lee SWCD, Pittsylvania SWCD, Halifax SWCD, Peaks of Otter SWCD, Peter Francisco SWCD, Patrick SWCD, Lake Country SWCD	Area VI: Southeast Virginia (6 SWCDs): Peanut SWCD, Chowan Basin SWCD, Eastern Shore SWCD, Virginia Dare SWCD, Appomattox River SWCD; James River SWCD

- b. Each of the six Association geographic Areas shall elect an Area Chair and Vice Chair.
- c. Meetings:
 - 1. The Annual Area meeting shall be held during the Annual Meeting of the Association.
 - 2. A Spring meeting of the Area shall be held at a time, and place, designated by the Area, or the Area Chair.
- d. Elections:

Area Chairs and Area Vice-Chairs shall be elected for terms of two years and each may succeed him/herself once but must vacate the office if he/she resigns or fails to gain re-election or re-appointment to a district board. Election shall be conducted by one of the following methods:

 - 1. By ballot or voice vote of Association members, of that Area, at the annual Area meeting.
 - 2. In the event of disability or resignation of an Area Chair or Vice Chair, by ballot or voice vote of Association members of that Area, at the Annual, or other, meeting of the Area or by mail ballot.

Article 8 – Board of Directors

- a. The Association Officers and the Area Chairs shall constitute the Board of Directors, with authority to act for the Association when it is not in regular session. All actions taken by the Board must be ratified by Association members at the following annual meeting or at a special meeting called for the purpose of approving or ratifying specific actions previously taken by the Board of Directors. If an Area Chair is unable to attend a Board of Directors meeting, then the Area Vice Chair may represent the Area. As a Board member, each Area Chair shall serve on at least one standing committee of the VASWCD.
- b. The President, 1st Vice President, 2nd Vice President, Secretary/Treasurer, NACD Board Representative, and the immediate Past President shall constitute the Executive Committee and shall be empowered by the Board of Directors to act on behalf of the Board when it is not in session. All actions taken by the Executive Committee must be ratified by the Board at the following Board meeting.
- c. No person shall concurrently serve in more than one position as an Association Officer or Area Chair or Vice Chair, and no person shall cast more than one vote on a question.
- d. If a member of the Board of Directors is appointed to the Virginia Soil and Water Conservation Board, then he/she must resign from the Association director position.

Article 9 – Association Committees

- a. When appropriate, the Board of Directors may establish standing committees. The Association President, with the assistance of the Executive Committee, will appoint members, including the chairperson, to these committees. Standing committee members may include, but are not limited to, District directors and associate directors, district staff, and employees of partner agencies.
- b. The initial standing committees are Agricultural, District Operations, Forestry, Marketing/Public Relations, Legislative, and Urban.
- c. When appropriate, the Association President, with the assistance of the Executive Committee, may establish ad-hoc committees, and appoint members to these ad-hoc committees.

Article 10 – Finances

- a. Each district shall be assessed an annual support services fee as determined by the Association membership.
- b. The records of the Association shall be audited annually by a certified public accountant.
- c. The Board of Directors shall provide for the execution of a surety bond for the Secretary/Treasurer in an amount determined by the Board.

- d. An annual report of the actions taken by the Board of Directors during the past year and a statement of the income and expenditures of the Association since the last financial report shall be distributed to each district through its Area Chair.

Article 11 – Meetings of the Association

- a. Annual Meeting

The Board of Directors shall set the date and place of the annual meeting of the Association.

- b. Other Meetings

The President shall set the date and place of other meetings of the Association as needed and shall call meetings of the Board of Directors.

- c. Quorum

Two-thirds of the Soil and Water District directors registered for the meeting of the Association shall constitute a quorum for annual meetings of the Association, provided however that number must represent a minimum of fifteen percent (15%) of the total membership of the Association. A majority vote of those present at the business session shall be necessary for the transaction of business. A simple majority of the Board of Directors shall constitute a quorum for its meetings and a majority vote of those present shall be necessary for the transaction of business at any meeting of the Board of Directors.

- d. The rules contained in the current edition of ***Robert's Rules of Order Newly Revised*** shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with the bylaws of the Association; any special rules the Association may adopt; or laws of the Commonwealth of Virginia.

Article 12 – District Responsibilities Toward the Association

- a. Each district, as a part of the Association, is expected to assist all 47 districts in Virginia to achieve their natural resource conservation goals by supporting the Virginia Association of Soil and Water Conservation Districts by 1) volunteering to help the Association work toward district goals, and 2) by providing annual financial assistance to the Association in an amount determined by the entire Association membership.

- b. If a district refuses to support the Association, as described above, the Association reserves the right to limit that district's participation in Association activities. The decision to limit a district's participation in Association activities shall be made by the Association's Board of Directors. The District will be notified prior to any action and given opportunity to respond in person or at a board meeting.

Article 13 – Amendments to the Bylaws

- a. Proposed amendments to these Bylaws may be considered at any annual meeting of the Association, provided the proposal has been submitted in writing to the Chairperson of each district at least 60 days prior to the date of the annual meeting.

- b. A two-thirds affirmative vote of those members present at the business session shall be necessary for adoption.

- c. Amendments shall become effective immediately upon adoption except those that have a specified effective date.

Adopted 12/6/2011; Amended 12/4/2012; Amended 12/10/2013; Amended 12/8/2015

SECTION VIII

MISCELLANEOUS