



*Commonwealth of Virginia*  
*Office of the Governor*

## *Executive Order*

### **NUMBER SIXTY FIVE (2017)**

#### **EXECUTIVE ORDER ON CHAPTER 836, 2017 ACTS OF ASSEMBLY (the 2017 APPROPRIATION ACT)**

##### **Importance of the Order**

Article V, Section 6 of the Constitution of Virginia vests in the Governor the power to veto certain items within any appropriation act. This is an essential power which permits the Governor to prevent legislative overreach and maintain fiscal discipline for the Commonwealth. Since the Supreme Court of Virginia decided *Commonwealth v. Dodson*, this power has “undoubtedly” included the ability to veto entire “items or unconstitutional provisions” in appropriation bills. 176 Va. 281, 310 (1940).

On April 28, 2017, I signed HB 1500 (the Budget Bill) with a communication of five item vetoes related to cybersecurity public service scholarships, the settlement of Medicaid claims, the expansion of the Virginia Medicaid program, new conditions on funding for the Secretary of Transportation, and funding for the Virginia Coalfields Economic Development Authority. In addition, I noted that certain language in Item 125, which would authorize the Comptroller to withhold funds from the Virginia Economic Development Partnership until it met certain conditions as approved by specific General Assembly members, was unconstitutional and unenforceable. On May 3, 2017, the Clerk of the House of Delegates indicated that he would not publish two of my five item vetoes, those related to Item 306 JJJ.4 and Item 436, considering them invalid under the Constitution of Virginia.

Frustrated by my successful veto of 120 of their bills, General Assembly members have resorted to legislating through the budget, using the appropriations power to change existing law in Virginia. This is an abuse of legislative power and a violation of the Constitution of Virginia. Moreover, the House Clerk’s refusal to publish actions taken by the Governor is a profound abuse of authority, purporting to endow an unelected ministerial officer with some

extraconstitutional power to override the Governor's vetoes based on his own legal opinions. This is entirely improper, and it must be addressed in a manner reflective of the seriousness of the issues involved—keeping Virginia's fiscal house in order.

Accordingly, I will use my authority under the Constitution of Virginia and as the Chief Planning and Budget Officer of the Commonwealth to bring clarity to Virginia's budget.

### **Executive Agencies to Recognize Item Vetoes**

As of the date of this Order, all Executive Branch agencies are hereby ordered to recognize and abide by the item vetoes I submitted to the Clerk of the House of Delegates on April 28, 2017, the date the newly-enacted budget became effective. All of these actions were legal, valid, and within the constitutional authority granted to the Governor under Article V, Section 6 of the Constitution of Virginia. Moreover, the provision in Item 125 that delegates to three members of the General Assembly the power to decide whether money is appropriated to the Virginia Economic Development Partnership or not is clearly unconstitutional and unenforceable. I append to this Order a copy of the communication of my actions to the General Assembly, which constitute the final action on the current biennial budget.

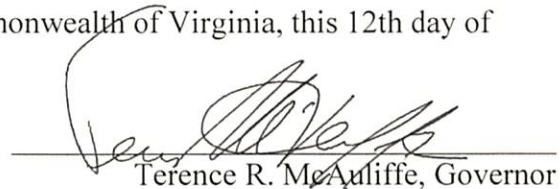
All language stricken by my vetoes, including Item 306 JJJ.4 and the additional language purportedly added to Item 436, are null and void, and of no legal effect whatsoever. Additionally, as noted in my communication to the House, I consider Item 125.R.3 unconstitutional and unenforceable, and I order the Comptroller not to abide by its terms.

### **Effective Date of the Executive Order**

This Executive Order shall be effective upon its signing and shall remain in force and effect until rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of May, 2017.



  
Terence R. McAuliffe, Governor

Attest:

  
Kelly Thomasson, Secretary of the Commonwealth





# COMMONWEALTH of VIRGINIA

## Office of the Governor

Terence R. McAuliffe  
Governor

### HOUSE OF DELEGATES

#### HB 1500 – GOVERNOR'S VETOES

I have completed my review of House Bill 1500. This budget represents a number of significant accomplishments; most important, it addresses the revenue shortfall and is balanced in a manner that protects public education and other core services that are important to a growing economy and a high quality of life.

Together, in this budget, we kept the promise to prioritize compensation increases for our dedicated state employees and state-responsible local employees. I am also pleased that we worked together to adhere to a conservative revenue forecast. This fiscally prudent action, along with adoption of a Revenue Cash Reserve to guard against short-term revenue shocks, will help to ensure that the Commonwealth has the capacity to address potential negative impacts from sequestration or other potentially threatening federal actions, as well as the possibility of other economic uncertainties.

Overall, this budget represents more areas of agreement than disagreement. That said, I remain disappointed that we could not agree on critical issues for the future of our Commonwealth, like investments in cybersecurity, workforce development, and solar energy. I also regret that this budget does not include the revenue for the lifesaving benefits that Medicaid expansion would generate for our Commonwealth.

This budget achieves most of the major objectives I proposed to you and I am proud to sign it. However, pursuant to Article V, Section 6, of the Constitution of Virginia, I have vetoed four items, vetoed one unconstitutional provision, and noted a sixth provision I believe is unconstitutional and unenforceable. The summary below describes each of these actions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terence R. McAuliffe".

Terence R. McAuliffe

## **Summary of Vetoes and Other Actions**

### **Item 125, page 94 – VEDP Language**

*Action: I view this provision to be unconstitutional.*

*Terence R. McAuliffe April 28, 2017*

The reenrolled budget includes language authorizing the Comptroller to withhold general fund appropriations in the amount of \$1.5 million from the Virginia Economic Development Partnership (VEDP) and to disburse the funding only as directed by the Chairmen of the House Appropriations and Senate Finance Committees following the chairmen's receipt and evaluation of certain plans. However, the Virginia Constitution prohibits the General Assembly from delegating final legislative authority regarding budget or other enactments to a committee composed of a subset of the members of the General Assembly. Accordingly, I will not execute this provision as written, but I will work with VEDP and the committee chairmen to ensure VEDP submits the plans outlined in Item 125 R.1. and 2. in a timely manner.

### **Item 144, page 154 – Cybersecurity Scholarships**

*Action: I veto this item and, consistent with the November 1, 1996, Supreme Court decision, Gilmore vs. Landside and Jamerson, it will return to its original enactment in Chapter 780 of the 2016 Acts of Assembly.*

*Terence R. McAuliffe April 28, 2017*

The reenrolled budget eliminates a \$500,000 general fund appropriation in FY 2018 and the related governing language for the cybersecurity public service scholarships program approved by the 2016 General Assembly and included in Chapter 780, 2016 Acts of Assembly. This program is intended to strengthen the state's ability to recruit cybersecurity talent by awarding scholarships to individuals who would work for the state upon completion of their cybersecurity academic program. Given the great amounts of sensitive information held by the state, and the difficulty experienced by state agencies when competing with the private sector for individuals with experience in protecting information technology from cyber-attacks, this program is vital for the state to continue defending itself from hackers and criminals. My veto will restore this appropriation and return it and the related language to its original enactment in Chapter 780, 2016 Acts of Assembly.

### **Item 306, page 280 – Medicaid Settlements**

*Action: I veto this item.*

*Terence R. McAuliffe April 28, 2017*

The reenrolled budget allows informal appeals agents at the Department of Medical Assistance Services to close an informal appeal based on a settlement between the parties up to \$250,000

without legal review by the Office of the Attorney General (OAG). The removal of the OAG's legal review could result in inconsistent settlement policy. The OAG should review and approve all settlements of claims of the Commonwealth pursuant to §2.2-514 of the Code of Virginia.

I veto this language as it is new language not included in Chapter 780, 2016 Acts of Assembly. It is not related to an appropriation or a condition on an appropriation, therefore, it constitutes separate legislation.

**Item 306, page 286 – Medicaid Expansion Language**

*Action: I veto this unconstitutional provision.*

*Terence R. McAuliffe April 28, 2017*

I veto Item 306.JJJ.4, which is unconstitutional. Item 306.JJJ.4 purports to condition, "all appropriations in this act" and to govern, "notwithstanding any other provision of this act, or any other law," such that no funds may be expended or appropriated to implement expanded coverage under the Patient Protection and Affordable Care Act.

Item 306.JJJ.4 violates Article V, Section 6(d), which provides the Governor line-item veto power in appropriation acts. By conditioning all appropriations in the budget on Item 306.JJJ.4, the Governor's ability to issue a line-item veto is removed. I object to Item 306.JJJ.4 as a condition on Item 306, yet I am unable to reject it without also rejecting all of the monies appropriated in this budget bill. Under Item 306.JJJ.4, the General Assembly has attempted to entirely remove the Governor's ability to reject an objectionable item, which is an unconstitutional overreach.

Additionally, Item 306.JJJ.4 violates Article IV, Section 12, which mandates that "[n]o law shall embrace more than one object," a constitutional prohibition on combining into one legislative act multiple provisions that separately may not each receive majority support. If the policy underlying Item 306.JJJ.4 were a separate bill, as it should have been, then I would have vetoed it and that veto certainly would have been sustained. The General Assembly has attempted to avoid that result by embedding that policy in the budget bill.

I vetoed this same provision last year and I communicated this same message. The Keeper of the Rolls did not print my veto. Once again, I must insist that this is an unconstitutional provision and I respectfully request that the enacted bill reflect my actions.

**Item 436, pages 399 through 404 – Language relating to the Public-Private Transportation Act of 1995**

*Action: I veto this item and, consistent with the November 1, 1996, Supreme Court decision, Gilmore vs. Landsidle and Jamerson, it will return to its original enactment in Chapter 780 of the 2016 Acts of Assembly.  
Terence R. McAuliffe April 28, 2017*

The reenrolled bill includes language that would extend public works contract requirements that presently pertain only to state-initiated transportation projects to include projects developed under the Public-Private Transportation Act (PPTA) of 1995. This could preclude vendors with union labor from participating in PPTA projects. Vendors involved with PPTA projects are typically national and international firms. Any restrictions on these vendors will reduce the possible benefits Virginia could reap from its PPTA projects.

My veto will remove this new restrictive language since it is likely to limit the number of companies willing to participate in transportation projects under the Public-Private Transportation Act.

I realize that my veto will return this item to its original enactment in Chapter 780, 2016 Acts of Assembly, and that it will nullify other provisions passed by the 2017 General Assembly to which I do not object. In order to implement those other provisions, I have asked my Secretary of Transportation to work with the affected parties and the appropriate General Assembly members to implement those provisions administratively.

**Item 476, page 447 – Virginia Coalfield Economic Development Authority**

*Action: I veto this item.  
Terence R. McAuliffe April 28, 2017*

The reenrolled bill directs the Virginia Coalfields Economic Development Authority (VCEDA) to provide up to \$500,000 of its balances to the Lenowisco and Cumberland Plateau Planning District Commissions to support economic development activities in Southwest Virginia. Currently, the Lenowisco and Cumberland Plateau Planning District Commissions each receive \$75,971 from the general fund in each year. Since the conclusion of the 2017 General Assembly, several communities in Southwest Virginia have expressed concern about the transfer of funds and requested a veto.

Further, the budget also provides funds for the Virginia Initiative for Growth and Opportunity in Each Region (GO Virginia). GO Virginia's focus is the creation of state financial incentives, technical support, and other assistance that will encourage collaboration for private-sector growth and job creation by business, education, and government entities in nine designated regions. Each region is developing a plan for spurring regional growth.

House of Delegates  
April 28, 2017  
Page 5

My veto removes the appropriation and corresponding budget language. I believe that the VCEDA funds duplicate efforts that can be accomplished through GO Virginia.



## ITEM 125.

O. The Virginia Economic Development Partnership shall transfer to the Department of Environmental Quality up to \$250,000 of the amounts appropriated in this item to conduct research and for other appropriate costs associated with the development of a long-term offsetting methods within the Virginia Nutrient Credit Exchange. The Virginia Economic Development Partnership shall work in conjunction with the Department of Environmental Quality to develop the long-term offsetting methods.

P. Out of the general fund appropriation in this item, the Virginia Economic Development Partnership shall provide \$1,000,000 the first year and \$1,000,000 \$25,000 the second year to the Commonwealth Center for Advanced Manufacturing for rent and operating support.

Q. Out of the amounts in this item, \$5,160,700 \$4,051,239 the first year and \$5,160,700 \$4,865,700 the second year from the general fund shall be provided to strengthen and promote economic development initiatives. The funding shall be allocated on an annual basis as follows: \$466,000 the first year and \$366,000 the second year to expand on an annual basis the Virginia Jobs Investment Program, \$1,000,000 the first year and \$950,000 the second year to support the Virginia International Trade Alliance, \$2,000,000 \$890,539 the first year and \$1,900,000 the second year to match federal grants for the Going Global Defense Initiative; Virginia International Trade Alliance; and the State Trade Export Promotion (STEP) grant program, \$650,000 the first year and \$605,000 the second year to Support Virginia exporters, \$250,000 in each year to implement the recommendations of the Virginia Sustained Growth Study and \$794,700 in each year to support US and international business attraction.

R.1. The Virginia Economic Development Partnership (VEDP) shall submit its strategic plan, marketing plan and operational plan to the Joint Legislative Audit and Review Commission Special Subcommittee on Economic Development no later than December 1, 2017 for review.

2. In addition, VEDP shall submit its plans for operating and staffing the new Incentives Division, the new Office of the Auditor, and the International Trade Division for review by the JLARC Special Subcommittee on Economic Development no later than December 1, 2017. These plans should include, but not be limited to, organization and staffing qualifications, as well as fiscal estimates for potential increases in funding and positions, if applicable.

3. The Comptroller is hereby authorized to withhold general funds in the amount of \$1,500,000 second year until notified by the Chairmen of the House Appropriations and the Senate Finance Committees that VEDP has complied with this request by the date specified and that all or a portion specified of the funds are authorized for disbursement.

Total for Virginia Economic Development Partnership.....

Fund Sources: General.....

39 125.10 Omitted.

40 126. Not set out.

41 127. Not set out.

42 128. Not set out.

43  
44 129. Tourist Promotion (53600).....  
45  
46  
47

Tourist Promotion Services (53607).....

Fund Sources: General.....

\$21,746,335  
\$21,035,296

\$21,746,335  
\$21,035,296

\$21,046,337  
\$19,784,112

\$21,746,335  
\$21,035,296

\$21,046,337  
\$19,784,112

Item Details(\$)  
First Year Second Year  
FY2017 FY2018

Appropriation(\$)  
First Year Second Year  
FY2017 FY2018

view this  
provision, to be  
uncertain  
for 1. 11/28/17

\$26,851,544  
\$25,508,967

\$26,851,544  
\$25,508,967

\$27,351,546  
\$26,035,046



## ITEM 144.

Item Details(S)  
First Year Second Year  
FY2017 FY2018

Appropriation(S)  
First Year Second Year  
FY2017 FY2018

J: Out of this appropriation, \$500,000 the first year and \$500,000 the second year from the general fund is designated for cybersecurity public service scholarships. This award requires a state government employment commitment in the Commonwealth by the recipient equal to the number of years the scholarship is awarded. The State Council of Higher Education for Virginia shall develop eligibility criteria for this program, as well as establish the award amounts.

K. 1. The State Council of Higher Education for Virginia shall work with representatives of the higher education institutions receiving state financial aid or whose students receive tuition assistance grants and review the financial aid award letters utilized by these institutions by November 1, 2017. During this review, the Council shall identify opportunities for improvement as well as best practices for, but not limited to, clarity and completeness of the information provided on gift aid as well as student's responsibility regarding student loans or work-study, student's ability to compare financial aid award packages among these institutions to make informed financial choices, and the conditions under which these awards or outstanding balance might change.

2. The Council shall then develop and implement award letter policies so that the following information is available to the student (1) a breakdown of the components of the institution's cost of attendance, designating billable charges; (2) a clear identification of each award, indicating the type of aid; (3) the use of standardized terminology consistent with the National Association of Student Financial Aid Administrators (NASFAA); and (4) whether awards are conditional and renewal requirement criteria information.

3. The Council shall report its findings and provide a status report on the implementation of the policy and process changes to the House Appropriations and Senate Finance Committees by December 1, 2018.

145. Not set out.

146. Higher Education Academic, Fiscal, and Facility Planning and Coordination (11100).....

Higher Education Coordination and Review (11104).....

Regulation of Private and Out-of-State Institutions (11105).....

Fund Sources: General.....

Special.....

Trust and Agency.....

Authority: §§ 23-9.3, 23-1-200, 23-9.6, 23-1-203, 23-20, 23-1-1107, 23-38.13, 23-1-629.

A. 1. It is the intent of the General Assembly to provide general fund support to contract at a level equivalent to the Tuition Assistance Grant undergraduate award with Mary Baldwin College University for Virginia women resident students to participate in the Virginia Women's Institute for Leadership at Mary Baldwin College University.

2. The amounts included in this Item are \$307,899 from the general fund the first year and \$307,899 the second year from the general fund for the programmatic administration of this program.

3. General fund appropriations provided under this contract include financial incentive for the participating students at Mary Baldwin College University in the Virginia Women's Institute for Leadership Program. Students receiving this financial incentive will not be eligible for Tuition Assistance Grants.

4. By September 1 of each year, Mary Baldwin College University shall report to the Chairmen of the House Appropriations and Senate Finance Committees, the Director, State Council of Higher Education for Virginia, and the Director, Department of Planning and Budget, on the number of students participating in the Virginia Women's Leadership Program, the number of in-state and out-of-state students receiving awards, the amount of the awards,

\$16,984,678 \$17,996,219  
\$15,376,867 \$15,157,983

\$15,768,614 \$16,780,097  
\$14,160,803 \$13,941,861

\$1,216,064 \$1,216,122

\$15,618,614 \$16,630,097

\$14,010,803 \$13,791,861

\$1,176,064 \$1,176,122

\$190,000 \$190,000

1 UCTO + 1  
Consistent with  
The November 1916  
Separate Grant  
- Lawrence J. Lawrence  
JAMORSON  
it will return  
to its original  
exclusion in  
chapter 780  
of the 2016 Acts  
of Assembly  
of  
Lawrence J. Lawrence  
4/18/17



plan of care developed by the residential treatment center or the freestanding psychiatric hospital and arranged by the residential treatment center or the freestanding psychiatric hospital. The department shall require residential treatment centers to include all services in the plan of care needed to meet the member's physical and psychological well-being while in the facility but may also include services in the community or as part of an emergency.

2. The department shall have the authority to promulgate emergency regulations to implement this amendment within 280 days from the enactment of this Act.

UU. The Department of Medical Assistance Services shall have the authority to amend the State Plans under Title XIX and Title XXI of the Social Security Act in order to comply with the mandated provider screening provisions of the federal Affordable Care Act (P.L. 111-148 and P.L. 111-152). The department shall have authority to promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this Act.

VV. The department may seek federal authority through amendments to the State Plans under Title XIX and XXI of the Social Security Act, and appropriate waivers to such, to develop and implement programmatic and system changes that allow expedited enrollment of Medicaid eligible recipients into Medicaid managed care, most importantly for pregnant women. The department shall have the authority to promulgate emergency regulations to implement this amendment within 280 days or less from the enactment date of this Act.

WW.1. The Department of Medical Assistance Services, related to appeals administered by and for the department, shall have authority to amend regulations to:

i. Utilize the method of transmittal of documentation to include email, fax, courier, and electronic transmission.

ii. Clarify that the day of delivery ends at normal business hours of 5:00 pm.

iii. Eliminate an automatic dismissal against DMAS for alleged deficiencies in the case summary that do not relate to DMAS's obligation to substantively address all issues specified in the provider's written notice of informal appeal. A process shall be added, by which the provider shall file with the informal appeals agent within 12 calendar days of the provider's receipt of the DMAS case summary, a written notice that specifies any such alleged deficiencies that the provider knows or reasonably should know exist. DMAS shall have 12 calendar days after receipt of the provider's timely written notification to address or cure any of said alleged deficiencies. The current requirement that the case summary address each adjustment, patient, service date, or other disputed matter identified in the provider's written notice of informal appeal in the detail set forth in the current regulation shall remain in force and effect, and failure to file a written case summary with the Appeals Division in the detail specified within 30 days of the filing of the provider's written notice of informal appeal shall result in dismissal in favor of the provider on those issues not addressed by DMAS.

iv. Clarify that appeals remanded to the informal appeal level via Final Agency Decision or court order shall reset the timetable under DMAS' appeals regulations to start running from the date of the remand.

v. Clarify the department's authority to administratively dismiss untimely filed appeal requests.

vi. Clarify the time requirement for commencement of the formal administrative hearing.

vii. Clarify that the informal appeals agent shall have the ability to close an informal appeal based on a settlement between the parties up to \$250,000, notwithstanding § 2.2-514 of the Code of Virginia. For settlements of \$250,000 or greater, such settlement shall be subject to § 2.2-514 of the Code of Virginia.

2. The Department of Medical Assistance Services shall have authority to promulgate regulations to implement these changes within 280 days or less from the enactment date of this Act.

3. The Department of Medical Assistance Services shall convene a workgroup with representatives from the provider community, and the legal community, and the Office of Attorney General to develop a plan to avoid or adjust retractions or for non-material

1 K. TO this  
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Tom R. MDA  
4/28/17



1 III. The Department of Medical Assistance Services shall realign the billable activities paid  
2 for individual supported employment provided under the Medicaid home- and community-  
3 based waivers to be consistent with job development and job placement services provided  
4 through employment services organizations that are reimbursed by the Department for Aging  
5 and Rehabilitative Services. The department shall have the authority to implement this  
6 reimbursement change effective July 1, 2013, and prior to the completion of any regulatory  
7 process undertaken in order to effect such change.

8 JJJ.1. The Department of Medical Assistance Services shall seek federal authority through  
9 any necessary waiver(s) and/or State Plan authorization under Titles XIX and XXI of the  
10 Social Security Act to implement a comprehensive value-driven, market-based reform of the  
11 Virginia Medicaid/FAMIS programs.

12 2. The department is authorized to contract with qualified health plans to offer recipients a  
13 Medicaid benefit package adhering to these principles. Any coordination of non-traditional  
14 behavioral health services covered under contract with qualified health plans or through other  
15 means shall adhere to the principles outlined in paragraph MM. c. This reformed service  
16 delivery model shall be mandatory, to the extent allowed under the relevant authority granted  
17 by the federal government and shall, at a minimum, include (i) limited high-performing  
18 provider networks and medical/health homes; (ii) financial incentives for high quality  
19 outcomes and alternative payment methods; (iii) improvements to encounter data submission,  
20 reporting, and oversight; (iv) standardization of administrative and other processes for  
21 providers; and (v) support of the health information exchange.

22 3. The Department of Medical Assistance Services shall seek reforms to include all remaining  
23 Medicaid populations and services, including long-term care and home- and community-  
24 based waiver services into cost-effective, managed and coordinated delivery systems. The  
25 department shall begin designing the process and obtaining federal authority to transition all  
26 remaining Medicaid beneficiaries into a coordinated delivery system. DMAS shall promulgate  
27 regulations to implement these provisions to be effective within 280 days of its enactment.  
28 The department may implement any changes necessary to implement these provisions prior to  
29 the promulgation of regulations undertaken in order to effect such changes.

30 4. As a condition on all appropriations in this act and notwithstanding any other provision of  
31 this act, or any other law, no general or nongeneral funds shall be appropriated or expended  
32 for such costs as may be incurred to implement coverage for newly eligible individuals  
33 pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act,  
34 unless included in an appropriation bill adopted by the General Assembly on or after July 1,  
35 2016.

36 KKK.1. The Director of the Department of Medical Assistance Services shall continue to  
37 make improvements in the provision of health and long-term care services under  
38 Medicaid/FAMIS that are consistent with evidence-based practices and delivered in a cost  
39 effective manner to eligible individuals.

40 2. In order to effect such improvements and ensure that reform efforts are cost effective  
41 relative to current forecasted Medicaid/FAMIS expenditure levels, the Department of Medical  
42 Assistance Services shall (i) develop a five-year consensus forecast of expenditures and  
43 savings associated with the Virginia Medicaid/FAMIS reform efforts by November 15 of each  
44 year in conjunction with the Department of Planning and Budget, and with input from the  
45 House Appropriations and Senate Finance Committees, and (ii) engage stakeholder  
46 involvement in meeting annual targets for quality and cost-effectiveness.

47 LLL. Effective July 1, 2014, the Department of Medical Assistance Services shall replace the  
48 AP-DRG grouper with the APR-DRG grouper for hospital inpatient reimbursement. The  
49 department shall develop budget neutral case rates and Virginia-specific weights for the APR-  
50 DRG grouper based on the FY 2011 base year. The department shall phase in the APR-DRG  
51 weights by blending in 50 percent of the full APR-DRG weights with 50 percent of FY 2014  
52 AP-DRG weights in the first year and 75 percent of the full APR-DRG weights with 25  
53 percent of the FY 2014 AP-DRG weights in the second year for each APR-DRG group and  
54 severity. FY 2014 AP-DRG weights shall be calculated as a weighted average FY 2014 AP-  
55 DRG weight for all claims in the base year that group to each APR-DRG group and severity.  
56 Full APR-DRG weights shall be used in the third year and succeeding years for each APR-  
57 DRG group and severity. The department shall have the authority to implement these

*I Vero this  
Unconstitutional  
Provision.*

*Lawrence M. DeLoach  
4/28/17*



# OFFICE OF TRANSPORTATION

## § 1-98. SECRETARY OF TRANSPORTATION (186)

\$888,357

\$888,474

Administrative and Support Services (79900).....	\$888,357	\$888,474
General Management and Direction (79901).....	\$888,357	\$888,474
Fund Sources: Commonwealth Transportation.....		

Authority: Title 2.2, Chapter 2, Article 10, § 2.2-201, and Titles 33, 46, and 58, Code of Virginia.

A. The transportation policy goals enumerated in this act shall be implemented by the Secretary of Transportation, including the Secretary acting as Chairman of the Commonwealth Transportation Board.

1. The maintenance of existing transportation assets to ensure the safety of the public shall be the first priority in budgeting, allocation, and spending. The highway share of the Transportation Trust Fund shall be used for highway maintenance and operation purposes prior to its availability for new development, acquisition, and construction.

2. It is in the interest of the Commonwealth to have an efficient and cost-effective transportation system that promotes economic development and all modes of transportation, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety. The planning, development, construction, and operations of Virginia's transportation facilities will reflect this goal.

3. To the greatest extent possible, the appropriation of transportation revenues shall reflect planned spending of such revenues by agency and by program.

B. The maximization of all federal transportation funds available to the Commonwealth shall be paramount in the budgetary, spending, and allocation processes.

1. Notwithstanding any provision of law to the contrary, the secretary and all agencies within the transportation secretariat are hereby authorized to take all actions necessary to ensure that federal transportation funds are allocated and utilized for the maximum benefit of the Commonwealth, whether such actions or funds or both are authorized under P.L. 112-141 of the 112th Congress, or any successor or related federal transportation legislation, or regulation, rule, or guidance issued by the U.S. Department of Transportation or any federal agency. The secretary and agencies within the transportation secretariat shall utilize, to the maximum extent practicable, the flexibility provided in federal law, regulation, rule, or guidance to use federal funds in a manner consistent with the Code of Virginia.

2. The secretary shall ensure that the allocation of transportation funds apportioned and for which obligation authority is expected to be available under federal law shall be in accordance with such laws and in support of the transportation policy goals enumerated in section A. of this Item. Furthermore, the secretary is authorized to take all actions necessary to allocate the required match for federal highway funds to ensure their appropriate and timely obligation and expenditure within the fiscal constraints of state transportation revenues. By June 1 of each year, the secretary, as Chairman of the Board, shall report to the Governor and General Assembly on the allocation of such federal transportation funds and the actions taken to provide the required match.

3. The board shall only make allocations providing the required match for federal Regional Surface Transportation Program funds to those Metropolitan Planning Organizations in urbanized areas greater than 200,000 that, in consultation with the Office of Intermodal Planning and Investment, have developed regional transportation and land use performance measures pursuant to Chapters 670 and 690 of the 2009 Acts of Assembly and have been approved by the board.

4. Projects funded, in whole or part, from federal funds referred to as congestion mitigation and air quality improvement, shall be selected as directed by the board. Such

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I am R.D.  
consistent with  
The November 1, 1996  
Supreme Court  
decision,  
Gilmore v. Arkside  
and Jamerson,  
it will return  
to its original  
environment  
in Chapter 780  
of the 2016  
Acts of Assembly.  
Russell A. Self  
4/28/17



funds shall be federally obligated within 12 months of their allocation by the board and expended within 36 months of such obligation. If the requirements included in this paragraph are not met by such agency or recipient, then the board shall use such federal funds for any other project eligible under 23 USC 149.

5. Funds apportioned under federal law for the Surface Transportation Program shall be distributed and administered in accordance with federal requirements, including the 22 percent of the non-suballocated portion that is required to be allocated for public transportation purposes. The prioritization process developed under subsection B of Chapter 726 of the 2014 Virginia Acts of Assembly shall not apply to the 22 percent share of the non-suballocated portion allocated for public transportation purposes.

6. Funds made available to the Metropolitan Planning Organizations known as the Regional Surface Transportation Program for urbanized areas greater than 200,000 shall be federally obligated within 12 months of their allocation by the board and expended within 36 months of such obligation. If the requirements included in this paragraph are not met by the recipient, then the board may rescind the required match for such federal funds.

7. Notwithstanding paragraph B.2. of this Item, the required matching funds for Transportation Alternatives projects are to be provided by the project sponsor of the federal-aid funding.

8. Federal transportation funds as well as the required state matching funds may be allocated by the Commonwealth Transportation Board for transit purposes under the same rules and conditions authorized by federal law. The Commonwealth Transportation Board, in consultation with the appropriate local and regional entities, may allocate state revenues to local and regional public transit operators, for operating and/or capital purposes.

9. If a regional area (or areas) of the Commonwealth is determined to be not in compliance with Clean Air Act rules regarding conformity and as a result federal and/or state allocations, apportionments or obligations cannot be used to fund or support transportation projects or programs in that area, such funds may be used to finance demand management, conformity, and congestion mitigation projects to the extent allowed by federal law. Any remaining amount of such allocations, apportionments, or obligations shall be set aside to the extent possible under law for use in that regional area.

10. Appropriations in this act related to federal revenues outlined in this section may be adjusted by the Director, Department of Planning and Budget, upon request from the Secretary of Transportation, as needed to utilize and allocate additional federal funds that may become available.

11. The secretary shall ensure that any bonds issued pursuant to Article 4, Chapter 15 of Title 33.2 shall be programmed to eligible projects selected and funded through the High Priority Projects Program pursuant to § 33.2-370 or the Construction District Grant Program pursuant to § 33.2-371. In any year such bond proceeds are allocated to one or both of the programs, the secretary shall take all necessary action to ensure that each program is provided with the same overall amount of monies though the mix of bond proceeds, state revenues, and federal revenues provided to each program may vary as deemed appropriate by the secretary.

C.1. The secretary may ensure that appropriate action is taken to maintain a minimum cash balance and/or cash reserve in the Highway Maintenance and Operating fund.

2. Notwithstanding the original programmatic allocation, funds provided by the previous primary, secondary and urban construction formulas prior to fiscal year 2010 that are not committed and expected to be expended as of January 1, 2018 may be consolidated to fully fund and advance priority transportation projects within the respective district or locality. If after taking said actions and the determination of the respective locality and the Department of Transportation that formula funds will remain, the funds may be used for other transportation purposes provided by § 33.2, Code of Virginia. All unspent primary, secondary and urban formula funds allocated prior to 2010 unspent as of January 1, 2018 shall be de-allocated and transferred to the State of Good Repair Program pursuant to § 33.2-369, Code of Virginia, unless such funds are allocated to a fully funded and active project.

D.1. The Office of Intermodal Planning and Investment shall recommend to the

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Commonwealth Transportation Board all allocations of funds made available in subsections A. and B. of Item 452. The planning and evaluation may be conducted or managed by the Department of Transportation, Department of Rail and Public Transportation, or another qualified entity selected and/or approved by the Commonwealth Transportation Board.

2. The office shall be responsible for implementing the statewide prioritization process pursuant to § 33.2-214.1 for the Commonwealth Transportation Board.

3. The office shall work directly with affected Metropolitan Planning Organizations to develop and implement quantifiable and achievable goals relating to congestion reduction and safety, transit and HOV usage, job/housing ratios, job and housing access to transit and pedestrian facilities, air quality, and/or per-capital vehicle miles traveled pursuant to Chapters 670 and 690 of the 2009 Acts of Assembly.

4. For allocation of funds under Paragraph 1, the office may give a higher priority for planning grants to (i) regional organizations to analyze various land development scenarios for their long range transportation plans, (ii) local governments to revise their comprehensive plans and other applicable local ordinances to designate urban development areas pursuant to Chapter 896 of the 2007 Acts of Assembly and incorporate the principles included in such act, and (iii) local governments, regional organizations, transit agencies and other appropriate entities to develop plans for transit oriented development and the expansion of transit service. Such analyses, plans, and ordinances shall be shared with the regional planning district commission or metropolitan planning organization and the Commonwealth Transportation Board.

E.1. The Commonwealth Transportation Board is hereby authorized to apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for one or more qualifying transportation infrastructure projects or facilities to be developed pursuant to the Public-Private Transportation Act of 1995, as amended. Any such application, agreement and/or endorsement shall not financially obligate the Commonwealth or be construed to implicate the credit of the Commonwealth as security for any such federal credit assistance.

2. The Commonwealth Transportation Board is hereby authorized to pursue or otherwise apply for, and execute, an agreement to obtain financing using a federal credit instrument for project financings otherwise authorized by this Act or other Acts of Assembly.

F. Revenues generated pursuant to the provisions of § 58.1-3221.3, Code of Virginia, shall only be used to supplement, not supplant, any local funds provided for transportation programs within the localities authorized to impose the fees under the provisions of § 58.1-3221.3, Code of Virginia.

G. The Director, Department of Planning and Budget, is authorized to adjust the appropriation of transportation agencies in order to utilize proceeds from the sale of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds which were authorized in the prior fiscal year but not issued, pursuant to Section 2 of Enactment Clause 2 of Chapter 896 of the 2007 General Assembly Session.

H. The Director, Department of Planning and Budget, is authorized to adjust the appropriation of transportation agencies in order to utilize proceeds from the sale of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes.

I. Notwithstanding any provision of law, any agreement to transfer money from the Commonwealth Transportation Funds to the Metropolitan Washington Airports Authority (MWAA) in connection with Phase II of the Dulles Corridor Metrorail Project beyond Wiehle Avenue in Fairfax County to Washington Dulles International Airport and on to Virginia Route 772 in Loudoun County shall include provisions stating that the MWAA has addressed all of the recommendations included in the November 2012 report of the Inspector General of the U.S. Department of Transportation as a condition of transferring such money. The Governor may waive this requirement for one or more specific recommendations that have not been implemented by notifying the Chairmen of the House Appropriations and Senate Finance Committees of his reason for granting the waiver or waivers.

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3 Board shall consider both state and locally-owned bridges.

4 K. All revenues generated under Chapter 896 of the Acts of Assembly of 2007 (HB 3202) and  
5 Chapter 766 of the Acts of Assembly of 2013 (HB 2313) that were dedicated to  
6 transportation-related funds have been appropriated in conformity with the requirements of  
7 those respective chapters.

8 L. The Secretary of Transportation shall assure that no funds appropriated to any  
9 transportation agency are expended directly or indirectly, including by a private contractor,  
10 for propaganda purposes in support of any proposed transportation project for which  
11 construction funding has not been allocated in the Six Year Improvement Program. This  
12 prohibition shall not extend to advertising legally required for public notifications.

13 M. 1. Notwithstanding § 33.2-1527 B., Code of Virginia, out of the funds made available in  
14 Item 453, \$25,000,000 the first year and \$25,000,000 the second year may be provided to the  
15 Metropolitan Washington Airports Authority for the sole purpose of reducing the airline cost  
16 per enplanement at Washington Dulles International Airport to help attract new domestic and  
17 international airlines and retain existing air carriers. Such funding shall be utilized to reduce  
18 the debt service requirements and total operating costs of the Authority. The first year amount  
19 shall not be provided before December 31, 2016. Payment shall not occur in either fiscal year  
20 unless the Authority has entered into an agreement with one or more airlines currently  
21 operating at Washington Dulles International Airport which ensures the retention of a  
22 domestic airline hub service at the airport for at least seven years beyond calendar year 2017.

23 2. Prior to the release of any funds authorized in Paragraph M.1. to the Authority, the  
24 Secretary of Transportation shall certify in writing to the Governor and the General Assembly  
25 that provision of the funds authorized under this item are in the public interest, that the funds  
26 will be used to supplement not supplant funds otherwise available to the Authority, and that  
27 the Authority has set forth an attainable plan for long-term cost reductions. Funding shall  
28 further be conditioned upon the following requirements:

29 a. No payments shall occur unless and until the Authority has entered into an agreement with  
30 the Virginia Department of Transportation that (i) identifies to the Department future efforts  
31 of the Authority to reduce airline cost per enplanement at Washington Dulles International  
32 Airport using financing efficiency savings, available funds, and future revenues in an amount  
33 that meets or exceeds the amount of the appropriation provided in this section over the course  
34 of the agreement through calendar year 2024, (ii) provides full access to the financial records  
35 of the Airports Authority recognizing such financial information will be considered  
36 confidential and proprietary and will only be used to verify targets for cost per enplanement  
37 reductions, and (iii) sets forth a long-range plan for financial viability of the airport and  
38 continued lower levels of cost per enplanement beyond the fiscal year 2016-2018 biennium  
39 without additional state support beyond the amounts provided pursuant to § 58.1-538, Code of  
40 Virginia. Such agreement shall be subject to the provisions established in § 2.2-3705.6, Code  
41 of Virginia.

42 3. By December 1, 2016 and December 1, 2017, the Authority shall report to the Secretary of  
43 Transportation and the Chairmen of the House Appropriations and Senate Finance  
44 Committees on the actual and forecasted changes to the cost per enplanement at the  
45 Washington Dulles International Airport over the prior year, what portion of the reduction is  
46 attributable to state support, what portion attributable to cost reduction measures implemented  
47 by the Authority and what portion is attributable to increased passenger traffic at the Airports.  
48 Further, the Authority shall report the additional measures taken by the Authority to reduce  
49 airline cost per enplanement including, but not limited to, an estimate of revenues that could  
50 be generated by development or disposal of property owned by the Authority as a means to  
51 further reduce long term cost per enplanement. Such report shall also include an outline of  
52 additional measures to be taken by the Authority to further reduce cost per enplanement  
53 through calendar year 2024.

54 4. In addition to the requirements set out in paragraphs M.1. through M.3. of this item, to be  
55 eligible for funding in the second year of the biennium, the Metropolitan Washington Airports  
56 Authority must submit to the Secretary of Transportation and the Chairmen of the House  
57 Appropriations and Senate Finance Committees a detailed plan on the potential sale, lease

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401.



and/or development of MWAA acreage unsuitable for airport use. Such report shall include an update on the status of the NEPA process and of any needed approvals from the Federal Aviation Administration or the U.S. Secretary of Transportation, an identification of the types of suitable uses for the various tracts and an estimate of the revenues that could be generated from such uses.

N. The Commonwealth Transportation Board's rail subcommittee shall review the long range service plan and financial analysis of Virginia Railway Express and assess the conclusions of that analysis with respect to the long-term financial viability of the service, their ability to maintain appropriately costed-services to maintain and expand market share, and the Virginia Railway Express's impact on traffic volumes on the Interstate 66 and Interstate 95 / 395 corridors of statewide significance. The Board shall consult with interested stakeholders and report its findings to the Secretary of Transportation, and the Chairmen of the House Committees on Appropriations and Transportation and the Senate Committees on Finance and Transportation no later than November 15, 2016.

O. 1. No later than October 31, 2016 the Secretary of Transportation shall report to the Chairmen of the House Appropriations and Senate Finance Committees on the outcome of the negotiations pursuant to the procurement for the Commonwealth of Virginia Transform I-66 Corridor Outside the Beltway project and whether the parties were able to deliver the project in a manner that meets all of the terms published in the request for qualifications dated September 17, 2015, as clarified by the term sheet published on October 1, 2015, and subsequently amended, and the draft request for proposals dated December 17, 2015.

2. If the Transportation Public-Private Partnership Advisory Committee established pursuant to § 33.2-1803.2 of the Code of Virginia and the Commissioner of Highways find that the private parties did not meet the terms published in the request for qualifications dated September 17, 2015, as clarified by the term sheet published on October 1, 2015, and subsequently amended, and the draft request for proposals dated December 17, 2015, and state that it is in the public interest to proceed with public financing for this project; and the Secretary of Finance concurs in writing with Commissioner of Highways' finding that the private parties did not meet the terms and that it is in the public interest to proceed with the issuance of bonds, the Secretary shall notify the Chairmen of such finding to enable the respective Committees to consider Senate Bill 60 and House Bill 1067, continued to the 2017 Session by the 2016 General Assembly, prior to the procedural deadline for action on such legislation.

P. The Commonwealth Transportation Board is hereby directed to enter into discussions with Arlington and Fairfax Counties regarding use of air rights over Interstate 66 in their respective jurisdictions no later than October 1, 2016. A report on the progress and outcome of such discussions shall be submitted to the Chairmen of the House Appropriations and Transportation Committees and the Senate Finance and Transportation Committees no later than July 15, 2017.

Q. Notwithstanding any provision of law to the contrary, the provisions of § 2.2-4321.2, Code of Virginia, shall be applicable to transportation infrastructure projects or facilities to be developed pursuant to the Public Private Transportation Act of 1995, as amended. However, § 2.2-4321.2 shall not apply to any projects or facilities to be developed pursuant to the Public Private Transportation Act of 1995, as amended, that (i) improve or construct a limited access roadway that crosses state borders, and (ii) include construction of a new bridge or expansion of an existing bridge.

R. The Secretary of Transportation shall initiate an objective review of the operating, governance and financial conditions at the Washington Metro Area Transit Authority. The objective review shall, at a minimum, analyze: (i) the legal and organizational structure of WMATA; (ii) the composition and qualifications of the WMATA Board of Directors and the length of terms of its members; (iii) labor costs and potential strategies to reduce the growth in such costs in the future; (iv) options to improve the sustainability of employee retirement plans; (v) safety and reliability; (vi) options to improve the efficiency of WMATA operations; and, (vii) other factors considered appropriate by the Secretary. To the extent practicable the review shall compare WMATA to other rail transit systems in the United States that have been in operations for more than 35 years and have an overall

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& 402.



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ITEM 436.

		Item Details(\$)		Appropriations(\$)	
		First Year FY2017	Second Year FY2018	First Year FY2017	Second Year FY2018
1	system length in excess of 35 miles. Further, the Secretary shall request the participation of				
2	the District of Columbia and the State of Maryland in such review and report the findings of				
3	his review to the Chairmen of the House Appropriations, Senate Finance and House and				
4	Senate Transportation Committees no later than November 15, 2017, with a follow-up report,				
5	if needed, submitted by June 30, 2018. Such report shall include a copy of the WMATA six				
6	year capital improvement program, as well as an accounting of assumed revenues generated				
7	and available by source and assumptions used regarding operating expenses to develop the				
8	capital improvement program.				
9	Total for Secretary of Transportation.....			\$888,357	\$888,474
10	Nongeneral Fund Positions.....	6.00	6.00		
11	Position Level.....	6.00	6.00		
12	Fund Sources: Commonwealth Transportation.....	\$888,357	\$888,474		

§ 1-99. VIRGINIA COMMERCIAL SPACE FLIGHT AUTHORITY (509)

13				\$15,800,020	\$15,800,021
14	437. Space Flight Support Services (60800).....				
15	Maintenance and Operation of Space Flight Facilities				
16	(60801).....	\$15,800,020	\$15,800,021		
17	Fund Sources: Commonwealth Transportation.....	\$15,800,020	\$15,800,021		
18	Authority: Title 2.2, Chapter 22, Code of Virginia.				

A. Pursuant to the provisions of Chapters 779 and 817, 2012 Session of the General Assembly, \$15,800,020 in the first year and \$15,800,021 in the second year shall be transferred to the Commonwealth Space Flight Fund as set forth in § 33.2-1526 to support the maintenance and operations of the Virginia Commercial Space Flight Authority. From the funds appropriated in this item, \$500,000 the first year shall be made available for development of an Aircraft Intermediate Maintenance Department in support of the Wallops Island unmanned aircraft systems test range.

B. In order to increase competition among qualified independent audit firms, the Virginia Commercial Spaceflight Authority is authorized to solicit requests for proposals from national firms including those that have submitted proposals prior to July 1, 2016. The final selection of the certified public accounting firm shall be performed by the Auditor of Public Accounts, with the assistance of the Virginia Commercial Spaceflight Authority, through a competitive negotiation process.

C. The Secretary of Transportation, as Chairman of the Virginia Commercial Spaceflight Authority Board, shall, in cooperation with the Secretary of Finance, review options to finance the construction of additional facilities at the Mid-Atlantic Regional Spaceport in support of both commercial space flight and unmanned systems activities. Such review shall include but not be limited to examination of financing options available from the Virginia Resources Authority in addition to other financing options available to the Commonwealth Transportation Board.

39	Total for Virginia Commercial Space Flight			\$15,800,020	\$15,800,021
40	Authority.....				
41	Fund Sources: Commonwealth Transportation.....	\$15,800,020	\$15,800,021		

§ 1-100. DEPARTMENT OF AVIATION (841)

42				\$28,351,475	\$28,351,475
43	438. Financial Assistance for Airports (65400).....				



quantity... state law and the provisions of Item 57 of this act. Such relief is hereby appropriated in accordance with the provisions of Item 57 of this act from the unexpended balances of the general fund.

L. The Director, Department of Planning and Budget, shall withhold and transfer to this item, amounts estimated at \$387,737 the first year and \$78,479 the second year from the general fund appropriations of state agencies and institutions of higher education, representing savings from agency charges for the Cardinal financial system operated by the Department of Accounts.

M.1. Out of the general fund appropriation for this Item, \$1,845,800 the second year is provided to support the transition offices established as a result of the 2017 elections for Governor, Lieutenant Governor, and Attorney General. Out of this amount, up to \$530,800 shall be transferred, based on actual expenses, to the Department of General Services, \$90,000 to the Division of Selected Agency Support Services, and \$1,225,000 to the Virginia Information Technologies Agency for the provision of facilities, equipment, services, and supplies required to support the transition activity.

2. The Commonwealth's financial support for the transition is to be allocated as follows:  
Office of the Governor: \$1,570,155

Office of the Lieutenant Governor: \$116,440

Office of the Attorney General: \$159,205

N. Included in this Item is \$492,638 the second year from the general fund to be transferred, based on actual expenditures, to the Department of General Services to support anticipated costs for the inauguration in January 2018.

O. The Director, Department of Planning and Budget, shall transfer from this Item, \$935,760 the second year from the general fund to executive branch agencies to support the costs of the Personnel Management Information System.

P. Out of the general fund appropriation in this Item for the second year, \$800,000 is provided for a joint internship and management training pilot program to assist in improving leadership, management, and succession planning capabilities of all branches of state government. The Secretary of Finance shall convene a work group consisting of representatives from each branch of state government for the purposes of establishing program details. The work group shall consider opportunities to collaborate with Virginia public colleges and universities on an internship, management training and succession planning program by which students in their final year of undergraduate school work, or those attending graduate programs may be considered for opportunities for state employment on a temporary basis, whereby they may earn academic credit for hours worked while participating in the program. No funds shall be distributed from this Item for the purposes described in this Paragraph prior to the creation of a plan for program implementation to be submitted to the Governor, the Chairman of the Commission on Employee Retirement Security and Pension Reform, and the Chairmen of the House Appropriations and Senate Finance committees.

Q. In addition to the amounts provided in paragraphs C.1., 2. and 3. of Item 109 of this act, the Virginia Coalfields Economic Development Authority shall provide up to \$500,000 of its nongeneral fund balances to the Lenowisco and Cumberland Plateau Planning District Commissions who shall serve as fiscal agents for coordinated economic development activities in the Lenowisco and Cumberland Plateau Planning Districts. The funding provided in this paragraph is contingent upon equal matching funds being awarded by the Tobacco Region Revitalization Commission.

477. Omitted.

478. Not set out.

F Veto  
this Item.  
4/28/17