Deficit Provision Acknowledgment Form

(Appendix A of DPB's New Year Start-up instructions)

To: Director, Department of Planning and Budget

Section A (for all agencies)

Agency Acknowledgement

I have received, read, and understand your instructions regarding indebtedness of state agencies as they relate to the requirements of § 4-3.01 of the current Appropriation Act.

Agency Name _____ Agency Code _____

Other agencies in the Act (if any) for which your agency is responsible: _____

_____

_____

Agency/Cabinet Head Name _____

Agency/Cabinet Head Signature _____

(Personal signature is required above and cannot be delegated)

Date _____

Section B (if applicable to your agency)

Supervisory Board *(see §2.2-2100 of the Code of Virginia for what constitutes a "supervisory board")*

I have provided each member of the supervisory board of this agency with a copy of the notice in this memorandum and I will provide the same material to those appointed to the board in the future.

_____

(Personal Signature of Agency Head)

Date: _____

Due to COVID-19 complications, an email option is provided this year instead of traditional mail:

E-mail to:

*Scan the **signed** original; Save as a PDF, and Email to **budget@dpb.virginia.gov**.*

NOTE: Provide your agency name and agency number as well as the phrase "Deficit Provision Acknowledgment Form" in the subject line of the email.

Deficits

Section 4-3.01 Requirements

Section 4-3.01 of Chapter 522 prohibits agencies from obligating or expending general fund amounts in excess of appropriations or obligating or expending at a rate that would result in expenditures in excess of nongeneral fund revenue collections and appropriations, without prior approval by the Governor. The prohibition from incurring a deficit applies to the legislative, judicial, and executive branch, as well as independent agencies that are designated in Chapter 522 by title and assigned a three digit agency code by DPB.

Agency analysis and monitoring of expenditures against cash, allotments, and appropriations are critical to avoid incurring a deficit at the close of the fiscal year. Agencies must alert DPB as soon as possible if a problem is detected and anticipated at year-end close. Any agency currently aware of potential deficits **should** notify DPB immediately. **Do not** wait until year-end close is underway.

Agencies **should not** assume that expenditures in excess of appropriations will be met from unappropriated nongeneral funds, by transfers from other current appropriations, or from appropriation of prior-year, unexpended balances. Each agency's request for an appropriation allotment, or any other action which requires executive approval, will be treated (in the absence of any specific statement to the contrary) as the representation that approval of the request will neither directly nor indirectly result in a deficit.

Pursuant to § 4-3.01, if any agency violates any of the prohibitions stated above and incurs an unauthorized deficit, the Governor is directed to withhold approval of such excess obligation or expenditure. The section stipulates that there will be no reimbursement of said excess, nor shall there be any liability or obligation upon the state to appropriate funds to address the unauthorized deficit. Instead, those members of the governing board of any such agency who shall have voted, or its head if there is no governing board, shall be personally liable for the full amount of such unauthorized deficit. At the discretion of the Governor, violators shall be deemed guilty of neglect of official duty, and will be subject to removal from his/her position.

Required Form

Section 4-3.01 also requires the Governor to bring the deficit provision to the attention of the members of the governing board of each state agency or the agency head if there is no governing board. Consistent with this provision, the agency head is directed to acknowledge the receipt of this notification by completing the attached form.

A signed form is required from each cabinet secretary and all agency heads in the legislative, judicial, and executive branches and the independent agencies. **Acknowledgement cannot be delegated and must contain the original signature of the cabinet secretary or agency head.**

The heads of agencies with governing boards must also provide each board member with a copy of this notice and of § 4-3.01. The governing boards are those classified as supervisory boards in § 2.2-2100, Code of Virginia. Agency heads are also requested to provide the material to any board members and fiscal officers who may be appointed in the future.

Item 4-3.01

§ 4-3.00 DEFICIT AUTHORIZATION AND TREASURY LOANS

§ 4-3.01 DEFICITS

a. GENERAL:

1. Except as provided in this section no state agency shall incur a deficit. No state agency receiving general fund appropriations under the provisions of this act shall obligate or expend moneys in excess of its general fund appropriations, nor shall it obligate or expend moneys in excess of nongeneral fund revenues that are collected and appropriated.

2. The Governor is authorized to approve deficit funding for a state agency under the following conditions:

a) an unanticipated federal or judicial mandate has been imposed,

b) insufficient moneys are available in the first year of the biennium for start-up of General Assembly-approved action, or

c) delay pending action by the General Assembly at its next legislative session will result in the curtailment of services required by statute or those required by federal mandate or will produce a threat to life, safety, health or property.

d) Such approval by the Governor shall be in writing under the conditions described in § 4-3.02 a Authorized Deficit Loans of this act and shall be promptly communicated to the Chairmen of the House Appropriations and Senate Finance Committees within five calendar days of deficit approval.

3. Deficits shall not be authorized for capital projects.

4. The Department of Transportation may obligate funds in excess of the current biennium appropriation for projects of a capital nature not covered by § 4-4.00 Capital Projects, of this act provided such projects a) are delineated in the Virginia Transportation Six-Year Improvement Program, as approved by the Commonwealth Transportation Board; and b) have sufficient cash allocated to each such project to cover projected costs in each year of the Program; and provided that c) sufficient revenues are projected to meet all cash obligations for such projects as well as all other commitments and appropriations approved by the General Assembly in the biennial budget.

b. UNAUTHORIZED DEFICITS: If any agency contravenes any of the prohibitions stated above, thereby incurring an unauthorized deficit, the Governor is hereby directed to withhold approval of such excess obligation or expenditure. Further, there shall be no reimbursement of said excess, nor shall there be any liability or obligation upon the state to make any appropriation hereafter to meet such unauthorized deficit. Further, those members of the governing board of any such agency who shall have voted therefor, or its head if there be no governing board, making any such excess obligation or expenditure shall be personally liable for the full amount of such unauthorized deficit and, at the discretion of the Governor, shall be deemed guilty of neglect of official duty and be subject to removal therefor. Further, the State Comptroller is hereby directed to make public any such unauthorized deficit, and the Director, Department of Planning and Budget, is hereby directed to set out such

unauthorized deficits in the next biennium budget. In addition, the Governor is directed to bring this provision of this act to the attention of the members of the governing board of each state agency, or its head if there be no governing board, within two weeks of the date that this act becomes effective. The governing board or the agency head shall execute and return to the Governor a signed acknowledgment of such notification.

c. TOTAL AUTHORIZED DEFICITS: The amount which the Governor may authorize, under the provisions of this section during the current biennium, to be expended from loans repayable out of the general fund of the state treasury, for all state agencies, or other agencies combined, in excess of general fund appropriations for the current biennium, shall not exceed one and one-half percent (1 1/2%) of the revenues collected and paid into the general fund of the state treasury as defined in § 4-2.02 b. of this act during the last year of the previous biennium and the first year of the current biennium.

d. The Governor shall report any such authorized and unauthorized deficits to the Chairmen of the House Appropriations and Senate Finance Committees within five calendar days of deficit approval. By August 15 of each year, the Governor shall provide a comprehensive report to the Chairmen of the House Appropriations and Senate Finance Committees detailing all such deficits.