

Joint Commission on Administrative Rules

Meeting Summary
September 12, 2007 @ 10:00 am
Senate Room A, General Assembly Building
Richmond, Virginia

Present at the Meeting: Senators Wagner, Marsh, Whipple; Delegates Gear, Howell, McQuigg, Saxman and Hull.

I. Call to Order

- A. The meeting was called to order by Senator Wagner at 10:10 am.
 - 1. Senator Wagner gave a brief introduction explaining that the Commission does not generally oversee the regulation of bridges, but the public concern with bridges in the wake of the Minnesota tragedy has led the Commission to ask about Virginia's regulations concerning bridges and whether those regulations are considered adequate.
- B. Bridge Standards are next on the agenda.

II. Bridge Standards

- A. **Commissioner David Ekern** from the Virginia Department of Transportation (VDOT)
 - 1. With him are Ken Wallace and Rick Walton also of VDOT, and John Beall from the Attorney General's office.
 - a. The Commonwealth Transportation Board and VDOT have a thorough bridge inspection system requiring bridge inspections every two years. When deterioration is noticed, action is taken by the inspectors and VDOT, based on a rating system.
 - b. Virginia adheres to the 1971 National Bridge Inspection Standards, which are codified at 23 C.F.R. Part 650 (2004).
 - c. Virginia goes further and adapts to the unique age and number of bridges that exist in Virginia. There are 2,823 bridges in Virginia.
 - d. Bridges are classified as Federal or not. The National Bridge Inventory System (NBIS) determines that if a bridge is greater than 20 feet it must be inspected under the NBIS. Virginia goes even further and inspects all bridges regardless of length.
 - e. In addition, if a bridge receives a lower rating it will be inspected for repairs every 12 months rather than the federally mandated 24 months.
 - f. In addition, VDOT created a quality assurance and control program in the early 1990's which entails the bridge inspectors' classifications being rechecked in different districts each year to assure a consistent and accurate inspection system.
 - g. As of August 31 2007, Virginia began inspecting steel deck trusses similar to the bridge in Minneapolis. There are 11 in Virginia, four bridges are being repaired or replaced.
 - h. They are also re-inspecting another 305 bridges in the coming weeks that are considered fracture critical.
 - i. Of the almost 600,000 bridges in the United States, 12.5% are termed structurally deficient, functionally obsolete.

- j. Structurally deficient means that one or more of the structural members of the bridge needs repairs. This does not mean the bridge needs to be replaced, nor does it mean the bridge is unsafe.
2. The question is are states spending enough?
- a. Virginia is in a daily campaign with its bridges. Since 1990 the states have reduced by half the number of structurally deficient bridges.
 - b. 5.1 billion dollars have been given to the states by the Federal Government for bridge repairs. The states spent 6.6 billion.
 - c. Bridges require a significant investment and there is no simple formula for financing transportation.
 - d. Virginia's six year plan for bridges requires 2.1 billion dollars
 - e. The reality is that funding is inadequate to meet the backlog on repairs needed for bridges in Virginia. The National Highway system needs 19 billion dollars in repairs for bridges alone.
 - f. **Delegate Hull**-*How can a bridge rated a 0 (zero) be considered safe?*
 - g. *Mr. Ekern deferred question to engineers from VDOT.*
 - h. **Senator Wagner** *summarized how Virginia conducts an inspection, which was previously stated above.*
 - i. **Del. Hull**-*In reference to a news article that came out previously, is it true that Virginia is not using bridge money from the federal government on bridges?*
 - j. If money is not used in a certain amount of time, the state loses the funding. So VDOT moved the money to other projects so that they would not lose funding, and then later moved money from other funds to use on the bridges.
 - k. **Sen. Wagner**-*A chart of some sort would be helpful to show how much money has been spent over 10 years on bridge repairs and replacements in Virginia and the projected costs of funding for the future. This way JCAR can try to get more money for VDOT if it is needed.*
 - l. The cost of steel, concrete, and other bridge materials has risen from 46% to 72% since 2003.

B. Ken Walus, State Structure and Bridge Engineer

- 1. Power point presentation from meeting.
 - a. **Del. Hull**-*If a bridge is found to be designed for a certain purpose, it could be declared structurally deficient even though it is perfectly safe, but it just didn't meet the standards for its original purpose.*
 - b. There is a subjective scale from 0-9 on which bridges are inspected by the district inspectors. A bridge could have a condition rating 4, and 8's in every other category, but because it has a 4 it would still be termed a structurally deficient bridge. Bridges between 0-4 are structurally deficient.
 - c. **Del. Hull**-*when would you close a bridge?*
 - d. The district engineers make that determination independently based on their personal observations of a bridge. At some point they have to make a subjective determination. A bridge will be closed when it is not economically worth fixing. Two bridges have been closed in Virginia in the past few weeks.
 - e. The Quality Control Program that was mentioned previously has been used since 1991. The federal government did not have one until 2005. It is done by the Central Office Personnel who review inspection reports and do random checks on

bridges to ensure the original inspections match up with what the bridge looks like to the Central Office Personnel. The Federal government also does random inspections through their program.

- f. **Del. Howell**-*asked about the rating of a specific bridge in his district.*
- g. The VDOT website has the rating and status for all bridges in Virginia.
- h. **Sen. Wagner**- *again raised his request for a projected cost of repairing and replacing bridges in Virginia.*
- i. **Del. Gear**-*asked about the Hampton Roads tunnel.*
- j. The Hampton Roads district does inspections, but tunnels in general are in good shape in Virginia.

III. Smoking in Restaurants (follow-up)

A. Tom Lisk-Virginia Hospitality and Travel Association (VHTA)

1. VHTA surveyed its members through online polls and regional meetings. There was overwhelming consensus on two issues. First, the VHTA is opposed to a state-wide ban on smoking since the Virginia Department of Health's (VDH) own research has shown there are alternatives to dining in smoking restaurants. Two-thirds of restaurants have already gone smoke free.
2. Second, if a ban is going to implemented, how should it look? VHTA members agree that if there is such a health issue with smoking and the government is serious about addressing it, then they should implement a ban that applies to all public places and places of employment, not just restaurants. Restaurants should not be singled out.
3. VHTA is happy with the new definition because it is a step in the right direction of encompassing more than just restaurants in a smoking prohibition.
4. Should there be exceptions to the ban? Possibilities for exceptions range from entertainment establishments such as bowling alleys and bingo halls to cigar bars. VHTA does not believe the ban should allow any of these exceptions. The ban should be universal. No establishment should be exempt.
5. Other states have exceptions for bars, but there is no legal definition for bars in Virginia. Twenty-two states have exceptions-VHTA members would prefer to not have any exceptions if this is truly a health risk. Some support for exceptions for bars, but the definition is a problem.
6. Two problems with exceptions: (a) unintended business impact-businesses will start creating business plans around exceptions such as not allowing any children (b) belies the public purpose to attack all health issues.
7. The Health Commissioners new definition of a restaurant meets these needs and the exception to outdoor areas is reasonable because there are fewer health risks from smoking outdoors. Although eventually the state will have to address the issue of outdoor smoking as Hawaii and California have done.
8. **Del. Hull**-*The Clean Indoor Air Act did not envision banning smoking in restaurants, only public places. New definition seems to put policy into the definition.*
9. Title 15.2 changes the language to clarify that outdoor areas are not included in the definition of a restaurant. The language is only supported by the VHTA if a ban addresses more than restaurants, but would prefer the status quo.
10. **Del. Gear**-*Are two-thirds of restaurants really smoke free?*

11. There are 25,000 establishments in Virginia, but only 18,000 are surveyed by the Health Commission, so two-thirds of those 18,000 are smoke free. The public perception that people can't go somewhere where smoking is not allowed just isn't accurate. The VDH website has lists of smoke free restaurants.
 12. **Sen. Whipple**-*Are fast food restaurants included in those numbers?*
 13. Yes.
 14. **Del. Hull**-*why was restaurant changed to "food establishment" in Title 5 of the Code of Virginia?*
 15. It was done to incorporate a wide variety of food places including vending carts, etc.
 16. **Del. Hull**-*where else will changes to the code have to be made due to the new definition?*
 17. Actual sections have not been identified but cross references will have to be made.
- B. Senator Wagner thanked VHTA for presenting their information.

IV. Neighborhood Assistance Program (22 VAC 40-41)

- A. **Senator Wagner** provided an introduction to the issue. New regulations changed the valuation process for the price of a car that is donated to charitable organizations, which affects write-offs and Neighborhood Assistance Program (NAP) credits. Many agencies that are given NAP credits are worried about the effect this will have on donations to them.
- B. **Chris Bridge**-Achievable Dream, Virginia Alliance for Boys and Girls Clubs
1. **Senator Whipple** asked for clarification of the issue.
 2. The IRS changed the way a car is valued in order to address raffles or auctions for used cars because there had been abuse of the way used cars were valued. That is not the issue here.
 3. The new Virginia regulation went into effect September 1, 2007. Prior to this time, Social Services permitted the non-profit organizations to participate in discussions about the proposed regulation. However, it still went forward. The issue is with the way a new car's value is determined.
 4. The IRS standards are frequently used when dealing with NAP credits to establish the value of a donated item.
 5. The Secretary of Health and Human Services recommended a legislative change for the 2008 Session. Michael Carter is here to explain the IRS standards.
- C. **Michael Carter**-Certified Public Accountant
1. The recent Virginia regulations have the potential to undermine the progress made by non-profit organizations through use of NAP credits.
 2. 22 VAC 40-41-40(C) requires businesses to make donations without knowing the actual benefit.
 3. 22 VAC 40-41-40(D) No conditions can be attached to donation. This prevents a business from making an informed business decision.
 4. IRS guidance affects donations to charities, but it was only focused on used cars due to past abuse.
 5. The new regulations that became effective 9/1/07 incorporate new cars in those standards which is not needed. His suggestion is to ask the Virginia General Assembly to suspend the new regulation so that a study can be done on the impact of the regulation on the non-profits.

6. **Del. Hull**-*The NAP credits are part of social services code sections, not the tax code. DSS is given the authority to create those regulations. So, prior to now there has been no question about what the value of a new car was?*
7. That is correct, and often fair market value is greater than the actual dealer price because of discounts and mark downs.
8. **Del. Hull**-*Do you think the new regulations will dry up donations?*
9. It will certainly reduce the number of cars donated.
10. **Sen. Whipple**-*so the new car regulation got folded into the old car issue?*
11. **Ms. Bridge**-*new cars can be better documented and their price verified based on the dealer's value for IRS purposes than old cars could.*

D. Anne Gambardella-Virginia Automobile Dealers Association

1. Dealers that want to donate often will receive less from a raffle of the car than the actual price of the car. If this happens they won't want to participate.

E. Commissioner Anthony Conyers-Virginia Department of Social Services

1. NAP credits are intended to leverage state funds. The NAP credits are in addition to the tax credit received for a donation. NAP credits are given up to 40% of the value of the donated item.
2. **Del. McQuigg**-*where is the problem?*
3. **Sen. Wagner**-*the new regulation includes everything donated. Donating a van gets full NAP credit, but if it is a raffle the value could be considered what it went for which is considerably less than the actual value of the van. The problem is with the tax codes definition. There were abuses with donations of old cars and the IRS code addressed those, but now the Virginia regulation has folded in all other goods donated to that issue. The values of new cars are well established. Donations are given to help an organization but they also have practical implications for a business because of the tax deductions. And in some cases they get NAP credits also for the donation.*
4. **Sen. Whipple**-*the donation can only receive 40% of its value in NAP credits and the fear is that it will get 40% of a smaller total value with this new regulation.*
5. **Sen. Wagner**-*reiterated the point. Numbers have to be known in order for a business to make a good business decision. They can't just hope that they will receive a credit for their donation. The problem is that if we decide to go ahead and suspend the regulation the Governor doesn't have to concur. And we don't want to sweep everything up that the new regulation addresses; only the section that applies to new cars.*
6. **Sen. Marsh**-*what percentage are we going to recommend for NAP credit?*
7. **Del. Hull**-*motion to vote to take appropriate action and write a letter to the Governor*
Del. McQuigg-*restate Senator Wagner's motion.*
8. **Sen. Wagner**-*Motion to recommend a fast-track regulation to the Governor that includes everything in it now, but with an exception for new cars.*
9. **Mark Vucci** (Division of Legislative Services)-*The Code of Virginia says that the amount of tax credit is 40% of the donative value of the gift. How value is determined is the issue not the percentage. (Addressing Sen. Marsh's question)*
10. Motion by Senator Wagner.
11. Seconded by Del. McQuigg. By unanimous consent motion passes.

V. Generators for Assisted Living Facilities (22 VAC 40-72)(follow-up)

A. Commissioner Anthony Conyers-Virginia Department of Social Services

1. On July 30, the Commission recommended changes that were then approved by the Attorney General's office. On August 22 the Governor and DSS approved fast-track legislation. On September 17, the regulation will be posted for public comment and then on November 1 the regulations will become effective.

B. Senator Wagner thanked the Commissioner for his work and the work of DSS.

VI. There being no further business, Senator Wagner adjourned the meeting at 11:54 am.