

Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding

November 5, 2014 Meeting Summary

The Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding pursuant to HJ 16 (2014) and SJ 3 (2014) held its third meeting on November 5, 2014, at Old Dominion University (ODU) in Norfolk.

The Joint Subcommittee is tasked with formulating recommendations for the development of a comprehensive and coordinated planning effort to address recurrent flooding, including recommendations for short-term and long-term strategies for minimizing the impact of recurrent flooding. Final recommendations will be presented to the 2016 Session of the General Assembly.

After welcoming remarks from John R. Broderick, President of ODU, the Joint Subcommittee received a presentation from Ray Toll, Director of Coastal Resilience at ODU. Mr. Toll stated that issues related to sea level rise have been a priority focus for ODU for the past five years. He noted that the university created the Sea Level Rise Initiative in 2010 to facilitate research and education on sea level rise. Mr. Toll noted that earlier this year, ODU announced the creation of a federal pilot program to develop a regional approach to sea-level-rise preparedness and resilience planning. ODU will serve as the neutral facilitator and coordinator to incubate intergovernmental solutions. The goal over the next two years is to establish the Hampton Roads Sea Level Rise Preparedness and Resilience Intergovernmental Planning Team, the first of its kind in the nation. Mr. Toll also informed the Joint Subcommittee of the university's efforts to create a National Center for Sea Level Rise in partnership with Virginia's congressional delegation and with the College of William and Mary's Virginia Institute of Marine Science.

The Joint Subcommittee also heard from Roy Hoagland, Director of the Virginia Coastal Policy Clinic at the College of William and Mary Law School. Mr. Hoagland presented an overview of legal issues related to local authority to take action on recurrent flooding and sea level rise. Mr. Hoagland began by giving an overview of the Dillon Rule as it impacts local authority in Virginia. The Dillon Rule limits the powers of local governments to those expressly granted by the General Assembly, those fairly implied from those express powers, and those that are essential to the exercise of those governmental powers. The Virginia Supreme Court has held that when there is reasonable doubt whether a legislative power exists, the doubt must be resolved against the local governing body. Mr. Hoagland concluded that although there is authority within existing statutes to support local government actions to respond to recurrent flooding, the state of law is confusing. He stated that the Joint Subcommittee might want to consider legislative action to resolve the issue in a straightforward manner. Among the alternatives that Mr. Hoagland suggests is the crafting of legislation that exempts local government actions taken to respond to recurrent flooding and sea level rise from application of the Dillon Rule. Other alternatives include undertaking a detailed legal analysis to assess the specific extent of authority that exists under the current state of the law.

Robert Bennett, Division Director of Dam Safety and Floodplain Management with the Department of Conservation and Recreation, also addressed the Joint Subcommittee. Mr. Bennett noted that the General Assembly amended the Flood Damage Reduction Act in 1989 in response to several severe floods and storms that hit the state between 1969 and 1985. As part of these amendments, the Department of Conservation and Recreation (DCR) was named coordinator of flood protection programs in the Commonwealth. DCR was also designated coordinating agency for the National Flood Insurance Program. Furthermore, DCR was directed to develop a flood protection plan for the Commonwealth. Such a plan was implemented in 2005 but has not been updated since that time. The enabling statute is silent on the timing of any further updates. Mr. Bennett noted that new resources and information have become available since the creation of the initial plan. He briefed the Joint Subcommittee on what DCR would need to initiate a process to modernize the plan. Mr. Bennett also brought forth additional floodplain management ideas such as greater disclosure of floodplain locations as a part of the Virginia Residential Property Disclosure Act and offering grants to localities as an incentive to join the community rating system.

During a period for public comment, the Joint Subcommittee heard from representatives of the Virginia Association of Realtors and the City of Portsmouth regarding the issue of real estate disclosure of flood zones. The Association representative noted that Virginia has always been a “buyer beware” state, and the City of Portsmouth representative explained that some buyers are finding out after the fact that an expensive insurance policy is required due to the location of a dwelling.

Finally, Jim Redick, the Director of Emergency Preparedness and Response for the City of Norfolk and a member of the Secure Commonwealth Panel, gave an update on the work of the Panel. He mentioned recommendations such as the creation of a resiliency coordinator, a continuation of the Panel, and an update of the floodplain plan.

The Joint Subcommittee concluded by discussing possible recommendations to be taken up at the final meeting of 2014. This meeting will be devoted to the development of interim recommendations to the 2015 Session of the General Assembly and the discussion of possible plans for 2015.