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General Assembly Issues

This Issue Brief contains descriptions of some of the issues that appear likely to capture the attention of legislators at the 2005 Session of the General Assembly. It is not intended to be a comprehensive listing of every issue that will be considered. Unanticipated issues will undoubtedly surface, and some of the issues discussed in these pages may not be considered during the 2005 Session. Finally, and most important, these descriptions are **not** predictions of how the General Assembly will respond to any issue.

The Revenue Picture

The Commonwealth will be in the fortunate position of having in excess of \$1 billion in additional general fund revenue when the 2005 Session of the General Assembly convenes to make amendments to the current 2004–2006 Appropriations Act. The \$1 billion of additional general fund revenue is the result of the combination of (i) the \$323.8 million in revenue in excess of the official forecast for the fiscal year that ended June 30, 2004, and (ii) the fact that general fund revenues and net lottery profits are, after four months of the new fiscal year, increasing at a rate of 11.3 percent, while the current Appropriations Act is based on growth of 4.2 percent.

Most forecasters believe the current economic expansion will continue through the 2004–2006 budget period, and therefore, the revenues for the second year of the biennium will also need to be adjusted upward as the economies of the United States and Virginia recover from the recession of the early 2000s.

Of course, the surplus is only part of the budget picture, and members will be faced

with decisions on the competing interests that will lay claim to portions the revenue surplus. Some may argue that the 2004 Session did not fully address the growing funding backlog in Virginia's transportation needs. Others will suggest that the surplus should be used to continue to repair the structural imbalances or one-time fixes in the Appropriations Act which were used during leaner times to balance the budget. For example, the Commonwealth still uses the acceleration of sales tax payments by large retailers in June of each year to help balance the existing budget.

Some members will likely suggest that now that tax revenues are starting to increase, the citizens of Virginia deserve further tax relief. Others may believe it to be an appropriate time to make a significant financial commitment to help accelerate the clean up of the Chesapeake Bay. These are just a sampling of potential claims to the revenue surplus. There are clearly additional potential claims—the required or supplemental deposit to the Rainy Day Fund, additional funding for high priority mandated budget items, and state employee pay and benefit increases.

Clearly, the 2005 Session will have both a large revenue surplus to appropriate and a large number of important claims to the general fund surplus.

□ *John A. Garka*

Commerce and Labor

Enterprise Zones

The authority for the Virginia Enterprise Zone Act expires on July 1, 2005 (see § 59.1-284.01). Under the program, businesses in targeted economically blighted areas are provided with state and local tax and funding incentives, regulatory relief, and infrastructure development to spur private investment and create jobs. The program has been hailed as successful in supporting community-based economic revitalization, and there may be interest in continuing it past 2005.

□ *Ellen Bowyer*



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Regulatory Impact on Small Businesses

Across the nation, jurisdictions are looking at revising their regulatory processes to include a specific review of the impact that regulations—both proposed and existing—may have on small businesses. Key to this effort is the recognition that regulations and rules promulgated by state agencies may impose unnecessary and disproportionately burdensome demands upon small businesses with limited resources. Generally, enacted provisions require state agencies proposing regulations to determine whether the proposed regulation adversely impacts small businesses and, if so, to take affirmative steps to limit the adverse impact. To date approximately 18 states have enacted some form of “regulatory flexibility” initiative for small businesses.

□ *Maria J. K. Everett*

Constitutional Amendments

The 2004 General Assembly passed two noncontroversial constitutional amendments that were approved by the voters at the November 2004 election. The amendments concerned revisions to the provisions for succession to the office of governor and the effective dates for decennial redistricting plans.

A number of proposed constitutional amendments that were carried over or defeated in 2004 have been prefiled or can be expected to resurface in 2005. If the 2005 and 2006 Sessions of the General Assembly approve identical amendments, the proposed changes will be put on the November 2006 election ballot for final approval by the voters.

□ **Successive terms for the governor.** Virginia is now the only state that prohibits the governor from serving two terms in succession. A joint subcommittee (HJR 13, 2004) is examining whether or not successive terms are desirable and the balance of power between the executive and legislative branches.

- ❑ **Restoration of civil rights for felons.** Should there be an alternative to the governor's clemency powers for the restoration of civil rights to ex-felons? The 2003 General Assembly proposed that the General Assembly be able to provide by general law for the restoration of civil rights for persons convicted of nonviolent felonies who meet the conditions prescribed by law, but the 2004 Legislature defeated these proposals. (Prefiled SJR 259).
- ❑ **Protections for special funds.** The General Assembly will examine ways to protect the existing Transportation Trust Fund and other special funds so that the revenues placed in the funds are used for the purposes specified in creating the funds. (Prefiled HJRs 527 and 550).
- ❑ **Limits on appropriations, special votes to increase taxes, and the use of surpluses.** Members are introducing measures to limit growth in government spending, to make it more difficult to raise taxes, and to specify how surpluses should be spent or returned to taxpayers. (Prefiled HJRs 525, 547, and 549).
- ❑ **Marriage.** The issue of single-sex marriages will be considered. (Prefiled HJR 528).
- ❑ **Redistricting commissions.** There will be measures put on the table to modify the redistricting process and possibly establish a bipartisan or nonpartisan redistricting commission or procedure. (Prefiled HJR 542.)

❑ *Mary R. Spain*

Courts

Methamphetamine

Measures to combat the increasing manufacture, distribution, and use of the illicit drug methamphetamine are likely during the 2005 Session. The drug is cheap, easy to make, extremely addictive, and terribly destructive.

The Legislature will therefore be asked to consider:

- ❑ Increasing the penalties for the manufacture and sale of methamphetamine,
- ❑ Enhancing the capabilities of law enforcement to find and dismantle methamphetamine laboratories, and
- ❑ Making unlawful the possession or distribution of large quantities of "precursor chemicals" (chemicals used in the manufacture of methamphetamine), including ephedrine, pseudoephedrine or phenylpropanolamine.

Sex Offender Registry.

Bills that broaden the range and strengthen and broaden the reporting requirements for the Sex Offender and Crimes Against Minors Registry are likely during the 2005 Session.

❑ *Robie Ingram*

Fencing Laws

Virginia common law requires landowners to "fence out." This means that landowners bear the burden of protecting their property from trespassing animals; the owner of the animals is not required to "fence in." This approach stands in direct opposition to English common law, which required owners of livestock to fence them in or be subject to damages for their trespasses.

Virginia's division fence statutes (enacted in 1887 and last amended in 1970) distribute fencing costs among landowners that own livestock and those that wish to exclude them from their property, rather than imposing the entire burden on either one or the other as do Virginia and English common law. The statutes distribute the costs by allowing one landowner to seek contributions for the cost of a division fence from another. While neighboring agricultural landowners can opt out of making such payments, owners of subdivided and commercial/industrial properties cannot. Agricultural landowners who do opt out still may be compelled to pay if they subsequently fence all or a portion of their property.

These division fence laws underlay a conflict that resulted in a death in Caroline County this past summer. A landowner shot his next door neighbor in a dispute over a trespassing bull. The two had been on bad terms previously due to the landowner's efforts to obtain contributions from his neighbor for fencing costs. The case may spur interest in revising the statutes in light of modern land ownership patterns.

□ *Ellen Bowyer*

Elections

Legislation will likely surface on random audits of campaign reports, mandated electronic filing of campaign reports, and other refinements in Virginia's Campaign Finance Disclosure Act.

The HJR 174 (2004) study on voting equipment will continue through the 2005 interim. Measures to refine the statutes governing the use and certification of voting systems will most likely await the outcome of that study.

□ *Mary R. Spain*

Freedom of Information

Both the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science have been examining the provisions of the Freedom of Information Act (FOIA) relating to the conduct by state public bodies of electronic communication meetings (teleconferences and audio/visual meetings) to determine whether the heightened requirements for conducting such meetings should be relaxed. Under consideration are amendments that would

- Reduce the notice requirements from 30 days to seven days,
- Allow closed meetings,
- Eliminate recording requirements,
- Expand the information that must be contained in the minutes for meetings conducted in this manner, and

- Codify certain provisions of the electronic meeting pilot program currently authorized as an alternative to the FOIA statutory provisions.

The amendments would also eliminate the pilot program due to sunset on July 1, 2005.

□ *Maria J. K. Everett*

Health Insurance

Assignment of Benefits

A measure likely to come before the 2005 General Assembly will prohibit health insurers, health maintenance organizations, and the state employees' health insurance plan from refusing to accept an assignment of benefits by an insured individual made to a physician or osteopath, whether or not that physician or osteopath is part of the health plan's provider network.

□ *Franklin D. Munyan*

Health

Birth Injury Fund

The fund supports the costs of caring for a child born with birth-related neurological injuries that would not otherwise be supported by insurance. Such costs include medical expenses, hospital expenses, rehabilitation expenses, and in-home nursing care. Children admitted to the fund forgo litigation in return for what is intended to be lifetime care.

The program has reserve funding currently on hand of about \$100 million, but faces an estimated deficit of approximately \$96 million. Although fees were increased last year, and the program is projected to be financially sound for the next 20 to 25 years, the funding deficit has not been conclusively resolved.

Legislation already has been introduced (HB 1505) that provides for revised filing dates and establishes a new presumption based

on birth weight. Where the infant's birth weight is 2,000 grams or less, a rebuttable presumption shall arise that the injury alleged is not a birth-related injury, but resulted from premature birth. Additional legislation directed towards the fund's solvency may be introduced in the 2005 Session.

□ *Ellen Bowyer*

Higher Education

Chartered Institutions

The 2004 Session considered, but carried over, HB 1359 and SB 638, which would have authorized the creation of Commonwealth Chartered Universities and Colleges. Deemed Commonwealth Chartered Universities within these bills, subject to the execution of charter agreements, were the University of Virginia, Virginia Polytechnic Institute and State University, and the College of William and Mary in Virginia.

Existing public colleges and universities might also seek this status, which would allow the qualifying public institution of higher education to, among other things:

- Exist as a political subdivision of the Commonwealth and not as a state agency;
- Continue to have bond-issuing authority as do other public institutions of higher education or state agencies, but without required legislative or other approval for bond issuance;
- Have authority to own and operate "projects," such as research programs and research, training, teaching, dormitory and classroom facilities;
- Have the power of eminent domain;
- No longer be subject to the Virginia Procurement Act, Virginia Personnel Act, or state grievance procedures, but able to adopt their own procurement, personnel, and grievance procedures;

- Be exempt from any state legislative or executive branch rules, regulations, and guidelines pertaining to submission, review, approval or implementation of capital projects, with the exception of capital projects funded in whole or in part by a general fund appropriation, which remain subject to certain preappropriation approvals; and
- Determine tuition, fees, and its budget, and control the expenditures of all moneys generated or received by the institution, including tuition, fees and other nongeneral fund revenue sources; however, all state general funds remain fully subject to the appropriations process.

Finally, chartered institutions would continue to be "public institutions of higher education" and "educational institutions," and these institutions would not be "subject to local law or regulation except as the General Assembly may explicitly authorize."

Institutional support for the adoption of the chartered institution concept continued following the 2004 Session, and the topic received interim review by legislators as well. Repeat consideration of this issue by the 2005 General Assembly seems likely.

□ *Kathleen G. Harris*

Medical Malpractice

In the medical malpractice area, measures may be introduced during the 2005 Session that:

- Require an expert witness to certify, prior to service of process on a defendant, that the standard of care was breached by the defendant, which proximately caused damages;
- Address the situation where a plaintiff leaves the medical facility against medical advice;

- Allow evidence of collateral benefits at trial;
- Prohibit evidence of a physician saying “I am sorry” or apologizing to a patient from being admitted into evidence in any subsequent litigation as an admission of liability or admission against interest;
- Require all medical malpractice claims settled or adjudicated to final judgment and any such claim closed without payment to be reported annually to the State Corporation Commission by the insurer of the health care provider;
- Revise Board of Medicine procedures to evaluate the competency of a practitioner who has a certain number of malpractice settlements or judgments within a certain amount of time;
- Establish a \$250,000 cap on non-economic damages;
- Establish a limit on attorneys’ fees;
- Revise provisions regarding the exclusion of testimony of treating physicians in medical malpractice cases involving their patients;
- Broaden the definition of “malpractice” so that actions against health care providers relating to medical treatment cannot circumvent the provisions of the Medical Malpractice Act; and
- Prohibit any entity from mandating that physicians carry limits equal to or greater than the current malpractice cap.

□ *Jescey French*

Mental Health

Title Revision

In May 2003, the Virginia Code Commission undertook the revision of Title 37.1 of the Code of Virginia. Title 37.1 (Institutions for the Mentally Ill; Mental Health Generally) is

the legal authority for the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Secretariat of Health and Human Resources, as well as the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services. Title 37.1 is also the legal authority for community services boards and behavioral health authorities.

This title was last revised in 1968. During the past 36 years, much has happened to affect laws governing mental health, mental retardation, and substance abuse programs and services. The primary purpose of the Title 37.1 revision is to reorganize the laws in a logical manner and to improve their structure and clarity. Additionally, certain substantive changes are made, many of which reflect current practices, delete eliminated programs, or conform provisions to other statutes and regulations. These changes include:

- Adding revised definitions for mental illness, mental retardation, and substance abuse;
- Merging the provisions related to substance abuse services that were added to Title 37.1 in 1976 into the State Mental Health, Mental Retardation and Substance Abuse Services Board, the department, licensing, admissions, and community services chapters to eliminate redundancies and improve clarity;
- Repealing archaic provisions relating to treatment centers for children, persons not confined in state hospitals, and judicial certification of eligibility for admission to state hospitals of persons in a coma, and the obsolete Interstate Compact on the Extradition of Persons of Unsound Minds;
- Bringing uniformity where possible to the community services board (CSB) and behavioral health authority (BHA) sections and amending them to reflect current practice; and

- Removing the concept of “prescription teams,” whose duties revert back to the community services boards and behavioral health authorities that have historically performed these duties.

The Code Commission has prepared a proposed Title 37.2 (Mental Health, Mental Retardation, and Substance Abuse Services) for introduction at the 2005 Session of the General Assembly.

□ *Amy Marschean*

Public Education

Standards of Quality

The 2004 General Assembly Session adopted legislation reorganizing the Standards of Quality and making substantive amendments that would (i) increase from one half-time to one full-time principal in elementary schools with fewer than 300 students; (ii) provide one full-time assistant principal for each 400 students in each school, regardless of grade level; (iii) require five elementary resource positions per 1,000 students in kindergarten through grade five for art, music, and physical education; (iv) lower the pupil-teacher ratio from 25:1 to 21:1 in middle and high schools, to ensure the provision of scheduled teacher planning time; (v) reduce the required speech pathologist caseload from 68 to 60 students; (vi) require one full-time reading specialist for each 1,000 students in average daily membership; (vii) require two technology support positions per 1,000 students in kindergarten through grade 12 division-wide; and (viii) modify the current funding mechanism for remediation.

However, because the legislation included a second enactment clause providing that any new Standard of Quality incorporated into the bill would not become effective unless an appropriation was included in the 2004-2006 Appropriation Act, the 2005 Session may be asked to consider additional amendments to the standards to reflect current as well as proposed funding.

School Infrastructure

While the Virginia Constitution addresses shared funding for “an educational program meeting the prescribed standards of quality,” the framers did not contemplate the challenges of aging school buildings, increased enrollments, and rapidly evolving educational technology. Although legislative appropriations and sales tax revenues support operating costs for public schools, school construction and other capital costs in the Commonwealth are financed through other sources. Acknowledging the complex fiscal and policy concerns surrounding school construction, the 2004 Session created the two-year, 16-member HJR 105 Joint Subcommittee to Study the Level of the Commonwealth’s Assistance to Localities Necessary for Developing Adequate K-12 School Infrastructure to examine current unmet needs and creative ways to address school infrastructure challenges.

In 1997, the National Conference of State Legislatures noted that “deteriorating schools in Virginia have some of the worst problems in the country,” with building improvements for the then-next five years reaching \$6.5 billion. In 2001, the American Society of Civil Engineers (ASCE) deemed three-quarters of America’s schools “inadequate,” based on overcrowded conditions or old or outdated facilities. Sixty percent of the Commonwealth’s public schools were rated as having “at least one inadequate building feature,” and 58 percent had “at least one unsatisfactory environmental condition.” Responses to a 1996 Virginia Department of Education school facility status survey indicated that unmet school construction needs stood at \$2.2 billion, reflecting a 147 percent increase in only three years.

As title to school property in the Commonwealth rests with the relevant local school board, so does primary responsibility for capital outlay and improvements. To support school construction, local school boards may pursue financing independently—perhaps through general obligation debt sold in public or private markets—or obtain assistance

through the Literary Fund, the Virginia Retirement System, or the Virginia Public School Authority. As the work of the HJR 105 Commission progresses, the General Assembly may be asked to consider initiatives addressing school construction needs.

Educational Accountability

The enactment of the federal No Child Left Behind Act (NCLB) in January 2002 has prompted many states to strengthen—and, in some cases, establish—educational accountability in public education. Invoking requirements for standards, assessments, and consequences, the federal law has challenged states to adopt annual testing practices, hire highly qualified instructional personnel, and improve the academic achievement of all students. Having established educational standards for its public schools more than 30 years ago, and, in the past decade, having strengthened accountability for public schools by implementing regular assessments for its Standards of Learning and revising the Standards of Accreditation for public schools, the Commonwealth nonetheless made modifications to its assessment policies and procedures prescribed in its current accountability system. Its Consolidated State Application Accountability Workbook for NCLB funding was approved by the U.S. Department of Education (USDOE) in spring 2003.

Although Virginia had already implemented many initiatives required by NCLB, it remains unclear how much money the Commonwealth will have to spend to obtain the compliance-contingent federal funds for public education. Of particular concern are the potential costs of additional assessments, the training and employment of highly qualified teachers and instructional paraprofessionals, and enhanced data collection and reporting systems. In 2004, the General Assembly carried over legislation that would have withdrawn the Commonwealth from NCLB participation; a resolution adopted that year directed the Superintendent of Public Instruction to report on an estimate of the cost impact of the act on the Commonwealth. As concern mounts among educators, parents, and

policymakers regarding unforeseen costs, duplicative requirements, and provisions perceived as unnecessarily punitive to students and struggling schools, the 2005 Session may be asked to revisit the implementation of NCLB in Virginia.

Educational Leadership

The work and recommendations of the HJR 124 Commission to Review, Study and Reform Educational Leadership may also confront the 2005 Session. The 21-member commission, initially created in 2002 (HJR 20/SJR 58), was directed to “(i) evaluate the policy environment for educational leadership; (ii) propose necessary statutory amendments or changes based on research, surveys, analysis and review of pertinent laws, guidelines, policies, regulations and practices; (iii) communicate regularly to the Board of Education any relevant findings with recommendations for needed regulatory action; and (iv) provide a forum for educational leaders to report to the commission the challenges of, and impact on, their work.”

□ *Kathleen G. Harris*

Senior Citizens

Assisted Living Facilities

Virginia is rapidly becoming one of the top magnets for older Americans, and by 2030, it is expected that more than 25 percent of Virginia's population will be over the age of 60.

Assisted living facilities provide room, board, and minimal to moderate assistance with residents' (most of whom are seniors) activities of daily living. As of June 2004, Virginia had 629 assisted living facilities serving close to 35,000 Virginians. Not only do these facilities serve an important role in the lives of Virginia's seniors, but they also serve many adults with mental health issues ranging from mental illness and substance abuse to mental retardation and dementia.

A series of articles published this year in the *Washington Post* revealed often disturbing illustrations of challenges that many of these facilities are facing, such as:

- ❑ A shrinking labor pool and an often insufficiently trained workforce;
- ❑ Inadequate funding for Auxiliary Grant recipients;
- ❑ A lack of services or coordination of services for residents with mental health issues;
- ❑ Infrequent facility inspection and cumbersome enforcement methods when a violation is evident; and
- ❑ Numerous incidents concerning the safety and welfare of residents.

Since the publication of these articles, there have been focused attempts coordinated by both the Secretary of Health and Human Resources and by the Department of Social Services to address these issues. A task force, formed by Secretary Woods and composed of relevant agency personnel and stakeholders, met extensively throughout the interim and is in the process of making recommendations to the Governor. Similarly, the Joint Legislative Commission on Health Care performed a thorough examination of assisted living facilities, and the commission is currently finalizing recommendations that resulted from its study.

Undoubtedly, this will be a topic for legislative and possibly budgetary proposals during the upcoming session.

❑ *Jeffrey S. Gore*

Taxation

Federal Tax Law Changes

The American Jobs Creation Act of 2004 would make significant changes to the federal income taxes paid by businesses and individuals. The act has passed both houses of the United States Congress and is currently en-

rolled. Because Virginia's income tax laws conform to the federal tax laws as they were in effect on December 31, 2003, the General Assembly would need to pass legislation in the 2005 Session for the provisions of the federal act to "flow through" or modify Virginia's income tax laws. If the General Assembly decides to adopt the provisions of the act, it could take a selective approach and only adopt certain provisions, or it could adopt all of the act's provisions by changing the date to which Virginia conforms from December 31, 2003, to a date in late 2004 or 2005.

Following are some of the more significant provisions in the federal act:

Deduction for income generated in the United States. Businesses will be allowed to take a deduction roughly equal to nine percent of their taxable income from qualified production activities for taxable year 2004. The percentage drops to three percent for 2005 and 2006 and increases to six percent for taxable years 2007 through 2009. The act defines income from qualified production activities as income generated from the sale, lease, rental, or other exchange of (i) personal property manufactured or produced in the U.S.; (ii) a film produced in the U. S.; (iii) electricity, natural gas, or potable water produced in the U.S.; (iv) construction performed in the U.S.; or (v) engineering or architectural services performed in the U.S. for construction projects in the U.S. The deduction in any one year is limited to 50 percent of the wages paid by the taxpayer in such year. This deduction most likely would have a significant impact if adopted for Virginia income tax purposes.

Acceleration of deductions for capital costs of motion pictures. The capital costs of making a motion picture or videotape may be expensed immediately as opposed to capitalized and expensed over a longer term of years. The ability to more quickly recover such costs only applies to motion pictures and videotapes costing \$15 million or less that are produced in the U.S.

Acceleration of deductions for reforestation expenses. Reforestation expenses up to \$10,000 per year for qualified timber property may be expensed in the year incurred. This is a change from the 84-year amortization period.

6 Acceleration of deductions for certain refiners of petroleum products. Seventy-five percent of the capital costs incurred by small business refiners to comply with EPA sulfur regulations may be expensed immediately as opposed to amortized over a number of years. Small business refiners are taxpayers in the business of refining petroleum products with 1,500 or fewer employees and less than 205,000 barrels per day in petroleum capacity.

Itemized deduction for sales taxes. Taxpayers will be allowed to take an itemized deduction for general state and local sales taxes in lieu of state and local income taxes. This most likely will not have a significant impact if adopted for Virginia income tax purposes. The primary beneficiaries of this deduction are residents of states that have no state or local income tax such as Florida, Tennessee, and Texas.

Payments for tobacco quotas. The act provides for payments by the U.S. government to purchase tobacco quotas from tobacco quota holders and producers of quota tobacco. These payments are treated as income and are taxable at the federal level and, therefore, are subject to Virginia income tax.

Deduction for attorney fees and court costs for certain legal claims. The act allows a deduction from income for attorney fees and court costs paid by, or on behalf of, taxpayers in connection with legal claims involving allegations of unlawful discrimination (e.g., violations of civil rights acts, national labor relation acts, fair labor standard acts, etc.).

Acceleration of deductions for capital placed in service at a motor-sports entertainment complex. The act provides

an accelerated write-off of capital costs (land-improvements and support facilities) by a motor-sports entertainment complex. The act reduces the write-off period from 39 years to seven years.

□ *Mark Vucci*

Tobacco

The Ad Hoc Joint Subcommittee Studying the Tobacco Master Settlement Agreement (MSA) was formed to examine issues concerning the legal status of non-participating manufacturers (NPMs) in the MSA, and to report to the Committee for Courts of Justice. A key issue relative to implementation of the MSA is whether to modify the amount of escrow NPMs must pay into the funds of states in which they operate. The escrow is retained in order to satisfy any judgments that may be obtained against the NPMs for liability associated with the manufacture and sale of tobacco.

A model statute modifying the escrow provisions, prepared by the National Association of Attorneys General and adopted in 37 states to date, would eliminate the cap on the escrow amounts by requiring the NPMs to pay essentially the same amount in escrow as they would pay to the states if they were members of the MSA. NPMs still would be refunded any amounts paid into the state escrow fund that exceed the amount that would have been paid nationally into the MSA, but for all practical purposes, that refund will be small if it exists at all. The provisions relating to the ultimate refund of any monies remaining in escrow 25 years after the deposit date would remain unchanged. Legislation attempting to address this issue last session (HB 345) was left in the Committee for Courts of Justice in the regular session of the 2004 General Assembly.

□ *Ellen Bowyer*

Transportation

Driver's Licenses

The 2005 Session of the General Assembly will almost certainly revisit (but possibly not change) the laws relating to proof of identity, Virginia residency, and legal presence in the United States by applicants for driver's licenses, learner's permits, and special identification cards issued by the Department of Motor Vehicles. Legislation will almost certainly be offered to either clarify which documents and other proofs are either required or acceptable in an effort to fine tune the balance between the need to be sure these documents are not issued to persons who might use them for nefarious purposes and the ability of ordinary Virginians to produce the required documents and other proofs.

Transportation Funding

Transportation was one major policy area whose funding was not discussed in any great detail during the 2004 Regular and Special Sessions. Provision of additional financial resources to transportation maintenance and improvement—possibly through use of innovative financing mechanisms—may be a ma-

ior issue in 2005, but most legislation in this area will probably be scrutinized by the money committees, not by the transportation committees.

"Photo-red" Enforcement

Unless the 2005 Session acts to prevent it, Virginia's "photo-red" traffic light signal enforcement program will "sunset" on July 1, 2005. Photo-red programs have occasioned more than a little controversy ever since they were first authorized in 1995, and this impending sunset will most likely serve to focus that controversy.

Special License Plates

Special license plates will almost certainly continue to be a growth industry in Virginia. In addition to legislation authorizing new plates, there may also be efforts to fine tune or refine the process by which such legislation is considered in hopes of reducing the percentage of plates that are authorized but never issued because the required minimum number of prepaid applications are not submitted to the Department of Motor Vehicles in time.

□ *Alan B. Wambold*