

Virginia Legislative Record

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HJR 72: Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia

August 12, 2009

The Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia held its fifth meeting at Old Dominion University.

Presentations

Paul D. Fraim, Mayor, Norfolk City

Mayor Fraim spoke on behalf of the City of Norfolk and the mayors of Newport News and Portsmouth. Mayor Fraim first stated that if privatization occurs, host cities should be treated fairly and equitably for costs they have incurred. Moreover, Mayor Fraim expressed concerns about private port operators being granted tax-exempt status because the status would prevent host cities from collecting revenue from them.

The mayor argued that cities do not necessarily benefit economically from having seaports located within their jurisdictions. The mayor referenced data that host cities lose more revenue because of unreimbursed municipal services given to ports (e.g., extra police, road construction, etc.). Finally, the mayor argued that the Public-Private Transportation Act was never designed to address the privatization of the Commonwealth's seaports.

Ashley S. Colvin, Project Leader, Joint Legislative Audit and Review Commission (JLARC)

Mr. Colvin's presentation centered on two issues: (i) the variation of legislative

oversight of public-private partnerships and (ii) lessons learned from selected public-private partnerships. Mr. Colvin discussed the legislative history of the Public-Private Transportation Act and the Public-Private Education Facilities and Infrastructure Act. He then reviewed the Public-Private Partnership Advisory Commission's mission, membership, and relationship with the Joint Commission on Transportation Accountability. In addition, Mr. Colvin commented that public-private partnerships sometimes require a public role and support, including the need for public moneys to be expended on partnership and the need by a public entity to have experienced staff. Mr. Colvin listed several factors to consider in evaluating public-private partnership proposals:

- The proposal may identify a need, but the public entity may be able to provide services without a partnership.
- Problems with a proposal's feasibility may not come to light until completion of agreement.
- Budget flexibility may be lost if long-term financial commitment is made to the private partner.

Furthermore, Mr. Colvin noted that there is implicit tension between the executive branch and the legislative branch over partnership projects because the executive branch is authorized to solicit, negotiate, and implement proposals, but there is no traditional role for the legislature in the approval process. Mr. Colvin suggested that a role

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For more information, visit study and commission websites. DLS staff members maintain comprehensive study and commission websites that contain complete summaries of meetings and links to additional information, handouts, and resources.

should exist for legislative financial auditing and performance evaluation, including a defined role in a public-private partnership agreement for legislative auditors (JLARC and APA) to evaluate and audit the project periodically.

Pierce R. Homer, Virginia Secretary of Transportation

Fifty-six percent of 20-foot equivalent units (TEU) internationally are handled in ports with private operators.

The Secretary's presentation centered on the Commonwealth's port and Public-Private Transportation Act (PPTA) priorities, which present both an economic opportunity and a transportation challenge. The three main priorities include:

- The promotion and realization of benefits of continued economic growth.
- The provision of surface transportation to serve the community and port.
- The addressing of community impacts of the ports.

Next, Secretary Homer discussed Virginia's public-private partnership transportation program. Secretary Homer explained that the program has several components, including special taxing districts and tolling revenues. Also, the program's goals are shared goals with other components of the Commonwealth's transportation program and include less cost, timeliness, accountability, and private risk sharing. Second, Secretary Homer explained certain current requirements of the PPTA, including the requirement of private sector commitments and the rejection of unsolicited bids that do not include private risk. Third, Secretary Homer discussed and gave examples of PPTA concession payments. Some examples included supporting other transportation projects and increasing access or mobility within the scope of the project. Fourth, the Secretary gave an update on the status of several PPTA construction projects, including four construction projects that have been cancelled or withdrawn since 2002, and three projects that are currently under negotiation.

Finally, Secretary Homer explained how the proposals to privatize Virginia's seaports are and will be handled under the PPTA. He further emphasized that the independent review panel:

- Will be constituted and serve as advisory body.
- Will hold public meetings, receive formal public comments, discuss proposals, and make a recommendation to the Virginia Port Authority (VPA) and the Secretary of Transportation on whether to advance the PPTA process.

- May recommend to advance all or none of the PPTA proposals to the detailed proposal phase.

However, Secretary Homer stated that the Virginia Port Authority must take affirmative action to request a detailed proposal, and execution of a comprehensive agreement would require successful submission of a detailed proposal and subsequent negotiation of a comprehensive agreement between the VPA and a private entity.

Dr. James V. Koch, President Emeritus and Board of Visitors Professor of Economics, Old Dominion University

Dr. Koch began by stating that the privatization of port operation in Virginia is a discussable idea. He stated that 35 ports in the United States are privately operated with 56% of 20-foot equivalent units (TEU) internationally handled in ports with private operators.

Dr. Koch listed the following possible benefits of private operation:

- Reduction of costs.
- Increase in cargo throughput speed.
- Increase in business volume.
- Stimulation of Virginia businesses.
- Attraction of higher value cargoes.
- Additional investments in equipment and infrastructure.
- Additional tax payments.

Dr. Koch also spoke on whether a private operation/partnership can:

- Lower costs.
- Increase speed/efficiency.
- Increase volume of business.
- Stimulate Virginia business.
- Attract higher value cargoes and investments in port equipment and infrastructure.

Dr. Koch then discussed evaluating systemic and nonsystemic risk. Systemic risk refers to economywide risk, as when the world economy suffers a decline or the value of the U.S. dollar declines. Nonsystemic risk refers to the risk associated with a specific firm or operator, e.g. if the firm or operator goes broke or doesn't meet performance standards. Dr. Koch advised a rigorous assessment of the three proposals versus an unstated fourth option - keeping the ports.

Jo Anne Maxwell, Sr. Assistant Attorney General/Section Chief for Transportation

Ms. Maxwell answered questions posed by joint subcommittee members. First, Ms. Maxwell informed the joint subcommittee that a responsible

public entity involved in a proposed PPTA project is responsible for paying for legal counsel/attorney fees incurred in negotiating the partnership agreement. Ms. Maxwell stated that while the Office of the Attorney General (OAG) takes into account input made by the responsible public entity, the OAG is responsible for appointing outside legal counsel to represent a responsible public entity involved in a proposed PPTA project. Ms. Maxwell also advised that, generally, the Virginia General Assembly has no role in a PPTA project; however, when there is an outright sale of an asset, the responsible public entity must notify the General Assembly.

Next Meeting

Chairman Purkey stated that the joint subcommittee will attempt to meet in September, October, and November. The next meeting dates will be posted on the joint subcommittee's website and the General Assembly calendar as soon as information is available.

HJR 72

Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia

Delegate Harry Purkey, Chairman

Kevin Stokes and Caroline Stalker, DLS Staff

[study website](#)

<http://dls.virginia.gov/ports.htm>

(804) 786-3591

Thirty-five ports in the United States are privately operated.

HJR 91: Joint Subcommittee Studying Ways in which the Commonwealth May Work More Closely with Virginia's Private, Nonprofit Colleges to Meet State Higher Education Needs

August 17, 2009

The Joint Subcommittee Studying Ways in which the Commonwealth May Work More Closely with Virginia's Private, Nonprofit Colleges to Meet State Higher Education Needs held its second meeting of the interim in Richmond.

Presentations

Eugene Cattie, Independent Consultant

Mr. Cattie gave an overview of the former Virginia Education Loan Authority (VELA), along with suggestions for how to create a new state student loan program more in line with current lending practices. Mr. Cattie explained the struggles many families face in trying to finance higher education. He offered three possible solutions:

- Create a hybrid VELA to offer alternative and federal loans to Virginia residents.
- Partner with another state that already has such a program, to offer loans to Virginia residents.
- Do nothing and let the schools find their own solutions.

He then went through the pros and cons of each option.

Joint subcommittee members expressed some interest in the first option, creating a hybrid VELA, and asked for details as to how such a program could be implemented. Mr. Cattie indicated that a program could be established in less than a year, with as little as \$5 million for the guarantee fund.

Robert Dean Pope, Hunton and Williams

Mr. Pope gave suggestions on ways in which the Commonwealth could help private institutions finance capital projects. Mr. Pope suggested a two-pronged approach: first, the Commonwealth could offer a form of credit enhancement modeled after the Virginia Resources Authority, and second, the Commonwealth could offer selective incentive grants. Together, he believes these two measures could have a profound effect on private institutions' ability to finance capital projects.

Staff Presentation

Different programs exist in various states for giving financial support to private institutions.

Staff gave a summary of a presentation given last year by Robert Lambeth, President of the Council for Independent Colleges in Virginia, detailing programs in other states that provide financial support to private institutions. Staff reviewed the capital funding programs in Maryland and New York, and briefly reminded the joint subcommittee members of other types of existing funding programs, such as the per capita funding available in New Jersey, Pennsylvania, and Maryland, and the shortage area programs in Illinois and Maryland.

Next Meeting

The joint subcommittee members agreed that the next and final meeting should focus on what recommendations, if any, the joint subcommittee will make. The chairman directed staff to prepare a list of ideas discussed throughout the course of the study, along with any suggestions submitted by joint subcommittee members, to be distributed in advance of the final meeting. The final meeting is scheduled for November 16, at 10:00 am, where the members will discuss and vote on any recommendations they wish to put forward.

HJR 91

Joint Subcommittee Studying Ways in which the Commonwealth May Work More closely with Virginia's Private, Nonprofit Colleges to Meet State Higher Education Needs

Delegate Phillip Hamilton, Chairman

Jessica Eades and Nicole Cheuk

DLS Staff

[study website](#)

<http://dls.virginia.gov/nonprofitedu.htm>

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Meeting Calendar for September – October '09

| <i>Study/Commission Name</i> | <i>Meeting Information</i> | <i>DLS Staff</i> |
|---|---|---------------------------------|
| War of 1812 Commission Citizen Advisory Council | 1:00 p.m., Friday, September 11, 2009 State Capitol, House Room 3 | Brenda Edwards |
| Freedom of Information Advisory Council | Personal Identifying Information Subcommittee, 9:30 a.m. 11:00 a.m., Monday, September 21, 2009 General Assembly Building, House Room D | Maria Everett Alan Gernhardt |
| Special Subcommittee of the 50th Anniversary of Public School Closings in Virginia | 10:00 a.m., Wednesday, September 23, 2009 General Assembly Building, House Room C | Brenda Edwards |
| War of 1812 Commission | 2:00 p.m., Thursday, September 24, 2009 General Assembly Building, House Room D | Brenda Edwards |
| MLK Commission's Lincoln Bicentennial Subcommittee | 10:00 a.m. (tentative time) Friday, September 25, 2009 Union Train Station (tentative), Petersburg, Virginia | Brenda Edwards |
| Virginia Code Commission | 10:00 a.m., Thursday, October 1, 2009 General Assembly Building, 6th Flr, Speakers Conference Room | Jane Chaffin |
| Virginia Housing Commission | See website for ongoing meeting information http://dls.virginia.gov/VHC.HTM | Elizabeth Palen |

Meetings may be added at anytime, so please check the General Assembly and DLS websites for updates.

Did You Know?

"Did You Know?" will appear in each issue of the *Virginia Legislative Record*. The article will feature important topics or interesting facts that are relevant to the Virginia legislature. For general questions or suggestions for a future issue, please contact DLS at (804) 786-3591 or emiller@dls.virginia.gov.

Who Controls the Special Session?

"Suppose someone else wants to introduce a bill on another topic at the special session?"

"That's pure speculation."¹

The question posed by the Richmond Times-Dispatch reporter is speculation of course, but the Governor's spokesman declined to answer the question at the heart of the inquiry: What is the Governor's authority to limit legislation introduced at a special session of the General Assembly?

Like the reporter, many Virginians might assume that the Governor defines the scope of issues considered at a special session. Indeed, it is the Governor who has the authority to call the special session. Article V, Section 5, of the Constitution states that the "Governor shall . . . convene the General Assembly on application of two thirds of the members . . . or when, in his opinion, the interest of the Commonwealth may require." Such interest of the Commonwealth is often laid out by the Governor in a proclamation announcing the special session.

For example, the July 22 press release from the Governor's office stated that the upcoming special session would focus solely on the legal changes necessary to comply with the U.S. Supreme Court's ruling in *Melendez-Diaz v. Massachusetts*.² Yet days after the Governor's press release, Senator Stolle announced his intention to reach beyond that topic and introduce legislation to compensate a man from Virginia Beach who had been wrongly convicted of rape and served 22 years in prison.³

While the Governor agreed with Senator Stolle to expand the special session for this purpose, no permission was required. The obstacle for members of the General Assembly hoping to introduce legislation at special session lies not in the proclamations or press releases from the Governor, but the procedural resolutions passed by the legislature at the start of session.

During this year's special session, HJR 5003 was the vehicle for limiting the scope of actions and was only the second piece of legislation acted on by the House of Delegates after notifying the Governor that the

legislature was in session. The procedural resolution, which was agreed to by both houses and was described by the Speaker as a contract between the House and the Senate, stated that "no bill or joint resolution shall be considered, except (i) bills and resolutions relating to changes to the Code of Virginia to assure Virginia's compliance with the United States Supreme Court's ruling in *Melendez-Diaz v. Massachusetts*; (ii) claims bills relating to wrongful incarceration; and (iii) joint resolutions and resolutions affecting the rules of procedure or schedule of business of the General Assembly, either of its houses, or any of its committees."

Despite the clear lack of executive authority to limit legislative actions during a special session, the issue is not new. Former Governor Gerald Baliles faced the question twice during his term as Attorney General from 1982-1985. With the help of a few constitutional scholars, he put the issue to rest:

The Virginia Constitution does not grant authority to the Governor to limit or restrict the powers of the legislature at a special session. Neither does it limit the General Assembly to the subject matter specified in the Governor's proclamation which convenes the special session. The Virginia Constitution is not a grant of powers to the General Assembly, but a statement of limitations on its otherwise plenary powers. In the absence of such restrictive provisions, the legislative power of the General Assembly, when convened in special session, is as broad as its powers in its regular sessions.⁴

Perhaps the next time a reporter wants to speculate on the possibility of out-of-bounds legislation during a special session he should ask the legislators themselves.

*Ellen Porter, Staff Attorney
Privileges and Elections Section*

¹Tyler Whitley, "Kaine wants to expand scope of special session," *Richmond Times Dispatch*, 31 July 2009.

²<http://www.governor.virginia.gov/MediaRelations/NewsReleases/viewRelease-print.cfm?id=1003>

³Julian Walker and Meghan Hoyer, "Stolle drafts bill to help freed Norfolk man to get restitution," *The Virginian-Pilot*, 24 July 2009.

⁴1981-1982 Op. Va. Atty Gen. Va. 188; see also 1983-1984 Op. Va. Atty Gen. Va. 59.

Virginia Code Commission

7/30/09

Presentations

Regulation Information System

Mr. Miller announced that Virginia's electronic regulation drafting and filing system (Regulation Information System) was awarded the 2009 Robert J. Colborn Jr. Innovation Award by the Administrative Codes and Registers Section of the National Association of Secretaries of State.

Revision of Title 64.1, Wills and Decedents' Estates

Mr. Cotter presented the Title 64.2 proposed outline recommended by the work group. The proposed name of the title (Wills, Trusts, and Fiduciaries) now reflects the incorporation of Trusts and Fiduciaries into the title. The title is divided into four subtitles:

- Wills and Decedents' Estates.
- Trusts, which are mostly uniform acts.
- Fiduciaries and Guardians.
- General Provisions concerning Probate and Nonprobate Transfers.

For a complete description of the discussion on the Title 64.1 revision, visit the Code Commission website.

Request to correct § 25.1-210

The Code Commission considered a request from an attorney at a Norfolk law firm to correct an error in § 25.1-210. Section 25.1-210 describes the process for obtaining a court order to effect service of a notice of a condemnation action by publication in situations where the property owners are out of state or unknown. As currently written, the section provides that unknown owners "may be served by order of publication." The requester suggested clarifying the language to read that unknown owners "may be served by notice, pursuant to an order of publication," so that it is clear that the notice must be published, not the order.

Senator Edwards stated that the requester is technically correct, but referred to it as a "de minimis error." In its discussion, the Commission agreed that the suggested change improved and clarified the language, but noted that this type of clarification change is usually handled during the recodification process. No motion was made to introduce legislation to correct the error.

Mr. Miller suggested that the Commission review its statutory authority to make corrections to the Code in order to consider whether that authority should be expanded to deal with issues such as this one. The Chairman asked staff to put the powers issue on a future agenda for thorough discussion.

Revision of Title 6.1, Banking and Finance

Mr. Munyan reported on the revision of Title 6.1. The Commission discussed Chapters 3 (Interest and Usury), 4 (Certain Lending Practices), 7 (Acquisitions of Interests in Financial Institutions), and 10 (Entities Conducting Trust Business) and certain outstanding issues. For a complete description of the discussion on the Title 6.1 revision, visit the Code Commission website.

Incorporating Federal Laws and Regulations by Reference into the Code of Virginia

At a recent meeting, a question was raised regarding incorporating a federal act or regulation by reference into the Code of Virginia, and whether the language "as amended" or similar language is necessary. One thought is that the federal act in effect at the time the Code section is read is the effective language, with or without the language "as amended" appended to the reference. Another consideration is that the federal act in effect at the time the Code section was enacted is the effective language. Mr. Miller stated that he is continuing to research the issue and will bring it back to the next meeting for discussion.

Authentication of State Online Legal Materials

Staff advised members that the Uniform Law Commissioners established a new drafting committee to develop a uniform law relating to the authentication and preservation of state electronic legal materials. The Commission may be interested in monitoring the progress because of the Commission's responsibility for codifying statutes and administrative regulations. Mr. Miller stated that he has requested to be on the drafting committee.

Next Meeting

The next meeting is scheduled for October 1, 2009, at the General Assembly Building.

DELEGATE R. STEVEN LANDES, CHAIR

Jane Chaffin, DLS Staff

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Small Business Commission

8/3/09

The Small Business Commission (Commission) met in Richmond, Virginia, and was presided over by the Commission's co-chairmen, Delegate Jeffrey M. Frederick and Senator W. Roscoe Reynolds.

House Bill 2121. Public Procurement Act; Verification of Legal Presence

House Bill 2121 would require all contractors with the Commonwealth and their subcontractors to register and participate in a federal Electronic Work Verification Program (E-Verify) to determine that their employees are legally eligible for employment in the United States. Contractors who do not register and participate in the registration program are ineligible for prequalification.

Bruce A. Morrison, former member of Congress and the Immigration Subcommittee of the Judiciary Committee and Consultant to the Society for Human Resource Management, made a presentation regarding the E-Verify program. Mr. Morrison explained that the E-Verify program was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The E-Verify program is currently administered by the Department of Homeland Security.

Mr. Morrison explained that currently employers are required to review various documents presented by employees demonstrating their identity and their authorization to work in the United States. The employer is then required to attest on Form I-9 that he or she has reviewed the requisite documents and that they appear to be authentic. Mr. Morrison testified that the I-9 verification process is time-consuming and burdensome for human resource professionals and that the process is prone to fraud, forgery, and identity theft.

In an effort to correct the problems with the I-9 process, Mr. Morrison explained, the United States Congress created the Basic Pilot program, now known as the E-Verify program. Mr. Morrison testified that the program, despite its intentions, is currently inadequate to meet the needs of mandated use by all employers. He noted that the program depends principally on the Social Security Administration database and that there is a 4.1 percent error rate in that database, thus affecting the reliability of the program. Mr. Morrison also testified that the E-Verify program results in many false positives and that

approximately four percent of people who are lawfully eligible to work get flagged as ineligible by the program. He further stated that such people have an eight-day window to contest such a finding and prove their citizenship.

Next, Delegate Nichols gave a brief overview of his bill. He also noted that President Barack Obama recently mandated that all federal contractors use the E-Verify program. Several witnesses then testified both on behalf of and against House Bill 2121.

Michael M. Hethmon, General Counsel, Immigration Reform Law Institute

Mr. Hethmon testified that 12 states have adopted the E-Verify program for their public contractors. Relying on the written testimony of Gerri Ratliff, the Deputy Associate Director of the National Security and Records Verification Directorate, submitted to the United States Congress, Mr. Hethmon noted that an average of 1,000 employers enroll in the program each week and that only 2.8 percent of queries ultimately result in a mismatch or nonconfirmation of eligibility. Mr. Hethmon stressed that two primary issues that must be considered by states seeking to utilize the E-Verify program with public contractors are to what extent should subcontractors be included, and whether contractors outside of the Commonwealth should be included. Mr. Hethmon distributed proposed amendments to House Bill 2121 intended to address these issues, as well as to what extent certain types of contractors would be required to participate in the E-Verify program. Mr. Hethmon noted that these proposed amendments were based on model provisions and would have to be adjusted to better fit Virginia law.

Maureen Wood, Save the Old Dominion

Ms. Wood reiterated many of the same points as Mr. Hethmon regarding the efficacy of the E-Verify program. She also stated that employees who are found to be ineligible for employment by the program have 21 days, not eight as Mr. Morrison stated, to contest such a finding. Ms. Wood also noted that businesses who employ unauthorized workers do not pay employment taxes on these employees, thus depriving the Commonwealth of tax revenue. Ms. Wood also testified that the unemployment rate in Virginia is currently at a 16-year high and that utilization of the E-Verify program will help to ensure the employment of citizens and authorized workers.

Michael J. McLaughlin and William Buchanan, American Council for Immigration Reform

Mr. McLaughlin likewise reiterated many statistics concerning the efficacy of the E-Verify program,

stressing that only 0.4 percent of all E-Verify queries are about United States citizens who have to take action to resolve a tentative nonconfirmation. Mr. McLaughlin also provided the Commission with information regarding other states that require the use of the E-Verify program.

Mr. Buchanan provided the Commission with a list of 2,985 private firms in Virginia that are registered to use the E-Verify program.

Nicole Riley and Travis Hill, Virginia Employers for Sensible Immigration Policy

Ms. Riley explained that her organization supports an adequate, stable, and legal workforce for Virginia employers and a federal system that allows employers to efficiently and effectively comply with federal immigration law. However, Ms. Riley stated her belief that laws relating to the employment of noncitizens was better left to the federal government. She also testified that Virginia employers should not bear the burden of enforcing federal immigration policy and that any attempt by the Commonwealth to require enforcing such policies that interfere with employment relations and impose mandates on employers beyond what federal law already requires would be counterproductive.

Mr. Hill testified that the federal rule requiring contractors with the federal government to use the E-Verify program goes into effect on September 8, 2009. He contended that, as the impact of this rule would not become apparent until the end of 2009, it would be better to wait and see how the new federal rule functions before action is taken in Virginia. He stated that he still had concerns about the accuracy of the E-Verify program as well as concerns about its capacity, noting that there will be 3.8 million employees enrolled in the program at the time the federal rule takes effect. Mr. Hill also remarked on a significant difference between the federal rule and House Bill 2121. The federal rule only requires that an employer use the E-Verify program if it is awarded a federal contract; House Bill 2121 would require employers to use the program in order to prequalify as public contractors.

Julia Ciarlo Hammond, State Director, National Federation of Independent Business

Ms. Hammond expressed her organization's opposition to the bill. She emphasized that the estimated fiscal impact of House Bill 2121 was approximately \$90,000 per year. Ms. Hammond noted that there were also costs to the employers to participate in the E-Verify program. The initial year

cost for an employer with up to 10 employees is \$1,300 and the initial year cost for an employer with up to 500 employees is \$25,000. She also testified that there could be even greater costs if contractors opted not to compete for public contracts due to the cost and complexity of participating in the E-Verify program. Ms. Hammond stated that the cost to the Commonwealth from this lack of competition for public contractors could be as high as \$50 million per year.

Keith Cheatham, Vice-President of Government Affairs, Virginia Chamber of Commerce

Mr. Cheatham also testified regarding the Chamber's opposition to House Bill 2121. He noted that the United States Chamber of Commerce was recently successful in having a similar Oklahoma law struck down in federal court on the basis of preemption. Although the court decision is currently on appeal, Mr. Cheatham stated that the court's ruling demonstrates that the enactment of House Bill 2121 would likewise be subject to a strong argument that it is federally preempted. Mr. Cheatham concluded by stressing that immigration is primarily the responsibility of the federal government and, that until a comprehensive federal response to the issue is implemented, Virginia and other states should resist creating a patchwork of possibly unenforceable state laws.

Claire Guthrie Gastanaga, National Association of Women Business Owners

Ms. Gastanaga testified that 98 percent of businesses in Virginia are small businesses and that the enactment of House Bill 2121 would have an adverse, disparate impact on small businesses.

House Bill 2026. Virginia Employee Voluntary Accounts Program

Delegates Daniel W. Marshall III and William R. Janis, co-patrons of House Bill 2026, briefly discussed the provisions of the bill. The bill would create the Virginia Employee Voluntary Accounts program (VEVA), a program in which small private employers would be able to enroll in and offer tax-deferred retirement plans to their employees using payroll deduction. The program would be administered by a new state agency created by the bill.

Delegate Marshall explained that the introduction of the bill was spurred by the fact that personal savings rates in the United States have declined steadily over the past 30 years and that people are not saving enough to support themselves in retirement. Delegate Marshall also explained that, in its current form, the structure of the

program was based on that used by the Virginia College Savings Plan (VCSP). Both Delegate Marshall and Delegate Janis acknowledged that the bill needed some work before it would be ready to go forward and both requested that the Commission appoint a working group to look at the bill and bring its recommendations back to the Commission.

Madge Bush and Dr. Robert Schneider, AARP Virginia

Ms. Bush briefly gave an overview of the underlying purpose of the bill. She then turned the presentation over to Dr. Robert Schneider, also of AARP, who went into more detail about the reason for the bill and how the program would operate. Dr. Schneider reiterated that Americans are not saving and are generally unprepared for retirement.

He noted, however, that employees who have automatic payroll deductions available to them are more likely to save than those who do not. Dr. Schneider testified that the VEVA program takes advantage of this fact to encourage employees to save by enabling small employers to offer tax-deferred retirement plans. Dr. Schneider also stressed the benefits of the VEVA program, noting that the program would enable small employers to take advantage of economies of scale by allowing them to pool their assets in the program, thereby reducing the fees associated with such retirement plans below where they would be for individual small employers. Dr. Schneider also asserted that the VEVA program could potentially help providers of such retirement plans penetrate the small business market and create new business opportunities for providers.

Cynthia W. Comer, General Counsel, Virginia College Savings Plan

As the VEVA program was designed to mirror the VCSP, Ms. Comer gave a brief outline of how that plan was established and how it is managed.

Robert N. Bradshaw, Jr., President and CEO, Independent Insurance Agents of Virginia (IIAV)

Mr. Bradshaw testified in opposition to the bill, although he agreed that the level of personal savings is a problem. Mr. Bradshaw explained that he does not view the VEVA program as being comparable to the VCSP. Mr. Bradshaw stated that the VEVA program would require the private sector, which already offers tax-deferred retirement plans to individual small employers, to compete with the government. His testimony was echoed by two other members of the IIAV, John Woleben and Barton Pasco.

Julia Ciarlo Hammond, State Director, National Federation of Independent Business

Ms. Hammond distributed to the Commission two reports concerning legislation in other states to create similar programs to the VEVA program. Ms. Hammond noted that while similar plans have been considered in other states, no state has adopted such a plan.

Update from the Virginia Department of Business Assistance

Lynda Sharp Anderson, Director of the Virginia Department of Business Assistance (VDBA) gave an update on the activities of the VDBA since her presentation at the Commission's meeting on May 22, 2009. At that meeting, the Commission requested that Ms. Anderson come up with specific recommendations that the VDBA would like the Commission to consider.

Ms. Anderson noted that since the May 22 meeting, the VDBA has reviewed and analyzed its programs and convened a brainstorming session of 50 small business owners and resource providers. As a result of this review, the VDBA identified the following three issues as the top issues for Virginia small businesses:

- State credit/access to capital programs should be enhanced.
- Business One Stop should be used for more efficient service delivery.
- Awareness of existing business assistance programs should be expanded.

Ms. Anderson suggested two legislative proposals for the 2010 Session, both of which involved Business One Stop, which is an electronic portal that serves to consolidate the presentation of services from various agencies to new and existing small businesses. The first legislative proposal would authorize the VDBA to collect social security numbers from employers who utilize the Business One Stop. It was explained that this is necessary in order to track the services provided to certain sole proprietors who refuse to obtain a federal employer identification number. The second legislative proposal would mandate that all state governmental agencies or departments that deal with small businesses be required to participate in Business One Stop.

Ms. Anderson addressed several possible legislative proposals for future sessions, including enhancing credit/financing programs for small businesses, offering tax credits to stimulate business investment, streamlining and consolidating programs, and expanding participation in the Virginia Jobs Investment Program.

Member Discussion and Work Plan

The members of the Commission discussed House Bill 2121 and the E-Verify program and decided to take up the bill again at the next meeting. Senator Barker noted that the Virginia Commission on Immigration, on which he served, looked at the E-Verify program and reported on its findings. He requested that a copy of the report be sent to the members of the Commission prior to the next meeting.

The Commission also decided to form a working group to look at the VEVA program as requested by Delegates Marshall and Janis. Interested parties were instructed to contact staff to indicate whether they would like to participate in the working group. The names of these parties will be forwarded to the co-chairs who will then select the members of the working group.

Next Meeting

The Commission plans to hold several more meetings prior to the start of the 2010 Session of the General Assembly. The next meeting date will be posted on the Commission's website and the General Assembly calendar as soon as information is available.

Small Business Commission

DELEGATE JEFFREY M. FREDERICK AND
SENATOR WM. ROSCOE REYNOLDS, CO-CHAIRS
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Commission on Energy and Environment

8/18/09

Consumer Education Plan

Ken Schrad, from the State Corporation Commission (SCC), gave the report on the Consumer Education Plan, entitled "Virginia Energy Sense," required by §§ 56-592 and 56-592.1 of the Code of Virginia. The plan focuses on energy efficiency for residential electric customers with a goal of reducing electricity consumption of retail customers by 10% by 2022. The SCC has submitted proposals for partners to implement the plan and expects to award a contract in the fall of 2009.

Virginia Energy Plan and Governor's Commission on Climate Change

Steve Walz, from the Department of Mines, Minerals and Energy, updated the Commission on the status of the recommendations drafted in response to the goals listed in the Virginia Energy Plan. Mr. Walz reviewed actual and projected energy consumption as well as actual and projected energy production in the Commonwealth. Mr. Walz also reviewed measures taken to reach the goals outlined in the Virginia Energy Plan.

Nikki Rovner, Deputy Secretary of Natural Resources, gave an overview of the status of recommendations generated by the Governor's Climate Change Commission (GCCC). Mrs. Rovner stated that the majority of the funds from the American Recovery and Reinvestment Act (ARRA) will be used in a manner consistent with the recommendations from the GCCC. The following legislation from the 2009 Session furthers the GCCC recommendations, but did not pass the General Assembly or needs further action: HB 2176/SB 1248 and HB 2105/SB 1339.

A member inquired as to whether the state fleet qualified for the "Cash for Clunkers" or C.A.R.S. program. Mrs. Rovner will find an answer to the question and follow-up with the Commission (State and local governments are not eligible under the C.A.R.S. program). Mrs. Rovner also mentioned that the majority of progress being made towards the GCCC recommendations can be attributed to ARRA funding. Interconnection rules, feed-in tariffs, and combined heat and power are all issues the General Assembly may want to focus on in 2010.

Over the next few years the key challenges identified by Mrs. Rovner are preparing and adapting to the impacts of climate change and focusing and expanding

state capacity to ensure implementation of the Climate Change Action Plan.

Offshore Oil and Gas Leasing

Renee Orr, from the U.S. Minerals Management Service, provided an overview of the Minerals Management Service (MMS) and a description of the leasing framework for oil and gas on the outer continental shelf (OCS). Currently, MMS is exploring the idea of leases off the Virginia coast in an area known as Block 220. Mrs. Orr stated that all leases on the OCS are over 50 miles from the closest shore, mainly due to the geologic structure and associated fossil fuels reserves.

A member asked about development of OCS lands between 0-50 miles. MMS is currently researching the extent of possible reserves based on the geology, but as of now it does not look like there will be significant oil or gas reserves.

Offshore Wind Energy Development

Dr. George Hagerman, Virginia Coastal Energy Research Consortium (VCERC)

Dr. Hagerman gave an overview of offshore wind potential off the Virginia coast. Regarding the cost of building an offshore wind farm, Dr. Hagerman noted that the price of steel is very important in estimating costs and with steel prices forecasted to increase, now would be a good time to start a project. In return for an initially higher cost for electricity, offshore wind can provide stable energy prices and add stability to PJM electricity prices. Dr. Hagerman noted that one of the major drawbacks of offshore wind is reliability. However, recent advances in technology and re-engineering of key components are beginning to address the problem. VCERC has recommended that a federal, state, and local task force be established to begin discussions on how to develop a windfarm off the coast of Virginia.

Robert Propes, Bluewater Wind

Mr. Propes spoke on his company's offshore development projects in Delaware and New Jersey. Mr. Propes explained that his company needed to have a power purchase agreement (PPA) in place before starting a project. Mr. Propes stated that developers take the initial risk in early stage development but that risk is hedged with a PPA that includes a fixed price, long-term contract. A state can also issue an RFP to purchase power for the state thereby reducing the risk for developers.

In response to a question about the number of jobs created and destroyed by offshore wind development,

Mr. Propes responded that the majority of the jobs are pulled from other areas, but some new jobs are created as well.

Jim Lanard, Deepwater Wind

Mr. Lanard spoke on offshore wind energy and Deepwater Wind's projects in Rhode Island and New Jersey. Mr. Lanard stated that offshore wind farms are expensive and risky. Early development of offshore wind farms in Europe can be attributed to heavy subsidies that represented a major policy commitment. Mr. Lanard stated that logistics and timing are among the greatest challenges to offshore wind farms.

Mr. Lanard stated that one of the largest barriers to offshore development in Virginia is that Virginia has some of the lowest electricity rates on the East Coast, which makes it more difficult for offshore wind to compete with traditional sources.

Mr. Lanard urged the Commission members to support the building of a vessel to install outer continental shelf platforms utilizing Virginia shipyards. Mr. Lanard stated that Virginia can help lure offshore wind developers by finding a way for developers to compete with traditional energy suppliers. One option would be enacting a production tax credit tailored for offshore wind. Another way of lowering the cost is encouraging the building of a vessel to install these turbines.

Tim Ryan, President, Apex Wind

Mr. Ryan briefed the Commission on Apex Wind and offered advice for encouraging the development of offshore wind energy. Mr. Ryan advised that VCERC is very important and he encouraged the General Assembly to continue funding VCERC in any way possible. Mr. Ryan reminded Commission members that offshore wind energy is a huge industry in Europe employing thousands of people and dozens of companies.

Next Meeting

The next meeting date will be posted on the Commission's website and the General Assembly calendar as soon as information is available.

SENATOR MARY MARGARET WHIPPLE, CHAIR

Ellen Porter and Patrick Cushing, DLS Staff

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<http://dls.virginia.gov/energy.htm>

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as "proposed regulations" gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the Legislative Record will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-10, 4VAC25-150-60, 4VAC25-150-80, 4VAC25-150-90 through 4VAC25-150-160, 4VAC25-150-180 through 4VAC25-150-260, 4VAC25-150-280, 4VAC25-150-300, 4VAC25-150-310, 4VAC25-150-340, 4VAC25-150-360, 4VAC25-150-380, 4VAC25-150-390, 4VAC25-150-420, 4VAC25-150-460, 4VAC25-150-490, 4VAC25-150-500, 4VAC25-150-510, 4VAC25-150-520, 4VAC25-150-530, 4VAC25-150-550, 4VAC25-150-560, 4VAC25-150-590, 4VAC25-150-600, 4VAC25-150-610, 4VAC25-150-620, 4VAC25-150-630, 4VAC25-150-650 through 4VAC25-150-750).

A public hearing will be held on October 23, 2009 - 1 p.m. - Department of Mines, Minerals and Energy, Big Stone Gap, VA. Written public comments may be submitted until 5 p.m. on October 30, 2009.

Summary:

As a result of periodic review, the Department of Mines, Minerals and Energy is amending 4VAC25-150, Virginia Gas and Oil Regulation. Sections within 4VAC25-150 will be amended to correct technical areas for accuracy, improve worker safety, and provide clarity. These amendments will aid the gas and oil industry and the Gas and Oil Board in the review and regulation of gas and oil permits. Amending 4VAC25-150-150 will reduce workload and increase efficiency for applicants by providing flexibility and economy to the permit process. 4VAC25-150-90 will be updated to include symbols that are consistent with current industry usage and available CAD technology. Amendments to 4VAC25-150-80, 4VAC25-150-260, 4VAC25-150-300, 4VAC25-150-380, and 4VAC25-150-630 will protect the safety and health of oil and gas industry employees. An amendment to 4VAC25-150-90 is being made to bring consistency to data submission requirements for the Division of Gas and Oil.

For more information please contact Tabitha Hibbits Peace, Policy Analyst, Department of Mines, Minerals and Energy, Big Stone Gap, VA, telephone (276) 523-8212, FAX (276) 523-8148, TTY (800) 828-1120, or email tabitha.peace@dmme.virginia.gov.

VIRGINIA GAS AND OIL BOARD

4VAC25-160. Virginia Gas and Oil Board Regulations (amending 4VAC25-160-10, 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, 4VAC25-160-130, 4VAC25-160-190, 4VAC25-160-200).

A public hearing will be held on October 23, 2009 - 9 a.m. - Department of Mines, Minerals and Energy, Big Stone Gap, VA. Written public comments may be submitted until 5 p.m. on October 30, 2009.

Summary:

As a result of periodic review, the Department of Mines, Minerals and Energy and the Virginia Gas and Oil Board are amending 4VAC25-160, Virginia Gas and Oil Board Regulations, to make technical corrections, improve clarity, increase efficiency, and to restore consistency with other chapters. 4VAC25-160-30, 4VAC25-160-40, 4VAC25-160-50, 4VAC25-160-60, 4VAC25-160-70, and 4VAC25-160-200 will be amended to correct several technical areas for accuracy, and provide clarity. Amending 4VAC25-160-30 will reduce workload and increase efficiency for applicants by providing flexibility and economy in the permit process. Amendments to 4VAC25-160-40, 4VAC25-160-50, and 4VAC25-160-70 are being made to bring consistency to data submission requirements for the Division of Gas and Oil.

For more information please contact Tabitha Hibbits Peace, Policy Analyst, Department of Mines, Minerals and Energy, Big Stone Gap, VA, telephone (276) 523-8212, FAX (276) 523-8148, TTY (800) 828-1120, or email tabitha.peace@dmme.virginia.gov.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

8VAC20-70. Regulations Governing Pupil Transportation (amending 8VAC20-70-10, 8VAC20-70-40, 8VAC20-70-100, 8VAC20-70-110, 8VAC20-70-130 through 8VAC20-70-180, 8VAC20-70-200, 8VAC20-70-220, 8VAC20-70-230, 8VAC20-70-280, 8VAC20-70-300, 8VAC20-70-350, 8VAC20-70-360, 8VAC20-70-370, 8VAC20-70-380, 8VAC20-70-420, 8VAC20-70-430, 8VAC20-70-450, 8VAC20-70-460, 8VAC20-70-480, 8VAC20-70-490, 8VAC20-70-510, 8VAC20-70-525; adding 8VAC20-70-31, 8VAC20-70-271, 8VAC20-70-359, 8VAC20-70-411, 8VAC20-70-435; repealing 8VAC20-70-310).

Public hearings will be held on September 24, 2009, at 7 p.m. at Robert E. Lee High School, Springfield, VA; Glenvar Middle School, Salem, VA; and Jolliff Middle School, Chesapeake, VA. Written public comment may be submitted until 5 p.m. on October 16, 2009.

Summary:

The proposed amendments include (i) updating definitions to conform to the 2005 National School Transportation Specifications and Procedures; (ii) adding numerous clarifications; (iii) prohibiting school divisions from having students stand during school bus rides during the first 30 instructional days of the school year; (iv) mandating that all high school students receive additional training on the rules for motorists approaching a stopped school bus and on safe following distances when operating a personal vehicle; (v) amending the required minimum frequency of school bus maintenance inspections; (vi) eliminating the requirement that bus collisions be reported to the Department of Education when no one is injured and damage is less than \$1,000; (vii) requiring review of school bus routes, school sites, and safety of pupils at designated school bus stops at least twice each year rather than just once; (viii) requiring new transportation directors/supervisors employed by school divisions to complete the "Train the Trainer" class conducted by the Department of Education; and (ix) requiring school bus driver instructors to meet the requirements of a school bus driver and have at least two years experience.

For more information please contact Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, Richmond, VA, telephone (804) 225-2540, FAX (804) 225-2524, or email margaret.roberts@doe.virginia.gov.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

10VAC5-200. Payday Lending (amending 10VAC5-200-100).

A public hearing will be scheduled upon request. Written public comments may be submitted until 5 p.m. on October 30, 2009.

Summary:

The proposed changes incorporate certain provisions of Chapters 784 and 860 of the 2009 Acts of Assembly that relate to the conduct of open-end credit business from payday lending offices. The proposal also incorporates a provision of § 6.1-439 of the Code of Virginia by providing that a person registered or required to be registered as a check casher under Chapter 17 (§ 6.1-432 et seq.) of Title 6.1 of the Code of Virginia is prohibited from making loans unless the person is licensed under, and the loans are made in accordance with, the Payday Loan Act. Subsection B of 10VAC5-200-100 specifies additional findings that the State Corporation Commission (commission) would need to make before approving an application to conduct other business in a licensee's payday lending offices. Subsection E of 10VAC5-200-100 adds a set of uniform conditions that would generally be applicable to the conduct of other business in payday lending offices. Subsections F through K of 10VAC5-200-100 prescribe the conditions that would be attached to specific types of other businesses, such as making open-end auto title loans, acting as an agent of a money transmitter, and providing tax preparation services. Under subsection M of 10VAC5-200-100, the conditions set forth in the regulation would generally supersede the conditions established in the approval orders that were previously entered by the commission. Lastly, subsection O of 10VAC5-200-100 is added to expressly provide that failure to comply with applicable laws or conditions may result in revocation of a payday lender's other business authority, fines, suspension, or revocation of a payday lender's license, or other appropriate enforcement action.

For more information please contact E. J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, Richmond, VA, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

TITLE 12. HEALTH STATE BOARD OF HEALTH

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 23 of the Code of Virginia, which excludes the State Board of Health when promulgating regulations pursuant to § 35.1-14, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code. Pursuant to § 35.1-14 E of the Code of Virginia, this regulatory action is exempt from portions of the Administrative Process Act provided the State Board of Agriculture and Consumer Services adopts the same version and both agency's regulations have the same effective date. Both agencies are working toward that goal.

12VAC5-421. Food Regulations (amending 12VAC5-421-10, 12VAC5-421-50 through 12VAC5-421-100, 12VAC5-421-140, 12VAC5-421-180, 12VAC5-421-360, 12VAC5-421-370,

12VAC5-421-400, 12VAC5-421-410, 12VAC5-421-430,
 12VAC5-421-440, 12VAC5-421-450, 12VAC5-421-490,
 12VAC5-421-500, 12VAC5-421-540, 12VAC5-421-570,
 12VAC5-421-680, 12VAC5-421-700, 12VAC5-421-730,
 12VAC5-421-740, 12VAC5-421-760, 12VAC5-421-780,
 12VAC5-421-790, 12VAC5-421-800, 12VAC5-421-820,
 12VAC5-421-830, 12VAC5-421-850, 12VAC5-421-860,
 12VAC5-421-870, 12VAC5-421-900, 12VAC5-421-950,
 12VAC5-421-980, 12VAC5-421-1200, 12VAC5-421-1230,
 12VAC5-421-1260, 12VAC5-421-1310, 12VAC5-421-1420,
 12VAC5-421-1550, 12VAC5-421-1560, 12VAC5-421-1690,
 12VAC5-421-1890, 12VAC5-421-1980, 12VAC5-421-2040,
 12VAC5-421-2190, 12VAC5-421-2230, 12VAC5-421-2280,
 12VAC5-421-2310, 12VAC5-421-2520, 12VAC5-421-2600,
 12VAC5-421-2630, 12VAC5-421-2790, 12VAC5-421-2810,
 12VAC5-421-2920, 12VAC5-421-2950, 12VAC5-421-2960,
 12VAC5-421-3020, 12VAC5-421-3030, 12VAC5-421-3040,
 12VAC5-421-3045, 12VAC5-421-3080, 12VAC5-421-3130,
 12VAC5-421-3180, 12VAC5-421-3240, 12VAC5-421-3460,
 12VAC5-421-3750, 12VAC5-421-3815, 12VAC5-421-3860,
 12VAC5-421-4040, 12VAC5-421-4050, 12VAC5-421-4070;
 repealing 12VAC5-421-110, 12VAC5-421-120, 12VAC5-421-150,
 12VAC5-421-750, 12VAC5-421-1020, 12VAC5-421-1030,
 12VAC5-421-1440, 12VAC5-421-1880, 12VAC5-421-2510,
 12VAC5-421-2590, 12VAC5-421-3010, 12VAC5-421-3050,
 12VAC5-421-3060, 12VAC5-421-3110, 12VAC5-421-3120,
 12VAC5-421-3160).

A public hearing will be held on October 21, 2009 - 2 p.m. - Virginia Department of Health, Richmond, VA. Written public comments may be submitted until 5 p.m. on October 30, 2009.

Summary:

The Food Regulations establish minimum sanitary standards for operating restaurants. Those standards include the safe and sanitary maintenance, storage, operation, and use of equipment; the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; procedures for vector and pest control; requirements for toilet and cleansing facilities for employees and customers; requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; requirements for an approved water supply and sewage disposal system; personal hygiene standards for employees, particularly those engaged in food handling; and the appropriate use of precautions to prevent the transmission of communicable diseases. The regulations also inform potential restaurant owners or operators how to obtain a permit to operate a restaurant from the department. The regulations are being amended to be consistent with the current 2007 supplement to the 2005 Food and Drug Administration's (FDA) Food Code. The current Food Regulations are based on the 2003 Supplement to the 2001 FDA Food Code. These changes are also being proposed concurrently with the Virginia Department of Agriculture and Consumer Services (VDACS) adoption of the 2007 Supplement to the 2005 FDA Food Code. Pursuant to § 35.1-14 C and E of the Code of Virginia, this action is exempt from portions of the Administrative Process Act (APA), provided VDACS adopts the same version and both agency's

regulations have the same effective date. Both agencies are working toward that end. Both VDH and VDACS previously adopted the 2003 supplement to the 2001 FDA Food Code with an effective date of October 16, 2007.

For more information please contact Gary L. Hagy, Director of Food and General Environmental Services, Department of Health, Richmond, VA, telephone (804) 864-7455, TTY (800) 828-1120, or email gary.hagy@vdh.virginia.gov.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING
 BOARD OF PHARMACY**

18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-25).

A public hearing will be held on September 2, 2009 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, Perimeter Center, 2nd Floor Conference Center, Richmond, VA. Written public comments may be submitted until 5 p.m. on October 30, 2009.

Summary:

The proposed regulatory action adds a section on unprofessional conduct to address certain issues and licensee conduct that have been problematic and to supplement the statutory provision in § 54.1-3316 of the Code of Virginia that establishes grounds for disciplinary action based on unprofessional conduct specified in regulations promulgated by the board. The amendments include, but are not limited to, patient confidentiality, unethical behavior, sexual misconduct, failure to report a known dispensing error in a manner that protects the public, and inappropriate delegation of pharmacy acts to subordinates.

For more information please contact Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Richmond, VA, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS
 STATE CORPORATION COMMISSION**

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

20VAC5-316. Regulations Governing Exemptions for Large General Services Customers Under § 56-585.1 A 5 c of the Code of Virginia (adding 20VAC5-316-10 through 20VAC5-316-40).

A public hearing will be held upon request. Written public comment may be submitted until 5 p.m. on September 3, 2009.

Background:

The State Corporation Commission has initiated a commission rulemaking required by Chapter 824 of the 2009 Acts of Assembly. Chapter 824 authorizes Virginia's electric utilities to seek rate adjustment clause treatment of the "projected and actual costs...to design, implement and operate energy efficiency programs, including a margin to be recovered on operating expenses. . . ." § 56-585.1 A 5 c of the Code of Virginia. However, Chapter 824 prohibits electric utilities from recovering the costs of these energy efficiency programs from any customer that has a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery. Additionally, the legislation prohibits program cost recovery from any large general service customer that has, at its own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in § 56-585.1 A 5 c of the Code of Virginia. For purposes of this legislation, large general service customers are customers that have a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery. Chapter 824 further directs the commission to promulgate rules and regulations not later than November 15, 2009, "to accommodate the process under which such large general service customers shall file notice for such an exemption, and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility." § 56-585.1 A 5 c of the Code of Virginia. The commission's staff has prepared proposed rules implementing the exemption process outlined above (proposed rules).

Summary:

The proposed rules set forth (i) administrative procedures for notices of nonparticipation to be provided by large general service customers to electric utilities, (ii) standard criteria for such notices of nonparticipation, and (iii) dispute resolution procedures governing all disputes arising out of the exemption process. The proposed rules add a new Chapter 316 (20VAC5-316) within Title 20 of the Virginia Administrative Code.

For more information please contact Cody Walker, Assistant Director, State Corporation Commission, Richmond, VA, telephone (804) 371-9611, FAX (804) 371-9350, or email cody.walker@scc.virginia.gov.

**TITLE 21. SECURITIES AND RETAIL
FRANCHISING
STATE CORPORATION COMMISSION**

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-160).

21VAC5-80. Investment Advisors (amending 21VAC5-80-200).

A public hearing will be held upon request. Written public comment may be submitted until 5 p.m. on August 31, 2009.

Summary:

The proposed amendments (i) change the reference of 21VAC5-80-140 to 21VAC5-80-145 in 21VAC5-80-200 A 15 and B 15; and (ii) add a two-year expiration period from the date of taking the required examination referenced in 21VAC5-20-160 B 4 to qualify as a registered agent of the issuer.

For more information please contact Al Hughes, Registration Chief, State Corporation Commission, Securities Division, Richmond, VA, telephone (804) 371-9415, FAX (804) 371-9911, or email al.hughes@scc.virginia.gov.

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

21VAC5-120. Virginia Trademark and Service Mark Act (amending 21VAC5-120-100).

A public hearing will be scheduled upon request. Written public comment may be submitted until 5 p.m. on August 31, 2009.

Summary:

The proposed amendment modifies the class of services with which a mark can actually be used, to include services for providing food and drink; medical services; veterinary services; hygienic and beauty care services; agricultural, horticulture, and forestry services; legal services; security services for the protection of property and individuals; and personal and social services rendered by others to meet the needs of individuals. Additional minor revisions and updates are also included.

For more information please contact Al Hughes, Registration Chief, Securities Division, State Corporation Commission, Richmond, VA, telephone (804) 371-9415, FAX (804) 371-9911, or email al.hughes@scc.virginia.gov.

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