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Commission on Energy and Environment

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The Virginia Commission on Energy and Environment, established to review and recommend steps to implement the Virginia Energy Plan, held its first meeting of the interim in Richmond.

Offshore Resource Development and Job Creation

Maureen Matsen, Deputy Secretary of Natural Resources, Sr. Advisor to Governor on Energy

Ms. Matsen spoke about the Governor's "All of the Above" policy towards energy use and resource development. Ms. Matsen noted the importance of the energy sector to the Commonwealth's overall strategy to support job creation and economic development. She emphasized the value of offshore energy resources to the Commonwealth and noted that any drilling for oil and gas would provide the opportunity for the creation of a supply chain and support industry that could be used for both the development of Virginia's resources and those of other states in the region. Such an economic development pattern would occur with the growth of either the offshore oil and gas industry or the offshore wind industry.

Tim Wilkins, Paliria Energy, Inc.

Mr. Wilkins spoke to the Commission on the details of an economic impact assessment and a framework for project cost and supply chain development of offshore energy development. His company estimated that Virginia manufacturers would need to capture roughly one-third of the eastern U.S. supply chain market to sustain 3,000 to 5,000 jobs annually. Most large-scale assembly and maritime opportunities would be in the Hampton Roads region; however, related production opportunities, including polymers and materials, electronic systems and transformers, and drive train components, are measurable throughout the state. Further opportunities would include installation vessel shipbuilding and maintenance, component production for domestic onshore projects, and potential entry for vessel and component supply into an increasingly open and burgeoning European offshore market. Mr. Wilkins stated that the creation of substantial supply chain infrastructure in the region coupled with aggressive entry into the broader market could generate 7,500 to 10,000 jobs for Virginia annually in a growing sector.

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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.

Potential Use Conflicts Between Offshore Energy Development and Military Operations

Tom Hicks, Deputy Assistant Secretary, U.S. Navy

Potential conflicts between offshore energy development and military operations include surface and helicopter transit, surface target live fire operations, and mine warfare countermeasures training.

Mr. Hicks spoke to the Commission on the issues related to potential conflicts between the military and offshore resource development. He began by speaking of the gravity of petroleum and water supply to national security and the resulting flexibility of operations that result when some of that dependence is lifted. As a result, the Navy has taken steps towards a number of goals including that of meeting a minimum of 50 percent of energy needs with new renewable sources by 2020. Mr. Hicks also provided the Commission with an overlay map showing both offshore blocks for wind energy development that may be available for lease and the conflicts with military uses. The conflicts include surface and helicopter transit, mine warfare countermeasures training, and surface target live fire operations. Furthermore, the potential blocks available for offshore oil and gas development conflict with the debris impact zone for launches from NASA Wallops Flight Facility.

In response to a question about the potential of interference between radar operations and larger wind turbines, Mr. Hicks noted that the Office of the Secretary of Defense is addressing that issue and developing a plan to coordinate among agencies such as the Federal Aviation Administration.

Outlook for Offshore Wind Energy Opportunities

George Hagerman, Virginia Coastal Energy Research Consortium (VCERC)

Mr. Hagerman spoke to the Commission about the potential for offshore wind energy development in the Commonwealth. Mr. Hagerman first explained the critical cost savings that might be contributed to a project if the turbines are manufactured

domestically. He pointed out that the cost of production and transportation from Europe could be prohibitively expensive in the current economic climate, but that manufacturing in Virginia would make such a project not only feasible, but desirable. In fact, as stated in its final report published in April:

VCERC has identified 25 lease blocks with 3,200 MW of potential offshore wind capacity in relatively shallow Class 6 waters beyond the visual horizon. Build-out of this potential would require a total of 125,000 job-years, including direct, indirect, and induced jobs, assuming that it can be supported by Virginia-based turbine and power cable manufacturing plants. If sustained at a build-out rate of 160 MW per year (equivalent to one 320-MW project being commissioned every two years), this would support 6,200 jobs that could last for a two-decade career. To this would be added operation and maintenance jobs, which are estimated to accrue at 1.1 to 1.7 jobs per cumulative megawatt, reaching 3,500 to 5,400 jobs after the first 3,200 MW of near-term commercial potential off Virginia has been built out over the next 20 years. Thus, within two decades, 9,700 to 11,600 career-length jobs can be created, solely associated with developing the 3,200 MW of offshore wind potential that VCERC has identified in shallow waters beyond the visual horizon off Virginia Beach. Since offshore foundations and submarine power cables are designed for a service life of 40 to 50 years, a second generation of jobs could be created for simply repowering the first 3,200 MW. Beyond this is a vast, deeper water potential that remains to be developed farther offshore.

Mr. Hagerman also noted that a full-scale demonstration should be explored to address issues with the U.S. Navy and Department of Defense. A National Offshore Wind Test Center could be further used to examine issues under storm conditions.

Tony Watkinson, Virginia Marine Resources Commission (VMRC)

Mr. Watkinson spoke to the Commission about the study done in response to legislation enacted in the 2009 Session of the General Assembly that required VMRC to identify 100 acres suitable for use by the VCERC as a research site and to determine whether sufficient and appropriate subaqueous land exists in state territorial waters to support the generation and transmission of electrical or compressed air energy from offshore wind. The first step of the project aimed to classify offshore geographical areas as either:

- Excluded, such as navigation channels.
- Major potential for resource and use conflict, such as sensitive ecological lagoons.
- Moderate potential for resource and use conflict, such as fishery management areas.
- Lesser potential for resource and use conflict, such as blue crab and hard clam resource areas.

The report concluded that it is unlikely that there will be a sufficiently large area in state waters with suitable wind resources for a large industrial scale project. However, there may be opportunities in state territorial waters for smaller community scale projects and possible research activities for turbine and tower design. Any projects should utilize the existing joint permit review process.

Update on Offshore Oil and Natural Gas Exploration

Andy Radford, American Petroleum Institute

Mr. Radford discussed the importance of oil and gas development to meeting future global energy demand. He also explained that, in the Gulf of Mexico, there is a long history of coexistence of military use and oil and gas exploration. Mr. Radford noted the specific needs of production capacity from deepwater resources, which are larger than typical onshore resources. However, since the Deepwater Horizon accident, many offshore activities have been postponed or cancelled. As a result of the accident, the

Minerals Management Service has been reorganized, a presidential investigation commission formed, enhanced safety measures announced, and a moratorium on deepwater drilling placed. Industry has also joined forces to examine deepwater operations, equipment, and oil spill responses.

A member commented that the cooperative military uses in the Gulf of Mexico are air space uses and not surface uses, as is the case in the Norfolk and Virginia Beach area.

Jim Kibler, AGL Resources

Mr. Kibler spoke to the Commission about the importance of natural gas and the meaning of vast new discoveries for domestic energy security. Mr. Kibler also spoke in favor of exploration and production of natural gas offshore of Virginia. New production areas will require a skilled workforce and infrastructure to deliver the gas to market. Downstream economic benefits to the Commonwealth would include stabilized natural gas supplies, jobs, investment, tax revenues, and royalties.

In response to a question about the estimates of natural gas available in the Marcellus Shale formation, Mr. Kibler replied that estimates for the recoverable quantities were dependent upon technology and the cost of petroleum.

Carl Hobbs, Virginia Institute of Marine Science

Mr. Hobbs spoke to the Commission about a number of the technical planning issues that would need to be addressed in order to safely allow platforms and pipelines and the environmental impacts of such structures.

Since the Deepwater Horizon accident, the Minerals Management Service has been reorganized, a presidential investigation commission formed, and enhanced safety measures announced.

Several factors to consider when building drilling and production platforms include hazards to navigation, durability in storms, environmental concerns, and stability of substrate.

For drilling and production platforms, the regulator will need to consider:

- Hazards to navigation.
- Durability in storms.
- The stability of substrate for supporting equipment.
- The environmental concerns associated with the platforms both during construction and operation.

Similar issues and onshore impacts arise when looking at pipeline construction and operation. Any such efforts will require an environmental impact statement with federal, state, and local participation.

Eileen Levandoski, Sierra Club

Ms. Levandoski addressed the Commission on the environmental risks of offshore drilling. She noted the sensitive ecology off of Virginia's coast and the wildlife that may be living in the area. Ms. Levandoski also commented that oil spills are not as novel as might be believed and that thousands of spills occur every year and that an extreme weather event could result in significant dangers. She added that Hurricanes Katrina and Rita resulted in roughly nine million gallons of oil spilled from six major spills and five medium spills, in addition to oil released from over 5,000 minor spills.

Public Comment

Mr. Matthew LaRocque, PJM Interconnection, spoke to the Commission about PJM's efforts to maintain electricity service during the peak periods of summer usage during a heat wave. The day prior to the meaning, PJM managed 135,000 MW—just under the all-time peak of 145,000 MW.

Al Weed, Public Policy Virginia, encouraged the Commission to support a mandatory renewable portfolio standard to create the markets necessary to grow renewable industries in Virginia.

Kay Slaughter, Southern Environmental Law Center, clarified that there were offshore spills during Hurricane Katrina. She also emphasized the concerns that

offshore energy would conflict with military operations and that the spill response from industry is inadequate.

Next Meeting

The next meeting of the Commission is scheduled for Tuesday, September 21, 2010, at the General Assembly Building in Richmond.

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Virginia Disability

Commission — 7/20/10

The first meeting of the Virginia Disability Commission for the 2010 interim was held in Richmond. Delegate Robert D. Orrock, Sr. and Senator Yvonne Miller were elected chair and vice-chair, respectively.

Purpose/Legislative and Budget Updates

Staff provided an overview of the purpose and activities of the Disability Commission. Section 30-232 of the *Code of Virginia* directs the Disability Commission "... to identify and recommend legislative priorities and policies for adoption or examination by the General Assembly in order to provide ongoing support in developing and reviewing services and funding related to Virginians with physical and sensory disabilities." Section 30-236 of the *Code* provides that the Disability Commission shall:

- Serve as the primary forum in the Commonwealth where the needs and issues of people with disabilities are addressed through the collaboration of members of the legislative and executive branches of state government, and citizens of the Commonwealth.
- Evaluate and advance budget proposals and policy issues oriented towards a service system that maximizes the self-sufficiency of Virginians with disabilities.
- Develop and review recommendations for service program changes and funding related to services for persons with physical and sensory disabilities.
- Advise on local, state, and federal policies and programs relevant to citizens with disabilities.

Staff also provided a brief overview of budget actions adopted during the 2010 Session of the General Assembly that affect services for persons with disabilities, budget actions that were recommended by Governor McDonnell that were not adopted, and information on legislation considered by the General Assembly during the 2010 Session that may affect or be of interest to persons with disabilities.

Health Reform

Damon Terzaghi, National Association of State Medicaid Directors/American Public Human Services Association

Mr. Terzaghi spoke on the Patient Protection and Affordable Care Act of 2010. His presentation included a summary of the major provisions of the legislation, potential impacts on services for persons with disabilities, and potential opportunities for states to maximize services for persons with disabilities included in the legislation.

He discussed the impact of expansion of Medicaid to new eligibility groups, and the potential impact that such expansion may have on states' ability to provide services for persons with disabilities. He also mentioned that changes in income calculations may affect who is eligible for Medicaid and the composition of the population served by state Medicaid programs. Mr. Terzaghi also noted that Medicaid expansion is oriented more toward provision of acute care services, and that states will have to plan carefully to ensure that long-term services are provided for those who require ongoing assistance.

Mr. Terzaghi identified several issues for states, including aligning state eligibility systems with required health insurance exchanges, establishing benchmark packages of services that meet the needs of enrolled persons, prioritizing nonmandated activities, and succession planning for the future.

In closing, Mr. Terzaghi stressed that eligibility is not necessarily the same as access, and that states will need to pay close attention to ensuring that services are available and accessible to persons who are or become eligible for Medicaid and other types of assistance. Mr. Terzaghi then responded to numerous questions from the Commission.

Changes in income calculations may affect who is eligible for Medicaid.

Department of Rehabilitative Services: Overview of Commission Initiatives

Jim Rothrock, Commissioner, Dept. of Rehabilitative Services (DRS)

Changes at the federal level will likely affect the Medicaid Works program.

Commissioner Rothrock gave an overview of activities of the DRS related to past Disability Commission initiatives. Commissioner Rothrock described the Department's community-based programs including brain injury services, community rehabilitation case management services, independent living services, and personal assistance services. He stated that funding for brain injury services had been reduced by the General Assembly in 2010, but that additional sources of funding may have been secured to make up the difference. Funding for independent living services had also been reduced, but the 16 Centers for Independent Living and the four satellite centers continue to provide services. An infusion of federal funds in 2009 provided some assistance in meeting current needs. Funding for personal assistance services has remained essentially level over the years, but Commissioner Rothrock reported that increased demand has resulted in a waiting list of 94 persons.

Commissioner Rothrock also described changes at the federal level that will likely affect the Medicaid Works program. He noted that statutory changes may allow individuals enrolled in the program to earn more in wages while continuing to receive medical assistance. This change is expected to increase the number of persons who are interested in participating in the program.

Finally, Commissioner Rothrock provided some information on AbilityOne employment programs and the impact these programs have in the Commonwealth. He highlighted programs that provide services for the federal government and employment for a number of persons with disabilities. He encouraged the Commission to become aware of how these programs benefit people with disabilities and to look at ways to increase jobs for persons with disabilities through similar programs in Virginia.

Virginia Housing Expansion Task Force

Bill Fuller, Sr., Virginia Housing Development Authority; Teri Barker, VA Board for People with Disabilities

Mr. Fuller and Ms. Barker, representing the Virginia Housing Expansion Task Force (Task Force), presented an update on past activities and identified issues that the Task Force continues to track, including:

- Development of EasyLiving Homes®.
- Efforts to secure additional U.S. Department of Housing and Urban Development Non-Elderly Disability Housing Vouchers.
- Activities of the Money Follows the Person project.
- Implementation of the Transportation and Housing Alliance Toolkit Project that assists localities in planning housing and transportation services.
- Expansion of sponsored residential services.
- Development of VirginiaHousingSearch.com.
- Impacts of the Southeastern Virginia Training Center rebuild and development of community housing for residents.

The Task Force has also identified several emerging issues that it will continue to follow, including:

- Development of accessibility standards and standardized nomenclature for housing developers.
- Impacts of the loss of certain housing options for persons receiving services through the state Individual and Family Developmental Disabilities Support Waiver.

Mr. Fuller and Ms. Barker noted that a shortage of accessible, affordable housing continues to be a problem for persons with disabilities, that lack of capacity to develop accessible affordable housing and serious financial limitations of many people who need accessible housing contribute to the problem, and that lack of community alternatives often lead to institutionalization even when individuals could remain in the community if sufficient housing were available.

In closing, Mr. Fuller and Ms. Barker advised that the Task Force has identified several strategies for meeting these challenges, including:

- Expanding the Livable Homes Tax Credit to allow developers to take advantage of the credit and increasing the amount of the credit.
- Facilitating collaboration between agencies and stakeholders to capture data on housing needs and choices of persons with disabilities.
- Continuing to promote aggressive pursuit of Housing Choice Vouchers for persons with disabilities.
- Supporting efforts of the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services to increase community living options and decrease the institutional census.
- Participating in a work group to identify and enumerate housing accessibility standards and standard nomenclature.

Discussion of 2010 Work Plan

Members of the Disability Commission discussed a work plan for the 2010 interim. Three work groups were established to study specific issues in greater detail. These include:

Work Group #1: Review of the name and purpose of the Virginia Disability Commission, including the option of expanding the scope of the Disability Commission to include policies affecting persons with disabilities of all types; and determine, with input from stakeholders and citizens, if the name or the scope and purpose of the Disability Commission should be revised.

Work Group #2: Evaluation of funding for current services; determine projected

cost of needed services and identify potential sources of funding for such services; and perform cost-benefit analysis of various program options.

Work Group #3: Work with stakeholders and citizens to determine needs related to housing and transportation for persons with physical and sensory disabilities and develop recommendations for change.

Next Meeting

The Disability Commission will meet on September 8 at the General Assembly Building in Richmond and also in October with another meeting in November if necessary. The Commission will also meet during the first week of the 2011 Session to receive information about the Governor's proposed budget and its impact on services for persons with disabilities and to develop recommendations related to the proposed budget.

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A shortage of accessible, affordable housing continues to be a problem for persons with disabilities.

Addition to DLS Staff

The Division of Legislative Services welcomed its newest staff member, David Sella-Villa, in July 2010. David will staff the House Science and Technology Committee and work primarily for the Joint Commission on Technology and Science. David earned a J.D. from William & Mary Law School. He also holds a master's degree in European Political Economy from the London School of Economics in England and received undergraduate degrees in Economics and International Studies from West Virginia University. In addition to a strong interest in science and technology policy, David also has a good working knowledge of international trade regimes and the European Union (EU) and a strong understanding of the challenges Virginia businesses might face in their international dealings.

An avid basketball fan, David also enjoys cooking and discovering the incredible bounty of Virginia's rich agricultural tradition - even the younger tradition of wine making. He speaks Italian, Spanish, French, and German and welcomes the chance to practice anytime.

Did You Know?

"Did You Know?" appears in each issue of the *Virginia Legislative Record*. The column features important topics or interesting facts relevant to the Virginia legislature. For general questions or issue suggestions, please contact DLS at (804) 786-3591 or emiller@dls.virginia.gov.

Government Reform and Restructuring

Governor Robert McDonnell established the Commission on Government Reform and Restructuring to perform a comprehensive examination of state government operations. Historically, there have been 14 major government reform initiatives since the turn of the last century. Probably the most significant of the initiatives was undertaken by the Commission on State Governmental Management, established by the General Assembly in 1973. The Commission was chaired by Senator William B. Hopkins of Roanoke. Recommendations made by the "Hopkins Commission" between 1975 and 1977 resulted in the basic organizational structure of state government that exists today.

Between 1990 and 1992, Governor Douglas Wilder initiated "Project Streamline," which focused on reducing the size of government through consolidation, streamlining, and eliminating unnecessary functions. A total of 228 recommendations were included in the final report with most of the recommendations being implemented by the end of Governor Wilder's term.¹ The next comprehensive review was undertaken by Governor George Allen with the establishment of a Blue Ribbon Strike Force on Government Reform in 1994. The focus of the Strike Force centered on opportunities for privatization and outsourcing to achieve efficiency. According to the Joint Legislative Audit and Review Commission, of the approximately 160 Strike Force recommendations dealing with privatization and outsourcing efforts, 69 were fully implemented and 55 were partially implemented, amounting to enactment of almost 80 percent of the recommendations.²

In 2002, Governor Mark Warner established the Commission on Efficiency and Effectiveness. This Commission concentrated its efforts on developing methods for using state resources more efficiently and increasing effectiveness of government operations in the delivery of services. Many recommendations focused on consolidation of state agencies that perform similar functions, consolidating technology operation and procurement practices to achieve greater efficiencies, and the privatization of the retail functions of the Department of Alcoholic Beverage Control. Of the more than 60 recommendations made by this commission, at least 38 were fully or partially implemented.³

Governor Robert McDonnell's 2010 Commission on Government Reform and Restructuring is the most recent of the ongoing efforts to ensure that the state government is functioning in the most efficient and effective manner. When one considers how almost daily technological advances fuel a near constant state of change and evolution in the business world, the Virginia tradition of constantly keeping an eye on how government operates is an effective method for remaining efficient at providing necessary services while at the same time being responsive and responsible to its citizens.

*Amigo Wade, Senior Attorney
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¹Joint Legislative Audit and Review Commission. *Special Report: Review of Virginia's Cost-Savings Initiatives*. Richmond, Virginia: 2006, 3. <http://jlarc.state.va.us/other/Savings06.pdf>.

²Ibid.

³Ibid.

Drawing the Line 2011

The first issue of *Drawing the Line 2011*, the Division's redistricting newsletter, is now available online at <http://dlsGIS.state.va.us/Ref/2011Draw1.pdf>. The publication includes estimates of the current populations of the present House, Senate, and congressional districts.

Freedom of Information Advisory Council — 7/26/10

The FOIA Council held its first meeting of 2010 in Richmond. The Council welcomed its newest members Ed Jones, Editor of the *Free Lance-Star*, and Eric Gregory, designee of the Attorney General. The Council also thanked outgoing member Courtney Malveaux for his service to the Council. The Council unanimously reelected Delegate Griffith and Senator Houck chair and vice chair, respectively.

2010 Legislative Update

Staff presented the 2010 legislative update to the Council. The General Assembly passed a total of 12 bills amending FOIA during the 2010 Session. Of note, House Bill 434, which allows the redaction of financial account numbers and routing information, passed as a recommendation of the Council. This bill was passed with an emergency clause and became law effective April 11, 2010. The General Assembly also passed House Bill 433, which sets out the original date (January 1, 1975) when social security numbers were authorized to be collected or required by state and local agencies under federal law, and makes other changes to the Government Data Collection and Dissemination Practices Act (GDCDPA), also a recommendation of the Council. A copy of the 2010 legislative update is also posted on the Council's website.

Staff explained the five bills referred to the Council for further study by the 2010 General Assembly:

- HB 449 - Remedy for public bodies for requester harassment.
- HB 641 - Extending the right to make FOIA requests in Virginia to U.S. citizens.
- HB 976/SB147 - Proceedings for enforcement; when notice of suit must be filed by petitioner on public body.
- SB 711 - Disclosure of criminal investigative records.

Two subcommittees had previously been appointed to study the above bills. The Rights and Remedies Subcommittee will study HB 449, HB 641, and HB 976/SB 147. The Council also directed the Rights and Remedies Subcommittee to

develop a plan for proactive training for legislators, aides, legislative agencies, committees, and commissions, as well as studying other possibilities to promote FOIA education (see discussion under Other Business).

The Criminal Investigative Records Subcommittee was appointed to study SB 711. The bill would limit the exemption for criminal investigative or prosecution records to those investigations or prosecutions that are ongoing. As a result, criminal investigative and prosecution records would be open to the public after the ongoing criminal investigation or prosecution has become final or has been otherwise terminated, unless there is jeopardy to any other criminal investigation or prosecution.

Rights and Remedies Subcommittee Report

Staff advised the Council that the Rights and Remedies Subcommittee met on July 22, 2010, to review the bills assigned to it and took the following actions:

HB 449 - The subcommittee was generally empathetic to the plight of public bodies faced with FOIA requests intended to harass because of the volume and frequency of these requests as well as the associated increase in allocation of resources to respond to them. The subcommittee noted that while this issue occurs infrequently it does cause problems. The subcommittee will look at what, if anything, other states do in these instances. The subcommittee will also investigate other approaches, including the payment of charges similar to the charges provision that was added in response to the 2002 bill on the same issue.

HB 641 - The subcommittee recommended no action on the bill as presented. Virginia is one of only six states that limit FOIA requests based on citizenship. The subcommittee is aware of the recent decision of the Third Circuit Court of Appeals (*Lee v. Minner*, 458 F. 3d 194 (3d Cir. 2006)) that upheld a decision of the federal District Court for the District of Delaware, holding that the limitation of rights under Delaware's FOIA law to Delaware citizens violates the Privileges and

Immunities Clause of the Constitution of the United States. The subcommittee will also continue to monitor a similar suit in Virginia. In *McBurney v. McDonnell*, the United States District Court for the Eastern District of Virginia, three out-of-state plaintiffs challenged on federal constitutional grounds (privileges and immunities) the provisions of FOIA granting access rights to Virginia citizens. On April 29, 2009, the Court entered an order dismissing the claims of the three out-of-state plaintiffs on procedural grounds. However, on appeal, the United States Court of Appeals for the Fourth Circuit ruled for two of the three plaintiffs, saying they can proceed with their challenge on the merits to the citizens-only provision of FOIA. It is the recommendation of the subcommittee to await the outcome of the *McBurney* case. In the meantime, however, the law can be successfully dealt with by following the advice of the Council to work it out with out-of-state requesters to provide records, including prepayment and supplying records within a reasonable time. Virginia public bodies should not control the in-state or out-of-state status of the requester. By consensus, the subcommittee agreed that the bill should not go forward as drafted.

With regard to HB 976/SB 147, the subcommittee recommended revision of the language to specify a time period when a public body against whom a FOIA petition is brought must receive a copy of the petition before the petition is filed with the court. The Council directed staff to redraft the bills according to its recommendation and to notify the patrons and Prince William County Public Schools of the recommendation. The draft will be posted on the Council's website.

Access to Budget Conferences

Helen Tansey, a citizen who attempted to follow the budget conferences at the end of the 2010 General Assembly Session and wrote live blogs concerning the same addressed the Council about her experience. Ms. Tansey has 10 years of experience lobbying the General Assembly on water and land conservation issues. In her new role as a blogger remarking on the budget process in Virginia, Ms. Tansey stated that she was told she was not welcome as a lobbyist or a citizen to the budget conferences. In preparation for her work, she indicated that she

had contacted the staff directors of the Senate Finance Committee and the House Appropriations Committees, and each budget conferee to advise them of her activities. She described the budget conference process as old, antiquated, and dysfunctional, and noted that there were many closed door meetings. Ms. Tansey advised that she tried to file a criminal complaint with law-enforcement officials and was told that it was a civil matter. She advised the Council that she was aware that she could sue for a violation of FOIA, but did not want to pursue this course of action. Instead, she requested the Council to provide annual FOIA training to the budget conferees, noting that the conferees were doing the public's business.

Other Business

Senator Houck advised the Council that given the issue raised by Ms. Tansey and some FOIA issues related to the appointment of a new director by the Joint Legislative Audit and Review Commission (JLARC) at a meeting earlier this summer, he believed the Council should become more proactive in training legislators and their aides, and all legislative commissions, councils, and agencies. It was his intent that the matter be added to the study charge of the Rights and Remedies Subcommittee. Senator Houck noted that he is a budget conferee and that the budget conference process has moved dramatically in the right direction over the years. He stated that it is not yet perfect. That any citizen feels aggrieved by the actions of the budget conferees is of concern and the issue should be examined. With regard to the JLARC action, he noted that while unintentional, the law was not followed. Delegate Griffith indicated that he agreed with Senator Houck but believes that the law as conceived in 1968 was not intended to cover the General Assembly. He noted there has been confusion on this issue and that is the reason he introduced HB 1357 in the 2004 Session to clarify the application of FOIA's open meeting rules to the General Assembly. He stated that there needs to be a balance between access and getting the budget work done within the tight time constraints imposed on the General Assembly. Senator Houck added that there is a practical

dynamic for budget conferees; however practicality should not overshadow a citizen's right of access. He described a closed door gathering between the two money committee chairs and their respective staffs; which is not a "meeting" under FOIA. However, other conferees came in to listen to the discussion and the result was possibly a violation of FOIA because the door was closed. He noted that this is a perfect example of the logistics involved. Ms. Treadway agreed and indicated as Librarian of Virginia, the same problem exists with respect to the Virginia Public Records Act (VPRA). She stated that without constant training on the law the institutional memory is lost. A member of the Council noted that while he was in agreement, citizens do have the responsibility to knock on a closed door. He stated that he would like local government officials included in the training as the issues are the same. Another member of the Council suggested that there should be mandatory FOIA training for the staff of the public bodies.

Public Comment

The Council heard comments from several members of the public.

Next Meetings

The next two meetings of the Council will be held on Monday, September 13, 2010, and Monday, November 8, 2010. Both meetings will be held in Richmond at 1:30 p.m. in House Room C of the General Assembly Building. The Council's annual Legislative Preview will be held in conjunction with the September 13, 2010, meeting.



**Virginia Freedom of Information
Advisory Council**

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Commission on Unemployment Compensation — 8/9/10

The Commission on Unemployment Compensation met in Richmond, Virginia, with Senator Watkins, chair, presiding. John Broadway, who became Commissioner of the Virginia Employment Commission (VEC) about 90 days earlier, briefed the members on the status of the Unemployment Trust Fund and related issues.

Employment Data

The Commonwealth's unemployment rate for June 2010 was 7.3 percent. Last June, the rate was 6.6 percent. Virginia's unemployment rate for months in 2010 has averaged about 10 percent higher than rates for the same months in 2009. The Commonwealth's unemployment rate in this recession peaked at 7.8 percent in February of this year, which was the highest rate in Virginia since it reached 8.1 percent in February 1983.

The growth in the number of unemployed Virginians has increased the VEC's workload. The annual number of initial claims has grown from 260,561 in 2007 to 501,950 in 2009. The number of initial claims for unemployment benefits for the first six months of this year is 204,320. This figure shows a promising reduction from the same period last year when 271,600 initial claims were filed. The decline of almost 25 percent was attributed to fewer layoffs related to the motor vehicle, furniture, retail, building, and financial sectors.

First payments of unemployment insurance benefits from January through June 2010 are 28.6 percent less than in the corresponding period in 2009 but 44.6 percent higher than in the corresponding period in 2008. The average duration for receipt of unemployment benefits was 16.7 weeks in June 2010; for the same month of 2009, the average duration was 13.5 weeks. Final payments of benefits in the first six months of 2010 are up 4.6 percent from the same period in 2009 and up 149.1 percent from the same period in 2008. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use

up all of the weeks of regular unemployment benefits for which they are eligible, was 51.7 percent in June 2010; in the same month of 2009 it was 51.5 percent.

Virginia's maximum weekly unemployment benefit is \$378; the national average is \$400. The maximum weekly benefit reflects a weekly benefit replacement rate of 42.6 percent of the state's average weekly wage. In 2009, the same maximum weekly unemployment benefit amount provided a weekly benefit replacement rate of 43 percent.

Unemployment Trust Fund

The Unemployment Trust Fund is funded by state unemployment taxes, which are paid by employers at a rate that varies depending on the solvency level of the Trust Fund and each employer's claims experience. The balance in the Unemployment Trust Fund on January 1, 2009, was \$546.7 million. On January 1, 2010, the balance was negative \$122.4 million, which included a \$62.8 million Incentive Distribution from the federal government. The balance is projected to fall to negative \$341.8 million at the end of 2010. While disappointing, this year's figures are not as bad as those that had been projected. Last summer the Trust Fund balance was expected to fall to negative \$194.2 million on January 1, 2010, and to negative \$561.4 million at the end of 2010. State unemployment tax revenue is projected to rise from \$327.7 in 2009 to \$516.1 million in 2010, while interest revenue will fall from \$13.9 million to zero. The amount of unemployment compensation benefits paid in 2009 was almost \$1.074 billion; it is projected to fall to around \$735 million this year.

The solvency level of the Trust Fund is calculated by dividing its balance on June 30 by an amount, determined in accordance with a statutory formula, that represents an adequate balance. The Unemployment Trust Fund's solvency level from 2008 to projected levels from 2010 to 2014 are shown in the next column.

<u>Year</u>	<u>Solvency Level</u>
6/08	64%
6/09	24.4%
6/10	-12.8% (Projected)
6/11	-10% (Projected)
6/12	7% (Projected)
6/13	30% (Projected)
6/14	52% (Projected)

Reaching a solvency level of 50 percent in 2014, starting the next calendar year, will end the Social Security benefit offset and the imposition of the fund builder tax of 0.2 percent of the first \$8,000 of each employee's wages.

Title XII of the federal Social Security Act provides a mechanism by which states may borrow funds to offset shortfalls in their unemployment trust funds. During the current recession, 33 states and the Virgin Islands have borrowed from the Federal Unemployment Account. Until this recession, Virginia has borrowed to meet its unemployment obligations once. In April 1983, the Commonwealth borrowed \$45 million, which was repaid by September of that year. The prompt repayment allowed Virginia to avoid liability for interest on the loan.

The current recession has required Virginia to borrow for a second time. Since October 2009, the Commonwealth has borrowed from the federal government in order to pay unemployment benefits. The balance owed as of July 27, 2010, was \$347 million. Virginia has not made such borrowings from the federal government since April 2010, though another loan may be required before the end of the calendar year. The VEC anticipates that Virginia will borrow an additional \$838 million through April 2013.

Borrowing from the federal government has several substantial implications. States are required to pay interest on the federal loans in 2011 (though the 2009 federal stimulus legislation waived interest on such loans to states for 2010). Legislation has been introduced in Congress to waive states' obligation to pay interest in 2011; its fate is uncertain. If the waiver of interest is not extended

beyond 2010, Virginia will be required to pay interest of \$20.2 million in 2011 and 2012. Interest payments cannot be paid from the Trust Fund or federal grants, and are expected to be made from state general funds. Members of the Commission urged the VEC Commissioner to work to have the administration include funding for the federal interest obligations in the amendments to the biennial budget to be considered during the 2011 Session.

Failing to repay the borrowed federal funds has substantial implications. Currently, most employers pay federal unemployment tax (FUTA) at a rate of 0.8 percent of each employee's first \$7,000 of wages, for a cost of \$56 per employee per year. This figure reflects the FUTA tax credit of 5.4 percent, which reduces the rate from 6.2 percent to 0.8 percent. However, employers in a state with an outstanding loan balance in two consecutive years will lose 0.3 percent of the 5.4 percent credit. This will raise employers' tax rate from 0.8 percent to 1.1 percent of the first \$7,000 of each employee's wages, which increases the annual FUTA liability for each employee by \$21, from \$56 to \$77. If this increase takes effect, the increased FUTA receipts will be applied to the state's loan balance, which in Virginia's case will reduce the balance by \$85 million in January 2012. Moreover, for each year beyond the two that a state has a loan balance, the FUTA tax credit is reduced by an additional 0.3 percent, resulting in a further tax liability of \$21 per employee.

A factor contributing to rising state unemployment tax (SUTA) assessments is the increasing number of business failures, which has increased the number of unemployment benefit payments charged to the pool rather than to an active employer's account. This is expected to increase the pool tax assessed against remaining employers from its 2010 level of \$22 per employee to about \$48 in 2012. The pool tax rate for 2010 is 0.28 percent. Employers are also assessed with a 0.20 percent fund builder tax.

The low level of solvency of the Trust Fund automatically increases the SUTA rate assessed on employers. The program's counter-cyclical funding formula links higher tax rates to low Trust Fund

solvency rates. At the Trust Fund's current level, employers are taxed under the highest of the 15 existing tax tables. The average annual state unemployment tax per employee assessed on employers in Virginia, exclusive of the FUTA assessment, was \$96 for the fiscal year ending September 30, 2009. The corresponding national average was \$259.94. However, the VEC projected that the average annual SUTA assessment per employee will rise to approximately \$160 in 2010, \$200 in 2011, and \$225 in 2012.

When the pool tax and fund builder tax are included, the average state tax per employee is \$161.60. The minimum tax, paid by 112,000 employers, is \$46.40, and the maximum tax, paid by 11,000 employers, is \$534.40.

Emergency and Extended Benefits Programs

Virginia's unemployment compensation program provides a maximum of 26 weeks of regular benefits. The federal government has enacted, and the General Assembly has amended its laws to permit, emergency unemployment benefits programs. The Tier I emergency benefits program provides for up to 20 extra weeks of benefits, and the Tier II program allows up to 13 weeks, plus one week added in November 2009, of benefits in "high unemployment states," defined as those with an unemployment rate exceeding six percent. Those who have exhausted Tier II benefits and extended benefits are eligible in high unemployment states for 13 weeks of Tier III benefits. If a state's unemployment rate equals or exceeds 8.5 percent, Tier IV benefits can provide another seven weeks of benefits.

The extended benefits program provides up to 13 weeks of benefits for claimants who have exhausted their regular benefits and Tier I and Tier II emergency benefits, and is available in states that have certain levels of unemployment. The extended benefits program includes enhanced job search requirements. In February 2009, Congress increased the federal share of such extended benefits to 100 percent. Another seven weeks of extended benefits are available at a state's option to claimants in states when unemployment exceeds 8.5 percent.

As a result, unemployed Virginians may be eligible for a maximum of 86 weeks of benefits. Of these, 26 weeks are financed through the State's Unemployment Trust Fund and the balance is funded by federal appropriations. An additional seven weeks of benefits may become available in Virginia if the unemployment rate exceeds certain levels.

The VEC's report prompted questions regarding prospects for improvements. Commissioner Broadway noted that there is some good news, including the fact that though Virginia had anticipated borrowing \$1.2 billion from the federal government, currently it anticipates borrowing only \$960 million. In addition, the rate of jobs creation this year was calculated to be the third highest in the nation. The Governor had announced in July that the Commonwealth has added 71,500 jobs since February. VEC data provided at the meeting states that between June 2009 and June 2010, Virginia's nonfarm employment increased by 1,500 jobs. The apparent discrepancy was explained as reflecting the seasonal changes, and well as not accounting for job losses between June 2009 and January 2010.

2010 Unemployment Compensation Legislation

Staff provided the Commission with an overview of legislation pertaining to unemployment compensation that was introduced during the 2010 Session. Of the two bills that passed, one (House Bill 535) postponed the scheduled increase, from \$2,700 to \$3,000, in the minimum amount of wages an employee must have earned in the two highest earnings quarters of the base period in order to be eligible for unemployment benefits. The other, House Bill 550, authorizes the VEC to negotiate the terms of repayment for benefits to which a recipient is not entitled, deduct up to 50 percent of future benefits, or forego collection of the payable amount until the recipient has found employment.

Two items of legislation, House Bill 252 and House Joint Resolution 49, also dealt with the issue of overpayments of unemployment compensation benefits occurring due to an administrative error by the VEC. These items were carried over to the 2011

Session, and are being examined by the Auditor of Public Accounts as part of its audit of the VEC. The Auditor's report is expected to be completed by the fall. This Commission intends to revisit the issue when the Auditor's report is completed.

Of the roughly half dozen items of legislation that did not pass during the 2010 Session, most dealt either with the eligibility of seasonal employees for unemployment benefits or attempts to expand eligibility for unemployment benefits in order to make Virginia eligible for federal stimulus funds.

Deputy-Level Hearings

House Joint Resolution 23 was introduced in the 2010 Session. The measure was tabled in the House Commerce and Labor Committee, and the Chair asked this Commission to examine the issue.

The resolution would have directed the Joint Legislative Audit and Review Commission to study the effectiveness of deputy-level hearings on claims under the Virginia Unemployment Compensation Act. The resolution recites that it is appropriate to determine the rate at which decisions at the deputy level approving benefits claims are overturned and whether the reasons for the rate of reversals on appeal indicate a failure of decision makers at the deputy level to properly interpret and implement the applicable provisions of the Virginia Unemployment Compensation Act.

John Milhiser, Small Business Owner

Mr. Milhiser described his concerns with deputy-level hearings. He described four cases where a former employee sought benefits, he contested the person's eligibility, the claimant was found after a deputy-level hearing to be eligible, and the deputy's decision granting benefits was overturned on appeal. While he ultimately prevailed in each case, Mr. Milhiser objected to the expenditure of time and money that was required, particularly when the same evidence was provided at both levels of hearing. His criticisms focused on a perceived cultural bias that favored claimants, which is expressed in such actions as coaching claimants about their testimony. He recommended improved training and education for hearing examiners as a means of addressing the bias issue.

Coleman Walsh, VEC Chief Administrative Law Judge

Judge Walsh provided the Commission with an overview of claims adjudications by the VEC's deputies. He noted that the agency began reviewing and evaluating the claims adjudication process prior to the introduction of House Joint Resolution 23. The review was prompted by a sharp increase in the number of claims adjudicated by the VEC. The agency has launched a comprehensive self-study focusing on organizational design, business processes and workflow, staffing, training, and examining best practices from other states.

The VEC is expecting to complete an interim report this summer, and to have a final report by the fall. Judge Walsh was invited to present the final report to this Commission at its next meeting. The VEC's data indicates that approximately one quarter of claims decisions were reversed on appeal in 2008, with the percentage falling to 22.6 percent in 2009. When claims involving issues related to separation from employment are examined, the percentage overturned on appeals rose to 29.5 percent in 2008 and 28.8 percent in 2009.

While the data does not indicate why the decisions were reversed, Judge Walsh observed that in about half of cases one party does not participate at the initial hearing. When a case in which one side did not participate is heard de novo on appeal, a reversal is not surprising. A related reason for decisions being overturned on appeal involves situations where a third party presents a case on an employer's behalf before a deputy and is not aware of the specific facts surrounding an employee's separation. In such a case, the information that was not available at the first level of hearing may be provided when it is heard de novo at the second hearing. The members agreed that the hearings should be unbiased and fair, and that perhaps an education program would be an appropriate response to the concerns identified by Mr. Milhiser. The VEC was requested to include in its report any specific statutory changes that it finds are appropriate to address shortcomings with the current system.

Other

Concern was expressed that the federally funded extensions of unemployment benefits are being paid for with borrowed money, and the question raised as to how long the Commonwealth can use borrowed capital to pay benefits. The VEC was asked to look at the issue of layoffs by state and local governments, which are required to reimburse the Unemployment Trust Fund for benefits paid to their eligible laid-off employees.

Chairman Watkins urged the members of the Commission to continue examining the burden on private employers of increasing levels of SUTA taxes and the loss of the FUTA credits. The Commission should continue its practice of looking at the tax levels and benefit levels in other states in the region.

Next Meeting

The Commission will hold a meeting later in the year, at which the VEC will provide updates to its projections regarding the Trust Fund's solvency level. The meeting is also expected to receive the Auditor of Public Account's report on benefits overpayments due to administrative error and the VEC's report on the claims adjudication process.

SENATOR JOHN C. WATKINS, CHAIR

FRANK MUNYAN, DLS STAFF

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Virginia Sesquicentennial of the American Civil War Commission — 8/11/10

Speaker Howell called the meeting to order and welcomed those in attendance.

Sesquicentennial Tourism Marketing Grant Program

Steve Galyean, Virginia Tourism Corporation

Mr. Galyean noted that the third round of grants to support local sesquicentennial endeavors yielded 11 applications, five of which staff recommended be awarded. Grant applications not recommended for funding were deficient either technically (not completing the application as required) or substantively (lack of compelling message or program).

The following programs were recommended for an award:

- **Montgomery County Sesquicentennial Committee/Radford Civil War Sesquicentennial Committee**
"Civil War Trails Interpretive Sites in the Town of Blacksburg and City of Radford"
- **Arlington County Sesquicentennial Committee**
"Arlington Sesquicentennial of the American Civil War Travel Package"
- **Chesterfield Sesquicentennial Committee**
"Chesterfield County Sesquicentennial Legacy Project"
- **Augusta-Staunton-Waynesboro Sesquicentennial Committee/Shenandoah Valley Battlefields Foundation (regional)**
"Community at War: Augusta County, Staunton, and Waynesboro during the Civil War Interpretive Kiosk"
- **Williamsburg-York-James City County Sesquicentennial Committee/Greater Williamsburg Chamber and Tourism Alliance (regional)**
"Williamsburg Civil War Sesquicentennial Website"

The grant recommendations were considered in a block. A motion passed unanimously that the block be approved as presented. Mr. Galyean recommended that the next round of grants open in late September and close in early November, and the Executive Committee concurred. Staff will continue to work with local representatives to explain the grant application and process.

Staff Update

Awards for "Virginia in the Civil War: A Sesquicentennial Remembrance"

Ms. Jackson announced that the DVD produced by Dr. Robertson and Blue Ridge Public Television was nominated for a 2010 Emmy Award in the category of informational instructional programming. It won two Telly Awards, which recognize excellence in public television, in the categories of "education/academic use" and "history/biography."

2010 Signature Conference (NSU): "Race, Slavery and the Civil War: The Tough Stuff of American History and Memory"

Staff reviewed the schedule for the 2010 Signature Conference, to be held Friday, September 24 at Norfolk State University, and noted that registration is filled and that C-SPAN has confirmed that they will cover the conference. Members discussed the lineup of panelists and logistics of the program.

2011 Signature Conference (Virginia Tech): "American Military Strategy in the Civil War"

Planning for the 2011 Signature Conference at Virginia Tech is well underway. Dr. Robertson will chair the conference, which is scheduled for Saturday, May 21, 2011. Members discussed whether to begin charging admission for the conferences, which has several benefits. After lengthy discussion, the Executive Committee agreed that charging an admission fee for ensuing Signature Conferences is appropriate. Admission for the Virginia Tech conference will be \$12.00/person for the conference or \$20.00/person for the conference plus lunch.

Logo Requests Approved and Pending

Ms. Jackson presented a list of applications to affix the Commission's logo that have been pre-approved by staff. The list includes the following:

- Shenandoah Valley Battlefields Foundation (Newsletter, brochures)
- Sully Historic Site (Correspondence)
- Lancaster County Sesquicentennial Committee (News article)
- Town of Occoquan (Flyers, brochure)
- Museum of the Confederacy (Lecture, signage)

A motion passed unanimously that staff recommendations for approval of logo applications be given final approval by the Executive Committee.

"Walk in Their Footsteps" Database

Staff demonstrated the "Walk in Their Footsteps" database, an interactive research portal that provides regimental history information for Civil War battles fought in Virginia, enabling users to learn more about battles in which their ancestors' regiments were engaged. In addition to providing rich layers of information about each regiment that fought in Virginia and battle detail, the database allows users to plot a "Battle Plan" itinerary of travel to these sites throughout the state.

Members praised the database and directed staff to (i) work with Virginia Tourism Corporation in promoting "Walk in Their Footsteps" and (ii) explore developing the database for mobile devices once it is complete.

Next Meeting

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

VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

SPEAKER WILLIAM J. HOWELL, CHAIR
Cheryl Jackson and Michele Howell, DLS Staff

Telephone (804) 786-3591
<http://dls.virginia.gov/civilwar.htm>
<http://www.virginiacivilwar.org>

Meeting Calendar for September - October 2010

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Small Business Commission	8:30 a.m. Wrkgrp, GA Bldg., 5th Flr .West Conf. Rm. 10:00 am Commission, GA Bldg. Senate Room B Wednesday, September 8, 2010	David Cotter Anne Louise Mason
Virginia Code Commission	10:00 a.m., Wednesday, September 8, 2010 10:00 a.m., Wednesday, October 6, 2010 General Assembly Building, 6th Floor Speakers Conf. Rm.	Jane Chaffin
Disability Commission Workgroups 1, 2, 3	1:00 Workgroups GA Building Workgroup 1 – 4th Flr. West Conf. Rm, Workgroup 2 – 5th Flr. East Conf. Rm, Workgroup 3 – 5th Flr West Conf. Rm. 2:00 p.m.-Commission, GA Building, House Room D Wednesday, September 8, 2010	Sarah Stanton
MLK Commission/Brown v Board of Education Special Subcommittee	10:00 a.m., Abraham Lincoln Subcommittee, Partnership & Expenditure Review Subcommittee, School Closings Subcommittee, King Commission 1:00 p.m. Town hall mtg. of the School Closings Subcommittee- Friday, September 10, 2010 Charlottesville High School, Charlottesville	Brenda Edwards
Freedom of Information Advisory Council	1:30 p.m., Monday, September 13, 2010 General Assembly Building, House Room C	Maria Everett Alan Gernhardt
Energy and Environment	1:00 p.m., Tuesday, September 21, 2010 General Assembly Building, Senate Room A	Ellen Porter Anne Louise Mason
MLK Commission/ Special Subcommittee on Public School Closings/Town hall mtg.	Monday, October 4, 2010, Norfolk	Brenda Edwards
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.

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 2. AGRICULTURE BOARD OF AGRICULTURE AND CONSUMER SERVICES

2VAC5-540. Rules and Regulations Pertaining to Carbonated and Still Water Bottling Plants and Beverages (repealing 2VAC5-540-10 through 2VAC5-540-70).

A public hearing will be held on September 30, 2010, at 2 p.m. at the Department of Agriculture and Consumer Services, Richmond, Virginia. Written public comments may be submitted until October 15, 2010.

Summary:

This regulation provides basic requirements for carbonated and still water bottling plants. The repeal of this regulation is requested because the essential elements of the regulation have already been incorporated into the Virginia Food Laws, Chapter 51 (§ 3.2-5100 et seq.) of Title 3.2 of the Code of Virginia.

For more information, please contact Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, Richmond, VA, telephone (804) 786-8910, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.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.

10VAC5-210. Motor Vehicle Title Lending (adding 10VAC5-210-10 through 10VAC5-210-110).

A public hearing will be held on September 7, 2010, at 2 p.m. at the State Corporation Commission, Courtroom, Tyler Building, Richmond, Virginia.

Summary:

The State Corporation Commission is proposing regulations in connection with Chapter 477 of the 2010 Acts of Assembly, which, effective October 1, 2010, establishes a comprehensive licensing and regulatory framework for motor vehicle title lenders and motor vehicle title loans. The proposed regulations (i) define various terms used in

Chapter 477, including "duplicate original" and "good funds instrument"; (ii) require a licensee to file written reports with the Commissioner of Financial Institutions within 15 days following the occurrence of certain events (including those events set forth in Chapter 477); (iii) require a licensee to provide prospective borrowers with a warning notice; (iv) prescribe the contents of the rights and responsibilities pamphlet; (v) require a licensee to post in or on its licensed locations the days and hours during which it is open for business so that the posting is legible from outside; (vi) prohibit a licensee from making a motor vehicle title loan to a borrower on the same day that the borrower repaid or satisfied in full a motor vehicle title loan from the same licensee or another licensee; (vii) require a licensee to include various questions in its loan application form so that the licensee will know whether an applicant is ineligible for a motor vehicle title loan; (viii) provide that a licensee must release its security interest and take other specified actions within 10 days after the date that a borrower's obligations under a motor vehicle title loan are satisfied in full; (ix) require a licensee to provide certain data to the Commissioner of Financial Institutions when filing its annual report, such as the total number and dollar amount of motor vehicle title loans made by the licensee; (x) set forth the rules governing the conduct of other business in motor vehicle title lending offices, including the findings that the commission would need to make before approving an application to conduct other business in a licensee's motor vehicle title lending offices, the uniform conditions applicable to the conduct of any approved other business as well as the conditions attached to specific types of other businesses, such as making payday loans, acting as an agent of a money transmitter, and providing tax preparation services; (xi) require a licensed motor vehicle title lender to disclose certain information in its advertisements, including the name of the lender as set forth in the license issued by the commission and a statement that the lender is "licensed by the Virginia State Corporation Commission"; (xii) require a licensee to maintain certain records for at least three years after final payment is made on a motor vehicle title loan, including copies of the loan application, the loan agreement, and a

record of the fair market value of the motor vehicle securing the loan; (xiii) require a licensee to maintain a repossession log or similar record of all motor vehicles that have been repossessed by or on behalf of the licensee; (xiv) require a licensee to maintain certain other records for at least three years after a motor vehicle used to secure a loan is repossessed and sold by or on behalf of the licensee, including copies of the written notices and accounting that were mailed by the licensee to the borrower prior to the sale of the motor vehicle; (xv) clarify the commission's enforcement authority and provide that the commission may, at its discretion, waive or grant exceptions to any provision of its motor vehicle title lending regulations for good cause shown; and (xvi) set forth various other requirements and limitations. In addition, the proposed regulations reflect statutory citations to Title 6.2 in conformance with Chapter 794 of the 2010 Acts of Assembly, which recodified Title 6.1 of the Code of Virginia as Title 6.2.

For more information, please contact Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, Richmond, VA, telephone (804) 371-9701, FAX (804) 371-9416, or email susan.hancock@scc.virginia.gov.

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