

# Virginia Legislative Record

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## SJR 357: Joint Subcommittee Studying the Feasibility of Creating a Regional Rapid Transit Network

**June 17, 2009**

The Joint Subcommittee to Study Creating a Regional Rapid Transit Network met in Woodbridge on June 17, 2009. Senator Barker, chair of the joint subcommittee, called the meeting to order.

### Presentations

Pierce R. Homer, Virginia Secretary of Transportation

Secretary Homer briefed the members on the state of Virginia's transportation finances, including the impact of federal stimulus funding on mass transit. He reported that:

- Traffic at the ports of Hampton Roads had declined 22.1% over the last year,
- Diesel fuel tax collections had declined 14.5% over the same period,
- Motor vehicle sales tax collections had fallen 28.2%,
- State recordation tax revenue estimates for fiscal year 2010 were lower than fiscal year 2007 by 47%,
- Original vehicle registrations were down by 11.4%,
- Virginia's air carrier capacity had slipped 12%, and
- The Congressional Budget Office has predicted a \$13.5 billion (33%) reduction in federal funds.

On a more positive note, Secretary Homer pointed out that Virginia will receive \$810.6 million federal ARRA (American Recovery and Reinvestment

Act) funds, of which \$116.1 million would be used for transit projects. In discussing investments in public transportation and travel demand management, Secretary Homer drew the members' attention to major transit projects (the Dulles Corridor Metrorail project, Richmond bus rapid transit alternatives analysis, and the Norfolk light rail project) in large urban areas that will improve mobility, generate jobs, and promote economic development.

Regarding projects involving the Rail Enhancement Fund and demonstration project, Secretary Homer told the members that \$217 million would be spent in the next six years for 14 projects aimed at meeting both freight and passenger rail needs. He urged the members to be aware of the need to identify a reliable and sustainable source of revenue to fund inter-city passenger rail service.

On the subject of bus rapid transit (BRT), Secretary Homer pointed to ongoing BRT studies along both the Interstate Route 66 corridor (from Prince William County to the Potomac) and the Interstate Route 95 corridor (from Stafford County to the District of Columbia and around the Capital Beltway).

In concluding, he pointed out that the Commonwealth has \$1 billion in deficient highway pavement needs; that, at least for this year, there would be essentially no money flowing through the statutory allocation formula for any

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Traffic  
at the ports of  
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last year.

construction in the state primary, urban, and secondary highway systems; and that it was unlikely that there would be sufficient revenue to permit the issuance of the transportation bonds provided for in House Bill 3202 (2007) until at least 2010 or even 2011.

In a discussion among the members, Senator Colgan suggested that it might be appropriate for the General Assembly to consider repeal of the Workforce Transition Act.

Steve Del Giudice, Arlington County Transit Bureau Chief

Mr. Del Giudice spoke on the Columbia Pike Streetcar project. He explained that the project, which is a cooperative effort involving both Arlington and Fairfax Counties, aims to develop an advanced transit system that will increase mobility and serve the emerging transit market between the Pentagon/Pentagon City area and Bailey's Crossroads, as well as support Arlington and Fairfax Counties' land use and redevelopment initiatives for the corridor. This coordination between transportation and land use planning has been a distinguishing feature of the project from the outset. He explained that environmental studies and preliminary engineering for the project would begin soon, and that actual construction would probably begin in about two years, with regular service to start in 2014 or 2015.

## Public Comment

Mr. Tom Hirst briefly took the floor to urge the joint subcommittee to take action to increase the capacity of existing highway infrastructure by using bus rapid transit and other forms of mass transit.

## HJR 178/SJR 70: Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities

**June 18, 2009**

The Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities held its second meeting of 2009 at the General Assembly Building in Richmond.

Prior to the full subcommittee meeting, the workgroups met at the General Assembly Building. Workgroup 1 discussed the proposed draft legislation relating to conditional zoning and impact fees while Workgroups 2 and 3 met

## Next Meeting

Chairman Barker announced his intention to hold three more meetings of the joint subcommittee before the end of the year: one in early September, one in early October, and the last in November, following the elections. He stated his desire to hear from the Virginia Department of Rail and Public Transportation and from the Northern Virginia metropolitan planning organization before considering findings and recommendations to be presented to the Governor and the 2010 Session of the General Assembly. The suggestion was made that it might be good to learn more about how Virginia's transportation and transit planning affects military installations in the Commonwealth and the businesses dependent upon those installations from the perspective of making these places into mass transit hubs. The Chairman invited members to share with him and with staff any other suggestions they might have for the agendas of future meetings.

SJR 357

### *Joint Subcommittee Studying the Feasibility of Creating a Regional Rapid Transit Network*

Senator George L. Barker, Chairman

Alan Wambold, DLS Staff

[study website](#)

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

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together to discuss the proposed draft legislation relating to urban development areas.

## Presentations

Eric Lawrence, Director, Department of Planning and Development, Frederick County

Mr. Lawrence spoke regarding the urban development area Frederick County has had for about 20 years and how the proposed legislation would affect the county. The urban development

area in the county is 15,000 acres and provides for 10-20 years of growth. The area provides for a density of four residential units per acre. To meet the proposed legislation, Frederick County would have to shrink its urban development area by 5,000 acres.

Mary Ann Curtin, Dir., Intergovernmental Relations, Chesterfield County

Ms. Curtin provided the report of Workgroup 1, the group charged with discussing the legislation relating to conditional zoning and impact fees. The general consensus of the members of Workgroup 1 was that the proposed legislation does not accomplish the intended goal and needs to be completely reworked. According to some members of the workgroup, new legislation needs to reflect the true cost of growth, while others, including Mike Toalson, representing the Home Builders Association of Virginia, argued that one industry should not be responsible for carrying the cost of all growth. Likewise, Philip F. Abraham, representing the Virginia Association for Commercial Real Estate, emphasized that the commercial real estate industry should not be burdened with paying for services such as schools. The workgroup members strongly indicated their willingness to continue working together, and Jeryl Phillips, President of the American Planning Association's Virginia Chapter, conveyed her group's interest in assisting the joint subcommittee in any way possible.

Lisa Guthrie, Executive Director, VA League of Conservation Voters

Ms. Guthrie provided a detailed report of the work done by Workgroups 2 and 3. These workgroups went through the proposed legislation line by line to propose changes. The workgroups expressed concern over term/definition usage, population numbers of towns being double-counted (they agreed that towns and the counties in which the towns are located need to work together in projecting growth), and certain language being too prescriptive. Ms. Phillips stated that members of her association are ready and willing to provide assistance with the language and any standards that may be proposed. Several members of the public stated that density should be used as classification rather than population. It was agreed that if populations continue to be used, localities with larger populations, e.g., localities having a population of 250,000 or more, need to be addressed in the legislation.

Another concern voiced by members of the workgroups was the notion that the proposed

legislation limited localities to 20 years when projecting future growth in urban development areas. Both M. Barrett Hardiman, also representing the Home Builders Association of Virginia, and Ted McCormack, Virginia Association of Counties Director of Governmental Affairs, voiced this concern to the full joint subcommittee and both stated that 20-year time period was not sufficient. According to them, this limitation does not take into account a variety of factors, including the new transfer of development rights legislation.

### Next Meeting

The August 19, 2009, meeting of the joint subcommittee has been cancelled due to the announcement of a special session of the General Assembly on that date. Please check the joint subcommittee's website to confirm the date of the rescheduled meeting. The workgroups met jointly on July 30, 2009, in preparation for the next joint subcommittee meeting.

*The urban development area in Frederick County is 15,000 acres.*

HJR 178/SJR 70

### *Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities*

Delegate Clifford Athey, Chairman

Kevin Stokes, Jeff Sharp, Rebecca Young,

DLS Staff

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# 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

**June 26, 2009**

*Virginia is one of only 11 states that does not offer a state-sponsored student loan program.*

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 first meeting on June 26, 2009, in Richmond.

Delegate Hamilton, the joint subcommittee's chairman, called the meeting to order. Because the position of vice-chairman had become vacant, a new election was held, and Senator Ruff was elected.

## Presentations

### Staff Report

The joint subcommittee staff presented a review of last year's activities, including an overview of the joint resolution and the joint subcommittee's charges. Staff also went over last year's presentations by the State Council for Higher Education in Virginia, detailing current enrollment trends and projections for the future, as well as a history of the Tuition Assistance Grant (TAG) program.

Robert Lambeth, President of the Council of Independent Colleges in Virginia (CICV) spoke about the valuable role that private institutions play in the higher education system and how additional state assistance would benefit Virginia families.

Paul Baker, Vice President of College Relations and Administration at Hampden-Sydney College, and Robert Lindgren, President of Randolph-Macon College discussed their experiences in financing capital projects without state assistance. Both spoke about the difficulty in raising private funds sufficient to finance capital projects.

Robert Lambeth also provided the joint subcommittee with an overview of publicly supported programs for private institutions in other states. Mr. Lambeth pointed out that Virginia is currently one of only 11 states that does not offer a state-sponsored student loan program. Members were interested to learn this, and it was eventually added to the list of topics to be discussed this year.

Tony Maggio, House Appropriations Staff

Mr. Maggio gave a higher education budget overview. Mr. Maggio explained that higher education funding is divided into three different categories, with educational and general programs being the category most often talked about. This category includes instruction, research, and public service programs. He then explained how state funding for higher education has fluctuated over the years, depending on the economic state of the Commonwealth. He also stated that while the Joint Subcommittee for Higher Education Funding Policies was established to develop funding guidelines for public colleges and universities in 1998, because of budget reduction requirements, the guidelines were not actually used until the 2004 session. These guidelines are intended to provide an objective analysis tool for higher education funding. Mr. Maggio then gave a brief history of TAG funding, which has increased from 59% of the general fund support (per full-time enrollment) for students in four-year public institutions of higher education in 1993, to 82% in 2009.

Manju Ganeriwala, State Treasurer of Virginia

Manju Ganeriwala spoke regarding the Virginia College Building Authority. Ms. Ganeriwala first gave an overview of the history and legal structure of the Authority, with particular emphasis on the Private College Program. This program allows the Authority to act as a conduit issuer, in order to give private, nonprofit institutions access to the tax-exempt bond market. The bonds issued through this program are in no way considered obligations of the Commonwealth. She then walked the joint subcommittee through the application process. Finally, she provided the joint subcommittee with information on current outstanding bonds, totaling over \$560 million.

Virginia Education Loan Program

Staff gave an historical overview of the Virginia Education Loan Program, or VELA. This program was started in 1972, in order to help Virginia students fill in any gaps in funding after existing federal resources were exhausted. In 1992, VELA was combined with the State Education Assistance Authority, the state's guarantee agency, to



comprise the Virginia Student Assistance Authorities. The two authorities were governed by a single board of directors, but maintained separate fund accounting. In 1995, legislation was passed directing VELA to liquidate its assets; after a final sale in 1997 to Sallie Mae, \$64 million was deposited into the General Fund.

Robert Lambeth, President, Council of Independent Colleges in Virginia

Mr. Lambeth reiterated the importance of private institutions in educating Virginia's citizens. He emphasized the cost-savings to the Commonwealth of educating students in private institutions of higher education rather than public. Mr. Lambeth again asked the joint subcommittee to consider successful programs for funding private institutions in place in other states. He asked the subcommittee to consider three separate issues in its remaining meetings:

- An increase in Tuition Assistance Grant funding, in order to attract more students to private institutions;
- Utilization of the Commonwealth's authority to contract with private institutions to provide education in specific areas at a lower cost; and
- Reinstatement of the state-run student loan program.

## Next Meeting

The next meeting, to be held at 1:00 p.m. on August 17, 2009, will focus on a review of existing funding programs in other states and more information on Virginia's former student loan program. The chair asked for more information on creative ways to help fund private institutions of higher education.

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, Nicole Cheuk,

DLS Staff

[study website](http://dls.virginia.gov/nonprofitedu.htm)

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Tuition Assistance Grant funding has increased from 59% of the general fund support for students in four-year public institutions of higher education in 1993, to 82% in 2009.

## Joint Meeting of the Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying Title Lending

June 29, 2009

The initial joint meeting of the special subcommittees was held in Richmond on June 29, 2009, and was chaired by Delegate Terry Kilgore.

### Presentations

#### Staff Report

Staff outlined the statutory framework in which title lending occurs in Virginia. The term "title loan," as used in Virginia, refers to a non-purchase-money, revolving consumer loan that is secured by a lien on the title to a motor vehicle, made pursuant to Virginia Code § 6.1-330.78 by unlicensed lenders. A typical title loan may be for \$500, have a term of six months, and require the payment of a membership fee. Title lenders typically charge interest at rates of 25% per month or more. Such interest rates are permitted under the existing Virginia law that allows a seller or lender extending credit under an open-end credit or similar plan to impose finance charges and other

charges and fees at such rates and in such manner as the parties may agree, if no interest is charged if the balance is repaid in full within a 25-day billing cycle.

The authorization to charge interest at any rate the parties agree, subject to requirements that the credit be extended under an open-end plan and that the borrower have a 25-day grace period, exists as an exemption to the general limitation, established by Virginia Code § 6.1-330.55, that limits the rate of interest that may be charged on a loan contract to no more than 12% per year.

Other exemptions from the 12% annual limit on the contract rate of interest on consumer loans exist for sellers extending credit under a closed-end installment credit plan, payday loans, and loans by consumer finance companies, which may charge interest at any agreed-upon rate if the loan is for more than \$2,500 or at a rate of not more than 36% per year if the loan amount does not exceed \$2,500. Moreover, inter-

est may be charged on pawn loans at rates not exceeding 10% per month on a loan of \$25 or less, 7% per month on a loan between \$25 and \$100, or 5% per month on a loan of \$100 or more.

In general, the Consumer Finance Act prohibits any person from lending any amount to individuals for personal, family, household, or other nonbusiness purposes, and charging more than 12% per year, unless authorized by the Consumer Finance Act or the Payday Loan Act. However, this prohibition does not apply to extensions of credit under Virginia Code § 6.1-330.78, which allows open-end extensions of credit to carry whatever interest rate the parties agree to, if interest does not accrue if the balance is paid within a 25-day billing cycle.

While § 6.1-330.78 currently allows title lenders to charge interest at unlimited rates, that section, as initially enacted in 1968, permitted certain creditors in consumer credit sales to charge 1.5% per month in interest. The section has since been amended multiple times. The most recent amendments occurred in the 2009 Session when it was amended to prohibit licensed payday lenders from extending unsecured credit under open-end credit plans. The 2009 amendments to § 6.1-330.78, by allowing payday lenders to make loans under this section if the loans are secured by a lien on a title to a motor vehicle, constitute the first occasion that the Virginia Code has recognized the practice of title lending.

The provisions of other states' laws regarding title lending vary widely.

- Approximately 17 states have enacted legislation specifically regulating title loans.
- Of these 17 states, 11 states (Arizona, Idaho, Illinois, Mississippi, Missouri, Montana, Nevada, South Carolina, South Dakota, Tennessee, and Utah) have enacted laws that either do not cap interest rates or cap interest rates at levels exceeding 10% per month.
- The other six states with laws specifically addressing title loans (Florida, Iowa, Kentucky, Minnesota, New Hampshire, and Oregon) cap interest at annual rates of 36% or less.
- Of the other states, high-interest title lending is permitted in two (Alabama and Georgia) under general pawn loan laws and is permitted in seven (California, Delaware, Kansas, New Mexico, Texas, Wisconsin, and Virginia) under other exceptions to general interest rate caps.
- Finally, 24 states and the District of Columbia either do not allow title lending or allow lenders to charge interest at rates that do not exceed the rates that generally may be charged on regulated consumer loans.

Dewey B. Morris, Thompson McMullan

Mr. Morris provided the perspective of four title lending firms. He advised that his clients supported the approach, previously adopted with respect to mortgage lenders and brokers, payday lenders, and other nondepository financial institutions, of requiring firms to be licensed by the State Corporation Commission and to comply with consumer protection requirements. Consumer protections that Mr. Morris' clients currently provide include limiting borrowers to having one title loan at a time, complying with truth-in-lending requirements, prohibiting personal recourse against borrowers for deficiencies, limiting on the amount of loans, and prohibiting the assessment of finance charges if a loan is repaid during a 25-day billing period. He noted that a number of the consumer protections are included in the Tennessee Title Pledge Act. He added that his clients would not object to the enactment of similar provisions in Virginia.

While Mr. Morris acknowledged that the industry should be regulated, he expressed concerns that prohibiting title lending will make it more difficult for Virginians to obtain small loans. If the only asset a borrower has is his motor vehicle, he may be better off using it as collateral for a title loan and using his car to travel to his job than selling his car to pay other debts.

Jay Speer, Virginia Poverty Law Center

Mr. Speer presented the perspective of consumer protection groups. He urged members to reject the title lending industry's call for licensure and regulation, arguing that it would result in a proliferation of new title lenders operating under the respectability provided by state licensure. He observed that title loans, per se, are being made by credit unions under terms that he does not characterize as predatory. Title loans were described as a device that attempts to keep borrowers in a cycle of debt.

Mr. Speer expressed great concern over the use of a motor vehicle title as security for a loan. Even when title loans are cast as nonrecourse debt, borrowers face a real threat of the vehicle's repossession because they do not have the resources to purchase another car if the collateral is sold. Mr. Speer added that some borrowers have chosen to lose their home to eviction or foreclosure rather than default on a title loan, because they would lose their means of commuting to work if their car was repossessed.

*Approximately 17 states have enacted legislation specifically regulating title loans.*

Mr. Speer urged the members to place title lending under the Consumer Finance Act. Reasons for this solution include the 36% annual interest rate cap on loans of less than \$2,500, the requirement that prospective licensees be investigated and post a bond, and the fact that loans under the Consumer Finance Act are required to be term loans rather than open-end revolving loans. Moreover, he expressed concern that payday lenders are shifting to making title loans in order to avoid many of the consumer protections addressing payday loans that were enacted in the 2008 Session.

E. Joseph Face, Jr., Commissioner of Financial Institutions

Mr. Face stated that while the State Corporation Commission is not authorized to regulate title lending (except when done by licensed payday lenders), the agency does receive complaints. Since 2004, the SCC has received 94 written complaints and 169 telephone inquiries. The four issues most often identified are:

- High interest rates,
- Owing a larger loan balance than anticipated,
- Repossessions of motor vehicles, and
- The inability of borrowers to repay a loan.

Mr. Face offered several suggestions for consideration in the event that the General Assembly sought to regulate the title lending industry. First, he cited Virginia's Mortgage Lender and Broker Act as containing tools that may serve as a model for regulatory legislation. Second, he observed that some states address motor vehicle repossession procedures. In addition, he noted that some states limit the amount that may be borrowed and address lending to military personnel.

David B. Irvin, Sr. Asst. Attorney General

Mr. Irvin outlined litigation instituted against title lenders who failed to comply with Virginia law. In the mid-1990s, the Attorney General's office obtained a summary judgment against a lender making loans that purportedly were exempt from Virginia's usury laws under the exemptions for loans by pawnbrokers. The court agreed with the Attorney General's position that a pawn loan requires the lender to retain physical possession of the pawned personal property and that pledging a certificate of title was legally insufficient.

In a second series of enforcement actions, the Attorney General's office settled disputes with title lenders regarding whether the loan product being

offered was open-end credit as required by § 6.1-330.78. In order to qualify as open-end credit, there must be a reasonable contemplation of repeated transactions, an assessment of finance charges on the outstanding balance, and the ability to borrow funds made available as the principal balance is reduced. Title lenders that charged borrowers a cash advance fee and one days' interest at the time the loan was made were charged with violating the requirement of § 6.1-330.78 that borrowers not be charged interest if the loan is repaid within a 25-day billing cycle. Under the terms of the settlements, the lenders were required, among other terms, to refund certain interest to borrowers and to agree not to collect on deficiency judgments.

The third series of enforcement actions, instituted in 2007, involved five title lenders who were alleged either to have violated the requirements regarding the 25-day interest-free grace period or to have structured their loans as installment loans rather than as an open-end loan product. Settlements were reached with the offending lenders. Mr. Irvin also described actions brought earlier this year by the District of Columbia against two Virginia-based title lenders for advertising title loans within that jurisdiction.

## Next Meeting

The subcommittees intend to hold their next joint meeting in September. The meeting will feature a presentation by a representative of the Tennessee Department of Financial Institutions. In addition, the State Corporation Commission and Office of the Attorney General were asked to report on Tennessee's Title Pledge Act.

*Joint Meeting of the Special  
Subcommittees of the House and  
Senate Committees on Commerce and  
Labor Studying Title Lending*  
Delegate Terry Kilgore, Chairman

Frank Munyan, DLS Staff  
(804) 786-3591

*Since 2004, the SCC has received 94 written complaints and 169 telephone inquiries regarding title lending.*

# Virginia Sesquicentennial of the American Civil War Commission

6/16/09

## Staff Reports

2010 Signature Conference: "*Race, Slavery and the Civil War: The Tough Stuff of American History*"

Staff announced that Dr. James O. Horton has accepted the offer to chair the 2010 Signature Conference, and presented an initial proposal. A tentative title for the program is "*Race, Slavery and the Civil War: The Tough Stuff of American History*," and the format would be morning and afternoon panel discussions. Dr. Horton is lining up top academic and public historians to participate, and a full proposal will be forthcoming. However, there is an incompatibility between Dr. Horton's availability and Hampton University's open dates for the conference. Due to an ongoing commitment to teach at the University of Hawaii each spring semester, Dr. Horton is available only in the summer or fall months. Representatives of Hampton University have, however, affirmed on several occasions that the university can only host the conference during the week of April 14, and suggested that another chairman be approached.

Dr. Levensgood stated that Dr. Horton is well-respected, well-known, and will continue to uphold the high standard set by Dr. Ayers at the Commission's first Signature Conference. He further stated that Dr. Horton is the perfect person to chair the conference and that the Executive Committee should do anything it can to secure his participation.

Speaker Howell recapped the discussion about the conflict by stating that (i) because Hampton University cannot host the conference in the summer or fall of 2010; (ii) because Dr. Horton is available only in the summer or fall; and (iii) because of Dr. Horton's outstanding reputation and the fact that he has been highly recommended by members of the Commission and Advisory Council, the Commission should consider pursuing a different venue for the 2010 Signature Conference.

Delegate A. T. Howell made a motion, seconded by Senator Colgan, that the Commission approach Norfolk State University as the new host of the 2010 Signature Conference. The motion passed unanimously.

Postconference Summary - *America on the Eve of the Civil War*

Staff reviewed a postconference summary, as well as a highly complimentary article that Dr. David Blight

wrote for the June 1 edition of *The Chronicle of Higher Education*, "*The Civil War Sesquicentennial : the Goal Should be an Enlightening Commemoration.*" Staff went over a table outlining the overwhelmingly positive comments and feedback the Commission has received regarding the conference. A two-volume DVD set of conference proceedings will be available for purchase within a month.

Schedule for Joint Meeting at Harpers Ferry, West Virginia, June 25, 2009

Staff reviewed the schedule for the joint meeting with the West Virginia Commission to be held in Harpers Ferry, on June 25, 2009. The morning tours will include a signing ceremony related to a land transfer between the Civil War Preservation Trust and the Harpers Ferry National Historical Park, as well as a demonstration of a student service project sponsored by The Journey Through Hallowed Ground.

Manassas 2011 Plans

The local sesquicentennial committees of Prince William-Manassas-Manassas Park have joined with a group of community leaders to develop plans for a commemorative event in July 2011, the 150<sup>th</sup> anniversary of the First Battle of Manassas. Senator Colgan, Delegate Lingamfelter, and staff will meet with the group and staff will keep the Commission informed of the plans.

Consideration of Applications to Affix Logo

In accordance with the procedure established by the Executive Committee, staff presented a list of applications to affix the Commission's logo that have been pre-approved by staff. This list included (i) Chesterfield County Civil War Sesquicentennial Committee (brochures); (ii) Greater Fredericksburg Tourism Partnership (website); (iii) Winchester-Frederick County Sesquicentennial Committee (invitation to event and print materials); and (iv) Fairfax County Park Authority (newsletter). Senator Colgan moved that the pre-approved applications be given final approval by the Executive Committee. The motion was seconded by Delegate Howell and passed unanimously.

Senator Colgan moved that the following pending applications to affix logo be approved by the committee: (i) History Museum of Western Virginia (website and print materials); and (ii) Museum of the Confederacy (print materials and advertisements). The motion was seconded by Delegate Howell and passed unanimously.



## Other Business

Pam Seay, VP of Advancement, Virginia Historical Society

Ms. Seay asked if the Commission would like for her to make preliminary contact with the Norfolk Foundation regarding possible funding of the 2010 conference given that the host venue will likely be in that area. The Executive Committee agreed and thanked Ms. Seay for her assistance.

## June 25, 2009

The Commission held a joint meeting with its newly formed West Virginia counterpart on June 25 to mark the beginning of the national commemoration of the 150<sup>th</sup> anniversary of the Civil War. The daylong program was held at Harpers Ferry National Historical Park as part of a series of events planned for the 150<sup>th</sup> anniversary of John Brown's Raid.

## Morning Program

### Tours

Staff of Harpers Ferry National Historical Park, led by Dennis Frye, Chief of Interpretation, Education, Cultural Resources and Partnerships, took members and guests on bus tours of John Brown's Fort. It was in this building, formerly known as the Armory, that John Brown and several of his followers barricaded themselves during the final hours of their ill-fated raid of October 16, 17, and 18, 1859. In 1909, on the occasion of the 50th Anniversary of John Brown's Raid, the building was purchased and moved to the Storer College campus on Camp Hill in Harpers Ferry. Acquired by the National Park Service in 1960, the building was moved back to the Lower Town in 1968. Because the fort's original site was covered with a railroad embankment in 1894, the building now sits about 150 feet east of its original location. Plans are underway to return the fort to its historically accurate location.

### Civil War Trails

Following the discussion of John Brown's Fort, members and guests were taken to Boliver Heights, where the first Civil War Trails sign in Harpers Ferry National Historical Park was unveiled. Civil War Trails is a six-state program, established in Virginia in 1994 that provides public access and interpretation to sites of historical significance, many of which would remain uninterpreted otherwise. Currently, 945 Civil War Trails sites are prominently marked

with highway directional signage. Tourists can follow the trail throughout Virginia, Maryland, West Virginia, Pennsylvania, Tennessee, and North Carolina.

### Land Transfer Ceremony

The group then traveled to historic School House Ridge, where the national Civil War Preservation Trust (CWPT) announced the donation of 176 acres of core battlefield land to Harpers Ferry National Historical Park. The property was the scene of intense fighting on September 15, 1862, during the three-day battle and siege of Harpers Ferry. CWPT purchased the land in 2002 as part of a larger parcel totaling 232 acres. Private donations of \$411,000 were matched with federal and state grants to complete the \$1.7 million total transaction. After acquiring the property, CWPT sold 56 acres to the National Park Service for \$420,000 – the appraised fair market value for the land. CWPT maintained the remaining acreage, looking forward to a time when it could make a gift of the battlefield land to the federal government, which it did to mark the beginning of the Civil War sesquicentennial. Jim Lighthizer, CWPT President, noted that the donation is emblematic of the organization's mission to see that preserved battlefield land becomes outdoor classrooms, available for the benefit of the American people.

### Student Service Learning Project

As the last event of the morning program, Harpers Ferry Middle School hosted the group for the premiere of a program entitled "Of the Student, By the Student, For the Student," created, developed, and sponsored by The Journey Through Hallowed Ground Partnership at the request of the Advisory Council on Historic Preservation (ACHP), in conjunction with Harpers Ferry National Historical Park and Harpers Ferry Middle School. The program consists of six innovative vodcasts about John Brown written, filmed, and produced by students at the middle school, which are available for viewing at [www.hallowedground.org](http://www.hallowedground.org). The student service-learning project serves as a model for other organizations to engage young people in history.

## Afternoon program

The group convened at the Mather Training Center, on the historic site of Storer College, for a joint meeting of the Virginia-West Virginia Civil War Sesquicentennial Commissions.

Representatives of several groups presented overviews of plans in development for the sesquicentennial, and two multimedia projects were premiered. Dennis Frye, Chairman of the John Brown Quad-State Committee, discussed the full slate of activities planned leading up to,

during, and after the October anniversary of John Brown's Raid. Events will include an academic symposium, special tours, dramatic and musical interpretations, lectures, and exhibitions.

Cate Magennis Wyatt, President of the Journey Through Hallowed Ground (JTHG) Partnership, described the mission and goals of the organization, and outlined plans for the sesquicentennial. The JTHG is a national heritage area that generally follows the Old Carolina Road (Rt. 15/231) from Monticello through Maryland to Gettysburg. Goals include:

- Building a strong network of local, regional and national partners to develop a common vision for the conservation and enhancement of the scenic, historic, recreational, cultural, and natural characteristics of the region.
- Developing an education outreach program to reach every student and teacher within the region as well as across the nation.
- Creating a heritage tourism program that will provide economic development opportunities, through regional branding and cooperative marketing, in communities throughout the corridor.
- Working in partnership with local, state and national officials to create a National Scenic Byway and a National Heritage Area to sustain and strengthen the economy, heritage and quality of life in this region.

Staff of the American Civil War Commission outlined the Commission's goals of diversity, inclusiveness, accessibility, and education. Virginia, which was the first state to create a Civil War sesquicentennial planning group, is recognized as a national leader in the commemoration and is serving as a model for other states as they begin developing similar programs. The Commission is committed to a balanced portrayal of the Civil War that includes Union, Confederate and African-American perspectives; presents stories from battlefield and home front; and examines the social and cultural legacies of the conflict, as well as the military and political. To that end, the Commission:

- Has funded a major museum exhibition, "*An American Turning Point: The Civil War in Virginia*," which will open at the Virginia Historical Society in February 2011 and travel thereafter in various formats;
- Is conducting an annual Signature Conference series with the nation's finest historians discussing topics that address the coming of the war, the impact of race and slavery, military strategies, leadership and generalship, the effects on the home front, Civil War in a global context, and memory of the Civil War in American society; and
- Is using technology to engage the public and make travel planning easy, through vodcasts, interactive maps, kiosks, and more.

## Vodcast

A vodcast written by John Hennessy, Chief Historian of the Fredericksburg/Spotsylvania National Military Park, which portrays the pivotal role of Virginia in the Civil War, was premiered. The vodcast series will highlight major Civil War battles in Virginia and be available through the Commission's website.

## DVD

Dr. James I. Robertson, Jr., Alumni Distinguished Professor, Virginia Tech and member of the Virginia Civil War Sesquicentennial Commission, debuted excerpts from a DVD that is one of the Commission's signature projects, "*Virginia in the Civil War: A Sesquicentennial Remembrance*." The DVD was developed by Dr. Robertson and produced by Blue Ridge Public Television specifically for teachers to use in the classroom. It is divided into eight 20-minute segments that focus on the background of the war, military campaigns, the African-American experience, leading Virginia personalities, the common soldiers, home front activities (including medical care), and legacies of the war for all Americans. The DVD will be distributed free of charge to all public schools and major library systems in Virginia beginning in Fall 2009.

## Panel Discussion

As the last event in the program, Dr. Peter Carmichael, Eberly Professor of Civil War Studies at West Virginia University, moderated a panel of distinguished historians who discussed "*Opportunities of the Civil War Sesquicentennial: Understanding Our Past, Embracing Our Future*." Panelists were Dr. Charles F. Bryan, Jr., President Emeritus, Virginia Historical Society; Jim Lighthizer, President, Civil War Preservation Trust; and Dr. Robert K. Sutton, Chief Historian, National Park Service. Each expert discussed the unparalleled opportunity that the sesquicentennial commemoration presents in terms of broadening knowledge of the Civil War, engaging new audiences, and land preservation. Several panelists contrasted the differences between the centennial and the sesquicentennial, citing how advances in historiography have evolved during the intervening 50 years and will yield a different commemoration. One key example is that slavery was rarely acknowledged as a cause of the Civil War during the centennial, while it will be a central focus of discussion during the sesquicentennial. The panel discussion can be viewed at the Commission's website: [www.VirginiaCivilWar.org](http://www.VirginiaCivilWar.org).

## 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.

## VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

### SPEAKER WILLIAM J. HOWELL, CHAIR

Cheryl Jackson and Brenda Edwards  
DLS Staff

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

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## Virginia Code Commission

6/18/09

### Presentations

#### CODE OF 1819 DISTRIBUTION

The Code of Virginia contract between LexisNexis and the Code Commission provided for the printing of 200 copies of the Code of 1819. In March, copies were distributed to General Assembly members, Code Commission members, and the Division of Legislative Services. After a brief discussion, the Code Commission approved distribution of the remaining 68 copies to the Attorney General Library, Clerk of the House, Clerk of the Senate, Code Commission members for discretionary distribution (two per member), Code Commission office, Governor's Office, Library of Virginia, Stephen Halbrook, Supreme Court Library, William Thro, Virginia four-year public college and university libraries, the Virginia Historical Society, and Virginia Law Schools.

#### TITLE 64.1 REVISION, WILLS & DECEDENTS' ESTATES PROPOSED WORK PLAN

Mr. Cotter presented the proposed work plan for the Title 64.1 recodification. Issues prompting the revision include:

- Title 64.1 has not been recodified since 1968 (Acts Ch. 656). Many sections have not been amended since that time and contain obsolete language and style.
- When recodified in 1968, the title had seven chapters. Since then, four chapters have been added to the title, one of which has been repealed. The title currently has 10 chapters, of which some would more properly fit as articles within other chapters.

- The title currently has one chapter (Ch. 2: Curtesy, Dower and Jointure) that has essentially been repealed, leaving only a statute saying that these estates no longer exist unless the right to these estates was vested prior to January 1, 1991.
- Placement of new sections and chapters into the existing framework is problematic and results in convoluted section numbering. Chapters added to the title since 1968 have been added the end of the title, which has compromised any previous organizational scheme.
- Other provisions relating to wills and decedents' estates are located throughout the Code of Virginia, creating a certain degree of difficulty for users of the Code. Many of these provisions could be considered for relocating to proposed Title 64.2, including Title 26, Fiduciaries; Title 31, Guardians; and certain provisions of Title 55, Property and Conveyances.

Mr. Cotter suggested that the final report would be presented at the final meeting in 2010, with legislation introduced at the 2011 Session of the General Assembly.

#### REQUEST TO RECODIFY TITLE 55, PROPERTY AND CONVEYANCES

Grice McMullan, the chair of the Real Estate Section of the Virginia Bar Association (VBA), advised the Commission that the Real Estate Section of the VBA has established a corrective legislation committee for the purpose of identifying provisions in Title 55 (Property and Conveyances) that may be ambiguous, obsolete, or superseded by court rulings. Mr. McMullan cited some examples and offered the VBA's assistance if the Commission should decide to undertake the recodification of Title 55.

Mr. Miller pointed out that Title 55 has never been through the recodification process. The Commission's work plan has been established for this year; however, the consensus was that a revision should be considered. The Commission approved a motion to utilize the expertise of the VBA and place Title 55 on the Code Commission's work plan next year.

#### 2009 CODE OF VIRGINIA SUPPLEMENTS

Brian Kennedy reported that the incorporation of the 2009 legislation into replacement volumes and Code of Virginia supplements is complete. The supplements are in the process of being mailed out. The Code of Virginia database on the General Assembly's website should be available by July 1.

#### REVISION OF TITLE 6.1, BANKING AND FINANCE

Mr. Munyan reported on the revision of Title 6.1, Banking and Finance. The Code Commission discussed Chapters 2 (Banking Act), 13 (Institution Holding

Companies), and 16.1 (Mortgage Loan Originators) of Title 6.1. For a complete description of the discussion on the revision of Title 6.1, visit the Code Commission website.

## Next Meeting

The Code Commission met on July 30, 2009, and the next meeting is scheduled for August 27, 2009, at the General Assembly Building.

### DELEGATE R. STEVEN LANDES, CHAIR

Jane Chaffin, DLS Staff

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codehome.htm](http://codecommission.dls.virginia.gov/codehome.htm)

## Commission on Energy and Environment

6/24/09

The Commission on Energy and Environment met on June 24, 2009, in Richmond. Delegate Poindexter opening the meeting on behalf of Senator Whipple, chair of the Commission.

## Presentations

### Staff Reports

Staff presented information on energy-related legislation considered during the 2009 Session of the General Assembly. SB 1212, Clean Energy Financing, was discussed, including how such financing would be accomplished and whether the statute would apply to all localities. Steve Walz, Director of the Department of Mines, Minerals and Energy, explained that the financing would be secured by a lien on the property and could be repaid in conjunction with other local government invoicing. The ordinance by the locality would address the priority of payments. Private lenders will have the opportunity to participate in the program. Staff stated that the bill applies to all cities, counties, and towns. Members of the Commission also asked about SB 1350, Marine Resources Commission; authority to lease subaqueous lands for generating electrical energy, and the jurisdiction of the lands contemplated by the legislation. The bill refers to state

territorial waters, which extend three miles from shore into the Atlantic Ocean.

Of those energy-related bills from the 2009 Session, SB 1452, was directed to the Commission for review. Staff provided a more detailed assessment of this legislation and its background. The program is based upon a successful program in Vermont and would assess a \$1 fee. A member noted that the program was based upon Efficiency Vermont and would take the efficiency programs approved by the General Assembly and send those to a third-party program administrator. Delegate Poindexter asked how efficiency programs would be selected and audited. The member replied that any program would be conducted with transparency and accountability.

Al Christopher, Dir., Division of Energy, Dept. of Mines, Minerals and Energy (DMME)

Mr. Christopher reviewed the framework of the American Recovery and Reinvestment Act (ARRA), procedures for project proposals and grants, and reporting requirements mandated by ARRA. In addition to the numerous state and federal guidelines to which DMME must adhere when awarding grants, projects will be selected in part for their conformance with existing policy and the ability of such projects to preserve or create jobs.

Mr. Christopher relayed that the Commonwealth received a total of \$76.5 million—\$70 million from the State Energy Program and \$6.5 million from the Energy Efficiency and Conservation Block Grants (EECBG)—to broadly promote the conservation of energy, reduce the rate of energy growth, expand existing energy efficiency, and support renewable energy. Programs include:

- Rebates for the purchase of renewable energy systems such as wind and solar power for households and businesses;
- Installations of such systems in state and local government facilities and public schools;
- Economic development incentives to support biomass, waste-to-energy, renewable energy and energy efficiency products, services, and projects; and
- Grants and rebates for energy efficiency improvements in homes and commercial properties.

The EECBG program also provides grants directly to localities to stimulate economic growth and reduce reliance on fossil fuels through conservation and efficiency. In Virginia, \$44.6 million will be provided directly to 28 larger localities and \$9.7 million will be provided competitively to smaller localities.

A question about the selection and eligibility of certain localities and who the contact person and liaison in state government for localities was raised. Al Christopher advised that he is appropriate person to contact.



Shea Hollifield, Deputy Director, Virginia Dept. of Housing and Community Development

Ms. Hollifield provided a review of the Weatherization Assistance Program, which receives funds from the U.S. Department of Energy's Weatherization Assistance Program and the U.S. Department of Health and Human Services Low Income Home Energy Assistance Program (LIHEAP). The program has received \$94.1 million in additional funding from ARRA. Currently weatherization services are provided through regional nonprofit organizations and allocated based on the federal weatherization formula that weighs income, number of heating and cooling days, and residential energy expenditures by low-income households. Eligibility is determined through an intake process that measures income and feasible energy savings. Priority is given to the elderly, disabled, and households with children. The weatherization process includes an energy audit, prioritized work specifications (which may be accomplished directly through providers or subcontractors), and a postproject assessment to document the energy savings accomplished. As for the ARRA funding, DHCD has entered into initial contracts for 40% of the moneys, accessed ramp-up funds for additional capacity to process the expanded program, and established training initiatives with the Virginia Community College System and the New River Center for Energy Research and Training. Ms. Hollifield stated that the challenge faced by DHCD in the implementation of the program is that of the limited time for implementation—March 31, 2012. Members had a variety of questions regarding the moneys, which can be viewed at the Commission's website.

Emory Rodgers, VA Dept. of Housing & Community Development

Mr. Rodgers provided the Commission with a review of the regulatory procedures for changes to the building code. The 2009 Virginia Uniform Statewide Building Code (USBC) will reference both the 2009 International Energy Conservation Code and the 2009 International Residential Code. The development of the regulation proceeds in accordance with the Administrative Process Act and includes two public hearings before the approval by the Board of Housing and Community Development on September 30, 2010. The progression of energy efficiency gains is occurring incrementally with each three-year amendment to the code. The 2006 USBC provided an approximate increase in energy efficiency of 11%, the 2009 USBC will provide an approximate increase in energy efficiency of 15%, and the 2012 USBC will provide an approximate increase in energy efficiency of 15%. Mr. Rodgers stressed

that, while the process is complicated because of its interrelation to other numerous and specific uniform codes, it is also open and transparent. Finally, Mr. Rodgers reviewed the changes to the USBC for 2009.

Kenneth Newbold and Jeffrey Tang, James Madison University

Mr. Newbold and Mr. Tang spoke to the Commission about the 25 x '25 Initiative to acquire 25% of energy from renewable resources such as wind, solar, and biomass by the year 2025. Although over 850 entities have endorsed the 25 x '25 Initiative, the General Assembly has not done so. A number of entities have joined to form the state alliance to create a demonstration area in the Shenandoah Valley. The demonstration area in the Shenandoah Valley is only the second project endorsed by the national 25 x '25 organization. Clarification was asked of JMU's assertion that it, as an institution, will meet the goal of 25% renewable energy by 2015 – 10 years early. Mr. Tang responded that the numbers shift with the measurements and that how one measures proportion of renewable energy used is not clear. It was also asked how, from a policy standpoint, that "25%" is the right choice if it isn't known how to measure renewable energy as a portion of all energy. Mr. Tang asserted that 25% is a reachable goal. Mr. Newbold added that the numbers can be viewed from a consumption or production standpoint. Delegate Poindexter suggested that the presenters review an article published by the University of Massachusetts, which can be found at [http://www.peri.umass.edu/fileadmin/pdf/other\\_publication\\_types/Green\\_Jobs\\_PERI.pdf](http://www.peri.umass.edu/fileadmin/pdf/other_publication_types/Green_Jobs_PERI.pdf). Delegate Poindexter further warned the speakers of the negative impacts that can come from a rushed or uninformed adoption of renewable standards, such as biofuels that can damage vehicle operations. Senator Whipple asked about whether the presenters had an opinion of the Waxman-Markey legislation. Mr. Tang responded that the legislation was still evolving and that the definition of renewable energy should not be crafted to cut out entire sectors such as agriculture and forestry.

John Oyhenart, CLEAResult Consulting, Inc.

Mr. Oyhenart provided the Commission with some details on the value of energy efficiency. Mr. Oyhenart suggested that there are four approaches to energy efficiency programs:

- Direct-install, which includes energy-saving and load control technologies installed by a utility;
- Educational such as ad campaigns, informational brochures, and presentations;
- Incentives-only measured as dollars per unit installed and/or savings achieved; and

- Market moving, which includes education, incentives, and pro-active steps to build infrastructure and help accelerate and sustain market adoption of energy efficiency.

There are also several models that can be adopted to administer an energy efficiency program. It could be done solely by the utility, the government, or a third-party and each model has its pros and cons. Interest in having a subcommittee looking at efficiency issues so that this topic could continue to be studied was expressed.

## Next Meeting

Senator Whipple discussed funding and work plans with the Commission. The June 24 meeting was covered by special exception of the Joint Rules Committee under the current fiscal year. For the next year, the Departments of Mines, Minerals and Energy and Environmental Quality have offered to assist with expenses, although members would not receive compensation. The next meeting will be held on Tuesday, August 18, 2009, in Richmond, Virginia.

### SENATOR MARY MARGARET WHIPPLE, CHAIR

Ellen Porter, DLS Staff

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## State Water Commission

7/9/09

The State Water Commission met on July 9, 2009, in Richmond, Virginia, with Chairman Harvey Morgan presiding. Chairman Morgan mentioned his hope that the review of important issues related to water supply would lead to meaningful legislation. Virginia has been a water-rich state and the preservation of the aquifers is critical for the state's future.

## Presentations

### Staff Report

Staff discussed the major water supply laws: the Ground Water Management Act, the Virginia Water Protection Permit Program (VWP), the Surface Water Withdrawal Permit, and § 62.1-44.38:1 of the Code of Virginia, which required the State Water Control Board to establish a comprehensive water supply planning process with stakeholders.

### David Paylor, Dir., Dept. of Environmental Quality

David Paylor provided the Commission with an overview of the water supply planning efforts initiated by the drought that took place throughout the Commonwealth from 1999 through 2002. The drought was very severe and numerous systems were close to failure—public health was in danger and public water supplies were in complete crisis. In 2002 and 2003, executive and legislative responses led to the establishment of a Drought Response Technical Advisory Committee (TAC), local and regional water supply planning regulations, and changes to the VWP. The TAC included over 30 members from varied industries and met over a period of 18 months. Mr. Paylor stressed to the Commission that, in his opinion, the TAC represents one of the most successful efforts of stakeholder involvement with which he has participated. The TAC issued a consensus report that eventually resulted in regulatory changes to water supply planning and water withdrawal permitting. The water supply planning strongly encourages localities to work together. Mr. Paylor hopes that the plan, when completed, will be able to identify areas of conflict among localities. DEQ hopes to facilitate resolution of conflicts, but will not have regulatory oversight. An extensive question and answer period followed, which can be found on the Commission's website.

### Thomas Botkins, Virginia Manufacturer's Association (VMA)

Thomas Botkins, also a member of the TAC, spoke to the Commission on a stakeholder's view of the TAC process. The TAC was professionally facilitated and included participants from conservation interests, agriculture, trade organizations, power generation, regional interests, local and regional utility managers, the Army Corps of Engineers, U.S.G.S., and academia. VMA began the process with concerns as to whether the water supply planning process would threaten ongoing water usage needs and supported the final regulation. Concerns remain that final water supply plans will overextend available supply. VMA hopes that all will have a reasonable and sustainable water supply and that any changes are publicly vetted.

### Scott Kudlas, Dir., Office of Surface & Groundwater Supply Planning, Dept. of Environmental Quality

Scott Kudlas spoke to the Commission on the specifics of program implementation and emerging needs. Also, in response to earlier discussion, Mr. Kudlas noted that the Commonwealth has entered into compacts for interstate water use; is a member of bi-state

commissions for shared water supplies; and adopted a cooperative and consensus-building process for water supply planning.

Mr. Kudlas emphasized that the State Water Resources Plan will not resolve conflicts among users or determine who gets a permit for withdrawal. Furthermore, localities do not need to include project alternatives in the approved plan in order to be permitted. Mr. Kudlas noted that the statewide planning effort is a shift from strictly local planning to regional interdependence. It is a data-intensive process that requires in excess of \$1 million for adequate completion. Those funds have been cut to less than \$400,000. The local plans have a number of strengths, but weaknesses remain. Localities may not be comfortable with their new role and may not have the capacity to collect the necessary data. Furthermore, as the de facto vendors of drinking water, localities may equate "water conservation" with "lost revenue."

Mr. Kudlas further pointed out a number of policy limitations in the Commonwealth.

- First, unlike other neighboring states, Virginia has not had a stated policy to promote and facilitate the development of basic data to characterize water resources to determine surface and groundwater resource availability statewide.
- Second, water supply is a state and local responsibility—there are no federal mandates for this effort and funding is solely state general fund money.
- Third, state budget cuts have a greater impact on water resource programs than programs with federal funding or mandates.
- Finally, there is no clear legislative policy to manage the relationships among the several agencies with jurisdiction over resource data.

Clarification was asked for on the conflicts of data management among agencies. Mr. Kudlas noted that well construction data in particular has been difficult to obtain. The data is maintained on paper in local health departments and he hopes that the data could be automated. The Department of Health has not had the resources to compile, automate, or transfer the documents to DEQ. In response to a question of whether the inadequate data collection has resulted from a lack of resources or policy, Mr. Kudlas responded that there is both a clear need of funding and statutory responsibility. For example, DEQ has entered all of the data obtained prior to 1991, which covered 38,000 wells. There are at least two million wells in the Commonwealth and DEQ has not been able to access subsequent records from the Department of Health. The information is important to establish the extent of the aquifer and identify subsidence risk.

Mr. Kudlas stated the importance of the question "how much groundwater do we have?" It is a question that cannot be clearly answered anywhere in Virginia. Groundwater monitoring capability peaked in the 1980s and has been limited ever since by dwindling investment and out-of-date modeling tools. The data is critical to avoid subsidence. (Subsidence is the nonreversible collapse of an aquifer from excessive water extraction.) Future issues for ground water planning might include the unregulated withdrawals from domestic use; the conflicts between states; and the need to develop dynamic regional flow models.

Mr. Kudlas also stated the importance of answering the question "how much surface water do we have?" The answer is better known than with groundwater, but surface water monitoring capability has also been in decline since the 1980s. There is a limited understanding of agricultural uses and a lack of certainty on the amount of water taken by grandfathered withdrawals. Agricultural use can be difficult to measure because farmers are generally not forthcoming. While it is unlikely that there will be a conflict with agricultural use, more information is needed to ensure adequate minimum flows in most years. Furthermore, there is a great lack of certainty in the quantity of withdrawals from grandfathered user. DEQ has asked the grandfathered users (all users prior to 1989) to report on their maximum capacity, but response has been disappointing. Future issues for surface water planning might include: the need to better understand agricultural use; the balancing of water supply among uses; and the need to improve water withdrawal reporting to include return flows sales, and transfers and real measurements. Mr. Kudlas added that, for all the areas where data is incomplete, resource managers are forced to be overcautious to preserve the resource. An extensive question and answer period followed, which can be found on the Commission's website.

Andrea Wortzel, Hunton & Williams

Ms. Wortzel provided the Commission with a review of concerns held by stakeholders. First, the priority of uses found in statute and at common law is not clear and may be in conflict. Second, the impacts of water supply planning on permitting should be identified. Third, water reuse and the distinction between consumptive and nonconsumptive uses should be taken into greater consideration. Finally, the planning process itself should be reviewed to ensure seamless implementation and coordination among partners. Ms. Wortzel suggested that it might be helpful to have a joint meeting between the Water Commission and the State Water Control Board and expressed her hope

that the Commission would utilize stakeholder committees to review potential actions.

### Next Meeting

The Water Commission will meet again at least once during the current interim. The next meeting date will be posted on the Commission's website and the General Assembly calendar as soon as information is available

### DELEGATE HARVEY MORGAN, CHAIR

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## Meeting Calendar for August – September '09

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Small Business Commission	10:00 a.m., Monday, August 3, 2009 General Assembly Building, Senate Room A	David Cotter
Study on Public-Private Partnerships Related to Seaports	12:00 p.m., Wednesday, August 12, 2009 Board of Visitors Rm., Webb Cntr., Old Dominion University	Caroline Stalker
Study on Working with Virginia's Private Nonprofit Colleges	1:00 p.m., Monday, August 17, 2009 General Assembly Building, House Room C	Jessica Eades Nikki Cheuk
Virginia Commission on Energy and Environment	10:00 a.m., Tuesday, August 18, 2009 General Assembly Building, Senate Room A	Ellen Porter Patrick Cushing
Virginia Code Commission	10:00 a.m., Thursday, August 27, 2009 General Assembly Bldg., 6th Flr. Speakers Conference Room	Jane Chaffin
Virginia Housing Commission	See website for ongoing meeting information <a href="http://dls.virginia.gov/VHC.HTM">http://dls.virginia.gov/VHC.HTM</a>	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](mailto:epalen@dls.virginia.gov) or the Code Commission staff at (804) 786-3591 for further information.

### TITLE 3. ALCOHOLIC BEVERAGES

#### ALCOHOLIC BEVERAGE CONTROL BOARD

**3VAC5-20. Advertising** (amending 3VAC5-20-10 through 3VAC5-20-40, 3VAC5-20-60, 3VAC5-20-90, 3VAC5-20-100; repealing 3VAC5-20-50, 3VAC5-20-70, 3VAC5-20-80).

**3VAC5-30. Tied-House** (amending 3VAC5-30-10, 3VAC5-30-20, 3VAC5-30-30, 3VAC5-30-60; adding 3VAC5-30-80).

A public hearing will be held on August 24, 2009, at 10 a.m., Dept. of Alcoholic Beverage Control, Richmond, Virginia. Written public comment may be submitted until September 4, 2009.

*This action proposes several changes to the regulations governing the advertising of alcoholic beverages, as well as to the tied-house regulations, designed to maintain a reasonable separation between manufacturing and wholesaling interests and retailers of alcoholic beverages. Several outdated advertising regulations will be repealed. Others will be modified to conform to statutory changes or to modernize them. The two chapters will be reorganized, moving some provisions dealing with limitations on the provision of advertising materials by manufacturers or wholesalers to retailers from the advertising chapter to the chapter dealing with tied-house restrictions.*

For additional information, please contact Jeffrey L. Painter, Legislative and Regulatory Coordinator, Dept. of Alcoholic Beverage Control, Richmond, VA, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email [jeffrey.painter@abc.virginia.gov](mailto:jeffrey.painter@abc.virginia.gov).

### TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

#### STATE BOARD OF JUVENILE JUSTICE

**6VAC35-150. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts** (amending 6VAC35-150-10, 6VAC35-150-30, 6VAC35-150-40, 6VAC35-150-50, 6VAC35-150-60, 6VAC35-150-80, 6VAC35-150-90, 6VAC35-150-100, 6VAC35-150-110, 6VAC35-150-130, 6VAC35-150-140, 6VAC35-150-200 through 6VAC35-150-320, 6VAC35-150-335, 6VAC35-150-340, 6VAC35-150-350, 6VAC35-150-380 through 6VAC35-150-425, 6VAC35-150-430, 6VAC35-150-435, 6VAC35-150-450 through 6VAC35-150-510, 6VAC35-150-530 through 6VAC35-150-550, 6VAC35-150-620, 6VAC35-150-640, 6VAC35-150-670, 6VAC35-150-680,

6VAC35-150-690; adding 6VAC35-150-62, 6VAC35-150-64, 6VAC35-150-66, 6VAC35-150-336, 6VAC35-150-355, 6VAC35-150-365, 6VAC35-150-415, 6VAC35-150-615; repealing 6VAC35-150-20, 6VAC35-150-35, 6VAC35-150-55, 6VAC35-150-70, 6VAC35-150-150 through 6VAC35-150-165, 6VAC35-150-175, 6VAC35-150-180, 6VAC35-150-190, 6VAC35-150-330, 6VAC35-150-370, 6VAC35-150-427, 6VAC35-150-440, 6VAC35-150-560, 6VAC35-150-570, 6VAC35-150-590, 6VAC35-150-600, 6VAC35-150-610, 6VAC35-150-650, 6VAC35-150-660, 6VAC35-150-700 through 6VAC35-150-740).

Written public comment may be submitted until September 4, 2009.

*This regulation was last reviewed in 2002, and since then, a number of administrative changes have occurred. This regulation was reviewed in light of current practices and in consultation with representatives of state and locally operated court service units. The proposed changes will update regulatory provisions in light of best practices and with the goal of providing a user-friendly regulatory scheme for which the requirements for compliance are clearly delineated. The proposed changes (i) update the definitions section and terms used for clarity and consistency with other regulations promulgated by the board; (ii) remove unnecessary verbiage; (iii) amend the background check section in light of recent statutory changes; (iv) clarify requirements for volunteers and interns; (v) streamline requirements for all reports to the court; (vi) clarify when procedures should be required for handling nondepartment funds; (vii) incorporate appropriate cross references to statutes, regulations, and guidance documents amended, enacted, or promulgated since the last review; (viii) formalize the process for obtaining a waiver of regulatory provisions; and (ix) amend the duties of court service unit staff in light of legislative changes since 2002.*

For additional information, please contact Janet Van Cuyk, Regulatory Coordinator, Dept. of Juvenile Justice, Richmond, VA, telephone (804) 371-4097, FAX (804) 371-0773, or email [janet.vancuyk@djj.virginia.gov](mailto:janet.vancuyk@djj.virginia.gov).

**TITLE 9. ENVIRONMENT**  
**VIRGINIA WASTE MANAGEMENT BOARD**

REGISTRAR'S NOTICE: Due to the length, the following regulations filed by the Virginia Waste Management Board are not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The regulations are available for public inspection at the office of the Registrar of Regulations and at the Virginia Waste Management Board (see contact information below) and are accessible on the Virginia Register of Regulations website at <http://register.dls.virginia.gov/vol25/Welcome.htm>.

**9VAC20-80. Solid Waste Management Regulations (repealing 9VAC20-80-10 through 9VAC20-80-790).**

**9VAC20-81. Solid Waste Management Regulations (adding 9VAC20-81-10 through 9VAC20-81-760).**

**9VAC20-101. Vegetative Waste Management and Yard Waste Composting Regulations (repealing 9VAC20-101-10 through 9VAC20-101-210).**

A public hearing will be held on August 3, 2009, at 10 a.m., Dept. of Environmental Quality, Richmond, VA. Written public comments may be submitted until September 4, 2009.

*This proposed action recodifies the Virginia Solid Waste Management Regulations and incorporates the Vegetative Waste and Yard Waste Composting Regulations into the regulations. The proposed regulations (i) no longer necessitate a full permit application for changes made to the operations manual of a solid waste facility; (ii) remove the composting facility capacity limit for a full permit and allow a facility to obtain a permit by rule; (iii) reduce the number of permit modifications considered major; (iv) add new standards for centralized sludge treatment facilities; (v) remove the Phase I groundwater monitoring; (vi) change the adoption of alternate concentration limit from a variance procedure to an approval procedure; (vii) modify language to conform to existing statutes and add citations to federal regulations; (viii) add a preapproved alternate liner to eliminate the variance process for those alternate liners routinely approved; (ix) make composting permitting requirements less burdensome; and (x) format, reorganize, and edit the regulations to improve clarity and streamline the flow of language.*

For more information, contact Leslie D. Beckwith, Dept. of Environmental Quality, Richmond, VA, telephone (804) 698-4123, FAX (804) 698-4237, or email [ldbeckwith@deq.virginia.gov](mailto:ldbeckwith@deq.virginia.gov).

**STATE WATER CONTROL BOARD**

**9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9VAC25-630-10, 9VAC25-630-20, 9VAC25-630-30, 9VAC25-630-40, 9VAC25-630-50, 9VAC25-630-60; adding 9VAC25-630-70, 9VAC25-630-80).**

*The State Water Control Board announced public hearings and a public comment period on proposed amendments to 9 VAC 25-630 in the Virginia Register of Regulations in Volume 25, Issue 21, page 3867. There has been a change in the date and time of the public hearing in Onley, Virginia. The public hearing is now scheduled for 7:30 p.m., August 4, 2009, Nandua High School Auditorium, 26350 Lankford Highway, Onley, VA. An informational briefing will be held one hour prior to the public hearing.*

For additional information, contact Betsy Bowles, Dept. of Environmental Quality, Richmond, VA, telephone (804) 698-4059, FAX (804) 698-4116, or email [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov).

**TITLE 11. GAMING**  
**CHARITABLE GAMING BOARD**

**11VAC15-22. Charitable Gaming Rules and Regulations (amending 11VAC15-22-10, 11VAC15-22-40, 11VAC15-22-50, 11VAC15-22-80).**

Written public comments may be submitted until September 4, 2009.

*The proposed amendments (i) clarify and add definitions; (ii) specify that paid callers and managers may not play bingo at any session they have worked and may not purchase instant bingo, pull-tab, or seal card products from organizations they assist on the day they have worked or later from any deal they have helped sell; (iii) no longer allow organizations to substitute an annual financial report for a quarterly report; and (iv) cap cumulative late fees at \$750 for late report filing.*

For more information, contact Betty Bowman, Dir., Div. of Charitable Gaming, James Monroe Bldg, Richmond, VA, telephone (804) 786-3015, FAX (804) 786-1079, or email [betty.bowman@dca.virginia.gov](mailto:betty.bowman@dca.virginia.gov).

**11VAC15-31. Supplier Regulations (amending 11VAC15-31-10).**

Written public comments may be submitted until September 4, 2009.

*The amendments add the definition of "last sale game" and modify the definition of "pack."*

For more information, contact Betty Bowman, Dir., Div. of Charitable Gaming, James Monroe Bldg, Richmond, VA, telephone (804) 786-3015, FAX (804) 786-1079, or email [betty.bowman@dca.virginia.gov](mailto:betty.bowman@dca.virginia.gov).

**TITLE 12. HEALTH**

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-200; adding 12VAC30-80-35).**

Written public comments may be submitted until September 4, 2009.

*The amendments are intended to implement reimbursement changes for ambulatory surgery centers. This action will also implement reimbursement changes for outpatient rehabilitation facilities that are currently reimbursed on a cost basis.*

For more information, contact Brian McCormick, Regulatory Supervisor, Dept. of Medical Assistance Services, Richmond, VA, telephone (804) 371-8856, FAX (804) 786-1680, or email [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

**TITLE 14. INSURANCE**

**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.

**14VAC5-260. Rules Governing Insurance Holding Companies (amending 14VAC5-260-40, 14VAC5-260-60, 14VAC5-260-70, 14VAC5-260-90).**

A public hearing will be held upon request. Written public comment may be submitted until August 14, 2009.

*The purpose of the proposed revisions to the rules and forms is to amend the language regarding declaration of dividends and disclaimer of affiliation. Additionally, a reference to electronic filing and clarification that dividends and distributions are to be paid out of earned surplus unless the commission approves otherwise, has been added. These proposed revisions are necessary as a result of the passage of Senate Bill 1352 (Chapter 717 of the 2009 Acts of Assembly), which amended § 38.2-1329 of the Code of Virginia.*

For more information, contact Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, Richmond, VA, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

**14VAC5-290. Rules Establishing Standards for Companies Deemed to Be in Hazardous Financial Condition (amending 14VAC5-290-10, 14VAC5-290-20, 14VAC5-290-30, 14VAC5-290-40, 14VAC5-290-50).**

A public hearing will be scheduled upon request.

*The proposed amendments incorporate the revisions made by the National Association of Insurance Commissioners to its Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition, which provides additional tools for state insurance departments to utilize in identifying and dealing with companies in hazardous financial condition, including the authority to issue corrective action orders.*

For more information, contact Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, SCC, Richmond, VA, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

**TITLE 15. JUDICIAL  
VIRGINIA STATE BAR**

REGISTRAR'S NOTICE: The Virginia State Bar 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.

**15VAC5-80. Regulations Under the Virginia Consumer Real Estate Settlement Protection Act (amending 15VAC5-80-20, 15VAC5-80-30, 15VAC5-80-40).**

*The amendments delete nonattorney settlement agents from those required to register with the Virginia State Bar. This conforms the regulations to Chapter 256 of the 2009 Acts of Assembly, which shifted the responsibility to register nonattorney settlement agents to the appropriate licensing agencies.*

For further information, please contact Mary Yancey Spencer, Deputy Executive Director, Virginia State Bar, Richmond, VA, telephone (804) 775-0575 or email spencer@vsb.org.

**15VAC5-80. Regulations under the Virginia Consumer Real Estate Settlement Protection Act (amending 15VAC5-80-40, 15VAC5-80-50).**

*The Virginia State Bar has withdrawn the proposed amendments to 15VAC5-80, Regulations Under the Virginia Consumer Real Estate Settlement Protection Act, which were published 25:4 VA.R. 669-672 October 27, 2008.*

For more information, contact Mary Yancey Spencer, Deputy Executive Director, Virginia State Bar, Richmond, VA, telephone (804) 775-0575 or email spencer@vsb.org.

**TITLE 16. LABOR AND EMPLOYMENT  
SAFETY AND HEALTH CODES BOARD**

**16VAC25-50. Boiler and Pressure Vessel Regulations (amending 16VAC25-50-150, 16VAC25-50-360, 16VAC25-50-380, 16VAC25-50-430, 16VAC25-50-480).**

Written public comments may be submitted until September 18, 2009.

*The proposed amendments (i) update the current regulation for consistency with national and international standards; (ii) add a fee of \$10 for the reprinting of inspection certificates; and (iii) increase the boiler inspection fee from \$800 to \$1,000.*

For more information, please contact Ed Hilton, Dir., Boiler Safety Compliance, Dept. of Labor and Industry, Richmond, VA, telephone (804) 786-2389, FAX (804) 371-2324, TTY (804) 785-2376, or email ed.hilton@doli.virginia.gov.

**TITLE 23. TAXATION  
DEPARTMENT OF TAXATION**

**23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-1020).**

A public hearing will be held on August 20, 2009, at 10 a.m., Richmond, VA. Written public comments may be submitted until September 18, 2009.

*Chapter 121 of the 2005 Acts of Assembly amended the definition of "retail sale" and "sale at retail" set forth in § 58.1-602 of the Code of Virginia to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from the department's longstanding policy that treats automotive refinishers and painters as service providers and the taxable user and consumer of tangible personal property used in providing their service. The proposed amendments allow automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charges for materials.*

For more information, contact Bland Sutton, Analyst, Dept. of Taxation, Richmond, VA, telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@tax.virginia.gov.

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