

# Virginia Legislative Record

VOLUME 16, ISSUE 1

JUNE 2006

## HJR 551: Reduction of Highway Noise Abatement Costs

*June 6, 2006*

Delegates Jeffrey Frederick (chair), Mayme BaCote, Daniel Marshall, and Thomas Gear met on June 6, 2006, to continue the two-year study on highway noise abatement issues.

### HJR 551 Summary

The subcommittee was formed in response to HJR 551 (2005) to study how highway noise can be reduced by way of highway planning, construction, and other possible means and identify the best methods, costs, and application situations.

### Study Objectives

- Identify materials, technologies, techniques, actions, and strategies regarding highway planning and construction and identify those that reduce highway noise at the lowest cost.
- Determine the best application and situation for proposed highway noise abatement solutions.

### Guest Speaker

**Amy Costello, VDOT Air, Noise, & Energy Section**

Ms. Costello explained that the state is required to establish a noise abatement policy inline with federal guidelines. The Virginia Department of Transportation (VDOT) conducts noise studies on most federally aided highway projects. VDOT utilizes **earthen berms**, which reduce noise and are cost-

effective, but pointed out that sometimes the acquiring of the necessary right-of-ways added substantially to the costs.

VDOT has discontinued the use of wooden barriers for noise abatement, because they were not durable over time. Ms. Costello stated that VDOT typically uses **concrete barriers** for noise abatement, because of relatively low maintenance costs, as well as it is thought that they have a smaller "foot print," or are less invasive than earthen berms. Ms. Costello used graphs to discuss VDOT's noise abatement costs, which in most instances were lower than the national average. The members were interested in how VDOT evaluates potential new materials and technologies that might prove both useful and cost-effective in achieving noise reduction and there was brief discussion.

### Next Meeting & Work Plan

Members wish to hear from local governments regarding their highway noise abatement issues, ideas, and concerns at a meeting possibly in Newport News at a date

#### HJR 551

*Joint Subcommittee to Study  
Highway Noise Abatement*

**Delegate Jeffrey M. Frederick, Chair**

Alan Wambold and Stephanie Bishop, DLS Staff  
(804) 786-3591

#### Inside this issue:

##### Study Committees

**Reduction of Highway Noise Abatement Costs** **1**

**Childhood Obesity** **2**

##### Commissions and Councils

**Freedom of Information Advisory Council** **5**

**Regulatory Alert** **7**

**For more information,**

**Visit study websites.**

*DLS Staff members maintain a comprehensive website on each study that contains a complete summary of each meeting and links to additional study information, handouts, and resources.*

# SB 206: Special Subcommittee on Childhood Obesity

May 3, 2006

Senator Russell Potts, Chairman of the Senate Committee on Education and Health, appointed a special subcommittee to study SB 206 (2006) and examine childhood obesity in the public schools. Senators Mary Margaret Whipple (chair), Louise Lucas, and Nick Rerras were appointed to the subcommittee. They met with Senator John Edwards, the patron of the bill, and other interested parties on May 3, 2006.

## Goals for the SB 206

childhood obesity  
study include setting  
state nutritional  
standards for public  
school children,  
teaching students  
about healthy eating,  
and increasing  
physical fitness  
opportunities in  
the schools.

## SB 206 Summary

SB 206 requires the Board of Education in cooperation with the State Department of Health to establish standards to help prevent and reduce obesity in children attending public schools in the Commonwealth. By July 1, 2008, all Division superintendents are required to complete instruction and training on the causes and consequences of overweight students and the relationship between obesity and nutrition, health, and learning.

## SB 206 Objectives

- **Set statewide nutritional standards.**
- **Teach children about nutrition.**
- **Increase physical fitness opportunities for children.**

## Guest Speakers

### Lynne Fellin - Acting Director of School Nutrition Programs, Department of Education

Ms. Fellin spoke to the group about what local school divisions, the federal government, and the Governor are doing to address the problem of childhood obesity.

School divisions were required by federal law to submit a wellness policy to the government by July 1, 2006, and involve parents, students, school nutrition staff, the school board, school administrators, and the public in the development of the plan. The wellness policy is required to include:

- **Goals for nutrition education, physical activity, and other school activities to promote student wellness.**

- **Nutrition standards for foods and beverages available during the school day.**
- **Assurance that local guidelines will be consistent with USDA school nutrition programs.**
- **A plan for measuring the success of wellness plans in local schools.**

Ms. Fellin briefly outlined other federal childhood obesity initiatives, including the Governor's Healthy Virginians program, which promotes healthy lifestyles in the workplace, school, and among families. Through the Healthy Virginians program, schools may voluntarily participate in the Nutrition and Physical Activity Awards Program, which provides guidelines and a scorecard for schools and students to develop good eating habits and a healthy lifestyle of regular physical activity. The scorecard acts as a guide for the program and addresses physical education, instruction in nutrition, standards for food and drinks sold during the school day, and other activities that promote student wellness. Since February 2005, more than 300 schools have used the online scorecard, and 15 schools in 10 school divisions have earned awards for meeting healthy living goals.

### Anne Massey - Department of Health

Ms. Massey spoke to the group about the Department of Health's CHAMPION program, which establishes a strategic plan and a "best practices" guide to help prevent and reduce childhood obesity across Virginia. Over the past two years, 640 citizens have participated in the regional CHAMPION meetings to explore ideas and available community resources that may benefit all Virginia school districts. The CHAMPION program offers a state resource guide, along with information about community-based programs for citizens who wish to become more active in childhood obesity prevention in the public school system. The CHAMPION program and regional meetings have led to new initiatives, including:

- **Public Service Announcements on television and radio featuring Chicago Bears running back and Virginia native, Thomas Jones, who urges kids to "Get Moving!"**

- **Department of Health monthly press releases with tips and suggestions on how to incorporate healthy foods and physical activity into everyday life.**
- **Virginia Women, Infants and Children (WIC) program changes that provide lowfat or skim milk for children over two and beans or peas instead of peanut butter for children in the 90-95th height/weight percentile.**

## June 14, 2006

The Special Subcommittee on Childhood Obesity held its final required meeting on June 14, 2006, with Senator John Edwards, the bill's patron, and other interested parties attending. The subcommittee invited several representatives of local school divisions to give their perspectives on childhood obesity related issues and some participated by teleconference, including Bill Hall, Director of Food Services for Accomack County Schools, Penny McConnell, Director of Food and Nutrition Services for Fairfax County Schools, Michael Tisdale, Director of Administrative Services for Lunenburg County Schools, and Daphne Stickley, Food Service Supervisor for Rockbridge County Schools.

## Local School Perspective

Alicia Cost, School Nutrition Supervisor for Charlottesville City Schools, and Peggy H. Lee, Director of School Nutrition Services for Chesapeake City Schools gave their perspectives on childhood obesity in the public schools, while other representatives participated via telephone conference. The group addressed many of the problems that local public schools share.

Due to national and state academic standards, class scheduling, and the large number of students who must be served in school cafeterias in a short period of time, many students, especially in the high schools, are left with little time to eat lunch. Participants agreed that this was a significant problem and solutions should be explored.

Participants also emphasized the business side of school nutrition services, finding it difficult to balance the nutritional needs of students with the schools' need to raise needed funds. School divisions often turn to outside sales and catering in order to survive. The removal of popular but less healthy menu items, like french fries, often cause students to go elsewhere for lunches.

Some school divisions have tried new strategies to interest students in healthier foods, such as

hosting food tastings and having students sample and recommend foods that they would like to include as cafeteria offerings. Participants agreed that including healthier menus is difficult due to cost and lack of interest.

Nearly all of the participants made positive comments about the new federally mandated local wellness policy and have begun to develop division programs based on the Governor's Nutrition and Physical Activity Scorecard, which is part of the Healthy Virginians Program.

## Guest Speakers

### **Lynne Fellin - Acting Director of School Nutrition Programs, Department of Education**

Ms. Fellin discussed funding for nutrition programs and explained that public schools receive both federal and state money. Schools are federally reimbursed at a set rate for each meal, breakfast or lunch, which is actually served to a student. The U.S. Department of Agriculture reports, however, that the true cost of meals is higher than the reimbursement rate. The public schools also receive a set amount of state funds based on 1980 revenues, which means the state reimbursement rate has not changed in over twenty years. Since federal and state funding are insufficient, many school divisions are forced to raise additional funds for school lunches through a la carte sales, or outside catering. Board of Education regulations forbid the sale of any competing foods, meaning anything other than the official school lunch or school breakfast, during meal times. However, there are no restrictions or nutritional limitations on foods sold during other times of the day.

Ms. Fellin also addressed the lack of time for an adequate lunch, particularly in high school, when students may choose to take an elective course rather than a lunch period. Virginia currently has no required minimum time for lunch periods.

### **James Firebaugh - Director of Middle and High School Instruction for the Department of Education**

Mr. Firebaugh spoke about physical education requirements in the Commonwealth and explained that there is a great deal of flexibility in current requirements, consequently, the

*The public schools receive a set amount of state funds for school nutrition programs based on 1980 revenues, which means the state reimbursement rate has not changed in over twenty years.*

*The 2006 changes to the Standards of Accreditation will require a physical education program for elementary and middle schools and continue to require two years of physical education in high school.*

amount of daily activity most students receive is unknown. The 2006 changes to the Standards of Accreditation will require a physical education program for elementary and middle school students with guidelines by the Board of Education. The new standards also continue to require two years of physical education in high school.

Subcommittee staff, Nikki Seeds and Jessica Eades of DLS, gave a brief overview of obesity-related legislation passed in other states, which included:

- **Limiting the types of foods that can be sold in public schools (aside from the official school meal programs).**
- **Increasing access to fresh fruits and vegetables.**
- **Prescribing weekly physical education requirements.**
- **Reporting to parents the body mass index of students.**

## Recommendations

The special subcommittee members agreed to review the information they had received during their two meetings and make recommendations to the full Senate Education and Health Committee.

SB 206

### *Special Subcommittee to Study Childhood Obesity*

Senator Mary Margaret Whipple, Chair

Norma Szakal, Jessica Eades, and Nikki Seeds, DLS Staff

(804) 786-3591

[study website](http://dls.state.va.us/interim_studies.htm)

[http://dls.state.va.us/interim\\_studies.htm](http://dls.state.va.us/interim_studies.htm)

## 2006 New and Continuing Interim Studies

<i>Study Name</i>	<i>DLS Staff</i>	<i>Bill</i>
Operations of Circuit Court Clerks' Offices	Mary Felch	SJ 336
Joint Subcommittee on Block Grants	Jessica Eades	SJ 223
Comprehensive Services for At-Risk Youth and Families	Pat Davis, Ellen Weston	SJ 96
Reduction of Highway Noise Abatement Costs	Alan Wambold, Stephanie Bishop	HJ 551
Lead Poisoning Prevention	Jessica Eades, Brenda Edwards	SJ 103
Open Space and Farmland Preservation	Mark Vucci, David Rosenberg, Lisa Wallmeyer	SJ 94
Commonwealth's Program for Prisoner Reentry to Society	Ellen Weston	SJ 126
Risk Management Plans for Physicians and Hospitals	Jessica French, Frank Munyan, Greg O'Halloran	SJ 90
U. S. Route 460 Communications Committee	Alan Wambold, Stephanie Bishop	HJ 75
Science, Math, and Technology Education	Nikki Seeds, Patrick Cushing	HJ 25
Medical, Ethical, and Scientific Issues Relating to Stem Cell Research	Jessica Eades, Nikki Seeds, Ellen Weston	HJ 48
Telework Opportunities for State and Private Sector Employees	Lisa Wallmeyer, Patrick Cushing, Amigo Wade	HJ 144
Virginia's Future Transportation Needs	Alan Wambold, David Rosenberg, Stephanie Bishop	SJ 60
Senate Education Special Subcommittees	Norma Szakal, Jessica Eades, Nikki Seeds, Ellen Weston, Brenda Edwards	SB206/SB18/ SB309/SB241 /SB 545
Brown V. Board of Education Scholarship Program	Brenda Edwards, Gwen Foley	SB 443



## COMMISSIONS and COUNCILS

Legislative Commissions and Advisory Councils are also staffed or monitored by Division of Legislative Services and some, such as the Freedom of Information Advisory Council featured in this issue, have independent, comprehensive websites that contain a wealth of information regarding research, proposed legislation, and ongoing activities and scheduled workshops. Be sure to visit each respective Commission and Council website for more detailed information.

### *Freedom of Information Advisory Council*

The Freedom of Information Advisory Council (the Council) held its first meeting of 2006 on June 12, 2006. The Council welcomed its newest member, Courtney Malveaux, who is the designee of the Attorney General. The meeting was an organizational meeting to adopt the Council's work plan for 2006.

#### **2006 Legislative Update**

The General Assembly passed a total of 16 bills amending the Virginia Freedom of Information Act (FOIA) in 2006, including:

- **SB 76, recommended by the Council, which concerns the release of certain records under the PPTA and the PPEA.**
- **SB 5011, passed during the 2006 Special Session I, which concerns the release of certain records and corresponding closed meetings under the PPTA and PPEA.**
- **Other bills which create five new record exemptions to FOIA, add three new closed meetings, and amend existing provisions of FOIA.**

A more detailed report of the bills passed during the 2006 Sessions is available on the Council's website.

#### **Subcommittees**

The existing PPEA/PPTA Subcommittee and the Electronic Meetings Subcommittee were both continued for 2006 and a "Fifth Response" Subcommittee was created. During 2005, the Council considered whether to add a "fifth response" within FOIA to address situations where a public body receives a records request for records that do not exist or cannot be found. FOIA currently does not specify what response a public body is to provide in such a situation. Council members Fifer (chair), Bryan, Griffith, and Malveaux were appointed to examine this issue. More information regarding Council subcommittees is available on the Council's website.

#### **Other Business**

Staff advised the Council of the concerns of the Statewide Independent Living Council (SILC) as they

relate to conducting open meetings under FOIA. Susan Prokop, chair of SILC, wrote to the Council expressing concern that Virginia's open meeting laws have an adverse impact on the ability of people with disabilities to participate on SILC. Specifically, SILC would like the ability to conduct meetings through teleconference without meeting the requirement for a physical quorum at one main location. The Council added this issue to the work plan of the Electronic Meetings Subcommittee.

Senator Houck and Delegate Griffith presented a framed copy of SJR 173 (2006) to Frosty Landon, executive director of the Virginia Coalition for Open Government (VCOG) commending VCOG on the occasion of its 10th anniversary.

#### **Of Note**

Staff briefed the Council on the case of *William F. Shaw v. John T. Casteen, et al*, decided on April 13, 2006, by the Supreme Court of Virginia. Information regarding the briefing, discussion, and recommendations by the Council regarding the case may be found on the Council's website.

Staff advised the Council that Virginia's FOIA laws rated 5 on a scale of 7 by the Marion Brechner Center Citizen Access Project at the University of Florida's College of Journalism and Communications for FOIA laws that provide noncriminal penalties for violation by government officials of open records law. Virginia is one of only six states that were rated as high as 5.

SJR 170 (2006) designates March 16, in 2006 and in each succeeding year, as Freedom of Information Day in Virginia.

On March 10, 2006, in conjunction with the Virginia Press Association, the Virginia Association of Broadcasters, and VCOG, the Council sponsored a "Sunshine Reception" in the General Assembly Building to help kick off Sunshine Week that began on March 13, 2006. The reception was attended by approximately 85 people, including 25 legislators, and provided attendees breakfast, sunshine cookies, and open government bracelets.

For the period December 1, 2005 through May 31, 2006, Council staff responded to 874 informal requests for assistance—437 by government officials, 333 from citizens, and 104 from media representatives. Additionally, the

Council issued six formal written opinions—four to citizens and two to government officials.

#### **Public Comment**

Craig Merritt, Esq., representing the Virginia Press Association, advised the Council of the provisions of HB 852 (2006), which concerns hospital authorities and attempts to standardize powers and duties of hospital authorities in Virginia. The bill, as introduced, contained broad FOIA exemptions for records and meetings of hospital authorities, but these provisions were removed from the bill by the patron after discussions with the Virginia Press Association and other interested parties. Mr. Merritt questioned whether another bill might again be offered by the patron to exempt hospital authority records from the provisions of FOIA, and he felt that it would be preferable to have the issues aired before the Council to ensure meaningful dialogue. The Council acknowledged the need to appoint a subcommittee to examine the issues if future legislation is anticipated.

#### **Future Meetings**

Council meetings in 2006 will be held on August 23 and October 11 in Richmond at 1:00 p.m. in the General Assembly Building. Another meeting in November or December may be scheduled if needed.

#### ***Freedom of Information Advisory Council***

**Senator Edward Houck, Chair**  
**Maria J.K. Everett, Director**  
**Alan Gernhardt, Staff Attorney**

General Assembly Building, 2nd Floor  
910 Capitol Street  
Richmond, Virginia 23219

Telephone (804) 225-3056  
Toll Free 1-866-448-4100

*website—<http://dls.state.va.us/foiacouncil.htm>*

## **Legislative Commissions and Advisory Councils**

<i>Commission or Council Name</i>	<i>DLS Staff</i>	<i>Bill /Code</i>
Manufacturing Development Commission	Katie Shuey	HB 1233/SB 261
Virginia Sesquicentennial American Civil War Commission	Cheryl Jackson, E.M. Miller, Brenda Edwards	HB 1440
Robert E. Lee Birthday 200th Anniversary Celebration	Robie Ingram, Lisa Wallmeyer	HJ 710/SJ 382
Commission on Electric Utility Restructuring	Katie Shuey	SB 711
Joint Commission on Administrative Rules (JCAR)	Elizabeth Palen	§ 30-73.1 et seq.
Joint Reapportionment Committee	Mary Spain, Jack Austin, Martha Brissette	§ 30-263 et seq.
Joint Commission on Technology and Science (JCOTS)	Lisa Wallmeyer, Patrick Cushing	§ 30-85 et seq.
Virginia Code Commission	Jane Chaffin	§ 30-145 et seq.
Virginia Freedom of Information Advisory Council (FOIA Council)	Maria Everett, Alan Gernhardt	§ 30-178 et seq.
Small Business Commission	Katie Shuey	§ 30-182 et seq.
State Water Commission	Marty Farber	§ 30-186 et seq.
Virginia Coal and Energy Commission	Marty Farber, Frank Munyan	§ 30-188 et seq.
Dr. Martin Luther King Jr. Memorial Commission	Brenda Edwards	§ 30-192 et seq.
Commissioners for Promotion of Uniformity of Legislation	Jessica French, E.M. Miller	§ 30-196 et seq.
Advisory Council on Career and Technical Education	Nikki Seeds, Jessica Eades	§ 30-198 et seq.
Commission on Electric Utility Restructuring	Katey Shuey, Frank Munyan	§ 30-201 et seq.
Electric Utility Consumer Advisory Board	Katey Shuey	§ 30-208 et seq.
Virginia Disability Commission	Pat Davis	§ 30-232 et seq.
Chesapeake Bay Restoration Fund Advisory Committee	Marty Farber, Gwen Foley	§ 30-256
Virginia Housing Commission	Elizabeth Palen, Amigo Wade	§ 30-257 et seq.
Commission on Unemployment Compensation	Frank Munyan	§ 30-218 et seq.

## 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://legis.state.va.us/codecomm/register/regindex.htm> or contact [epalen@leg.state.va.us](mailto:epalen@leg.state.va.us) or the Code Commission staff at (804) 786-3591 for further information.

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the Board of Agriculture and Consumer Services when promulgating regulations pursuant to § 3.1-398, which conform, insofar as practicable, with the federal Food and Drug Administration's Food Code.

**2 VAC 5-580. Rules and Regulations Pertaining to the Sanitary and Operating Requirements in Retail Food Stores (repealing 2 VAC 5-580-10 through 2 VAC 5-580-310).**

**2 VAC 5-585. Retail Food Establishment Regulations (adding 2 VAC 5-585-10 through 2 VAC 5-585-4070).**

A public hearing will be held August 29, 2006, at 9 a.m., Department of Agriculture and Consumer Services, Richmond, VA. Written public comment may be submitted until September 11, 2006.

*The proposed new regulation replaces the existing regulation (2 VAC 5-580) in order to (i) be consistent with regulations enforced by the Virginia Department of Health in restaurants and food service operations, by adopting appropriate portions of the 2001 edition and 2003 supplement of the U.S. Food and Drug Administration's Food Code; (ii) provide*

*practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne disease; (iii) significantly expand the definitions section, providing much greater clarification; (iv) require the demonstration of knowledge by the food establishment operator for foodborne disease prevention, application of Hazard Analysis Critical Control Point principles, and the requirements of the regulation; (v) require minimal bare-hand contact with ready-to-eat foods; (vi) allow greater flexibility with respect to properly cooling hot foods; (vii) require colder holding temperatures for refrigerated foods (41°F as opposed to 45°F) but allow a five year phase-in period for existing equipment that cannot currently meet the 41°F requirement; (viii) allow a lesser temperature for foods required to be held hot (135°F as opposed to 140°F); (ix) permit the use of time as a public health control, as appropriate, in place of the typical time in conjunction with temperature; (x) require that food establishments obtain a variance from the agency if performing certain high-risk processing operations not typically performed at the retail level; (xi) require the use of a disclosure statement indicating that the consumption of raw or undercooked animal foods significantly increase the risk of foodborne disease to the consumer; (xii) identify requirements that are necessary to properly protect highly susceptible populations from foodborne disease; and (xiii) lessen the restrictions contained in the existing regulation by allowing all service animals controlled by disabled persons.*

*Due to the extensive amendments to the existing regulation, 2 VAC 5-580 (Rules and Regulations*

*Pertaining to the Sanitary and Operating Requirements in Retail Food Stores) is being repealed and 2 VAC 5-585 (Retail Food Establishment Regulations) is being adopted concurrently.*

For additional information contact: Richard D. Saunders, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, Richmond, VA, (804) 786-8899, or e-mail [doug.saunders@vdacs.virginia.gov](mailto:doug.saunders@vdacs.virginia.gov).

## **TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

### **BOARD OF CORRECTIONS**

#### **6 VAC 15-20. Regulations Governing Certification and Inspection (amending 6 VAC 15-20-10 through 6 VAC 15-20-230).**

Written public comment may be submitted until 5 p.m. on September 8, 2006.

*The proposed amendments account for changes in the internal structure of the department's auditing unit. The amendments require that correctional facilities and programs provide documentation for any waivers that the board has obtained and eliminate the requirement that the auditing unit send enumerated compliance forms to correctional facilities each time they are audited.*

For more information please contact: Donna Lawrence, Department of Corrections, Richmond, VA, (804) 674-3499, or e-mail [donna.lawrence@vadoc.virginia.gov](mailto:donna.lawrence@vadoc.virginia.gov).

### **CRIMINAL JUSTICE SERVICES BOARD**

#### **6 VAC 20-30. Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations (amending 6 VAC 20-30-10 through 6 VAC 20-30-60, 6 VAC 20-30-80).**

A public hearing will be held September 13, 2006, at 1 p.m., Department of Criminal Justice Services, Richmond, Virginia. Written public comment may be submitted until September 11, 2006.

*The proposed amendments (i) allow academy directors to approve all in-service training; (ii) reduce the minimum length of a training session to two hours; (iii) require that two hours of the in-service training for law-enforcement officers, jailors, custodial officers, courtroom security officers, process service officers, and officers of the Department of Corrections be on cultural diversity; (iv) eliminate certain current limitations on extensions of the time limit for completion of in-service training; (v) eliminate the time limit on when the*

*chief of police, sheriff or agency administrator may request authorization for attendance and successful completion by an employee of job-related courses to count for partial in-service credit; (vi) eliminate the requirement that the local agency maintain records of in-service training attendance; (vii) eliminate the limit on the number of credits that can be earned via electronic training; (viii) permit that up to 16 credit hours per two-year in-service period may be earned via being an instructor; and (ix) update the annual firearms requirement to be consistent with the options available for entry-level training.*

For additional information contact: John Byrd, Assistant Section Chief, Department of Criminal Justice Services, Richmond, VA, (804) 786-6375, or e-mail [john.byrd@dcjs.virginia.gov](mailto:john.byrd@dcjs.virginia.gov).

#### **6 VAC 20-50. Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers (amending 6 VAC 20-50-10 through 6 VAC 20-50-90; adding 6 VAC 20-50-21 and 6 VAC 20-50-110; repealing 6 VAC 20-50-100).**

A public hearing will be held September 13, 2006, at 1 p.m., Department of Criminal Justice Services, Richmond, VA. Written public comment may be submitted until September 11, 2006.

*The proposed amendments provide that individuals who are jailors or custodial officers, courthouse and courtroom security officers, and process service officers need not be trained in skills that have no bearing on their job performance. The proposed amendments also set up a standing Curriculum Review Committee that will review and recommend changes to the training objectives, criteria for testing, and lesson plan guides for such persons. The proposed amendments specify the process that will be used to change the plan guides.*

For more information contact: Judith Kirkendall, Department of Criminal Justice Services, Richmond, VA, (804) 786-8003, or e-mail [judith.kirkendall@dcjs.virginia.gov](mailto:judith.kirkendall@dcjs.virginia.gov).

## **TITLE 8. EDUCATION**

### **STATE BOARD OF EDUCATION**

#### **8 VAC 20-700. Regulations for Conducting Division-Level Academic Reviews (adding 8 VAC 20-700-10 through 8 VAC 20-700-50).**

A public hearing will be held on September 27, 2006, at 9 a.m., Department of Education, Richmond, VA.. Written public comment may be submitted until September 11, 2006.



*The regulations give the Board of Education the authority to require division-level academic reviews in school divisions where findings of school-level academic reviews show that the failure of the schools to reach full accreditation is related to the local school board's failure to meet its responsibilities under the Standards of Quality.*

For additional information contact: Dr. Margaret N. Roberts, Department of Education, Richmond, VA, (804) 225-2540, or e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

**8 VAC 20-710. Regulations Governing the Process for Submitting Proposals to Consolidate School Divisions (adding 8 VAC 20-710-10 through 8 VAC 20-710-30).**

A public hearing will be held on September 27, 2006, at 9 a.m., Department of Education, Richmond, VA. Written public comment may be submitted until September 11, 2006.

*This regulation provides for a process by which school divisions may submit proposals for consolidation. The new regulation stipulates the information and data to be submitted by school divisions in their proposals for consolidation, the criteria that must be considered by the Board of Education in reviewing the proposals, and a process for public participation in the process.*

For additional information contact: Dr. Margaret N. Roberts, Department of Education, Richmond, VA, (804) 225-2540, or e-mail [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**REGISTRAR'S NOTICE:** Due to its length, the following regulatory action filed by the State Air Pollution Control Board is 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 full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the State Air Pollution Control Board (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://legis.state.va.us/codecomm/register/vol22/welcome.htm>.

**9 VAC 5-140. Regulation for Emissions Trading (adding Part II: Article 1 (9 VAC 5-140-1010 through 9 VAC 5-140-1080), Article 2 (9 VAC 5-140-1100 through 9 VAC 5-140-1140), Article 3 (9 VAC 5-140-1200 through 9 VAC 5-140-1240), Article 4 (9 VAC 5-140-1300), Article 5 (9 VAC 5-140-1400 through 9 VAC 5-140-1430), Article 6 (9 VAC 5-140-1500 through 9 VAC 5-140-1570), Article 7 (9 VAC 5-140-1600), Article 8 (9 VAC 5-140-1700 through**

**9 VAC 5-140-1760), Article 9 (9 VAC 5-140-1800 through 9 VAC 5-140-1880); Part III: Article 1 (9 VAC 5-140-2010 through 9 VAC 5-140-2080), Article 2 (9 VAC 5-140-2100 through 9 VAC 5-140-2140), Article 3 (9 VAC 5-140-2200 through 9 VAC 5-140-2240), Article 4 (9 VAC 5-140-2300), Article 5 (9 VAC 5-140-2400 through 9 VAC 5-140-2430), Article 6 (9 VAC 5-140-2500 through 9 VAC 5-140-2570), Article 7 (9 VAC 5-140-2600 through 9 VAC 5-140-2620), Article 8 (9 VAC 5-140-2700 through 9 VAC 5-140-2760), Article 9 (9 VAC 5-140-2800 through 9 VAC 5-140-2880); Part IV: Article 1 (9 VAC 5-140-3010 through 9 VAC 5-140-3080), Article 2 (9 VAC 5-140-3100 through 9 VAC 5-140-3140), Article 3 (9 VAC 5-140-3200 through 9 VAC 5-140-3240), Article 4 (9 VAC 5-140-3300), Article 5 (9 VAC 5-140-3400), Article 6 (9 VAC 5-140-3500 through 9 VAC 5-140-3570), Article 7 (9 VAC 5-140-3600 through 9 VAC 5-140-3620), Article 8 (9 VAC 5-140-3700 through 9 VAC 5-140-3760), Article 9 (9 VAC 5-140-3800 through 9 VAC 5-140-3880).**

A public hearing will be held August 24, 2006, at 10 a.m., Department of Environmental Quality, Richmond, VA. Written public comment may be submitted until 5 p.m. on September 8, 2006.

The State Air Pollution Control Board (board) proposes to add three new parts to the Regulation for Emissions Trading (9 VAC 5-140), as per request of the federal Clean Air Interstate Rule (CAIR). Major changes include:

1. A new nitrogen oxides (NO<sub>x</sub>) Annual Trading program (Part II) will be established.
2. A NO<sub>x</sub> Ozone Season Trading program (Part III) will replace the current NO<sub>x</sub> Budget Trading Program (SIP Call).
3. A Sulfur dioxide (SO<sub>2</sub>) Annual Trading Program (Part IV) will replace the current federal-administered Acid Rain Program.

*(Part II): NO<sub>x</sub> Annual Trading Program. This part establishes a NO<sub>x</sub> Annual Trading Program, which addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance supplement pool, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NO<sub>x</sub> annual budgets are 36,074 tons in 2009 through 2014 and 30,062 tons in 2015 and thereafter.*

*Beginning January 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the NO<sub>x</sub> emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The NO<sub>x</sub> allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2006, is the cutoff for determining whether a unit is new or existing. If a unit*

does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO<sub>x</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

A compliance supplement pool (5,134 tons) is provided for sources that generate early reduction credits or to avoid an "undue risk to the reliability of electricity." The allowances from the pool are valid for only one year (2009) and cannot be banked after that one-year period.

(Part III): NO<sub>x</sub> Ozone Season Trading Program. This part establishes a NO<sub>x</sub> Ozone Season Trading Program that addresses the following substantive provisions: permitting, allowance methodology, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's NO<sub>x</sub> ozone season budgets for electric generating units are 15,994 tons in 2009 through 2014 and 13,328 tons in 2015 and thereafter. Virginia's NO<sub>x</sub> ozone season budget for nonelectric generating units is 3,840 tons in 2009 and thereafter.

Beginning May 1, 2009, electric generating units with a nameplate capacity greater than 25 MWe and nonelectric generating units above 250 mmBtu will be subject to the provisions of this part. To accommodate the NO<sub>x</sub> emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per season) during the summer months of May 1 through September 30, otherwise known as the control period. The NO<sub>x</sub> allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2006, is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO<sub>x</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of

3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt-in to the program.

(Part IV): SO<sub>2</sub> Annual Trading Program. This part establishes a SO<sub>2</sub> Annual Trading Program that addresses the following substantive provisions: permitting, monitoring, banking, compliance determination, and opt-in provisions for sources not covered by the regulation. Virginia's SO<sub>2</sub> annual budgets are 63,478 tons in 2010 through 2014 and 44,435 tons in 2015 and thereafter.

Beginning January 1, 2010, electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the SO<sub>2</sub> emissions from the affected units, the units have been allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The SO<sub>2</sub> allocations are carried over from the Acid Rain Program and are valid indefinitely, except the value of the allowances is reduced over time. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of SO<sub>2</sub> generated above the allocated allowances. Smaller sources within the affected source categories are allowed to opt-in to the program.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1, i.e. for every ton over its allocations, three tons will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 for all sources subject to the regulation and for any sources wishing to opt-in to the program.

For more information please contact: Mary E. Major, Department of Environmental Quality, Richmond, VA, (804) 698-4423, or e-mail [memajor@deq.virginia.gov](mailto:memajor@deq.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 which by the Constitution is expressly granted any of the powers of a court of record.

**14 VAC 5-260. Rules Governing Insurance Holding Companies (amending 14 VAC 5-260-10, 14 VAC 5-260-30 through 14 VAC 5-260-60, 14 VAC 5-260-80, 14 VAC 5-260-90; adding 14 VAC 5-260-110; repealing 14 VAC 5-260-20).**

A public hearing will be held upon request. Written public comment may be submitted until August 25, 2006.

*The proposed revisions amend the Code of Virginia citation references and add language requiring notification to the Bureau of Insurance regarding (i) investments in any one corporation under certain circumstances and (ii) declaration or payment of dividends or other distributions. These proposed revisions are necessary as a result of the passage of Chapter 577 of the 2006 Acts of Assembly effective July 1, 2006, which amends §§ 38.2-1329 and 38.2-1330, and adds § 38.2-1330.1 to the Code of Virginia.*

*The proposed revisions also relocate the section entitled "Severability clause" and provide nonsubstantive and housekeeping revisions to various sections.*

For more information contact: Raquel C. Pino-Moreno, Bureau of Insurance, Richmond, VA, (804) 371-9499, toll free (800) 552-7945, or e-mail [raquel.pino-moreno@scc.virginia.gov](mailto:raquel.pino-moreno@scc.virginia.gov).

**14 VAC 5-30. Rules Governing Life Insurance and Annuity Replacements (amending 14 VAC 5-30-10 through 14 VAC 5-30-40, and 14 VAC 5-30-60 through 14 VAC 5-30-90; adding 14 VAC 5-30-51 and 14 VAC 5-30-55; repealing 14 VAC 5-30-50, 14 VAC 5-30-100 and Exhibit A).**

Written public comment may be submitted to the State Corporation Commission until September 1, 2006.

*The proposed amendments add annuities to the products under the rules governing replacement, and for consistency with the most recent National Association of Insurance Commissioners (NAIC) "Life Insurance and Annuities Replacement Model Regulation." The procedural requirements for insurers and agents have been amended so that they are consistent with the NAIC Model. New forms are also attached to the revised rules.*

For additional information contact: Jacqueline K. Cunningham, Deputy Director, State Corporation Commission, Life and Health Division, Bureau of Insurance, Richmond, VA, (804) 371-9074, or e-mail [chaps30\\_45comments@scc.virginia.gov](mailto:chaps30_45comments@scc.virginia.gov).

**14 VAC 5-45. Rules Governing Suitability in Annuity Transactions (adding 14 VAC 5-45-10 through 14 VAC 5-45-50).**

A public hearing will be scheduled upon request. Written public comments may be submitted to the State Corporation Commission until September 1, 2006.

*The proposed regulations follow the National Association of Insurance Commissioners "Suitability in Annuity Transactions Model Regulation." The proposed regulations set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products, so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. The proposed regulations apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance agent, or an insurer where no agent is involved, that results in the purchase or exchange recommended. The proposed regulations are as a result of increasing reports of inappropriate sales of annuities to consumers of all ages.*

For additional information contact: Jacqueline K. Cunningham, Deputy Director, State Corporation Commission, Life and Health Division, Bureau of Insurance, Richmond, VA, (804) 371-9074, or e-mail [chaps30\\_45comments@scc.virginia.gov](mailto:chaps30_45comments@scc.virginia.gov).

## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

**18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-70, 18 VAC 65-20-130, 18 VAC 65-20-140 and 18 VAC 65-20-154).**

Written public comment may be submitted to the Department of Health Professions until August 25, 2006.

*The proposed amendments increase certain fees for the regulants of the board as necessary to provide sufficient funding for its licensing and disciplinary functions. An annual renewal fee for a funeral service licensee increases from \$150 to \$175 and for a funeral establishment from \$225 to \$300. Other fees, such as application and late fees that are tied to the renewal fee, are increased correspondingly.*

For more information contact: Elizabeth Young, Executive Director, Department of Health Professions, Richmond, VA, (804) 662-9907, or e-mail [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).

For multiple copies of the  
*Virginia Legislative Record*  
or other DLS publications, please contact  
the House or the Senate Clerks' Office.

*Division of Legislative Services*

910 Capitol Street, 2nd Floor  
Richmond, Virginia 23219  
(804) 786-3591

E. M. Miller, Jr., Director  
R.J. Austin, Manager, Special Projects  
Lynda Waddill, Editor

© 2006 Division of Legislative Services  
Published in Richmond, Virginia  
by the Division of Legislative Services,  
an agency of the General Assembly of Virginia.  
The Legislative Record is available online at-

<http://dls.state.va.us/pubs/legisrec/2006/welcome.htm>