

Virginia Legislative Record

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Virginia Housing Commission

April 25, 2012

Multistate Mortgage Servicer Settlement

David B. Irvin, Senior Assistant Attorney General, Office of the Attorney General of Virginia

Mr. Irvin provided the Virginia Housing Commission (the Commission) with an overview of the National Mortgage Settlement (the Settlement) with the five largest mortgage servicers in the United States (individually known as the Settling Servicer and collectively as the Settling Servicers):

- Bank of America.
- J.P. Morgan Chase.
- Wells Fargo.
- Citigroup.
- Ally Financial (formerly GMAC).

The Settlement settles all administrative and civil claims (state and federal) regarding all residential loan servicing, foreclosure services, and loan origination. The Settlement does not settle any criminal, securitization, fair lending, mortgage discrimination, Mortgage Electronic Registration System (MERS), or settled claims. The Settlement also does not settle any third-party claims—claims that an individual borrower may have against his mortgage lender and/or servicer.

The Settlement provides \$294.3 million in federal “menu” benefits to Virginians, though these are not hard dollar amounts. The figure represents the credit—sometimes 10 cents on the dollar—that the Settling Servicers will receive for taking various actions that will aid homeowners.

The Settling Servicers make up to 59 percent of the United States’ market of residential mortgage servicing. The next nine servicers in the market make up only

about nine percent of the total of market shares. The Settling Servicers own approximately 20 percent of the loans in the United States. The Settling Servicers, like all servicers, may or may not be the entity that made the mortgage loans in the first place. Rather, a servicer is the entity responsible for collecting the mortgage loan payment(s) and typically deals with foreclosures related to mortgage loans. Thus, the number of loans that the Settling Servicers own and service is a smaller subset of the total number of loans they deal with in general.

Attorneys general from 49 states joined the Settlement. Oklahoma signed a similar settlement independently, which was announced the same day as the multistate Settlement. Forty-three state banking commissioners were involved in the Settlement, including commissioners of the Virginia State Corporation Commission and the Bureau of Financial Institutions. Federal entities involved included the United States Department of Justice, the Federal Trade Commission, the Department of the Treasury, and the Department of Housing and Urban Development.

At least 60 percent of the benefits provided take the form of a first or second lien loan modification where a borrower is either already in default or in imminent risk of being in default. These loan modifications must include some form of principal reduction. A higher amount of credit is given for portfolio loans (loans that the specific Settling Servicer owns and sells).

The Settlement provides \$31.3 million in hard dollar amounts to Virginia borrowers who have been foreclosed on between January of 2008 and December 31, 2011; whose mortgages have been serviced by the Settling Servicers; and who occupied the property on which the lender has foreclosed. An estimated 15,000 Virginians will benefit from these funds if \$2,000 is provided to these homeowners.

The National Mortgage Settlement settles all administrative and civil claims (state and federal) regarding residential loan servicing, foreclosure services, and loan origination.

The homeowner does not need to show legal wrongdoing in order to qualify for this payment, but will have to submit a claim for the payment alleging they are victims of servicing abuse (such as robo-signing, lost paperwork, or dual tracking). Accepting the money does not affect the homeowner's ability to pursue any personal claims the homeowner may have with the Settling Servicers.

The Settlement provides \$84.3 million for interest savings over the life of loans for borrowers who refinance "underwater homes," homes for which the borrower owes more than the home's value.

The Settlement provides Virginia's Office of the Attorney General with \$66.5 million for the Attorney General's revolving fund. Any amount over \$1.25 million that is unused by the end of the fiscal year (midnight on June 30, 2012) will revert to the general fund. The Settlement provides the State Corporation Commission and the Bureau of Financial Institutions with \$1 million, which should be received soon.

A state can only designate 10 percent of the funds that it receives as a civil penalty. Aside from that, there are no limitations regarding how the state can use the money it receives. The Settlement states that it is preferred that the state spends the funds on foreclosure prevention, counseling, consumer protection efforts geared towards prevention of foreclosure, prosecuting financial fraud, or compensating the state for the losses incurred from the unlawful conduct of the Settling Servicers. The attorneys general of other states are distributing the Settlement funds as grants to nonprofits. Virginia's Attorney General turned the funds over to the General Assembly to decide how to allocate the money.

The other 40 percent of the Settlement will provide the following types of benefits to homeowners that do not fit into the first category:

Short sale. Deed in lieu approvals from which the Settling Servicers will receive credit for taking various actions to increase the likelihood of short sales, particularly beneficial for homeowners with a first and second lien on their homes as they are unable to complete a short sale of their home unless both the first and second lienholders agree. Through these services, second lienholders will be provided some compensation for allowing the short sale to occur, which will have a market-clearing effect.

Deficiency waivers. In Virginia, where a home is foreclosed on but the foreclosure does not provide the lender with the amount owed on the mortgage, the former homeowner is still responsible for this unpaid balance (the deficiency). Many lenders agree to waive the deficiency that is due on the loan on the first or second lien. These lenders within the Settling Servicers will get credit towards the amount to which they committed. This allows Virginians in this situation to avoid large judgments against them.

Transitional funds. These will provide Virginians going through foreclosure with money to facilitate the transfer of the property back to the lender, and to help the resident to move out and find other housing. Lenders can receive credit on the amount due by making payments of over \$15,000.

Anti-bligh actions. Lenders can receive credit for demolishing blighted property, for helping to keep blighted properties off the market, for donating blighted properties, etc.

Within the Settlement, the Settling Servicers agreed to new, fairer "servicing standards" to promote transparency and timeliness. The Settling Servicers agreed to promote short sales over foreclosures and to provide more transparent fees, loan modification processes, and loan timelines. The Settling Servicers agreed to provide homeowners with preforeclosure notices, including the amount that is owed; the amount needed to reinstate; the terms of the loan; information on mitigation services; an explanation of the homeowner's right to request a copy of the endorsement notes with the name of the investor holding the loan; an explanation of why the servicer has a right to foreclose; and a single point of contact with their company to prevent dual tracking of the foreclosure process. The Settling Servicers also agreed to the development of loan portals that provide homeowners with a single resource for all of the documents and statuses related to their mortgage loan. The Settlement allows the Attorney General to bring criminal charges against the Settling Servicers who used robo-signing (automated signing by machinery in lieu of actual trustees) in violation of criminal laws.

Current Housing Conditions in Virginia

Sonya Waddell, Associate Regional Economist, Federal Reserve Bank of Richmond

Ms. Waddell provided the Commission with an update on current housing conditions in Virginia, stating that, in general, home sales are slow and house prices are stabilizing, but on a year-to-year basis, prices for housing are still falling.

In the fourth quarter of 2011, the inventory of foreclosures in Virginia was 1.8 percent, translating to over 25,000 loans in foreclosure. However, things are getting better. In 2009, the highest inventory of foreclosures was over 30,000 loans in foreclosure.

Virginia is doing better than the rest of the country regarding foreclosures, as the inventory of foreclosures in the United States was 4.4 percent for the fourth quarter of 2011. Virginia has the seventh lowest total inventory of foreclosures in the United States. In Florida, the foreclosure inventory was as high as 14.3 percent, which translates to over 450,000 loans in the foreclosure process. In Maryland, the foreclosure rate was as high as four percent. It is important to note that these numbers are related to how long loans stay in foreclosure, which is affected by whether the state processes foreclosures through statutes or through the courts. Virginia is a foreclosure by statute state and Florida is a judicial foreclosure state. Additionally, Virginia has fewer homes entering foreclosure than many other states.

Subprime loans make up about seven to eight percent of the mortgage inventory, but account for over a quarter of the foreclosure inventory of the state. Accordingly, subprime loans are still disproportionately represented in the foreclosure pool in Virginia—although this is similar to the United States as a whole.

There are about 200,000 units in Virginia that are vacant—meaning unrented, unoccupied, unsold, and generally unused. This number, however, does not include homes that are going through the short sale process.

Existing home sales in Virginia have not returned to 2004-2005 sales levels. However, the Virginia Association of Realtors is optimistic about home sales—as it has witnessed home sales return to the levels of the 1990s (though it should be noted there are many more homes since then and more on the market).

According to the Federal Housing Finance Agency, Virginia housing prices increased 1.1

percent in the third quarter of 2011 and 0.7 percent in the fourth quarter of 2011. This is the first two-quarter increase in housing prices in Virginia since the first two quarters of 2007.

According to CoreLogic's statistics, there was no change for housing prices in February. According to CoreLogic estimates, 23 percent of original homeowners were faced with negative equity and an additional six percent were facing year-negative equity (less than five percent equity for the house). This is in line with the national average for foreclosures. Virginia Beach, Richmond, and Norfolk are currently facing the most foreclosures in Virginia.

According to a survey of 1,490 realtors (99 percent of them Virginia realtors), market conditions are getting better, with customer traffic up by more than 50 percent. Most customers, it was reported, are first-time homebuyers seeking mid-range and lower-end homes. In contrast to the data explained above, 50 percent of the realtors stated that the inventories were low on homes. The realtors also stated that distressed homes are bringing down prices and borrowers are still having difficulties obtaining financing.

According to a survey of 101 home builders (mostly from North Carolina), more than 50 percent of the home builders feel that the outlook for construction is better. However, the home builders agree with the realtors that the distressed home sales seem to be holding down prices and financing is still difficult to obtain for home sales.

The unemployment rate in Virginia is now down to 5.6 percent compared to the 8.2 percent for the United States as a whole. There was a slight payroll loss of 400 jobs in Virginia. There are still high unemployment rates in the southernmost part of the state and Southwest Virginia.

Work Groups

The chair stated that Delegate Dance will chair the Neighborhood Transitions and Residential Land Use Work Group; Senator Watkins the Housing and Environmental Standards Work Group; Delegate Danny Marshall the Affordability, Real Estate Law and Mortgages Work Group; and Delegate Cosgrove the Common Interest Communities Work Group.

The chair also noted that there is another issue in need of review this year. SJ 49 (2012) deals with continuing care retirement communities, for which a special sub-work group will be

Virginia housing prices increased 1.1 percent in the third quarter of 2011 and 0.7 percent in the fourth quarter of 2011, the first two-quarter increase in housing prices since the first two quarters of 2007.

formed. (Senator Barker was appointed chair of the Continuing Care Retirement Communities Sub-Work Group at the sub-work group's June 14, 2012, meeting).

Public Comment

There then followed comments from the public regarding the creation of a work group to study continuing care retirement communities. Comments from a resident of a continuing care retirement community, the president of the Virginia Association of Nonprofit Homes for the Aging, and the vice president of the Virginia Continuing Care Residents Association can be viewed in their entirety on the Virginia Housing Commission website.

Virginia Housing Commission work groups will meet throughout the summer.

Next Meeting

The next meeting of the full Virginia Housing Commission will be on September 5, 2012, at the General Assembly Building in Richmond. Work groups will meet throughout the summer as seen below and summaries of those meetings can be viewed on the Virginia Housing Commission website.

Housing and Environmental Standards Work Group

May 9, 2012

Affordability, Real Estate Law, and Mortgages Work Group

May 14, 2012

Common Interest Communities Work Group

June 6, 2012

Continuing Care Retirement Communities Sub-Work Group

June 14, 2012

Neighborhood Transitions and Residential Land Use Work Group

10:00 a.m., Tuesday, July 31, 2012
House Room C, GAB

Affordability, Real Estate Law, and Mortgages Work Group

1:30 p.m., Tuesday, July 31, 2012
House Room C, GAB



VIRGINIA HOUSING COMMISSION

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Joint Commission on Technology and Science

May 16, 2012

The Joint Commission on Technology and Science (JCOTS) held its first meeting of the 2012 interim in Richmond.

Election of Chair and Vice Chair

Delegate Joe May was thanked for his many years of service as JCOTS chair. Delegate Thomas Rust and Senator John Watkins were elected chair and vice chair, respectively.

2012 Legislative Update

Staff provided an overview of legislation considered by the 2012 Session of the General Assembly related to science and technology. Of particular note were the three pieces of legislation recommended by JCOTS:

HB 807. Use of electronic tracking devices

This bill was developed by the 2011 JCOTS Electronic Privacy Advisory Committee. The bill would prohibit the use of electronic tracking devices to track an individual when used “without consent” and through “intentionally deceptive means.” The bill passed the House of Delegates, but was carried over by the Senate Committee for Courts of Justice. The Senate Committee had questions about consent and about how the prohibition would work in practice. The patron indicated that he does not believe the bill warrants further study, as the bill that was introduced was the result of two years of discussion with interested parties, but noted that he does plan on reintroducing the legislation during the 2013 Session of the General Assembly.

HB 874. Use of handheld personal communications devices

This bill would have made texting while driving a primary offense (it is currently a secondary offense) and was a recommendation of the 2011 JCOTS Transportation and Technology Advisory Committee. HB 874, and several other similar pieces of legislation introduced by other members, failed to be reported from the House Committee on Militia, Police and Public Safety.

SJ 15. Electronic identity credentials

This resolution was a recommendation of the 2011 UCITA Advisory Committee. The resolution directs JCOTS to study issues related to the issuance of electronic identity credentials and liability concerns therewith. The resolution was adopted by the General Assembly and will be included in the JCOTS 2012 work plan.

Other

Staff also highlighted other relevant pieces of legislation that were related to issues previously discussed by JCOTS or that otherwise raised significant policy issues. A list of all of the 2012 science and technology bills, along with their summaries, can be found on the JCOTS website.

2012 Work Plan

Staff presented a proposed work plan for the 2012 interim. The work plan would include four advisory committees as follows:

Energy

This would be a continuation of the Energy Advisory Committee that met during the 2011 interim. The Energy Advisory Committee would be tasked with continuing to review emerging renewable energies and technologies used to generate energy. It was also specifically requested that the Energy Advisory Committee review the taxation of alternative automotive energies.

Electronic Meetings

JCOTS requested that the 2011 Privacy Advisory Committee review technologies and policies concerning the use of electronic meetings by public bodies, but the committee did not have enough time on its agenda to address the issue. Instead it recommended that JCOTS convene an advisory committee in 2012 dedicated solely to this issue.

Electronic Identity Credentials

The Electronic Identity Credentials Advisory Committee will study the issues referred to JCOTS by SJ 15 (2012) concerning the issuance of electronic identity credentials.

Cybersecurity

The Cybersecurity Advisory Committee will study the cybersecurity industry in the Commonwealth.

JCOTS members heard information about the proposed work plan for the 2012 interim.

During discussion of the work plan, a member raised questions about Amendment 49 proposed by the Governor to HB 1301 (the Budget Bill). The amendment did not pass the General Assembly, but it raised questions concerning the sharing of records containing personal information between agencies. It was suggested that JCOTS begin to review the issue. The Electronic Identity Credentials Advisory Committee, as it is studying an issue related to the issuance of authentication and identity, will begin to review the issue and will report to the chair of JCOTS any further suggested course of action or study.

The Electronic Identity Credentials Advisory Committee will review questions raised about the sharing of records containing personal information between state agencies.

Next Meeting

The next meeting of the Joint Commission on Technology and Science will be posted on the Commission's website and the General Assembly website as soon as more information is available.



JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

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Meeting Calendar for July - August 2012

FOIA

Maria Everett/Alan Gernhardt

Parole Board Subcommittee

10:30 a.m., Monday, July 2, 2012—6th Floor Speaker's Conference Room, GAB

Full Council Meeting

1:30 p.m.—House Room C, GAB

Virginia Housing Commission

Neighborhood Transitions and Residential Land Use Work Group

Elizabeth Palen

10:00 a.m., Tuesday, July 31, 2012—House Room C, GAB

Virginia Housing Commission

Affordability, Real Estate Law, and Mortgages Work Group

Elizabeth Palen

10:00 a.m., Wednesday, August 1, 2012—House Room C, GAB

Virginia Code Commission

Jane Chaffin

10:00 a.m., Monday, August 20, 2012—6th Floor Speaker's Conference Room, GAB

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

Virginia Sesquicentennial of the American Civil War Commission Executive Committee

May 22, 2012

Speaker Howell called the meeting of the Virginia Sesquicentennial of the American Civil War Commission (the Commission) to order and welcomed those in attendance.

Legacy Project Scope

Sandra G. Treadway, Librarian of Virginia

Dr. Treadway updated the Executive Committee on the success of the Legacy Project. Since Phase I of the program began in July 2010, the Legacy Project staff has held 133 events covering virtually the entire Commonwealth, scanning Civil War-era documents previously unknown to the public. The program is now moving into Phase II, focusing on cataloging and providing access to the images through the Library of Virginia website. Changes to the scope of the project as it moves forward are as follows:

- Scheduled visits by the project archivist to individual localities in Virginia will taper off by Spring 2013, allowing the project archivist time to describe, catalog, and publish to the Virginia Memory website items collected in earlier phases of the project.
- A few regional scanning events will be planned in lieu of individual events.
- The project archivist will hold scanning events and take individual appointments in Richmond when there is sufficient interest.
- Library of Virginia staff will continue to look for additional outside funding to possibly extend the project subject to the Executive Committee's approval.

In response to a question about press coverage of the Legacy Project, Dr. Treadway noted that there have been multiple stories in local newspapers and a front-page article in the *Los Angeles Times*. Staff will work with the Library of Virginia to develop an expansive story about the significance of the Legacy Project and highlight some of its major finds.

2013 Signature Conference Proposal: "The American Civil War at Home"

Dr. Scott Nelson and Dr. Carol Sheriff,
College of William and Mary

Dr. Nelson presented the proposed program for the 2013 Signature Conference, to be held on Saturday, April 20, 2013, at the College of William and Mary, which will focus on the Civil War at home and the long-term legacies of a fratricidal conflict on a society. The program will cover the time period around 1863 when the question of secession evolved into a question about slavery. The conference format will be similar to that of the 2009 Signature Conference held at the University of Richmond. The proposed program will include a keynote address by Pulitzer Prize-winning author Eric Foner, followed by two panels of historians that include Thavolia Glymph, Bob Engs, Stephen Kantrowicz, Stephanie McCurry, Stephen Ash, and Matthew Gallman. The first panel will discuss Emancipation and its limits, touching on such topics as how slavery ended and the roles played by the Union Army and enslaved African Americans. The second panel will consider how two turbulent years of war caused both Union and Confederate home fronts to fracture from within.

Members discussed the program and the capacity of the facility at William and Mary, and asked for the university's help in holding costs down. In addition, members agreed that promoting the conference to local teachers and students should be a high priority for the host committee. Dr. Nelson mentioned that they will look into offering continuing education credit to teachers for their attendance.

Richmond National Battlefield Park: Update on 150th Anniversary Programs

David Ruth, Superintendent, Richmond
National Battlefield Park

Mr. Ruth updated Executive Committee members on over 80 sesquicentennial events offered by the Richmond National Battlefield Park and its partners during the commemoration period. Events began with a successful program May 9 - May 15 at Drewry's Bluff, held in partnership with Chesterfield, Henrico, and Hanover Counties. During the event, featured speaker and Vietnam veteran Colonel Wesley Fox told the story of how the first Marine to win the Medal of Honor for bravery won it at

*Richmond National
Battlefield Park has
partnered with other
organizations and
entities for dozens of
sesquicentennial
events.*

the Battle of Drewry's Bluff. Also during the event, over 500 people toured the Civil War 150 HistoryMobile and an estimated 300 home-schoolers and students from Chesterfield County took advantage of interpretive stations provided by the National Park Service that focused on elements of science and technology during the Civil War.

A book based on the March 22, 2012, Signature Conference, "Leadership and Generalship in the Civil War," should be available in early 2013.

Richmond National Battlefield Park has been intentional about providing a variety of sesquicentennial programming, and has partnered with the Virginia Historical Society and the American Civil War Center to focus on the significance of the Seven Days Battles in the Civil War. On June 19, Edward L. Ayers will speak on *The Civil War at a Crossroads: The Seven Days*, and on July 11, Gary Gallagher will give a presentation entitled *More Important than Gettysburg: The Seven Days Campaign as a Turning Point*. Another program is being held in partnership with the community at Gravel Hill - a community that was comprised of free, black Americans whose lands and homes were caught up in the middle of the Battle of Malvern Hill. Professor Bill Anderson with the University of Virginia and former resident of Gravel Hill will be giving a lecture. Mr. Ruth invited Executive Committee members to attend any of the events, and members praised him for developing such a comprehensive series of programs.

Sesquicentennial Tourism Marketing Grant Program

The Commission's executive director briefed Executive Committee members on the eighth round of grant applications for the Commission-sponsored sesquicentennial tourism marketing program. Seven grant applications were received, all of which were recommended by the grant review committee for funding:

- **Montgomery County Sesquicentennial Committee** "Civil War Trails Marker: William Ballard Preston/Smithfield Plantation."
- **Lynchburg Sesquicentennial Committee and Legacy Museum of African American History and Culture** "African American Civil War Learning Initiative of Central Virginia."
- **Rappahannock-Rapidan Regional Commission** "Commemorating the Sesquicentennial in the Piedmont."
- **Franklin County Sesquicentennial Committee and Jubal A. Early Preservation Trust, Inc.** "Marketing Materials for Franklin

County CW150 as part of the Virginia Civil War Trails and in the Year of the Homefront."

- **Lee County Sesquicentennial Committee** "Lee County Civil War Trails Interpretive Markers."
- **Harrisonburg-Rockingham Sesquicentennial Committees and Shenandoah Valley Battlefields Foundation** "Youth Travel Booklet: Shenandoah Valley Civil War Sites."
- **Manassas Sesquicentennial Committee and Historic Manassas, Inc.** "Historic Manassas Mobile Apps."

Staff reported that with the Commission's approval of these seven applications, \$131,889.10 will have been awarded through this grant program thus far, generating an additional \$218,291.70 in matching funds. The grant recommendations were considered and approved en bloc.

Approval of Logo Requests

In accordance with the procedure established by the Executive Committee, the executive director presented a list of applications to affix the Commission's logo that have been given provisional authorization. The Executive Committee gave final approval to those logos recommended by staff for approval, while logo requests not recommended for approval were tabled.

Program Updates

2012 Signature Conference: *Leadership and Generalship in the Civil War*

The executive director provided an update on the 2012 Signature Conference, *Leadership and Generalship in the Civil War*, held at Virginia Military Institute on March 22, 2012, and drew the members' attention to a thank you letter from General J.H. Binford Peay III, VMI Superintendent. The Commission has received universally positive feedback about the conference, and a DVD of the program was released in early May. Commission staff is working with Lt. Gen. John W. Knapp, conference chair, to publish a book based on the conference proceedings, which should be available in early 2013. Ms. Jackson also reported that one of the conference panelists, military historian Carol Reardon, offered to lead a detailed tour for Commission members this fall at Gettysburg, including a briefing on preparations for the battle's 150th anniversary.

If This Valley is Lost: Preserving the Legacy of Stonewall Jackson's Valley Campaign

The executive director also provided an update on the 150th anniversary event the Commission is co-sponsoring with the Shenandoah Valley Battlefields Foundation on June 9 entitled, *If This Valley is Lost: Preserving the Legacy of Stonewall Jackson's Valley Campaign*. The evening event will be held at the Widow Pence Farm on the Cross Keys Battlefield in Rockingham County. Speaker Howell will offer remarks, along with Lt. Gov. Bolling, Secretary Domenech, and Kathleen Kilpatrick. The keynote address will be delivered by James I. Robertson, Jr.

A Fireside Chat: Looking at the Emancipation Proclamation

The executive director continued with an update on the Commission-sponsored 150th anniversary commemorative event, *A Fireside Chat: Looking at the Emancipation Proclamation*, to be held September 21 in the Dodd Auditorium at the University of Mary Washington. The program is drawn from the popular book, *The Emancipation Proclamation: Three Views*, and will bring together acclaimed Lincoln scholars, Harold Holzer, Edna Greene Medford, and Frank Williams to remember, interpret, and evaluate the Emancipation Proclamation at its 150th anniversary. Lynwood Evans will serve as discussion host and James I. Robertson, Jr., will provide introductory remarks.

Civil War 150 HistoryMobile

The Civil War 150 HistoryMobile continues to meet with an overwhelmingly positive response as it travels the state. Over 33,000 people have toured the HistoryMobile to date, including nearly 12,000 students and young people. The HistoryMobile traveled to schools in Hanover, Chesterfield, Louisa, Spotsylvania, Stafford, and Fredericksburg during the winter months, and the full tour year began in early March. Members discussed the strong merchandise sales at the HistoryMobile and authorized the sale of baseball caps with the Civil War 150 logo. Staff will work with marketing partners at the Virginia Tourism Corporation to create the caps.

An American Turning Point: The Civil War in Virginia

The Commission-sponsored gallery exhibition, *An American Turning Point: The Civil War in Virginia*, has been uninstalled from the Virginia Historical Society, divided into its two

component units, and installed at the Museum of the Shenandoah Valley (Winchester) and the Hampton History Museum. Both it and the smaller travelling panel exhibit have met with great public response. The success of the Commission's programs was described, which was evident recently at the 150th anniversary events for the Battle of Williamsburg. The panel exhibit was installed in the Williamsburg Community Building for viewing during a reception and the weekend events; the HistoryMobile was located nearby and was toured by over 900 visitors; and the Legacy Project visited the library and scanned 1,500 items. All of the Commission programs have been well received and staff continues to work with localities to ensure they are able to take full advantage of the Commission's programs during the commemorative period.

Next Meeting

The next meeting of the Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission will be posted on the Commission website and General Assembly website as soon as information is available.

"A Fireside Chat: Looking at the Emancipation Proclamation" will be held at the University of Mary Washington on September 21, 2012, at 7 p.m.

"A Fireside Chat: Looking at the Emancipation Proclamation" will be held September 21, 2012, at the University of Mary Washington.



VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

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Did You Know?

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

Governor’s Executive Reorganization Plan (HB 1291/SB 678)

On January 16, 2010, Governor McDonnell signed Executive Order 2 establishing the Commission on Government Reform and Restructuring to perform a comprehensive examination of state government to determine the effectiveness, efficiency, and need for existing agencies, governing bodies, programs, and services. During its first year the Commission identified several operational and administrative areas in which government could be improved. The second year of the Commission involved the development of specific legislative actions that were later combined to formulate a comprehensive plan for executive reorganization under Article 2 (§ 2.2-127 et seq.) of Chapter 1 of Title 2.2 of the *Code of Virginia*.

The statute requires the executive reorganization plan to first be submitted to each house of the General Assembly in the form of a resolution. House Joint Resolution 49 and Senate Joint Resolution 66 detailed the proposed actions of the plan, which were organized by the nine subject matter areas of the Governor’s secretariats. After the review of the resolutions, bills were introduced in the House of Delegates (HB 1291) and Senate (SB 678) to enact the plan as approved by each house.

HB 1291 and SB 678 subsequently passed the General Assembly and were signed by the Governor. The bills, which are identical, contained 114 enactment clauses eliminating or merging several state entities and transferring and consolidating functions and responsibilities

from one state entity to another. Some highlights of the legislation include:

- Transferring certain investigative and consumer complaint functions from the Department of Agriculture and Consumer Services to the Office of the Attorney General.
- Eliminating the Pesticide Control Board and transferring its duties to the Board of Agriculture and Consumer Services.
- Eliminating the Board of Mineral Mining Examiners and transferring its duties to the Department of Mines, Minerals and Energy.
- Eliminating the Virginia Public Broadcasting Board and transferring its duties to the Board of Education.
- Eliminating the Department for the Aging and the Department of Rehabilitative Services and transferring the powers and duties of those agencies to a new Department for Aging and Rehabilitative Services.
- Eliminating the Child Day-Care Council and transferring authority for regulating child day care programs to the State Board of Social Services.
- Eliminating the Board of Towing and Recovery Operators and providing for the Department of Criminal Justice Services to regulate drivers with the Office of the Attorney General to investigate complaints.

A more detailed review of the actions contained in HB 1291/SB 678 can be found at:

http://dls.virginia.gov/gov_reorg_pkg.pdf.

Maria Everett and Amigo Wade, DLS Senior Attorneys

2012 Acts of Assembly: Changes to State Entities

In addition to the changes to state entities referenced in the link above, the following changes are also a result of the 2012 Acts of Assembly:

New State Entities

- Joint Subcommittee to Evaluate Tax Preferences
- Innovation Technical Advisory Group (under Department of Education)

Name Changes of State Entities

- Council on the Status of Women changed to Council on Women

State Entities Abolished

- Chesapeake Bay Local Assistance Board
- Interagency Drug Offender Screening and Assessment Committee
- Virginia Office for Protection and Advocacy (effective 1/1/14 with the director and board to establish a nonprofit organization to provide advocacy, legal, and ombudsman services to persons with disabilities no later than 12/31/13)

Virginia Code Commission

May 22, 2012

Senator Edwards, chair, called the meeting of the Virginia Code Commission (the Commission) to order and welcomed new member Delegate Greg Habeeb.

Citizen Member Vacancy

After brief discussion, the Commission members moved and agreed to recommend Christopher R. Nolen to the Speaker of the House of Delegates as a citizen member. The motion was seconded and approved unanimously.

2012 Legislative Update

Jane Chaffin briefly reviewed the history of the legislation regarding the Virginia Rules of Evidence and the changes that were made to the bill originally recommended by the Commission. She indicated that the sixth enactment clause of Chapter 688 makes the Commission responsible for ensuring that the catchline of every section of the *Code of Virginia* from which any rule contained in the Rules of Evidence has been derived includes a notation specifying such rule. A motion passed unanimously that the Commission direct the publisher, LexisNexis, to comply with this requirement. Delegate Habeeb and Senator Edwards addressed the changes made by the General Assembly.

Ms. Chaffin reported that the General Assembly passed the bills recommended by the Code Commission regarding the recodification of Title 64.2 and the repeal of obsolete laws. She will send an email to all Virginia Circuit Courts clerks to advise them of the recodification of Title 64.2 and asked if the Commission was aware of anyone else to whom the notice should be sent. No additional recipients were identified.

Title 33.1 Recodification

Alan Wambold, Senior Research Associate, Division of Legislative Services

Mr. Wambold presented the work plan for the recodification of Title 33.1, Highways, Bridges and Ferries, and distributed a document entitled "Title 33.2 - Highways and Other

Surface Transportation," which contained a proposed outline and organization of the new title. Senator Calhoun asked whether all areas under the Secretary of Transportation should be in the new title, which would require adding aviation and ports to the work plan. After discussion of the pros and cons of this suggestion, including the number of pages involved, Senator Edwards directed Mr. Wambold to contact the Virginia Port Authority and the Department of Aviation and obtain their input. If there is no objection, the Commission will consider adding these areas to Title 33.2.

The Commission discussed whether to (i) incorporate certain transportation-related compacts from Titles 15.2, 33.1, and 56 into Title 33.2 or (ii) remove the compacts from the codified titles and retain them only in the *Code of Virginia* Compacts Volume. After a general discussion of the compacts publication policy, the Commission deferred a decision on this issue to be taken up at a future meeting.

The Commission approved Mr. Wambold's recommendation to move the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.) and the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) from Title 56 into Title 33.2.

Mr. Wambold reviewed proposed Articles 1 through 10 of Chapter 4 (Highway Corporations, Public-Private Partnerships, and Special Programs and Funds) and asked whether any articles should be moved to Chapter 2 (Highways, Bridges, and Ferries). The Commission determined to retain Articles 1 through 10 in Chapter 4.

Mr. Wambold reviewed proposed Articles 1 through 14 of Chapter 5 (Local and Regional Highway and Transportation Programs) and suggested that the Commission might consider repealing certain articles that do not appear to be used or are duplicative. After discussion, the Commission decided to retain the following proposed articles in new Title 33.2:

- Richmond Metropolitan Authority (Article 9), which will move from Title 15.2.
- Buchanan County Tourist Train Development Authority (Article 12).
- U.S. Route 58 Corridor Development Program (Article 13).
- Chesapeake Bay Bridge and Tunnel District (Article 14).

The consensus of the Commission regarding the Transportation District within

The Virginia Code Commission will work on the recodification of Title 33.1 of the Code of Virginia during the 2012 interim.

the City of Charlottesville and the County of Albemarle (Article 11), which was enacted in 2004, was to obtain input from Delegates Danny Marshall and David Toscano. A member suggested that a 2004 act is relatively recent and that the Commission should exercise caution when repealing such acts.

In response to the question of whether a work group had been established, Mr. Wambold explained that he has established contacts at the Virginia Department of Transportation (VDOT), the Department of Rail and Public Transportation, and the Secretary of Transportation's office. Representatives from the Department of Aviation and Virginia Port Authority should be added if those titles are moved into Title 33.2. Also, staff suggested involving the Department of State Police, possibly the Department of Motor Vehicles, and the Office of the Attorney General. The Commission discussed involving local governments, and the consensus was to invite a representative from the Northern Virginia Transportation Commission to participate. Further, Mr. Wambold explained that he planned to circulate a draft for comments to all his contacts to obtain their input before any meeting of the Commission regarding the recodification. The recodification work will be posted on the Code Commission's website.

The Commission made the following determinations based on questions raised or issues identified by Mr. Wambold:

- The name of the new title will depend on whether ports and aviation are included. The Commission will revisit this issue later in the process.
- The 2011 General Assembly changed the title "Commissioner of Transportation" to "Commissioner of Highways," but did not change the department name to correspond with the agency head title. The Commission decided to leave the agency name as is.
- The references to pre-1976 contracts in §§ 33.1-192 and 33.1-192.1 will be retained. Attorneys at the Attorney General's office will be contacted for input.
- §§ 33.1-23, 33.1-183, 33.1-190.2, 33.1-225.2, 33.1-225.3, 33.1-228, and 33.1-241 will be retained in the new Title 33.2. With regard to § 33.1-247 (Ferry across Corrotoman River), Joanne Maxwell of VDOT will double check the need for this section. Also, as a general rule, the Commission indicated that anything in the last 15 years should be retained.

- §§ 33.1-14 (VDOT bookkeeping system), 33.1-225 (levy of road tax; disbursement of taxes levied prior to 1932), 33.1-226 (enactment of county road regulations; Craig County), and 33.1-252.1 (noise abatement measures; Virginia Beach expressway) will be repealed.
- Mr. Wambold will obtain additional information about toll bridges before a determination is made whether to retain Article 4 (Toll Bridges Generally) of Chapter 3 of the current Title 33.1. This article pertains to toll bridges built before 1928. VDOT had suggested removing the article, but it was pointed out that the recent budget affected two sections of this article.

In closing, Mr. Wambold said he hopes to have the recodification bill ready for introduction at the 2013 legislative session, but that would depend on the issue regarding aviation and ports.

Delivery of Notices Provisions in the Code of Virginia

Lisa Wallmeyer, Senior Attorney,
Division of Legislative Services

Ms. Wallmeyer submitted her work plan for reviewing the over 1,000 references to delivery of notices provisions in the *Code of Virginia* and identifying which provisions could include an additional method of delivery, such as a commercial delivery service. She explained the sizeable scope of this project and suggested that the project be divided into workable sections in order to identify appropriate constituencies. Ms. Wallmeyer suggested that the Commission solicit the assistance of the Boyd Graves Conference, Virginia Supreme Court, and the Virginia State Crime Commission to conduct a review of select titles as outlined in her work plan. Options for reviewing notice delivery provisions in other titles include review by the Code Commission as it undertakes a title recodification and requesting the Governor's office to establish a review process of existing notice provisions through the cabinet secretaries. The Commission unanimously adopted Ms. Wallmeyer's work plan, except that the Virginia Supreme Court will be asked to look at Title 18.2 rather than the Crime Commission, and under "Options," the first bullet regarding establishment of a general rule is adopted with the recodification of Title 33.1 being used as a pilot.

Civil Penalties

Wenzel Cummings, Attorney, Division of Legislative Services

Mr. Cummings indicated that the civil penalties provisions in the *Code of Virginia* need to be amended due to the following issues:

- Failure to designate the fund to which the penalty is paid.
- Failure to designate who enforces the penalty.
- Inconsistency in nomenclature (i.e., civil fine vs. civil penalty).
- Discrepancy in the purpose of the penalty.

Mr. Cummings indicated that he would like guidance from the Commission on the proper use of civil penalties that could be put into a standard for use by drafters at the Division of Legislative Services and approval to draft a bill to fix the current penalties provisions in the *Code of Virginia*. The Commission agreed that Mr. Cummings should present a work plan and guidelines at the next meeting.

Virginia Administrative Code Contract

Staff advised the Commission that West wants to discontinue use of the binders for the print version of the *Virginia Administrative Code* (VAC), as the binders will not be available after the current year, and provide the Commission with alternatives. West plans to address the Commission at the next meeting and provide further details and alternatives. Staff also advised that the current contract with West for publication of VAC will expire in December 2012. Mr. Miller provided a brief history of the original contract with West (Thomson Reuters) and said that in addition to West, LexisNexis is really the only other administrative code publisher. He recommended that the Commission listen to the West proposal. Staff indicated that in Texas, there is no contract and the entire code is published every year. However, the cost of the code is considerably higher than in Virginia. The Commission looked forward to receiving information from West regarding its proposal.

Next Meeting

The next scheduled meeting of the Virginia Code Commission is August 20, 2012, in Richmond.

VIRGINIA CODE COMMISSION

SENATOR JOHN S. EDWARDS, CHAIR
JANE CHAFFIN, DLS STAFF

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The Virginia Code Commission gave approval for a work plan to be developed to amend civil penalties provisions in the Code of Virginia to address conformity and other issues.

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

Virginia Freedom of Information Advisory Council

May 23, 2011

The Virginia Freedom of Information Advisory Council received information regarding 2012 legislation.

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of 2012 in Richmond, with Delegate Sal R. Iaquinto, vice chair, presiding. The organizational meeting included a 2012 legislative update, review of bills referred to the Council for study, establishment of a work plan with the appointment of necessary subcommittees, and the setting of future meeting dates.

2012 Legislative Update

The General Assembly passed a total of 10 bills amending the Virginia Freedom of Information Act (FOIA) during the 2012 Session.

Of the 10 bills, two bills create new records exemptions as follows:

- HB 141. Creates an exemption for personal information in constituent correspondence, unless the correspondence relates to the transaction of public business.
- SB 193. Creates an exemption for records of a fire/EMS company or fire/EMS department, to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

Eight bills amend existing provisions of FOIA as follows:

- HB 343/SB 135. Amends an existing exemption for certain records disclosed to the State Health Commission to exempt certain records of the Virginia All-Payer Claims Database as well.
- HB 480. Provides that a member of a public body shall be permitted to attend a closed meeting held by any of its committees or subcommittees, provided such member does not participate in any discussions held by the committee or subcommittee conducting the closed meeting. The bill requires that the minutes of the committee or subcommittee include the identity of the member who attended the closed meeting.

- HB 552/SB 387. Changes the terminology used for mental health and developmental services, including technical changes within several existing provisions of FOIA.
- HB 1291/SB 678. Reorganizes the executive branch of state government. The bill contains numerous technical amendments to FOIA and other laws to accomplish this reorganization.
- SB 451. Amends an existing exemption to include certain information furnished to the Attorney General under the Virginia Fraud Against Taxpayers Act.

The complete 2012 legislative update is available on the Council's website.

Bills Referred for Study

The Council next reviewed the three bills referred to it by the General Assembly for additional study.

HB 397. Virginia Parole Board

HB 397 requires guidance documents of the Virginia Parole Board to be available as public records under the Freedom of Information Act. The bill has a delayed effective date to give the Freedom of Information Advisory Council an opportunity to review the legislation and report on its implementation.

Delegate Hope, the patron of the bill, told the Council that he introduced HB 397 in order to allow for public inspection of guidance documents regarding the Parole Board's policies and procedures. He pointed out concerns about restrictions on civil liberties, the costs of incarceration, and that currently no policy or procedural documents are available from the Parole Board.

Steve Northup, from the law firm of Troutman Sanders, elaborated that based on his experience in litigation, the Parole Board generally operates in secrecy, and that what published information is available is not helpful. He further noted concerns for prisoners who were convicted before the abolition of discretionary parole in Virginia, effective in 1995. He related that many such prisoners were given very lengthy sentences with the expectation that they would be released on parole once eligible, but many have not been so released. The result is that those convicted before 1995 often serve longer sentences than those convicted after 1995, for the same offenses. He also noted that the bill would not only address

documents about granting discretionary parole, but would also make available guidance documents about the revocation of parole. Delegate Hope and Mr. Northup both indicated that the bill was not intended to reach individual case information, but only general policy guidelines and procedures.

Carla Peterson also spoke to the bill, as Director of Virginia CURE, an advocacy organization for prisoners and their families. She indicated that the organization supported the bill because it would like to know how the Parole Board makes its decisions to ensure the process is fair. Mr. Fifer stated that the general approach under FOIA was to make all records public and to place the burden on government to show why a record should be exempt. With that in mind, he suggested a possible approach to this issue would be to make the Parole Board subject to FOIA just as any other public body would be, but to give it the exemptions it would need both for meetings and records, particularly those involving the discussion of individual case files and criminal history.

HB 1105. Electronic Communication Meetings

HB 1105 revises the rules for which meetings of state public bodies may be conducted by audio or video means. The bill provides that:

- At least one member of the public body must be physically assembled at the principal meeting location.
- The quorum of the public body is determined by members participating in person or by electronic means in the meeting.
- A member of the public shall pay for the documented marginal cost that a public body may incur in expanding public participation to the meeting.
- The number of meetings a public body may conduct through electronic communications means is limited to 50 percent of its regular meetings in any calendar year.

Delegate Greason, the patron, was unable to attend, but indicated that he was interested in participating in the work of the Council as it relates to HB 1105. Staff indicated that currently, only state public bodies are permitted to conduct electronic meetings as a general rule, because state officials are often geographically separated, but officials serving on local and regional bodies generally live in the same area. Staff related that the FOIA Council had a continuing Electronic Meetings Subcommittee

from 2005 through 2008, which over those years recommended loosening the requirements for conducting electronic meetings. Staff highlighted that HB 1105 would eliminate the requirement to have a quorum physically assembled in one location and would require the public to pay to participate in public meetings by electronic means. As further background, staff described a policy statement adopted by the FOIA Council in 2008 by a vote of 6-5 that generally expressed support for face-to-face meetings but recognized continuing improvements in communications technology.

HB 1149. Electronic Communication Meetings by Local and Regional Public Bodies

HB 1149 expands the authority for the conduct of electronic communication meetings to all public bodies. Currently, local public bodies are prohibited from conducting public meetings in this manner, except when the Governor declares a state of emergency.

Delegate Dudenhefer, the patron, was present at the meeting and advised the Council that he introduced HB 1149 to allow local and regional bodies to conduct meetings by electronic means. He noted that technology has come a long way in recent years, and he had personal experience with worldwide electronic conferences. As an example, he described a recent dinner in Virginia where the guest speaker was in Afghanistan. He noted that at times the restrictions on electronic meetings prevent good people from running for office or other public service due to scheduling conflicts that would not allow them to attend meetings in person. He further indicated he was open to the idea of having a test case to see how the bill would work if implemented on a limited basis.

Mark Flynn, speaking on behalf of the Virginia Municipal League and the Virginia Association of Counties, indicated support for the approach of looking at the ability to use technology to conduct meetings. The vice chair asked if there were problems getting quorums assembled at the local level. Mr. Flynn indicated it was sometimes a problem, but not all the time. Delegate Dudenhefer stated that from his experience as a former Board of Supervisors member, board meetings were usually not a problem, but there were problems with committee meetings and in just getting good people with demanding jobs to serve at all.

*The Virginia
Freedom of
Information Advisory
Council reviewed
three bills referred to
it by the General
Assembly for study.*

The Virginia
Freedom of
Information Advisory
Council received a
briefing on the work
of the Criminal
Investigative Records
Subcommittee.

The Council created two subcommittees to study the referred bills. The Parole Board Subcommittee, consisting of Council members Robert Tavenner, James Schliessman, and Frosty Landon, will study HB 397 during the 2012 interim. The Electronic Meetings Subcommittee, consisting of Council members Craig Fifer, John Selph, and George Whitehurst, will study HB 1105 and HB 1149. Staff will check with Senator Stuart and Ed Jones about serving on either or both of the above subcommittees.

Other Business

Craig Fifer briefed the Council on the work of the Criminal Investigative Records Subcommittee, which is continuing to work in 2012. Mr. Fifer told the Council that the Criminal Investigative Records stakeholders group will continue to meet. Included in the work of the stakeholders group will be the consideration of the release of adult arrestee photographs (mug shots) and access to criminal history records.

Delegate Iaquinto commended Mr. Fifer for his service to the Council. Delegate Iaquinto noted that during his tenure on the Council, Mr. Fifer has participated in and chaired several subcommittees and has made other significant contributions to the work of the Council and to open government in general. Mr. Fifer's second four-year term expires on July 1, 2012, and he is not eligible for reappointment according to the Council's enabling statute. Mr. Fifer will continue to serve on the Council until his successor is appointed by the Governor.

Delegate Iaquinto noted that at the next Council meeting, the election of the chair and vice chair will take place. Delegate Iaquinto next called for public comment and there was none.

The Council by consensus agreed that a resolution commending Senator R. Edward Houck for his years of service to the Council be prepared and presented to Senator Houck at a subsequent Council meeting that is convenient for Senator Houck.

Next Meeting

The Council then set the following meeting dates for the 2012 interim:

- Monday, July 2, 2012, 1:30 p.m., House Room C, General Assembly Building
- Wednesday, September 5, 2012, 1:30 p.m., House Room D, General Assembly Building
- Monday, December 17, 2012, 1:30 p.m., House Room C, General Assembly Building



**Virginia Freedom of Information
Advisory Council**

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

**DELEGATE SAL IAQUINTO, VICE CHAIR
MARIA EVERETT, EXECUTIVE DIRECTOR
ALAN GERNHARDT, DLS STAFF**

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**Prefiling
for the 2013 Regular Session
begins on Monday, July 16, 2012.**

**The last day to act on continued
legislation is Thursday, November 29,
2012.**

Virginia Disability Commission

June 5, 2012

The first meeting of the Virginia Disability Commission (the Commission) for the 2012 interim was held June 5, 2012, in Richmond.

Election of Chair and Vice Chair

Following introductions and opening remarks, Senator Yvonne B. Miller and Delegate Brenda Pogge were elected chair and vice chair, respectively.

2012 Legislative Update

Staff reviewed the scope and purpose of the Disability Commission and provided a review of the activities and recommendations of the 2011 Disability Commission. Staff also provided a brief review of legislation introduced during the 2012 Session of the General Assembly affecting persons with physical and sensory disabilities.

HB 79. Virginia Disability Commission powers and duties, work groups, and sunset

This bill was a recommendation of the 2011 Commission. It provides that the Commission establish work groups to focus on various issues including housing and transportation, education and employment, and publicly funded services. The bill also repeals the sunset provision for the Commission, which was set to expire July 1, 2012.

HB 382. Transfer of assistive technology devices by a school division

This bill was a recommendation of the 2011 Commission. It allows a school division to transfer assistive technology devices purchased by the division for a child with a disability when the division is no longer providing services to the child. The assistive technology devices may be transferred to a different school division, a state agency, the parents of a child with a disability, or the child with a disability if the child is age 18 or older and has capacity to enter into a contract.

HB 1230. Privatization of the Virginia Office for Protection and Advocacy

This bill privatizes the Virginia Office for Protection and Advocacy (VOPA). It requires VOPA to establish a nonprofit corporation by

December 31, 2013, that will continue VOPA's mission and operations. The bill provides that VOPA will be eliminated as of January 1, 2014.

2012 Budget Actions

Susan Massart, Legislative Fiscal Analyst, House Appropriations Committee Staff

Ms. Massart presented information on 2012 budget actions affecting persons with physical and sensory disabilities. Ms. Massart noted that the 2012-2014 appropriation act allocated approximately \$10.3 billion to Virginia's health and human resources agencies, with \$112.7 million allocated to the Commonwealth's disability services agencies. Totals for Virginia's health and human resources agencies included a net increase of \$277.6 million in state general funds and \$1.6 billion in nongeneral funds. The increased spending was largely driven by federally mandated programs. Most new federal funding represents federal Medicaid funds to finance expanded Medicaid eligibility required under federal health care reform. Major spending initiatives for health and human resources agencies will include:

- Increased funding to restore or mitigate reductions to Medicaid provider rates.
- Funding to expand access to community-based developmental disability services to address the U.S. Department of Justice Settlement Agreement (DOJ Settlement).
- Funding to increase intellectual disability and developmental disability Medicaid waiver slots over the biennium.
- Funding to restore the health care safety net.
- Funding to restore wrap-around services for children in special education.

Reductions in health and human resources spending included reduction of the Medicaid forecasts for inflationary increases in hospital and nursing home rates, a reduction in eligibility for long-term care services from 300 percent to 267 percent of Supplemental Security Income payment level, and two significant Medicaid fraud recoveries.

Several budget actions that affect the Department of Rehabilitative Services were recommended by the 2011 Disability Commission. The recommended actions included \$3.4 million general funds each year to match federal funding for the Vocational Rehabilitation Program and \$391,069 in general funds to restore various community

The 2012-2014 appropriation act allocated approximately \$10.3 billion to Virginia's health and human resources agencies, with \$112.7 million allocated to the Commonwealth's disability services agencies.

based services (\$233,316 for brain injury services, \$70,000 for personal services, and \$87,753 for independent living services). There was also a \$10,153 per year savings in general funds for long-term rehabilitative case management services. This two percent savings stemmed from a recommendation of the Commission.

The Virginia Disability Commission heard information regarding the Virginia Office for Protection and Advocacy's transition to a private nonprofit.

In response to a question about the status of Virginia's settlement with the Department of Justice concerning violations of the Americans with Disabilities Act and how the closing of training facilities would affect those who needed services, Ms. Massart noted that there are funds in the budget for implementing the settlement and that the Southeast Virginia Training Center will remain open. It was noted that this facility has only 75 slots.

Privatization of the Virginia Office for Protection and Advocacy

Colleen Miller, Executive Director, Virginia Office for Protection and Advocacy

Ms. Miller presented information on the Virginia Office for Protection and Advocacy's (VOPA) transition to a private nonprofit as required by HB 1230 (2012). Prior to her presentation, Ms. Miller mentioned that the settlement agreement with the Department of Justice had been challenged by a number of concerned citizens and that the judge in the case would be hearing testimony on June 8.

VOPA currently is the state's designated protection and advocacy system. It is an independent state agency, outside the executive, legislative, and judicial branches. It is mandated to combat abuse, neglect, and discrimination of people with disabilities. VOPA is entirely federally funded and has not received state funds since 2010. Per HB 1230, the director of VOPA, prior to December 1, 2013, will develop and report to the General Assembly an implementation plan for the transition. VOPA's goal is to develop and report its implementation plan by December 2012. VOPA will present a proposed implementation plan to the Disability Commission at the August 2012 meeting, at which time the Commission will provide feedback. The transition will require some "cleanup" in the *Code of Virginia* and VOPA will rely on the Commission to provide legislation to implement this. Governor McDonnell has requested that VOPA perform

a study examining how other similar protection and advocacy entities are structured and operated. VOPA will conduct the study and report its results to the Governor; the House Committee on Health, Welfare and Institutions; the Senate Committee on Education and Health; and the Disability Commission.

In response to a question about how the transition will affect VOPA's board of trustees, which is currently appointed by the Governor, Ms. Miller responded that VOPA is still developing its articles of incorporation and bylaws and has not determined the method for board member selection. VOPA will continue to look at agencies that have undergone a similar transition for guidance. It was suggested that VOPA include in its bylaws a requirement that it submit an annual report to the Governor, General Assembly, and the Disability Commission that includes a financial breakdown.

Governor's Reorganization of Executive Branch Agencies

Keith Hare, Deputy Secretary of Health and Human Resources

Mr. Hare presented information regarding the reorganization of the executive branch agencies as well as information on other initiatives of the Secretary of Health and Human Resources. The Department of Rehabilitative Services, the Department for the Aging, and the Adult Services Unit of the Department of Social Services have administered separate policies, funding streams, procedures, and information systems related to long-term services and supports for older Virginians and adults with disabilities. These agencies have served separate but overlapping populations and the agencies have similar functions, programs, and service delivery methods. The existing state-level organizational structure prevented coordination between the agencies.

The Governor's Commission on Government Reform and Restructuring, as well as the Secretary of Health and Human Resources, Bill Hazel, recognized the need for increased efficiency, coordination, and collaboration. The combining of agencies and services for individuals with disabilities and aging adults is a national trend. Virginia, as well as the rest of the United States, is experiencing an "age wave." This demographic expansion will lead to an increased demand for long-term aging and disability services. To meet this increasing

demand, states are moving toward greater collaboration and consolidation of agencies involved in aging and disability services to provide improved coordination to operate more efficiently.

HB 1291 and SB 678 created a new state agency titled the Department for Aging and Rehabilitative Service (DARS). On July 1, 2012, the Department of Rehabilitative Services and the Department for the Aging will be combined in the new agency. On July 1, 2013, the adult services programs in the Department of Social Services, including Adult Protective Services and Auxiliary Grants, will be combined with the new agency. The creation of DARS will increase efficiency and consistency of services, while reducing confusion and complexity for those who seek services.

Deputy Secretary Hare outlined some of the other initiatives of the Secretary of Health and Human Resources. Implementation of the DOJ Settlement concerning violations of the Americans with Disabilities Act is ongoing. All facets of the agreement are being implemented and more than 50 individuals have transitioned from the training centers to community-based services since January 1, 2012. Deputy Secretary Hare noted that, as previously mentioned by Ms. Massart, the budget included funds for the implementation of the settlement agreement. Other initiatives include (i) a new online Medicaid Eligibility System that has already received over 1,000 applications, (ii) the removal of over 3,500 individuals from the waiting list for vocational rehabilitative services and the acceptance of new clients by the Department for Rehabilitative Services, (iii) the changing of the name of the NewWell Fund to the Assistive Technology Loan Fund and the creation of its new strategic plan and organizational structure, and (iv) the reopening of the Virginia Center for the Blind and Vision Impaired.

Deputy Secretary Hare responded to concerns about the sufficiency of waiver services for individuals transitioning out of state training centers by saying that care received in ICF/MR was equivalent to care received in the training centers. The goal is for the care to be at least equivalent if not better. In response to an inquiry about individuals who are transferred to community-based care with MR waiver services, the Deputy Secretary noted that the discharge process will arrange for services to ensure a successful transfer. He also noted that the Department of Justice and

VOPA will continue their oversight roles. It was noted that the discrepancy between the levels of care was a perceptual difference, but not necessarily an actual difference. It was also noted that VOPA will play a critical role going forward. Deputy Secretary Hare stated that over 6,000 individuals are currently on the waiting list to transfer and that the reason the settlement agreement lasts for 10 years is to ensure that there is time for services to become available.

In response to a question asking for clarification of the 3,500 individuals who have come off of the vocational rehabilitative services waiting list, Commissioner James Rothrock, Department of Rehabilitative Services, mentioned that the 3,500 individuals that have come off the waiting list have done so since January, and that the Department will be able to serve thousands more as new resources become available July 1.

Department of Rehabilitative Services

Commissioner James Rothrock,
Department of Rehabilitative Services

Commissioner Rothrock spoke on the reorganization of the Department of Rehabilitative Services, the Department for the Aging, and the Adult Services Unit of the Department of Social Services into the combined Department for Aging and Rehabilitative Services. Commissioner Rothrock noted that the combined agencies are developing a joint mission statement and are focusing on what the agencies need to do to ensure sustainable services for the aging and disabled populations. All 25 of Virginia's Area Agencies on Aging (AAAs) will continue to operate as they have been operating. The new agency will not have a significant impact on the local level. On the state level, however, the new agency will be more efficient and more effective. The Commissioner noted that the AAAs in the Commonwealth and nationwide are looking at long-term service and support models that work for aging individuals as well as those with disabilities.

The goal of DARS is to be a single point of entry for services whatever the need. Once an individual enters the system, agencies will partner to get individuals the services they need. Aging and Disability Resource Connections will help facilitate this "No Wrong Door" policy by providing electronic access to services and other resources. Information sharing is challenging,

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the Department for the
Aging, and the Adult
Services Unit of the
Department of Social
Services into the
combined Department
for Aging and
Rehabilitative Services.*

The Virginia
Disability
Commission discussed
its 2012 work plan.

but the state has received federal funding to create a single database that will contain all of an individual's needs. The Commissioner outlined the "options counseling" method of serving citizens. This method is to provide an individual services based on an individual's specific needs rather than on what services are available.

In response to a question about how the various agency boards would be affected by the reorganization, the Commissioner commented that the boards would remain separate. There will be 11 boards under the new agency that represent a significant constituent base and provide unique voices. The Commissioner is hoping to have a "cross-pollination" of boards so that they collaborate and coordinate better than in the past. Commissioner Rothrock noted that the Commission should study how to better facilitate communication between agencies and boards and concluded by stating that DARS will give a progress report to the Disability Commission in the winter.

2012 Disability Commission Work Plan

After the various presentations, the members of the Disability Commission discussed the 2012 work plan. Delegate Orrock noted that the Disability Commission would meet at least three more times to prepare recommendations for submission to the General Assembly and the Governor by October 1. Commission members expressed the need to receive input from the newly elected chair, Senator Miller, before finalizing the work plan. Delegate Pogge noted that the Commission would be getting some new members as Mr. Burmester and Mr. Fleming will no longer be serving. She thanked them for their service to the Commission. Delegate Pogge also thanked Delegate Orrock for his service as chair of the Commission.

The Disability Commission would like to receive recommendations for non-Commission members to participate in the work groups. Recommendations may be emailed to staff at sstanton@dls.virginia.gov.

Next Meeting

Information about meetings of the work groups will be made available as soon as possible. The next meeting of the Disability Commission will be posted on the Commission website and General Assembly website as soon as information is available.

Virginia Disability Commission

VIRGINIA DISABILITY COMMISSION

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SARAH STANTON & THOMAS STEVENS,
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publications should email
mtanner@dls.virginia.gov.**

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 this section of the *Virginia Legislative Record* will assist members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the *Code of Virginia*, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (amending 9VAC25-120-10, 9VAC25-120-20, 9VAC25-120-50, 9VAC25-120-60, 9VAC25-120-70, 9VAC25-120-80; adding 9VAC25-120-15).

Written public comments may be submitted until July 6, 2012.

Summary:

The General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Ground Water Remediation, and Hydrostatic Tests has existed since 1992. This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of petroleum-contaminated wastewater, chlorinated hydrocarbon contaminated wastewater, and wastewater from hydrostatic tests. The proposed changes to the regulation will make this general permit similar to other general permits issued recently and clarify and update permit limits and conditions.

The proposed substantive changes (i) add coverage under the permit for hydrostatic tests of water storage tanks and pipelines; (ii) add two reasons why a facility's discharge would not be eligible for coverage under the permit; (iii) add language to allow for administrative continuance of coverage under the general permit; (iv) add a provision that allows specified short-term projects (14 days or less in duration) and hydrostatic test discharges to be automatically covered under the permit without the requirement to submit a registration statement, and require that the owner notify the department within 14 days of the discharge's completion; (v) consolidate the permit Part I A Effluent Limitations and Monitoring Requirements for "Gasoline Contaminated Discharges" into one limits table, and discharges

“Contaminated by Petroleum Products Other Than Gasoline” into one limits table; recalculate the effluent limits in the combined tables to be at the most protective levels for the discharge type and to protect all receiving waters based on an analysis of water quality criteria, toxicity data, and best professional judgment; and (vi) add permit special conditions for: (a) required number of significant digits for reporting monitoring results, (b) controlling discharges as necessary to meet water quality standards, responsibility to comply with any other federal, state, or local statute, ordinance, or regulation, (c) requirement to submit discharge monitoring reports to the owner of the municipal storm sewer system (MS4) if they discharge to the MS4, and (d) requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL.

For more information, please contact Burton Tuxford, Department of Environmental Quality, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, or email burton.tuxford@deq.virginia.gov.

REGISTRAR’S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the *Code of Virginia*, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-10, 9VAC25-196-40, 9VAC25-196-50, 9VAC25-196-60, 9VAC25-196-70; adding 9VAC25-196-15).

Written public comments may be submitted until July 6, 2012.

Summary:

This rulemaking revises and reissues the existing general permit, which expires on March 1, 2013, to continue making it available as a permitting option for this type of discharger. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of noncontact cooling water and cooling equipment blow down to surface waters. The proposed changes to the regulation make this general permit similar to other general permits issued recently and clarify and update permit limits and conditions.

Substantive proposed changes (i) add two reasons that authorization to discharge would not be granted; (ii) add language to allow for administrative continuation of permit coverage; (iii) add effluent limitations for copper, zinc, and silver for both freshwater and saltwater receiving streams; (iv) add special conditions for the required number of significant digits for reporting monitoring results, a requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL, the notice of termination requirements, a requirement to control discharges as necessary to meet water quality standards, and the permittee’s responsibility to comply with any other federal, state, or local statute, ordinance, or regulation; and (v) modify the MS4 notification special condition to require the permittee to submit discharge monitoring reports to the owner of the municipal storm sewer system (MS4) if the permittee discharges to the MS4.

For more information, please contact Burton Tuxford, Department of Environmental Quality, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, or email burton.tuxford@deq.virginia.gov.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

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

20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15, 20VAC5-309-90, 20VAC5-309-110, 20VAC5-309-120; adding 20VAC5-309-165, 20VAC5-309-190, 20VAC5-309-200).

A public hearing will be held upon request. Written public comment may be submitted until July 9, 2012.

Summary:

The proposed amendments to Chapter 309 are:

20VAC5-309-15. Definitions. This amendment moves the definition of "Clear Evidence" from 20VAC5-309-120 to 20VAC5-309-15 and adds a definition for "GPS" which is used in proposed rule 20VAC5-309-190.

20VAC5-309-90. Emergency excavation or demolition. This amendment prevents potential abuse of emergency notices for nonemergency excavations and demolitions.

20VAC5-309-110. General marking requirements. This amendment defines the marking requirements clearly in the rule independent of an external document (the Virginia Underground Utility Marking Standards Booklet) to allow updating the best practices in this booklet, when necessary, without the need to change the reference in the rules.

20VAC5-309-120. Notification of clear evidence. This amendment prevents potential abuse of three-hour notices when an excavator has not observed clear evidence of an unmarked utility line and simply wishes to have the site re-marked without waiting the period required by the Underground Utility Damage Prevention Act.

20VAC5-309-165. Operator's responsibilities for abandoned utility lines. This new section clearly defines an operator's responsibility to timely respond to an excavator's request regarding the

status of an unmarked utility line (i.e., active or abandoned).

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition. This new section further delineates means by which a person serving notice of proposed excavation or demolition to the notification center can describe their work area.

20VAC5-309-200. Reporting damage by calling 911. This new section better defines the requirements of § 56-265.24 E of the Code of Virginia, enhances public safety in the event of a pipeline incident, and brings Virginia's requirements more in line with the federal Pipeline Safety Act of 2011.

For more information, please contact Shane Ayers, Senior Damage Prevention Specialist, Utility and Railroad Safety Division, State Corporation Commission, Richmond, VA 23218, telephone (804) 371-9561, FAX (804) 371-9734, or email shane.ayers@scc.virginia.gov.

Division of Legislative Services

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