

# Virginia Legislative Record

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## Inside this issue:

FOIA Advisory Council	1
JCOTS	5
Changes to State Entities	6
Small Business Commission	7
New Legislative Studies	8
Local Tax Structure	9
Manufacturing Development Commission	13
Tax Preferences	15
Other Commissions and Committees	16
Civil War Commission	17
Meeting Calendar	19
Housing Commission	20
Transportation Accountability	24
Public Procurement	25
Code Commission	30
Regulatory Alert	32

## Virginia Freedom of Information Advisory Council

March 18, 2013

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of the 2013 interim in Richmond with Senator Richard Stuart, chair, presiding.

### Legislative Update

Staff provided a legislative update that highlighted a total of 11 bills from the 2013 Session of the General Assembly. Three bills add new records exemptions to FOIA, and six amend existing provisions of FOIA. Regarding the two other, access-related bills, HB 1952 requires boards of visitors of public institutions of higher education to participate in educational programs on certain topics, including a FOIA program to be developed and delivered in conjunction with the FOIA Council. SB 1335 restricts access to concealed carry permits and is mentioned because it is a topic that was studied previously by the FOIA Council in 2007 and 2008. Staff noted that HB 2026 and SBs 1263 and 1264 all passed the General Assembly as recommendations of the FOIA Council. HB 2026 and SB 1263 concerned electronic meetings, and SB 1264 concerned access to law-enforcement records.

Staff also observed that among other provisions, SB 1263 requires the FOIA Council to develop an electronic meetings public comment form. A draft version of the form was presented, and feedback from the Council and the public was invited. There was no comment at this time. Finally, staff also noted that SB 1263 would allow advisory public bodies at the state level to hold electronic meetings using audio/visual technology without having a quorum physically assembled in one location. As an

advisory body, the FOIA Council and its subcommittees could choose to avail themselves of that provision.

### Bills Referred for Study

HB 2032. Electronic Meetings.

The bill allows regional public bodies to conduct electronic meetings in the same manner as state public bodies. The bill also removes the requirement that a public body hold one meeting each year at which no member participates using electronic means. This bill is a recommendation of the Joint Commission on Technology and Science.

HB 2125. Requests for Records.

The bill provides that FOIA requests may be made by any citizen of the United States and not just citizens of the Commonwealth. The bill also allows a public body to require prepayment before providing requested records when the cost for production of the records is likely to exceed \$100.

HB 2321. Application to the State Corporation Commission.

The bill makes the State Corporation Commission (SCC) subject to the Freedom of Information Act (FOIA) and designates venue for FOIA petitions against the SCC. The bill reverses a case holding that the Freedom of Information Act is not applicable to the SCC (*Christian v. State Corporation Commission*, November 2011).

SB 889. Electronic Communication Meetings; School Boards.

The bill allows local school boards to hold electronic communication meetings to the same extent currently allowed for state public bodies.

## SB 1371. Repetitive Requests; Remedies.

The bill allows a public body to petition the appropriate court for additional time to respond to a request for records when the request is one of a series of requests by the same requester and a response by the public body within the time required by FOIA will prevent the public body from meeting its operational responsibilities. The bill also authorizes a court, in any action to enforce the provisions of FOIA, to decline to order production of the requested records if the evidence shows that the frequency or volume of the record requests made by the petitioner (i) constitutes an unreasonable burden on the resources of the public body, (ii) will prevent the public body from meeting its operational responsibilities, or (iii) has been made to evade the payment of any charges assessed in accordance with FOIA.

## Subcommittee Appointments

The Council appointed two subcommittees to study the bills referred to it: the Electronic Meetings Subcommittee and the Rights and Remedies Subcommittee. The Electronic Meetings Subcommittee, which began its work in 2012, was reconstituted to study HB 2032 and SB 889. Staff noted that Delegate May, the chair of the Joint Commission on Technology and Science (JCOTS), had indicated an interest in having the Council work with JCOTS regarding electronic meetings issues, as the two bodies had worked together in the past.

The Rights and Remedies Subcommittee will study HB 2125, HB 2321, and SB 1371. Staff noted that the U.S. Supreme Court had heard oral argument in the case of *McBurney v. Young* in February 2013. The case challenged the provisions of FOIA-granting rights only to Virginia citizens and certain media representatives. It was recommended that consideration of HB 2125, which would expand FOIA rights to all citizens of the United States, be delayed pending the decision of the Supreme Court, which is expected to be rendered later this year. In regard to HB 2321, concerning the application of FOIA to the State Corporation Commission (SCC), the chair noted that industry representatives had expressed interest in serving on a Council subcommittee studying the issue, and it was suggested that it might also be helpful to include a representative from the SCC.

## Other Business

### March 16—FOIA Day and James Madison's Birthday

Maria J.K. Everett, Executive Director, related that she had attended the commemoration of the 262nd anniversary of the birth of President James Madison at James Madison's Montpelier and placed a wreath there on behalf of the Council. In addition to being James Madison's birthday, March 16 is also FOIA Day in Virginia, pursuant to Senate Joint Resolution 170 (2006) and Senate Joint Resolution 176 (1991). The presentation included a slide show of the festivities as well as a program pamphlet.

### Remembering Delegate Clifton A. "Chip" Woodrum

Delegate Clifton A. "Chip" Woodrum, who served in the House of Delegates from 1980 through 2003, headed the General Assembly study of FOIA from 1998-2000, was chief patron of the House bill that created the FOIA Council, and was the first chair of the FOIA Council. He passed away February 19, 2013. Delegate Woodrum is remembered as an honest and caring state legislator and for his wisdom, wit, and integrity. For Sunshine Week, Ms. Everett wrote an article remembering Delegate Woodrum and his role as an advocate for open government and the creation of the Council that appeared in the *Roanoke Times* on March 10, 2013. The Council directed staff to post a copy of the article on the Council's website.

## Attorney General's Opinion on License Plate Readers

Staff related that the Attorney General had issued an opinion on February 13, 2013, concerning the use of license plate readers, an issue that had been brought to the Council's attention at its meeting on September 5, 2012. At that meeting, staff reported that numerous news articles on the topic indicated that various law-enforcement agencies across the state and the nation have technology that automatically reads and stores information about passing vehicles, including license plate numbers, location, time, and sometimes other data. Staff noted that the concern was more about overcollection of information, length of retention, and potential misuse, rather than access under FOIA. The opinion issued by the Attorney General was decided under the Government Data Collection and Dissemination Practices Act (GDCDPA) (§ 2.2-3800 et

Two subcommittees, the Electronic Meetings Subcommittee and the Rights and Remedies Subcommittee, will study bills referred to the FOIA Council for the 2013 interim.

seq. of the Code of Virginia), rather than FOIA. The Attorney General opined that general, passive collection using license plate readers to dredge data on all passing vehicles without a specific purpose violates GDCDPA, but that it was legal to use such devices in the context of specific investigations and to gather criminal intelligence information.

*June 6, 2013*

The Virginia Freedom of Information Advisory Council (the Council) held its second meeting of 2013 in Richmond.

## Subcommittee Reports

### Electronic Meetings Subcommittee

Ms. Dooley reported that the Electronic Meetings Subcommittee (Subcommittee) had met on May 20, 2013, and June 6, 2013, to study HB 2032 and SB 889. She stated that after discussing the bills, the Subcommittee recommended taking no action at this time. The Subcommittee felt that the legislation recommended by the Council and passed by the 2013 Regular Session of the General Assembly may alleviate many of the problems these bills sought to address, as it will allow individual members of all public bodies to participate in meetings by electronic means when personal matters prevent their attendance in person. As the legislative change does not take effect until July 1, 2013, the Subcommittee recommended taking a wait-and-see approach to see how this change will work in practice before recommending any additional legislation. The Council voted unanimously to accept the Subcommittee's recommendation to take no action at this time on HB 2032 and SB 889.

### Rights and Remedies Subcommittee

Mr. Landon reported that the Rights and Remedies Subcommittee (Subcommittee) met on May 20, 2013, to study HB 2125, HB 2321, and SB 1371.

Regarding HB 2125, Mr. Landon observed that the Council had been waiting for the federal courts to render a final decision on whether Virginia FOIA's citizenship limitation was constitutional, and that this year the U.S. Supreme Court had ruled that it was. The Subcommittee heard from Delegate Keam in support of his bill that would grant access rights to all citizens of the United States and also heard from opposing parties who felt the current law should be kept with the citizenship limitation in

place. The Subcommittee had no recommendation at this time, as it wishes to meet again and discuss the matter further, giving particular consideration to persons who are not citizens of the Commonwealth but have some nexus to Virginia, such as former citizens who have moved out-of-state or citizens of other states who work or own property in Virginia.

Regarding HB 2321, the Subcommittee heard from Delegate Surovell in support of his bill and from representatives of the State Corporation Commission (SCC) and regulated industries who opposed it. Through discussion it appeared that the patron and the representatives of the SCC had not previously discussed the issues among themselves before the bill was introduced; the Subcommittee suggested that such a discussion might be productive. Therefore the Subcommittee had no recommendation at this time, but planned to discuss the issue further at a later meeting after the patron and interested parties had a chance to discuss the matter among themselves.

The Subcommittee reported that it had discussed the history of SB 1371 and previous bills that would have provided different forms of remedies for public bodies who felt overburdened or harassed by repetitive requests. As there appeared to be no support for the bill moving forward, the Subcommittee recommended laying the bill on the table, and it was so moved for the Council's consideration. Because he was the patron of SB 1371, Senator Stuart made Mr. Landon the acting chair of the Council for the purpose of considering the motion to lay SB 1371 on the table. The motion passed by a vote of nine-to-one (all present in favor, except Senator Stuart voted against), and Mr. Landon returned the gavel to Senator Stuart.

## 2013 FOIA Workshops

Staff reported that in fulfilling its statutory mission to conduct educational programs about FOIA, the FOIA Council conducts a series of daylong workshops around the state. From 2000 through 2005, the workshops were held every year in multiple locations in an effort to maximize the availability of training throughout the Commonwealth. From 2005 through 2012, the workshops were held every other year due to declining attendance as many interested persons had already attended a conference just the year before. However, staff still receives requests for the workshops every year. Beginning in 2013, in an effort to satisfy the demand for annual programs without oversaturating any particular

*The FOIA Council will continue to conduct workshops throughout the Commonwealth during 2013.*

The FOIA Council will hear at a future meeting information about the treatment of geographic information systems.

area, staff will resume presenting the workshops annually, but at only a few locations per year (note that other individualized free training presentations will remain available by request). Staff intends to present the workshops in the City of Richmond every year due to its central location and large concentration of interested participants. This year, the workshops will be held as follows:

- Richmond – Tuesday, September 10, 2013
- Lebanon – Monday, September 16, 2013
- Lynchburg – Tuesday, September 17, 2013
- Harrisonburg – Wednesday, September 18, 2013

For 2014, staff expects to present workshops in Richmond, Northern Virginia, and Tidewater (exact locations to be determined). Staff also discussed the general format and content of the workshops, which include public records, public meetings, law-enforcement records, and a topical segment that changes from year to year. The chair and the Council expressed their appreciation and support for the workshops in fulfilling the Council's educational mission.

## Office of Attorney General and FOIA

Staff noted that there had been several news reports and editorials recently discussing a footnote in FOIA responses from the Office of the Attorney General (OAG) that raised the possibility that the OAG may not be subject to FOIA, following the Virginia Supreme Court's reasoning in the *Christian v. State Corporation Commission* case. Staff read into the record the official statement from Attorney General Cuccinelli dated May 20, 2013:

*I have always instructed my staff to fully abide by FOIA. Several staff members are assigned to work on FOIA requests, we have always complied with all FOIA requests, and we will continue to respond to every one of the hundreds of requests we get each year.*

*The attorneys who work on FOIA requests were diligently attempting to preserve any potential legal arguments this office may have based on a 2011 Supreme Court case. However, I have instructed my staff to remove the recently inserted footnote referencing *Christian v. SCC* because it has created confusion and it does not*

*comport with the office's practice of fully complying with FOIA.*

## Treatment of Geographic Information Systems (GIS)

Staff informed the Council that FOIA currently addresses GIS maps in subsection F of § 2.2-3704 of the Code of Virginia, which provides special charging provisions for copies of topographic maps. This language has been in FOIA since 1987. Unfortunately, the FOIA GIS terminology is outdated and refers only to the production of topographical maps. Staff has been told by GIS professionals that topographic maps are a very small part of GIS capabilities, and the current charging provisions do not provide for actual cost recovery. Staff had been contacted by the Virginia Information Technologies Agency (VITA) about this issue, but was unable to reach the contact person before the meeting. As no one appeared before the Council to request any specific action, the Council directed staff to try again to reach the contact person at VITA and to add this item to the agenda for a future meeting as appropriate.

## Next Meetings

The Council is scheduled to meet on September 12, 2013, and December 5, 2013.



## VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

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# Joint Commission on Technology and Science

April 2, 2013

The Joint Commission on Technology and Science (JCOTS) held its 2013 organizational meeting in Richmond, with Delegate Thomas Rust, chair, calling the meeting to order.

## Legislative Update

The meeting began with an overview of technology and science legislation adopted by the 2013 Session of the General Assembly. The only bill recommended by JCOTS in 2013, HB 2032, related to electronic meetings, was left in the House General Laws Committee and referred to the Virginia Freedom of Information Advisory Council for further review. Other bills of interest to JCOTS were adopted. HB 1981, which makes it a crime to track an individual using an electronic tracking device without his consent, was developed and recommended by JCOTS three years ago. Likewise, JCOTS had previously advocated for laws related to texting while driving, and legislation making texting while driving a primary offense was adopted in 2013. Finally, legislation allowing, until July 1, 2014, certain advisory bodies to hold audio-visual electronic meetings without a quorum in one location will be applicable to JCOTS advisory committees. A comprehensive document with the summaries of all technology and science legislation adopted in 2013 is available on the JCOTS website.

## Work Plan

The members next turned to the development of a work plan for the 2013 interim. Several bills were referred to JCOTS for study by the General Assembly:

- **HB 1738.** Contracts for invention development services.
- **HB 1777.** Use of open source digital textbooks at state colleges and universities.
- **HB 1915.** Approval of use of access to electronic textbooks by school boards.
- **HB 2050/SB 1030.** Search and seizure of computers and computer contents.
- **HB 2064.** Uniform Trade Secrets Act.
- **HB 2286.** Access to electronic textbooks in kindergarten through twelfth grade and

reporting regarding Internet access within school divisions.

- **SB 830.** Electronic voting by active-duty overseas military.
- **SB 1173.** Computer trespass.

In addition to these bills, JCOTS had voted at the end of the 2012 interim to continue the study of electronic identity management, energy, and cyber security. JCOTS had also recommended the development of an electronic meetings pilot program to use and report on a variety of electronic meeting technology during the 2013 interim.

As a result of these continued studies, as well as the numerous bills referred for study, JCOTS unanimously adopted a work plan for the 2013 interim that would establish the following seven advisory committees:

- **Broadband and Education.** This advisory committee will study the issues presented by HB 1777, HB 1915, and HB 2286. Applications will be accepted for membership on the committee from other interested parties.
- **Computer Crimes.** This advisory committee will study the issues presented in HB 2050/SB 1030 and SB 1173. Applications will be accepted for membership on the committee from other interested parties.
- **Cyber Security.** This advisory committee, and its membership, will be continued from the 2012 interim and study the issues presented by SB 830.
- **Electronic Identity Management.** This advisory committee, and its membership, will be continued from the 2012 interim.
- **Electronic Meetings.** This advisory committee will develop the parameter of an electronic meetings pilot program to be used by all of the advisory committees during the course of the interim.
- **Energy.** This advisory committee, and its membership, will be continued from the 2012 interim.
- **Intellectual Property.** This advisory committee will study the issues presented by HB 1738 and HB 2064. Applications will be accepted for membership on the committee from other interested parties.

*JCOTS established seven advisory committees for the 2013 interim to study referred bills.*

## Public Comment

After the adoption of the work plan, the floor was open for public comment. Ron

Martin, Executive Director of the Open Security Exchange and an active participant in the 2012 Electronic Identity Management Advisory Committee, suggested the Identity Management and Cyber Security Advisory Committees hold a joint meeting and that the committees invite Dr. Ron Ross from the National Institute of Standards and Technology to speak on cyber security and the recent Executive Order. Delegate Rust and Senator Watkins concurred that this would be a good idea and directed staff to work on arranging this.

*JCOTS will study referred bills and continue its study of electronic identity management, energy, and cyber security during the 2013 interim.*

### Next Meeting

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



### JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

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## 2013 Acts of Assembly: Changes to State Entities

### New State Entities

- Department of Small Business and Supplier Diversity (effective January 1, 2014).
- Health Insurance Reform Commission.
- Opportunity Educational Institution and Board.
- Statewide Traffic Incident Management Committee (requested to be established in SJ 277).
- Transit Service Delivery Advisory Committee.
- Virginia Nuclear Energy Consortium Authority.
- Virginia War Memorial Division (established in the Department of Veterans Services).

### Name Changes to State Entities

- State Employee Fraud, Waste and Abuse Hotline changed to Fraud, Waste and Abuse Hotline.

### State Entities Abolished

- Department of Business Assistance (effective January 1, 2014).
- Office of Intergovernmental Affairs (duties transferred to Assistant to the Governor for Intergovernmental Affairs).
- Special Advisory Commission on Mandated Health Insurance Benefits.
- Department of Minority Business Enterprise (effective January 1, 2014).
- Open Education Curriculum Board.
- Recycled Materials in Highway Construction Advisory Committee.

### Other

- Board of Agriculture and Consumer Services (authority to adopt regulations establishing schedules for calibration of service agencies' weights and measures standards transferred from the Board to the Commissioner of Agriculture and Consumer Services).
- State Board of Elections (changes the name of the State Board of Elections, the agency that administers election law, to the Department of Elections. The three-member board appointed by the Governor that is also known as the State Board of Elections retains its name. The law also provides that instead of the Governor designating one member of the three-member State Board of Elections as the Secretary who then acts as the agency head, the Governor will appoint a Commissioner of Elections to act as agency head (effective July 1, 2014)).
- Department of Environmental Quality and State Water Control Board (administration and oversight of water quality planning and laws dealing with stormwater management, Chesapeake Bay Preservation Areas, and erosion and sediment control transferred from Department of Conservation and Recreation to the Department of Environmental Quality and the State Water Control Board).
- Virginia Soil and Water Conservation Board (authority for administration of the nutrient management certification program and responsibility for adopting regulations on nitrogen application rates transferred from the Department of Conservation and Recreation to the Virginia Soil and Water Conservation Board).
- Executive Secretary of Supreme Court of Virginia (responsibility of oversight of establishing and requiring magistrates to be available for performing certain duties related to issuing temporary detention orders transferred from the chief judge of each district court to the Executive Secretary of the Supreme Court of Virginia).

# Small Business Commission

April 2, 2013

The Small Business Commission (Commission) held its first meeting of the 2013 interim in Richmond with Senator Frank Ruff, chair, presiding.

## Legislative Update

The meeting began with an overview of small business–related legislation from the 2013 legislative session. The overview grouped the legislation into nine categories:

- Business Organizations.
- General Business Incentives and Support.
- Health Insurance.
- Labor Relations.
- Professions, Occupations, and Housing.
- Public Procurement.
- Taxation.
- Workers' Compensation and Unemployment Compensation.
- Workforce Development and Employment.

The overview also included a more in-depth review of the Amendment in the Nature of a Substitute to HB 2313 that was proposed by the Governor at the 2013 Reconvened Session of the General Assembly.

## Issues Referred for Study

After the overview, staff presented the bills and issues that have been referred to the Commission for study during the 2013 interim. A total of three bills were referred to the Commission for study during the 2013 interim:

- **HB 1935. Self-Employment Assistance Program.** Establishes the Self-Employment Assistance Program, under which unemployed individuals receive unemployment compensation while they are establishing their own businesses and becoming self-employed. Participants receive an allowance in lieu of weekly regular benefit payments and may use the allowance for entrepreneurial training, business counseling, and technical assistance.
- **HB 1936. Definition of small business.** Changes the definition of “small business” to be a business located in Virginia that meets the definition of a small business concern as

defined in the federal Small Business Act (15 U.S.C. § 631 et seq.). The current definition is a business with 250 or fewer employees OR average annual gross receipts of \$10 million or less over the previous three years.

- **HB 2198. Commercial credit reporting.** Establishes a procedure through which a copy of a commercial credit report may be obtained by the subject of the report upon request annually at no cost. If the report contains an inaccurate statement of fact, the commercial credit reporting agency is required to delete the disputed item from the report or include in the report a notice of the subject's assertion that the statement is inaccurate. A violation of the provision is a prohibited practice under the Virginia Consumer Protection Act (§ 59.1-196 et seq. of the Code of Virginia).

## Issues Suggested for Monitoring

A Commission member suggested that the Commission consider monitoring two bills relating to workers' compensation, HB 1612 and HB 2206. Both bills were left in the House Committee on Commerce and Labor with the understanding that the parties will continue to work on the issues that the bills were attempting to address.

Other issues that were suggested to be monitored by the Commission over the 2013 interim included:

- **SB 1350. Department of Small Business and Supplier Diversity created.** Combines the Department of Business Assistance Services and the Department of Minority Business Enterprises to create a new Department of Small Business and Supplier Diversity by January 2014. Language in the appropriation act directs the Secretary of Commerce and Trade to report on the progress of the consolidation of the two departments to ensure that the core responsibilities of each agency are retained.
- **HB 2079. Virginia Public Procurement Act.** Establishes a work group to study the Public Procurement Act.
- **HB 2087/SB 1134. Virginia Jobs Investment Program.** Moves the administration of the Virginia Jobs Investment Program (VJIP) from the Department of Business Assistance (DBA) to the Virginia Economic Development Partnership (VEDP). The bills were left in House Appropriations; however, language in the appropriation act provides for the Secretary of Commerce and Trade to convene a working group to determine whether VJIP funds are best managed within DBA or VEDP.

*The Small Business Commission heard information about three bills referred to it for study during the 2013 interim.*

## Joint Study with the Manufacturing Development Commission

*The Small Business Commission will work with the Virginia Municipal League, the Virginia Association of Counties, and the Manufacturing Development Commission to study a plan for the restructuring of Virginia's tax code.*

Staff also discussed a request for the Commission to jointly study a plan for the restructuring of Virginia's tax code. HJR 755 provided for the Virginia Municipal League (VML), the Virginia Association of Counties (VACO), the Commission, and the Manufacturing Development Commission (MDC) to evaluate and develop a plan for a major tax restructuring that would, among other things, provide for the elimination of the BPOL tax, machine and tools tax, and merchants' capital tax. While the resolution did not pass, the request has been made by the Senate Committee on Rules to the Commission and MDC to take on the review of the subject matter it encompassed, including three charges:

- Evaluate the Thomas Jefferson Institute for Public Policy's Virginia State Tax Analysis Modeling Program (STAMP).
- Evaluate lowering and broadening the state sales tax, eliminating lower personal income tax brackets, and eliminating the BPOL, M&T, and merchants' capital taxes and consider other tax restructuring plans to accomplish these ends.
- Ensure that any proposed plan is mutually beneficial to small businesses, the manufacturing sector, local government, and the Commonwealth and that the provisions are not redundant.

Under the terms of the joint study referral, work must be completed in time for the submission of a written report by November 1,

2013. The first meeting of the joint study was scheduled for April 2, 2013, immediately after the Small Business Commission's meeting.

## Other Work of the Commission

Delegate Danny Marshall, vice chair, asked if it would be more efficient for the Commission to use dedicated work groups to complete its assigned studies. The chair indicated that the workload could likely be completed without the use of work groups. He further stated that the Commission would be in a better position to establish a more detailed work plan after the parameters of the joint study have been established.

## Next Meeting

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

### SMALL BUSINESS COMMISSION

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## 2013 New Legislative Studies Staffed by DLS

Bill No.	Description	DLS Staff
HB 2079	Virginia Public Procurement Act	Maria Everett Amigo Wade
HB 2048/SB 1279	Consolidation of water quality programs	Marty Farber Scott Meacham
HJ 755	Tax restructuring	Mark Vucci Amigo Wade



# Joint Study of Local Tax Structure

April 2, 2013

The initial meeting of the Joint Study of Local Tax Structure (Joint Study) being conducted by the Small Business Commission (SBC) and the Manufacturing Development Commission (MDC) to evaluate a restructuring plan to eliminate the business, professional and occupational license (BPOL) tax, the machinery and tools (M&T) tax, and the merchants' capital tax was held in Richmond. The meeting began with the election of Senator Frank Wagner as chair and Senator Frank Ruff as vice chair.

## Overview of HJR 755

Amigo Wade, Senior Attorney, Division of Legislative Services

Mr. Wade provided a brief overview of the Joint Study's charge. HJR 755 provided for the Virginia Municipal League (VML), the Virginia Association of Counties (VACO), the SBC, and the MDC to evaluate and develop a plan for a major tax restructuring that would provide for the elimination of the three taxes. While HJR 755 did not pass, the subject matter it encompassed was subsequently referred to the SBC and MDC for study. HJR 755 included three charges:

- Evaluate the Thomas Jefferson Institute for Public Policy's Virginia State Tax Analysis Modeling Program (STAMP).
- Evaluate lowering and broadening the state sales tax, eliminating lower personal income tax brackets, and eliminating the BPOL tax, M&T tax, and merchants' capital tax and consider other tax restructuring plans to accomplish these ends.
- Ensure that any proposed plan is mutually beneficial to small businesses, the manufacturing sector, local government, and the Commonwealth and that the provisions are not redundant.

Mr. Wade indicated that these charges, though not specifically binding on the joint study, are nonetheless instructive and would be instrumental in providing guidance for reaching the ultimate objectives. Under the terms of the Joint Study referral, work must be completed in time for the submission of a written report by November 1, 2013.

The Joint Study proceeded to hear presentations aimed at providing a broad overview of the current status of BPOL, M&T, and merchants' capital taxes as currently administered and collected by localities, economic models for tax restructuring, and prior tax restructuring studies.

## Overview of Local Government Finances

Dean Lynch, CAE, Deputy Executive Director, Virginia Association of Counties

Mr. Lynch provided an overview of local government finances. He indicated that local revenues continue to suffer in part due to the fall in real property taxes. Mr. Lynch displayed charts showing local revenue trends since 1990, which indicated steep declines in 2010, and state categorical aid as a percentage of local expenditures from 2000 to 2012, which also indicated a steep decline in 2010. In response to a question for the explanation of the decline, Mr. Lynch stated that the decline could have been caused by discontinued federal stimulus funds, but he asserted that state support unrelated to federal stimulus funds was still down. Mr. Lynch cited several factors that would make it difficult for the Commonwealth to increase its aid for locally administered programs, including continuing slow general fund revenue growth, required Rainy Day Fund deposits, Medicaid program costs that continue to outpace general fund revenue growth, increasing Virginia Retirement System contribution rates, funds to pay for additional debt service to support capital programs, and transportation funding. Jim Regimbal of Fiscal Analytics, Ltd., a consultant to VACO and VML, responded to a question about how payroll numbers contributed to increased costs at the local level by stating that while he did not have specific numbers, both state and local employment have been declining.

Mr. Lynch went on to state that in FY 2012 local government operating expenditures came to \$25.8 billion, noting that most local government expenditures are mandated or regulated by the Commonwealth. Education (K-12) costs provided the largest local government expenditure with 53 percent of the total operations budget. A fiscal survey conducted jointly by VACO and VML found that many localities felt that they will be less able to meet their future financial needs in FY 2013 compared with FY 2012. Mr. Lynch

*In FY 2012, local government operating expenditures came to \$25.8 billion.*

In FY 2012, total revenues from BPOL taxes in counties, cities, and towns came to \$683 million while revenue from M&T taxes for counties, cities, and towns came to \$213.7 million.

noted that the combination of decreasing revenues and reduced Commonwealth support had required localities to take a wide range of actions to balance their budgets, including (i) delaying or canceling capital outlay, infrastructure, and equipment; (ii) eliminating vacant positions or reducing staff; (iii) reducing staff health care benefits; (iv) increasing tax rates and fees; and (v) across-the-board service cuts. Mr. Lynch asserted that it is important to keep a mix of local revenues in place. To support this assertion, he provided a chart detailing the source of local fund revenues in terms of percentages. Of the \$17.2 billion in local fund revenue sources included in the chart, real property taxes accounted for \$8.9 billion, or 51.8 percent.

Mr. Lynch then focused his presentation on how localities used the BPOL and machinery and tools taxes.

#### BPOL Taxes

	Use of BPOL Tax	Reliance on BPOL Revenues
Cities	All 39 Cities	10.7%
Counties	55 of 95 Counties	6.2%
Towns	All Towns	18%

Total revenues from BPOL taxes in counties, cities, and towns of \$683 million, or four percent of locally generated revenue, in FY 2012.

#### Machinery and Tools Tax

	Use of M&T Tax	Reliance on M&T Revenues
Cities	36 of 39 Cities	32%
Counties	90 of 95 Counties	27%
Towns	23 of 36 Towns	36%

Total revenues from M&T taxes in counties, cities, and towns of \$213.7 million, or 1.3 percent of locally generated revenue, for FY 2012.

In order to replace the revenue provided by the two taxes, counties would have to raise their real estate tax rates by 4.8 cents for BPOL revenues and 1.8 cents for M&T revenues; cities, 11.3 cents for BPOL and 3.3 cents for

M&T; and towns, 7.2 cents for BPOL and 1.2 cents for M&T. Mr. Lynch also displayed a chart indicting that BPOL and M&T revenues for localities were similar in terms of size as are corporate income tax revenues to the Commonwealth.

The presentation moved to a discussion of the role BPOL and M&T taxes have on the overall business climate of the state. Mr. Lynch asserted that Virginia continues to rank high in independent evaluations of the state business climates. These independent evaluations indicate that cost-of-living and labor costs were the worst-rated factors in achieving business growth in Virginia rather than tax policy. Mr. Lynch further noted that according to the independent evaluations, local BPOL and M&T taxes did not materially affect the state's business tax climate.

## Economic Models

Michael Thompson, Chair and President, The Thomas Jefferson Institute for Public Policy

Mr. Thompson provided an overview of economic models for tax restructuring that had been developed by The Thomas Jefferson Institute for Public Policy (TJI). Before reviewing the specific models, Mr. Thompson reviewed the goals, objectives, and methodology of TJI's Tax Reform Study. The most important goal was for the resulting structure to be revenue neutral. The TJI Tax Reform Study included three central objectives:

- Establishing a more fair tax structure.
- Eliminating "job-killing" taxes.
- Encouraging economic growth.

Mr. Thompson asserted that according to most economists, low and broadly applied taxes are better for the economy, while targeted taxes, tax credits, and special tax exemptions serve to distort the marketplace. Mr. Thompson stated that the TJI Tax Reform Study included policy suggestions from VML and VACO, the Tax Foundation, and Americans for Tax Reform and that each of these groups remain at the table. The resulting models included three major conceptual methodologies:

- Reducing personal income tax.
- Eliminating the BPOL, M&T, and merchants' capital taxes.
- Broadening the sales tax to include services.

The broadened sales tax would be collected by the Commonwealth and returned to localities through monthly distributions using a formula that would replace existing revenues from the eliminated BPOL, M&T, and merchants' capital taxes.

Several questions were raised and comments offered, which are listed below.

- Will the elimination of business-to-business taxes covers services provided by attorneys? The expanded tax on services would include attorneys, barbers, and other professionals who provide services. While individuals may pay more to have their nails manicured or to get a haircut, the increased price would be offset by lower individual taxes and taxes on goods.
- Would the restructuring be revenue neutral to all localities? Virginia Secretary of Finance Richard Brown had assured Mr. Thompson that each locality could be made whole with all the eliminated taxes replaced.
- It was noted that there were already several taxes collected by real estate establishments and that they should be exempted.
- Will the money sent back to the locality be based on what had been paid to the locality by the eliminated taxes? It would be based on the larger amount collected from the expanded sales tax.
- It was noted that there would be a number of localities that would impose BPOL, M&T, and merchants' capital taxes to get more money. The legislation to implement the restructuring could be crafted to prevent that result.
- Has any state moved in the direction of taxing services? Florida and Ohio have initiated a tax on services and Kansas, Connecticut, and Michigan had eliminated the BPOL tax, with North Carolina contemplating whether or not to proceed with doing so. The chair asked staff to find out what other states are doing in terms of taxing services and eliminating BPOL taxes.

Mr. Thompson proceeded to present the various economic models for tax restructuring developed by TJI's Tax Reform Model through a series of nine scenarios.

- **Scenario #1:** Sales taxes expanded to service sectors just enough to eliminate the BPOL, M&T, and merchants' capital taxes.
- **Scenario #2:** Sales tax expanded to all service sectors; eliminate the BPOL, M&T, and merchants' capital taxes; and lower the sales tax rate to 3.07 percent (a 42 percent cut).
- **Scenario #3:** Sales tax expanded to all service sectors, excluding health care; eliminate the

BPOL, M&T, and merchants' capital taxes; and lower the sales tax rate to 3.68 percent (a 30.6 percent cut).

- **Scenario #4:** Sales tax expanded to all service sectors, excluding entire health care sector; eliminate the BPOL, M&T, and merchants' capital taxes; and reduce personal income taxes by 17 percent.
- **Scenario #5:** Sales tax expanded to all service sectors, excluding entire health care sector; eliminate the BPOL, M&T, and merchants' capital taxes; eliminate the lowest personal income tax bracket (\$0 to \$3,000); and reduce all personal income taxes by 10 percent.
- **Scenario #6:** Sales tax expanded to all service sectors, excluding entire health care sector; eliminate the BPOL, M&T, and merchants' capital taxes; eliminate the bottom two income tax brackets (\$0 to \$3,000 and \$3,000 to \$5,000); reduce the five percent income tax rate to 4.55 percent (a nine percent tax cut); and reduce the 5.75 percent rate to five percent (a 13 percent tax cut).
- **Scenario #7:** Sales tax expanded to all service sectors, excluding entire health care sector, private colleges, and private schools; eliminate the BPOL, M&T, and merchants' capital taxes; eliminate the lowest personal income tax bracket; and cut other personal income tax brackets by 13 percent.
- **Scenario #8:** Sales tax expanded to all service sectors, excluding entire health care sector, private colleges and private schools, and day care services; eliminate the BPOL, M&T, and merchants' capital taxes; eliminate the lowest personal income tax bracket; and cut other personal income tax brackets by 12.5 percent.
- **Scenario #9:** Sales tax expanded to all service sectors, excluding entire health care sector, private colleges and private schools, day care services, and banking/finance services; eliminate the BPOL, M&T, and merchants' capital taxes; eliminate the lowest personal income tax bracket; and cut other personal income tax brackets by 10 percent.

Mr. Thompson stated that TJI supported the implementation of Scenario #6 because it provided a revenue neutral plan aimed at spurring economic growth. This scenario would:

- Eliminate the bottom two tax brackets of the state's individual income tax code.
- Reduce the remaining two tax bracket rates by nine percent and 13 percent, respectively.
- Eliminate the BPOL, M&T, and merchants' capital taxes.

*The Joint Study of Local Tax Structure heard information from The Thomas Jefferson Institute for Public Policy about economic models for tax restructuring.*

- Make localities whole for the revenue loss from the eliminated local taxes.
- Broaden the current sales tax to all service industries, while keeping health care-related services exempt.
- Include no business-to-business tax on services.

*A 2011 JLARC study concluded that sales and use tax preferences reduced tax liability by \$7.9 billion per year.*

Mr. Thompson noted that the economic consequences over the next five years according to the model built by economists at the Beacon Hill Institute of Suffolk University in Boston, Massachusetts, would provide 79,000 new jobs, a \$287 million increase in capital investment, a \$2.85 billion increase in disposable income, and an \$8.4 billion increase in the Commonwealth's gross domestic product, all without an overall tax increase.

## Overview of State Tax Studies

Mark Vucci, Senior Attorney, Division of Legislative Services

Mr. Vucci discussed state tax studies relevant to the work of the study. In 2011, the Joint Legislative Audit and Review Commission (JLARC) reviewed the effectiveness of Virginia's tax preferences. The report subsequently issued by JLARC concluded that sales and use tax preferences reduced tax liability by \$7.9 billion per year. Of this amount, \$3.5 billion was for services exemptions. JLARC concluded further that eliminating the services exemptions could result in administrative burdens to businesses. The report also included a review of both tangible goods and services exemptions and reported the following expenditure costs of certain exemptions:

- Professional, insurance, personal, repair, and Internet services account for \$3.3 billion annually.
- Prescription drugs account for \$379 million annually.
- Reduced sales tax on food accounts for \$346 million annually.
- Nonprofit and church purchases account for \$184 million annually.
- Advertising accounts for \$85 million annually.
- Separately stated transportation charges account for \$84 million annually.

Mr. Vucci noted that it is easier to collect taxes on some services than on others. For example, it will be relatively easy to collect a tax on a service such as barbering while more difficult to collect a tax on legal services that

may involve work being performed across state lines.

The JLARC report also recommended the establishment of a joint subcommittee to conduct a continuing review of the state's tax structure. In 2012, the Joint Subcommittee to Evaluate Tax Preferences (Joint Subcommittee) was established as a permanent entity in the legislative branch to oversee an ongoing evaluation of tax credits, deductions, subtractions, exemptions, and exclusions. Mr. Vucci explained that the Joint Subcommittee's work plan contemplated the establishment of an income tax subcommittee to perform a comprehensive review of the Commonwealth's personal and corporate income tax structures.

Mr. Vucci also provided a brief overview of studies released in 2003 by the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement (SJR 347, 2003) and in 2001 by the Commission to Study Virginia's State and Local Tax Structure for the 21st Century (HJR 578 and SJR 401, 1999).

## Next Meeting

The chair indicated that the next meeting of the Joint Study will be on June 14, 2013, in Virginia Beach at a time and location to be announced.

### JOINT STUDY OF LOCAL TAX STRUCTURE

**SENATOR FRANK WAGNER, CHAIR**  
**MARK VUCCI AND AMIGO WADE, DLS STAFF**  
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# Manufacturing Development Commission

*April 2, 2013*

The Manufacturing Development Commission (Commission) convened in Richmond the day prior to the 2013 Reconvened Session of the General Assembly, with Senator Frank Wagner, chair, presiding.

## Legislative Update

Staff provided a comparison of HB 2313 (transportation funding) as it was enacted by the General Assembly and as proposed to be amended by the Governor. As passed by the General Assembly, the bill would:

- Eliminate the \$0.175 per gallon tax on motor fuels and replace it with a percentage-based tax of 3.5 percent for gasoline and six percent for diesel fuel. The bill provides for a refund of an amount equal to a 2.5 percent tax paid on diesel fuel for passenger cars, pickup or panel trucks, and vehicles having a gross vehicle weight rating of 10,000 pounds or less.
- Increase from \$50 to \$100 the annual registration fee on electric motor vehicles and make the fee also applicable to alternative fuel vehicles and hybrid electric motor vehicles. The revenues from the fee are designated for the Highway Maintenance and Operating Fund.
- Raise the state sales and use tax across the Commonwealth from four percent to 4.3 percent and designate the increased revenues for the Highway Maintenance and Operating Fund, the Intercity Passenger Rail Operating and Capital Fund, and the Commonwealth Mass Transit Fund.
- Establish procedures for the collection of the state sales and use tax from retail dealers located outside Virginia for sales made into the Commonwealth, contingent upon the federal government passing legislation authorizing such collection. If the revenues are collected, a portion of the revenues would be allocated to localities for education, a portion would be allocated to localities with a stipulation that some of the funds be used by the locality for transportation needs, and a portion of the revenues would be deposited in the Transportation Trust Fund. A portion would also be used to reimburse localities that currently impose a retail sales tax on

the sale of certain fuels used for domestic consumption, as the bill also repeals the authority to impose such tax. If the federal government does not pass legislation authorizing the Commonwealth and other states to collect sales taxes from retail dealers located outside the state by January 1, 2015, then the motor fuels tax imposed on gasoline would be raised from 3.5 percent to 5.1 percent (the motor fuels tax on diesel fuel would remain at six percent, but the diesel fuel refund for passenger cars, pickup or panel trucks, and vehicles having a gross vehicle weight rating of 10,000 pounds or less would be in an amount equal to a 0.9 percent tax paid). If the federal government passes such legislation after January 1, 2015, the rate of tax on gasoline would revert to 3.5 percent.

- Increase the tax on the sales of motor vehicles (the titling tax) from the current rate of three percent to a rate of 4.3 percent, phased-in over four years.
- Increase the share of existing general sales and use tax revenues used for transportation from a 0.50 percent sales and use tax to a 0.675 percent sales and use tax, phased-in over four years. The additional allocation would be deposited into the Highway Maintenance and Operating Fund. The bill would also allocate the revenues from an existing 0.125 percent sales and use tax to public education.
- Generate additional revenues in the Hampton Roads and Northern Virginia regions. In Hampton Roads, an additional state sales tax of 0.70 percent, and an additional 2.1 percent state tax on wholesale distributors of motor fuels, would be imposed in the localities that compose the Hampton Roads Transportation Planning Organization. These additional revenues would be deposited into a Hampton Roads Transportation Fund, to be used for road construction projects, to be determined by the Hampton Roads Transportation Planning Organization. In Northern Virginia, there would be imposed an additional state sales tax of 0.70 percent, an additional three percent state transient occupancy tax, and an additional state fee on grantors of real property equal to \$0.25 per \$100 of the value of the real property sold by such persons. The additional revenues would be deposited into a Northern Virginia Transportation Authority Fund, with 30 percent of the funds being distributed to the member localities for use on transportation projects and the remainder to be used for regional transportation projects. The 0.70 percent state sales and

*The Manufacturing Development Commission heard information about the transportation funding bill.*

*The Manufacturing Development Commission will work with the Small Business Commission, the Virginia Municipal League, and the Virginia Association of Counties to study a plan for a major tax restructuring.*

use taxes in Northern Virginia and Hampton Roads are in addition to the 0.3 percent state sales and use tax increase that would apply throughout the Commonwealth.

- Dedicate \$100 million in FYs 2014, 2015, and 2016 from the increased revenues in the Highway Maintenance and Operating Fund to Phase II of the Dulles Metrorail Extension Project, subject to certain conditions. Beginning in FY 2020, \$20 million from the Highway Maintenance and Operating Fund would be deposited into the Route 58 Corridor Development Fund.
- Prohibit tolling on Interstate 95 south of Fredericksburg without prior approval of the General Assembly.

The key amendments proposed by the Governor were to:

- Reduce the increase in the titling tax from three percent to 4.15 percent, phased-in over four years.
- Reduce the proposed state transient occupancy tax from three percent to two percent.
- Reduce the proposed state grantor's fee from \$0.25 per \$100 of real property value to \$0.15 per \$100.
- Reduce the increase in the annual license tax on certain motor vehicles from \$100 to \$64.
- Make the proposed taxes in Hampton Roads and Northern Virginia applicable to any planning district in the Commonwealth meeting certain population, motor vehicle registration, and transit ridership criteria. Under the Governor's substitute, only the Hampton Roads and Northern Virginia planning districts currently meet the criteria.

Staff also reviewed legislation that passed the General Assembly regarding business tax incentives and grants available to businesses.

- **HB 1824. Virginia port volume increase tax credit.** Expanded the availability of Virginia's port volume increase tax credit to growers and producers of certain items.
- **HB 1923. Worker retraining tax credit.** Increased the worker retraining tax credit for worker retraining courses taken by employees at private schools from a maximum of \$100 per year per employee to \$200 per year per employee or \$300 per year per employee if the worker retraining includes retraining in a STEM or STEAM discipline.
- **HB 1767. Grants for donations of machinery and equipment.** Created a grant program that would pay grants to businesses donating new machinery and equipment for

use in Virginia by the community colleges or vocational schools of the Commonwealth.

## HJR 755

Staff also discussed a request that has been made to the Commission, the Small Business Commission, the Virginia Municipal League, and the Virginia Association of Counties through HJR 755 (2013) to evaluate and develop a plan for a major tax restructuring that, among other things, will eliminate the business, professional, and occupational license, machinery and tools, and merchants' capital taxes. These four entities have been asked to ensure that the plan is mutually beneficial to small businesses, the manufacturing sector, local government, and the Commonwealth. They have also been asked to evaluate a lowering and broadening of the state sales tax and the elimination of lower personal income tax brackets.

## Other Work of the Commission

The chair indicated that he would like the Commission to also study the possibility of establishing a Standard of Learning for vocational trades and the efficiency of certain laws as they relate to the manufacturing community.

## Next Meeting

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

### MANUFACTURING DEVELOPMENT COMMISSION

SENATOR FRANK WAGNER, CHAIR  
MARK VUCCI, DLS STAFF

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# Joint Subcommittee to Evaluate Tax Preferences

*April 2, 2013*

The Joint Subcommittee to Evaluate Tax Preferences (Joint Subcommittee) held its first meeting of the 2013 interim in Richmond with Senator Jeffrey McWaters, chair, presiding.

At previous meetings, members had expressed an interest in examining some of the larger tax credits currently utilized in the Commonwealth. Two of the largest are the land preservation tax credit and the historic rehabilitation tax credit. To provide members with some background information on both, the chair arranged for presentations. Lawrence Durbin, Assistant Tax Commissioner at the Virginia Department of Taxation (Department), provided the Joint Subcommittee with a general overview of Virginia's land preservation tax credit program. He noted that of the 14 other states that have such a program, Virginia has the largest. Next, Kathleen Kilpatrick, Director of the Virginia Department of Historic Resources, provided an overview of the historic rehabilitation tax credit.

Senator McWaters then announced the creation of two work groups to conduct the work of the Joint Subcommittee. Bills referred to the Joint Subcommittee by the 2013 Session of the General Assembly for review will also be studied by the work groups, with recommendations back to the Joint Subcommittee. The first work group will study issues related to income tax. The second work group will study issues related to sales tax.

## Work Group #1

*April 2, 2013*

Work Group #1 convened immediately upon the adjournment of the Joint Subcommittee with Delegate Ben Cline serving as chair. The work group first discussed the bills referred to it for review. HB 1963 and SB 859 would create an income tax deduction for payment of certain tolls in the Hampton Roads area. SB 692, SB 745, and SJR 255 all deal with the corporate income tax rate in the Commonwealth. Members requested that staff provide them with copies of the recent studies of the Joint Legislative Audit and Review Commission concerning corporate income tax. Requests were also made for staff to review what other states are doing related to corporate income tax

rates and to see what related bills were introduced during the 2010, 2011, and 2012 Sessions of the General Assembly. Members also agreed that they would like to receive a presentation from the City of Portsmouth regarding the tolling bills.

Kristen Collins, a Senior Tax Policy Analyst with the Department, provided the work group with an overview of tax credits in the Commonwealth. A copy of her presentation is available on the Joint Subcommittee website.

The members next turned to a discussion regarding work planning for future meetings. They agreed that they would like to receive more detailed presentations concerning both the land preservation tax credit program and the historic rehabilitation tax credit program. There is an interest in not only looking at the costs of the programs, but also trying to identify and quantify the public policy benefits created by the credits.

On a more general note, the members discussed an interest in looking at credit usage generally over the past 10 years. Questions were raised as to how long it takes to educate the public about the existence of a credit and at what point one can examine the effectiveness of a credit. Interest was also expressed in looking at historic trends related to the usage of older tax credits—for instance, has usage of any credits tapered off, or does credit usage continue to grow?

## Work Group #2

*April 2, 2013*

Work Group #2 also convened immediately upon the adjournment of the Joint Subcommittee, with Senator Jeffrey McWaters serving as chair.

Joe Mayer, Lead Tax Policy Analyst at the Department, presented an overview of sales and use tax exemptions. The exemptions are grouped in seven major categories:

- Agricultural.
- Commercial and Industrial.
- Government and Commodities.
- Media-Related.
- Medical-Related.
- Miscellaneous.
- Services.

*The Joint Subcommittee to Evaluate Tax Preferences heard background information about the land preservation tax credit and historic rehabilitation tax credit.*

*The Joint Subcommittee  
to Evaluate Tax  
Preferences created two  
work groups for the  
2013 interim.*

Regarding the exemption of services, the chair asked the Department to distribute a document of all services in the United States, as reported by the Federation of Tax Administrators. He also asked staff to provide information regarding the taxation of services in other states and the “politics” in play in those states when the legislation was passed.

For the next meeting of the work group, the chair asked staff and the Department to compile a few representative exemptions fostering different purposes for the Joint Subcommittee to analyze in detail at the next meeting and to solicit input from the work group’s members. He also asked the Department to present a summary of all media-related exemptions at the next meeting. Copies of all presentations are available on the Joint Subcommittee website.

### Next Meeting

The next meeting of the Joint Subcommittee will be posted on the Commission’s website and the General Assembly website as soon as information is available.

### JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

SENATOR JEFFREY MCWATERS, CHAIR  
DAVID ROSENBERG AND LISA WALLMEYER  
DLS STAFF

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## Other Legislative Commissions and Committees

The following are other legislative commissions and committees that hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

### Joint Legislative Audit and Review Commission

<http://jlarc.virginia.gov/meetings.shtml>

### Virginia State Crime Commission

<http://vscc.virginia.gov/meetings.asp>

### Joint Commission on Health Care

<http://jchc.virginia.gov/meetings.asp>

### Virginia Commission on Youth

<http://vcoy.virginia.gov/meetings.asp>

### House Appropriations Committee

<http://hac.virginia.gov/>

### Senate Finance Committee

<http://sfc.virginia.gov/>



# Virginia Sesquicentennial of the American Civil War Commission

April 16, 2013

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission met on April 16, 2013, in Richmond. Speaker William Howell, chair, called the meeting to order and requested a moment of silence for the victims of the bombings at the Boston Marathon.

## 2014 Signature Conference

Dr. Peter Stearns, Provost, George Mason University

Dr. Stearns presented the framework for the 2014 Signature Conference, *The Civil War in Global Context*. This conference will provide the opportunity to look at the Civil War from an intriguing and different perspective. The Civil War was an intense regional struggle, but it was also an international event in many ways. Considering it from this standpoint provides a number of unexpected connections between the American crisis and the wider world and sheds light on the war itself as well.

The Civil War will be juxtaposed with other internal conflicts during the same period—the national unifications in Europe, the struggles over identity in Japan, and rebellions in China and in India. Each case has distinctive features that the comparison helps to highlight, but there were also common issues that provide fresh insights into the American experience.

Several eminent historians will discuss the war's wider impact in areas ranging from the global cotton trade, to international abolition efforts, to changes in the future of military operations. The American Civil War was the first of wars fought in an industrial age, and a culminating keynote address by Jeremy Black, the distinguished British military historian, will explore the wider implications of this fact.

This conference, in no way detracting from the war as an American event, situates its meaning and its legacy in the wider currents of world history.

Executive Committee members were supportive of Dr. Stearns' proposal for the conference but expressed concern over the

travel costs associated with engaging multiple panelists from other countries. Dr. Stearns acknowledged the concern and assured members that costs would be kept within budget by adjusting honoraria to offset travel costs, where necessary.

The Executive Committee asked Dr. Stearns to work with staff as well as the local sesquicentennial committee to organize tours and other activities to be held before the conference, focusing on Civil War history in Fairfax.

## Sesquicentennial Tourism Marketing Grant Program

Steve Galyean, Virginia Tourism Corporation  
Cheryl Jackson, Executive Director,  
Virginia Sesquicentennial of the  
American Civil War Commission

Six grant applications from the spring 2013 grant cycle (Round 11) were recommended by the grant review committee for funding:

- **Franklin County Sesquicentennial Committee** "Franklin County Marketing Initiative." This project will entail the creation of marketing materials that highlight the attractions, destinations, and events within Franklin County that are associated with the commemoration of the Civil War sesquicentennial, and the distribution of same through various forms of social media with the goal of significantly increasing Civil War-related visitation to Franklin County and the Commonwealth.
- **Barter Theatre** "Freedom: Commemorating the Struggle." This project will attract local, state, and national attention to the history surrounding the American Civil War in Southwest Virginia by exploring the Battle of Saltville (150th anniversary of which is October 2014), allowing participants to walk in the footsteps of key individuals and examine life on the home front through the use of Barter Theatre's production of "Freedom," along with educational exhibits and lectures in partnership with the Museum of the Middle Appalachians.
- **Town of Abingdon** "Abingdon and Washington County: Second 2013 American Civil War Commemoration Program." The funds will be used to install two Civil War Trails markers: one at the Fields-Penn 1860 House Museum that will chronicle the life and accomplishments of Abingdon native son Francis Preston Blair and the second at the Abingdon Muster Grounds that will highlight the contributions of the 48th Volunteer Infantry

*The Civil War  
Commission heard  
information about the  
2014 Signature  
Conference, which will  
examine the Civil War  
in the context of world  
history at the time of the  
American Civil War.*

*The Civil War Commission has awarded \$176,338 through its tourism marketing grant program, generating an additional \$264,941 in matching funds.*

Regiment as well as Washington County native Colonel John Arthur Campbell.

- **Shenandoah Valley Battlefields Foundation** “Battlefield Driving Tours.” The grant project will be used to develop and produce 11 printed driving tours—10 for Shenandoah Valley Civil War battles/battlefields and one on The Burning—tours designed to increase visitation by making it easier for visitors to find and understand key sites.
- **Prince William County Historic Preservation Division** “Bristoe Station Campaign Cell Phone Tour.” The Bristoe Station Campaign Cell Phone Tour will be a multifaceted media tour (with cellular and smart phone technology) to provide out-of-town visitors and the local population a chance to learn more about the sites and actions that related to the Bristoe Station Campaign of 1863 and to enjoy the local neighborhoods and areas that are along the tour route.
- **Hanover Tavern Foundation** “War Comes to Hanover, 1861-1865 Civil War Brochure.” Funds are to be used to update and reprint the popular Hanover County Civil War brochure, as well as cover the cost to distribute the brochure at Virginia Interstate Welcome Centers and the HistoryMobile through 2015.

Mr. Galyean reported that one application was incomplete and, therefore, not recommended for funding. However, he will reach out to the applicant and encourage reapplication.

Ms. Jackson summarized the tourism marketing grant program to date, reporting that with the Commission’s approval of the current applications, \$176,338 will have been awarded through the program, generating an additional \$264,941 in matching funds. Ms. Jackson also pointed out that the Commission-funded grant program is responsible for putting nearly \$500,000 in the marketplace. The remaining balance in the grant program is approximately \$123,000. This balance should allow for another three or four grant cycles. The next grant cycle will open on April 29 and close on July 9.

Committee members asked if the Virginia Tourism Corporation is tracking the program’s impact on visitation to Civil War-related sites in Virginia. Mr. Galyean indicated that grantees are required to submit a report that includes such data within 18-24 months after the end of the event, and that the Executive Committee will be provided with a comprehensive report when the program concludes. Ms. Jackson

noted that some measures of success from previous grants are reported in the Commission’s recent report, “Civil War Sesquicentennial in Virginia: Impact at the Halfway Mark.”

The grant recommendations were unanimously approved en bloc.

## Approval of Logo Requests

Ms. Jackson reported that the Commission has approved a total of 201 logo requests since 2009. The Commission unanimously approved 10 logo applications to affix the Commission’s logo that had been given provisional authorization in accordance with the procedure established by the Executive Committee.

## Next Meeting

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



## VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

**SPEAKER WILLIAM J. HOWELL, CHAIR**  
**CHERYL JACKSON, EXECUTIVE DIRECTOR**

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# Meeting Calendar for July - August 2013

<b>JCOTS/Computer Crimes Advisory Committee</b> Lisa Wallmeyer	10:00 a.m., Monday, July 1, 2013—House Room C, GAB
<b>Joint Legislative Audit and Review Commission</b>	10:00 a.m., Monday, July 8, 2013—Senate Room A, GAB
<b>Civil War Commission/Executive Committee</b> Cheryl Jackson	10:00 a.m., Monday, July 8, 2013—6th Floor Speaker's Conference Room, GAB
<b>Virginia Bicentennial of the American War of 1812 Commission/Chesapeake Bay Tour</b> Brenda Edwards/Jeff Sharp	10:00 a.m., Tuesday, July 9, 2013—Hampton Public Piers, 710 Settlers Landing Road, Hampton
<b>Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act</b> Maria Everett/Amigo Wade	10:00 a.m., Tuesday, July 9, 2013—House Room C, GAB
<b>JCOTS/Electronic Meetings and Cyber Security Advisory Committees</b> Lisa Wallmeyer	1:00 p.m., Monday, July 15, 2013—House Room C, GAB
<b>Joint Commission on Transportation Accountability/Vehicle Subcommittee</b> Alan Wambold/Nicole Brenner	10:00 a.m., Tuesday, July 16, 2013—House Room C, GAB
<b>Virginia Housing Commission/Affordable Housing Work Group</b> Elizabeth Palen	10:00 a.m., Tuesday, July 16, 2013—House Room D, GAB
<b>Virginia Housing Commission/Environmental Standards Work Group</b> Elizabeth Palen	1:30 p.m., Tuesday, July 16, 2013—Senate Room A, GAB
<b>Joint Commission on Transportation Accountability/Tolling Subcommittee</b> Alan Wambold/Nicole Brenner	2:00 p.m., Tuesday, July 16, 2013—House Room C, GAB
<b>Joint Commission on Transportation Accountability/Transportation Funding Subcommittee</b> Alan Wambold/Nicole Brenner	10:00 a.m., Wednesday, July 17, 2013—Merritt Hall, Multipurpose Room #5222, Central Virginia Community College, Lynchburg
<b>Virginia Disability Commission</b> Sarah Stanton/Thomas Stevens	Work Group #1 (Housing and Transportation) 10:00 a.m., Wednesday, July 17, 2013—4th Floor West Conf. Rm., GAB Work Group #2 (Education and Employment) 12:00 p.m., Wednesday, July 17, 2013—4th Floor West Conf. Rm., GAB Work Group #3 (Publicly Funded Services) 12:00 p.m., Wednesday, July 17, 2013—5th Floor West Conf. Rm., GAB Full Commission 2:00 p.m., Wednesday, July 17, 2013—House Room D, GAB
<b>JCOTS/Intellectual Property Advisory Committee</b> Lisa Wallmeyer	2:00 p.m., Tuesday, August 6, 2013—5th Floor West Conference Room, GAB
<b>Virginia Code Commission</b> Jane Chaffin	10:00 a.m., Wednesday, August 7, 2013—6th Floor Speaker's Conference Room, GAB
<b>JCOTS/Computer Crimes Advisory Committee</b> Lisa Wallmeyer	10:00 a.m., Wednesday, August 7, 2013—House Room C, GAB
<b>Joint Meeting of House Appropriations, House Finance, and Senate Finance Committees</b>	9:30 a.m., Monday, August 19, 2013—House Room D, GAB
<b>Virginia Freedom of Information Advisory Council/Rights and Remedies Subcommittee</b> Maria Everett/Alan Gernhardt	1:00 p.m., Tuesday, August 20, 2013—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 Housing Commission

April 18, 2013

The Virginia Housing Commission (Commission) held its first meeting of the 2013 interim in Richmond with Senator Locke, chair, presiding.

## Future of Public Housing

Maurice Jones, Deputy Secretary, U.S. Department of Housing and Urban Development

Mr. Jones began his presentation by noting that the release of the proposed 2014 federal budget the previous week presented an excellent opportunity to talk about the future of public housing and how the proposed budget will help build that future.

### Budget Goals

The proposed 2014 federal budget:

- Puts HUD-subsidized public and assisted housing on a financially sustainable path.
- Recognizes that public housing authorities (PHAs) cannot be expected to house over one million families while they are subjected to overly burdensome regulation and denied access to private capital available to virtually every other form of rental housing.
- Improves the way federal dollars are spent and builds evidence of what works.

### Capital Needs

One of the biggest challenges PHAs face is the existing capital needs backlog. Currently, the national backlog is more than \$25.6 billion. The key to addressing the backlog is providing PHAs with a variety of options that provide the flexibility they need to make necessary repairs and other investments to better serve their clients.

### Rental Assistance Demonstration

To bring the public housing program toward mainstream real estate financing and management, the U.S. Department of Housing and Urban Development (HUD) will continue to implement the Rental Assistance Demonstration (RAD) enacted in 2012.

- In just the initial 30-day application window, PHAs submitted and HUD gave initial approval to proposals that can generate over \$650 million in private debt and equity investments and preserve over 12,000 public housing units—all without any additional funding from the government.
- These applications proposed a host of creative solutions, using RAD to meet local needs by modernizing aging properties for families and the elderly, including energy-retrofits to save on energy cost; reducing the densities of larger, troubled projects; demolishing severely distressed or obsolete units; and constructing new replacement units on a one-for-one basis or transferring subsidies to other mixed-income or rehab projects already underway.
- Not only will RAD produce quality, fully modernized housing, but many applicants proposed to use RAD to create or enhance mixed-income housing developments, which can strengthen neighborhoods, schools, and other resources in ways that most take for granted—safer streets; more accessible, better quality retail offerings and grocery stores; and new parks and recreation centers.
- The proposed 2014 federal budget also provides \$10 million for a targeted expansion of RAD to public housing properties in high-poverty neighborhoods.
- There may be concern about whether sequestration will prevent participation in RAD.
- PHAs can make up any gap in operating subsidy for the calendar year owing to FY 2013 appropriations that are lower than the FY 2012 numbers in the RAD application. This gap will only have to be made up for the balance of 2013 after converting assistance. Going forward, a Project-Based Voucher or Project-Based Rental Assistance contract will carry the established FY 2012 baseline rent through the duration of the contract. While this solution is not perfect, it will allow PHAs to proceed with proposed conversions and continue to participate in the program.

### Moving to Work

The proposed 2014 federal budget proposes to scale up the Moving to Work (MTW) program, which gives high-performing state and local PHAs various flexibilities in their use of Housing Choice Voucher and public housing funds.

*The Virginia Housing Commission heard from the Deputy Secretary of the U.S. Department of Housing and Urban Development about the impact of the 2014 federal budget on public housing.*

- In exchange for this flexibility, PHAs will help design and test innovative policies to support self-sufficiency and other positive outcomes for families, streamline and consolidate program delivery, and reduce long-term costs.
- In addition, PHAs will report on outcomes associated with their MTW activities, and those that choose to implement work requirements, time limits on assistance, or major rent reform initiatives will participate in rigorous evaluations.

### Other Strategies

The proposed 2014 federal budget also recognizes the need to simplify, align, and reform housing programs to reduce administrative burdens and increase efficiency across programs.

- **Combine Operating and Capital Funds.** To both simplify the program and reduce the administrative burden on state and local public housing authorities, the proposed 2014 federal budget provides all PHAs with full flexibility to use their operating and capital funds for any eligible capital or operating expense.
- **Improve Supportive Services for Assisted Households.** The Family Self-Sufficiency (FSS) program will be consolidated and aligned to enable PHAs to more uniformly serve both Tenant-Based Rental Assistance (TBRA) and public housing residents. In addition, the proposed 2014 federal budget authorizes PHAs to use a portion of their public housing and TBRA funding to augment case management and supportive services coordination provided through FSS or provide other supportive services to increase opportunities for residents.

### Public Housing and Neighborhoods

The significant impact that public housing can have on the surrounding neighborhood is understood and the need exists to support PHAs to help create opportunity not just for their residents, but for everyone in the neighborhood.

### Choice Neighborhoods

The \$400 million requested for the Choice Neighborhoods program represents a significant increase that will allow the transformation of public and assisted housing in the hardest hit neighborhoods and ensure that children are prepared for the 21st century economy.

- The Choice Neighborhoods initiative is a central element of the inter-agency, place-based strategy to support local communities in developing the tools they need to revitalize neighborhoods of concentrated poverty into neighborhoods of opportunity.
- Choice Neighborhoods grants exemplify how practices generate effective partnerships with local housing and community development efforts.

### Promise Zones

Mr. Jones also spoke about the effort to create “ladders of opportunity” for all Americans.

- The fundamental premise of the American Dream is that if people work hard and play by the rules that they will have a chance to get ahead and that their kids will have a chance to have a better life than they had.
- The proposed Promise Zones expand investments by HUD, the Departments of Education and Justice, and other agencies while coordinating and streamlining this work, to maximize impact and reduce cost.
- Choice Neighborhoods and RAD are essential elements of this place-based strategy.

### Sequestration

Mr. Jones noted that sequestration went into effect March 1 and that the cuts were deeply destructive, not just to HUD programs and the people who rely on them, but to entire communities. He encouraged the reversal of sequestration and stated that everyone will eventually feel the impact of these cuts.

- **Vouchers.** Under sequestration about 125,000 individuals and families nationwide—more than half of whom are elderly and disabled—would lose assistance provided by the Housing Choice Voucher program.
- **PHAs.** PHA residents could be facing higher rent burdens and longer waiting lists to enter public housing as a result of these cuts.
- **Relief.** While no amount of partnership, belt-tightening, or smarter management will avoid the effects of sequestration, HUD has taken several steps to provide administrative relief that may be helpful during this difficult time, publishing two notices on streamlining income verification for both public housing and Housing Choice Vouchers and another on reducing Housing Choice Voucher administrative costs.
- **Impacts.** Mr. Jones stated that while HUD is attempting to reduce these impacts, there is

*The proposed 2014 federal budget seeks to simplify, align, and reform housing programs to reduce administrative burdens and increase efficiency.*

simply no way to prevent serious damage this year or the resulting consequences for FY 14 unless sequestration is reversed with the balanced deficit reduction plan.

## Current Housing Conditions in the Commonwealth

Sonya Waddell, Regional Economist, Federal Reserve Bank of Richmond

Ms. Waddell reported that a sustained recovery in housing is being seen in the Commonwealth and across the nation.

	Foreclosure rate 4th Quarter 2012
Virginia	1.52%
Nation	3.74%
Florida	12.15%
Maryland	4.05%

	Number of Loans in Foreclosure in Virginia
4th Quarter 2012	20,775
2nd Quarter 2009	30,000
3rd Quarter 2002	9,000

Ms. Waddell noted that these figures also have to do with how long a mortgage stays in foreclosure. Virginia is ranked 43rd in total inventory of foreclosure of all states and the District of Columbia in the nation, with only Texas, Colorado, South Dakota, Montana, Nebraska, Alaska, North Dakota, and Wyoming having a lower inventory of foreclosures than Virginia. Ms. Waddell noted that the time in foreclosure is not the only issue. Virginia was 37th in terms of foreclosure starts.

	New foreclosure rate 4th quarter 2012	Number of new foreclosures 4th quarter 2012
Virginia	.53%	7,244 (peak was 13,148 in the 2nd quarter of 2009)
Maryland	.83%	8,599
Florida	1.34%	40,407

Ms. Waddell stated that prime loans still make up most of the loans in foreclosure,

approximately 47 percent, though subprime loans are still disproportionately represented in the foreclosure pool in the Commonwealth. She also noted that 2.3 percent of the mortgage inventory in Virginia was delinquent 90 or more days in the third quarter of 2012, approximately 31,000 loans, which was still less than the national average. Ms. Waddell provided historical figures about the distribution of mortgages in foreclosure.

4th Q	Loans in foreclosure	% Prime Loans	% Sub-prime Loans	% FHA Loans	% VA Loans
2000	6,500	18%	17%	41%	24%
2007	14,000	37%	57%	4%	2%
2009	30,000	56%	33%	8%	3%
2012	21,000	43%	30%	21%	6%

Ms. Waddell also presented information regarding shadow inventory, the number of homes in the foreclosure process and those that are 90+ days delinquent. For the fourth quarter of 2012, the number of homes was just under 52,000, a slight decrease from the 53,000 figure she presented at the December meeting. The number of homes in shadow inventory peaked at 81,000 in the first quarter of 2009.

Ms. Waddell reported on the new U.S. YoY growth in home sales October rate of 12.3 percent, which reflects a consistent positive since the end of 2011. She also cited the Virginia Association of Realtors November report, which showed an 18 percent increase in single family home sales from November 2011 to November 2012. She also noted that the median sales price of a home went up and that there was a decline in the number of average days on the market.

According to CoreLogic, housing prices have seen consistently positive year-over-year growth for a full year—since February 2012 and a 6.7 percent increase over 12 months ending in February 2013. A less positive picture was painted if the Federal Housing Finance Agency Year over Year (FHFA YoY) was used—the change was around zero for most of 2012. (FHFA conforming conventional loans meet underwriting guidelines of Fannie Mae and Freddie Mac and do not exceed the conforming loan limit. They are also not insured by FHA, VA, or any other federal government entity.)

Virginia's fourth quarter foreclosure rate in 2012 was 1.52 percent, compared to the national average of 3.74 percent.

	Negative Equity	Near Negative Equity (<5 percent equity)
Virginia	19.3%	5.3%
United States	21.5%	4.7%

The states with the highest levels of negative equity were Nevada (52.4 percent), Florida (40.2 percent), Arizona (34.9 percent). The lowest states had 10-15 percent in negative equity.

### Unemployment

Virginia's unemployment rate stood at 5.6 percent in February with 16,900 jobs added in February. While the unemployment rate has moved around a bit, Ms. Waddell stated that it may be more useful to think of an average increase of 3,300 jobs/month in the past 12 months. (A little less than what is needed to keep up with population growth of 1.2 percent in the long run.)

The national unemployment rate was 7.7 percent in February and 7.6 percent in March with 268,000 jobs added in February and 88,000 jobs added in March. An average increase of 169,000 February-to-February (159,000 March-to-March).

Questions remain about the impact of sequestration. Government employment has been lagging behind the private sector. Some of that is, of course, state and local government. Even with federal government employment, that alone does not even proxy very well for the full effect of sequestration.

Overall, residential real estate conditions are improving.

- House price stabilization, or even sustained improvement.
- Evidence of a pickup in construction.
- Stabilizing or declining foreclosure and delinquency rates.

On the other hand:

- There is still a long way to go to regain the losses of the past few years.
- There is still a historically high level of problem loans to work through in Virginia and in the nation.
- The labor market in Virginia is stable, but not growing strongly and is lagging the nation.

## Legislative Update

Elizabeth Palen, Executive Director, Virginia Housing Commission

Ms. Palen provided an overview of 2013 legislation referred to the Virginia Housing Commission for study and review during the interim. The legislation, along with other referred matters that may arise during the interim, will be studied by the Affordability, Real Estate Law and Mortgages Work Group, the Common Interest Communities Work Group, the Neighborhood Transitions and Residential Land Use Work Group, and the Housing and Environmental Standards Work Group.

*There has been an average increase of 3,300 jobs per month in the last 12 months in Virginia.*

## Next Meeting

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



### VIRGINIA HOUSING COMMISSION

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# Joint Commission on Transportation Accountability

April 24, 2013

Four subcommittees  
of the Joint  
Commission on  
Transportation  
Accountability will  
consider  
transportation-related  
issues during the  
2013 interim.

The Commission held its first meeting of the 2013 interim in Richmond. Delegate Joe May and Senator Steve Newman were unanimously elected chair and vice chair, respectively. The chair announced that four subcommittees would consider transportation-related issues during the interim. The subcommittees and their topics are listed below.

## Tolling Subcommittee

Delegate Joe May, Chair

- HBs 1302 and 1779 from the 2013 Session.
- Virginia Department of Transportation (VDOT) tutorial on future of tolling, generally, including status of tolling of Elizabeth River tunnels in connection with funding regional projects.
- Presentation by VDOT and Metropolitan Washington Airports Authority on status of Dulles Toll Road tolls in connection with rail-to-Dulles project.
- Impact of “clean special fuel vehicles” on degradation of service on HOV facilities.

## Vehicle Subcommittee

Senator Frank Wagner, Chair

- HBs 1948 and 1984, SBs 736 and 1038 from 2013 Session.
- Hear from the Department of Motor Vehicles (DMV) on Phase II of their study of unconventional vehicles.

## Transportation Funding Subcommittee

Senator Steve Newman, Chair

- Briefing by VDOT on impact of passage of HB 2313, generally, and impact on existing allocation formulas and changes needed or desirable in wake of HB 2313.
- Comments and briefing by Virginia Department of Rail and Public Transportation on impact of HB 2313 on allocations to rail and mass transit and on the need to shift traffic congestion from highways to rail.
- Discussion of efforts to provide a separate and explicit formula for allocation of maintenance funds.

- Impact of composition of Commonwealth Transportation Board on allocations and allocation process.
- VDOT review of its maintenance policies, including mowing.

## Technology Subcommittee

Delegate James LeMunyon, Chair

- Presentation on “open lane tolling” technology.
- Status of Quiet Pavement Study by VDOT and Virginia Center for Transportation Innovation and Research.
- Geo-synthetic materials in road construction.

## Other Discussion

The chair and Senator Smith discussed with the members a letter Senator Smith sent to the chair suggesting that the Commission look into highway accidents and highway construction operations that cause traffic congestion and may contribute to further crashes. Senator Smith suggested highway safety might be improved by additional coordination and prioritization of actions by different entities and parties. The chair said he would forward the letter to Commissioner of Highways Whirley with the request that VDOT share with the Commission the data it has on these kinds of situations. Mr. Walton, representing VDOT, assured the members that VDOT would be soliciting the input of State Police and the DMV in this effort as well.

## Next Meeting

An interim meeting of the full Commission is contemplated for late August, with a final meeting in December. Details will be posted on the Commission’s website and the General Assembly website as soon as information is available.

### JOINT COMMISSION ON TRANSPORTATION ACCOUNTABILITY

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# Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act

May 14, 2013

The Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act (Special Subcommittee) held its initial meeting in Richmond. The Special Subcommittee elected Delegate Chris Jones as chair and Senator Richard Stuart as vice chair. The chair discussed the proposed direction of the study, including an initial work plan. He emphasized that the charge of the Special Subcommittee will involve an extensive and comprehensive review of all aspects of the Virginia Public Procurement Act (VPPA) and that effectively performing this task will be a two-year process.

The first year of the study will be devoted to fact-finding and providing interested parties with the opportunity to share information and identify concerns related to the public procurement process. The information developed during this period will assist the Special Subcommittee in identifying the key areas where improvements may be made. The chair indicated that three additional meetings are anticipated for the first year. The second and third meetings will be focused on the receipt of public comment from interested parties. The fourth meeting of the first year will be held to identify those issues or concerns for which there is a general consensus that a problem exists and needs to be addressed.

The second year of the study will then focus on working to resolve the identified issues in the context of achieving wide consensus on the solutions that will ultimately be recommended. The chair further indicated that work groups may be established during this second year to deal with some of the more complicated issues. The ultimate goal of the Special Subcommittee's work is to develop recommendations for legislation for the 2015 Session.

The chair stated that the remainder of the first meeting was designed as an educational session for the Special Subcommittee

members on the various aspects of public procurement, including the background of the VPPA and a primer on the fundamentals of public procurement.

## Overview of the Virginia Public Procurement Act

Maria Everett, Senior Attorney,  
Division of Legislative Services

Ms. Everett provided the Special Subcommittee with an overview of the VPPA, starting with the status of public procurement in the Commonwealth prior to the Act.

The VPPA is based on the American Bar Association's Model Procurement Code. In 1982, Virginia became the tenth state to consolidate its procurement statutes based on the model code. The VPPA consolidates the state's policies, including purchasing methods, remedies in the event of controversy, and ethical standards governing procurement. The VPPA applies to all state entities and political subdivisions, except that counties, cities, and towns that adopt "alternative procurement policy based on competitive principles" are exempted from most of the provisions of the VPPA. Briefly stated, the VPPA seeks to ensure that (i) public bodies obtain high-quality goods and services at reasonable costs, (ii) public procurement is administered in a fair and impartial manner, and (iii) qualified vendors have access to the public's business. To achieve these purposes, the VPPA establishes a procedure for awarding public contracts based on competitive principles and provides that all public contracts with nongovernmental contractors for the purchase or lease of goods, for the purchase of services, or for construction be awarded after either competitive sealed bidding or competitive negotiation, unless otherwise provided by law. As originally conceived, competitive sealed bidding was and remains the preferred method of public procurement.

Ms. Everett also provided an overview of the organization of the VPPA as well as the impact of major developments on public procurement, including (i) mandatory procurement of goods produced by Virginia Correctional Enterprises, (ii) supplier diversity and enhancement provisions and the role of the Department of Minority Business Enterprise (DMBE), (iii) nonprofit

*The Virginia Public  
Procurement Act is  
based on the  
American Bar  
Association's Model  
Procurement Code.*

employment services organizations, (iv) public-private partnerships, (v) the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq. of the Code of Virginia) and the authority it provides to Level III and Level II institutions, and (vi) electronic procurement.

*eVA has resulted in savings of \$368 million since its inception.*

## **Restructured Higher Education Financial and Administrative Operations Act**

Colette Sheehy, Vice President for Management and Budget, University of Virginia

Ms. Sheehy summarized the Restructured Higher Education Financial and Administrative Operations Act (Restructured Operations Act) of 2005 and the authority granted to public institutions of higher education, focusing on Level III institutions.

Under the Restructured Operations Act, all public institutions of higher education in the Commonwealth may obtain authority to conduct business practices with a level of autonomy in the areas of (i) human resources, (ii) financial management, (iii) information technology, (iv) real estate, (v) procurement, and (vi) capital outlay. The Restructured Operations Act provides for three levels of authority, with Level III providing the broadest available authority. Ms. Sheehy stated that the University of Virginia (University) entered into a Level III management agreement in 2006, which gave the institution the broadest level of authority in all six of the business practice areas. Ms. Sheehy indicated that the University has used the expanded procurement authority to adopt rules that were based on the VPPA but tailored more specifically to the needs of higher education. The University also replaced the Construction and Professional Services Manual with a Higher Education Capital Outlay Manual, which provided a wider range of construction procurement options and flexibility. Ms. Sheehy provided examples of how the University had used the flexibility in procurement authority to successfully complete contract purchases and capital outlay projects.

In response to a question about if any overall cost-benefit analysis had been conducted to review whether the authority provided under the management agreement was advantageous to the Commonwealth, Ms. Sheehy indicated that when the authority was initially established there was some tracking

that was done supporting costs savings. In response to an inquiry about what put the University in a better position than the Department of General Services to better administer procurement activities, Ms. Sheehy replied that a chief factor was size, citing the University's annual operations budget of over \$2.5 billion and 40-person procurement department. Ms. Sheehy replied to a question about whether public institutions of higher education with Level I and II procurement authority are able to purchase off of each other's contracts using cooperative procurement by noting that all public institutions of higher education and all public bodies generally are able to purchase from the University's contracts.

## **Department of General Services**

Richard Sliwoski, Director

Mr. Sliwoski addressed the Special Subcommittee on the responsibilities of the Department of General Services. Mr. Sliwoski noted that Virginia is recognized as a leader in innovation and ethical procurement practices both nationally and internationally, receiving several awards and citations. He further noted that the agency is proactive in seeking and implementing best practices and provided several examples of how best practices have been implemented since the Governor's Task Force on Procurement Assessment, conducted in 1999. Mr. Sliwoski also provided examples of procurement operations that have increased efficiency and generated procurement savings, including the use of statewide leveraged contracts resulting in \$40 million in savings annually and the Commonwealth's statewide electronic procurement program, eVA, which has resulted in savings of \$368 million since the program began.

Mr. Sliwoski stated that the VPPA generally provides for transparent, competitive, and reliable procurement processes by which billions of dollars in public funds are spent through contracts with private sector businesses. He noted that recent legislation has exempted various public bodies from the VPPA under the premise that doing so would allow for greater efficiency and cost effectiveness. While these decisions on a micro basis may have merit, Mr. Sliwoski noted that they have also created an imbalance resulting in possible increased costs to the nonexempt agencies. These impacts include increased resource costs and complexity of contracts for

agencies and vendors; confusion for vendors due to multiple and disparate procedures resulting in a less friendly environment to conduct the state business; fractured efficiency of cooperative contracting such that one public body cannot use another public body's contract without expending resources to bring it into compliance with laws; and duplication of contracts resulting in less aggregated spending, higher prices, and increased contract award and administration costs. Mr. Sliwoski then reviewed the procurement process under the VPPA for construction, professional services, and nonprofessional services.

Mr. Sliwoski noted three general areas that the Special Subcommittee may want to consider for improvement:

- The lack of consequences for violating the VPPA.
- The small business set-aside preference.
- The absence of any central procurement oversight, making achievement of enterprise cost savings and efficiencies difficult.

In response to an inquiry about how an individual or company with a “great idea” would approach a public body under the VPPA, Mr. Sliwoski responded that if it is a product, the public body entertaining the idea may proceed with a Request for Proposals (RFP). Mr. Sliwoski responded to a question about if a cost-benefit analysis has been done on the SWaM program to determine whether and how much the program was saving or costing the state by noting that no hard data exists. A member expressed concern that smaller localities may be at a disadvantage when it comes to procurement because they do not have extensive staff and asked if smaller localities could contract with the state to do construction projects, to which Mr. Sliwoski responded that there was nothing to prevent such partnerships.

## Virginia Information Technologies Agency

Sam Nixon, Chief Information Officer

Mr. Nixon discussed with the Special Subcommittee the procurement services that the Virginia Information Technologies Agency (VITA) provides for the state. VITA procures information technology for most state agencies, and all such procurements must be made pursuant to the VPPA. VITA's oversight does not extend to independent agencies, Tier II and

III public institutions of higher education, the legislative or judicial branches, or local governments. Mr. Nixon noted that 50 percent of spending on VITA's contracts is from localities, K-12 education, and non-executive branch agencies. Other major efforts undertaken by VITA include leveraging the Commonwealth's information technology (IT) buying power, RFPs, and contract templates for information technology.

Mr. Nixon suggested the following areas for improvement of the VPPA:

- Clarification of statutory provisions. As an example, Mr. Nixon noted the prequalification of vendors provided by § 2.2-4317 of the VPPA and confusion about whether that pertains to all goods and services or just to construction projects.
- Removal of preference for competitive sealed bidding over competitive negotiation. Currently, the VPPA establishes competitive sealed bidding as the preferred method for procurement and requires the public body to justify the use of competitive negotiation.
- Modification of cooperative procurement language. The current language effectively creates a de facto “statewide” contract, which dilutes competition and leverage.
- Provision of explicit enforcement authority.

In response to the question of what would prevent VITA from accepting a “great idea” from a vendor, Mr. Nixon responded that the agency must first agree that the idea is a great idea and then it must be determined if funding is available before moving forward.

## Department of Minority Business Enterprise

Ida McPherson, Director

Ms. McPherson began by briefly describing the certification programs administered by the Department of Minority Business Enterprise (DMBE). The SWaM program is designed to promote access and to enhance procurement opportunities for businesses participating in state-funded projects. Currently certification numbers for this program are as follows: 20,926 small businesses, 5,383 women-owned businesses, and 6,775 minority-owned businesses. The Service Disabled Veteran-Owned Business Program, which consists of 224 certified businesses, allows veterans who are classified as “service disabled” by the Virginia Department of Veterans Services to include such certification in the SWaM vendor

*Fifty percent of spending on VITA's contracts comes from localities, K-12 education, and non-executive branch agencies.*

*A small business is a business with 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.*

base. DBME also administers a certification program for nonprofit employment services organizations (ESO) that have been accredited by both the Commission on Accreditation of Rehabilitation Facilities and the Department for Aging and Rehabilitative Services. Only one business has been certified as an ESO. Finally, DBME administers a component of the federal Disadvantaged Business Enterprise program designed to increase the participation of such business enterprises in projects funded by the U.S. Department of Transportation and other federal organizations. There are 1,435 disadvantaged businesses certified in the state.

Ms. McPherson also discussed the small business set-aside program established under Executive Order 33, which was initially signed on August 10, 2006, by Governor Timothy Kaine and extended by Governor Robert McDonnell. The order established a goal of 40 percent of purchases from SWaM businesses for the Commonwealth and established a small business set-aside program, as well as several other initiatives for state agencies and departments to enhance SWaM participation in procurement activities. In response to a question about who makes the determination of whether a business is a small business under the statutory definition and what indicia are used, Ms. McPherson replied that when an application for certification is received, DBME reviews a variety of information and documents, including tax returns and stock reports. In response to the inquiry about how the small business set-aside program legally operates if the lowest bidder is not awarded the contract, Secretary of Administration Lisa Hicks-Thomas moved forward to respond that the preference is reflected through the awarding of additional points during the procurement review process. The chair asked if that would raise the contract price, and Secretary Hicks-Thomas replied that cost was only one of the factors that would be considered. Another member added that while there may not be specific statistical data bearing out a cost-benefit analysis, most small companies add to the local economy by hiring local workers and contributing sales taxes. Ms. McPherson answered the question of how many small businesses were certified and how the procurement documents were structured to include such firms by noting that there are over 20,000 certified small businesses in the state, 90 percent of which are Virginia firms. She further stated that eVA allows for the inclusion of all businesses.

Regarding areas for possible change, Ms. McPherson offered that the Special Subcommittee may wish to consider amending the definition of “small business.” Current law defines a small business as a business with 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. Most Virginia businesses meet this definition. According to Ms. McPherson, most Virginia businesses have zero to 15 employees.

## **Large-County Perspective of VPAA**

Patti Innocenti, Deputy Director, Department of Purchasing and Supply Management, County of Fairfax

Ms. Innocenti provided the Special Subcommittee with a large-county perspective on the VPPA. The Department of Purchasing and Supply Management has authority for the Fairfax County government and public schools. The Department employs 28 contracts professionals, oversees 2,300 term contracts, and administers procurement expenditures with an average value of \$700 million. Ms. Innocenti stated that some aspects of the VPPA work well, including (i) the flexibility for local public bodies to establish alternative procurement procedures, (ii) the ability to post solicitations notices and contract awards on eVA, and (iii) cooperative purchasing, which allows localities to purchase off of national and regional contracts.

Ms. Innocenti also noted areas that present challenges, including understanding that one size does not fit all. Large and small localities have different needs and have varying in-house procurement capabilities. Ms. Innocenti also cited proposed changes to the VPPA that conflict with its intent as well as the cumulative effect of changes to the VPPA that adversely affect readability and create conflicting provisions. She stated that the VPPA should also be more nimble in order to adapt to current technology and business practices. Ms. Innocenti noted that the American Bar Association’s Model Procurement Code had been revised and could serve as a good starting point for the Special Subcommittee.

## Small-County Perspective of VPAA

William Lindsey, CPPO, C.P.M.  
President, Virginia Association of  
Governmental Purchasing  
Gloucester County Purchasing Agent

Mr. Lindsey provided the Special Subcommittee with a small-county perspective on the VPPA. He explained that the procurement office for Gloucester County consists of three employees who are responsible for \$69.8 million in total expenditures, including 108 term contracts. The office services the procurement needs of both the county government and the public school system. Mr. Lindsey noted that the advantages of the VPPA include the authority for local governments to establish alternative procurement procedures. He further noted that Gloucester County has adopted a 37-page procurement ordinance.

Mr. Lindsey also cited several problems with the VPPA, including:

- A “one size fits all” approach.
- Legislative actions that apply to all public bodies based on the noncompliance of one.
- Legislative actions that do not champion competition at the highest degree, such as state and local preferences.
- Legislative actions that seek to make the procurement function perform a regulatory function, such as requiring evidence of registration with the State Corporation Commission to do business in the Commonwealth and the use of the E-Verify program.
- Skewed lines of defined authority.
- The use of population thresholds associated with application of the VPPA.
- The wide variety of exceptions and exemptions to the VPPA that have been made since 1983 that have served to make it difficult to read, follow, and interpret.
- The disjointed provisions and difficult-to-observe methods of procurement.

In response to an inquiry about what percentage of localities have enacted procurement ordinances, Mr. Lindsey responded that about one-third of all localities have such ordinances.

## Next Meeting

The chair, noting the time, decided to move the two remaining presentations to the next meeting of the Special Subcommittee. The next meeting of the Special Subcommittee will be posted on the Special Subcommittee’s website and the General Assembly website as soon as information is available.

*The Special Joint  
General Laws  
Subcommittee  
Studying the Virginia  
Public Procurement  
Act heard a large-  
and small-county  
perspective of the  
Virginia Public  
Procurement Act.*

### SPECIAL JOINT GENERAL LAWS SUBCOMMITTEE STUDYING THE VIRGINIA PUBLIC PROCUREMENT ACT

#### DELEGATE CHRIS JONES, CHAIR

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# Virginia Code Commission

May 20, 2013

The Virginia Code Commission continued with the recodification of Title 33.1.

The Virginia Code Commission (Commission) held its first meeting of the 2013 interim in Richmond with Senator John Edwards, chair, presiding.

## Legislative Update

Jane Chaffin, Division of Legislative Services Staff

The Commission heard that both bills recommended by it had passed: SB 1043 (Chapter 629) extended the duration of emergency regulations from 12 to 18 months and SB 1052 (Chapter 784) made technical corrections to the Title 64.1 recodification bill (Chapter 614 of the 2012 Acts of Assembly) by reinserting language inadvertently omitted from that legislation.

Senator Edwards explained that his bill, SB 944, regarding appeals of administrative decisions, had passed. He thanked the Office of the Attorney General, especially Elizabeth Andrews, for its assistance with the bill.

## Recodification of Title 33.1

Alan Wambold and Nicole Brenner, DLS Staff

Ms. Brenner reviewed the organization outline and noted that significant reorganization had occurred since the Commission last reviewed the outline. The title has now been divided into four subtitles:

- Subtitle I. General Provisions and Transportation Entities.
- Subtitle II. Modes of Transportation: Highways, Bridges, Ferries, Rail, and Public Transportation.
- Subtitle III. Transportation Funding.
- Subtitle IV. Local and Regional Transportation.

Ms. Brenner reviewed the proposed schedule for reviewing specific chapters. The Highway Maintenance and Operating Fund will be added and other changes made to reflect changes made by the 2013 Regular Session of the General Assembly.

Regarding the Virginia Coalfield Coalition Authority (VCCA), Ms. Brenner advised that

she researched this authority and was unable to find any evidence that it ever existed. The Secretary of the Commonwealth reported that no appointments were ever made to this authority. Ms. Brenner stated that there is now a Coalfield Development Authority, which may have superseded VCCA. The Commission unanimously voted to repeal the VCCA.

The Commission discussed the placement of the Washington Metropolitan Area Transit Regulation Compact (assigned § 56-529 et seq. in the current Code of Virginia, but not set out in Title 56; only set out in the Compacts volume) and the Washington Metropolitan Area Transit Authority (WMATA) Compact (not assigned a Code section number; only set out in the Compacts volume). After discussion, the Commission determined to assign a section number in new Title 33.2, not Title 56, to the WMATA compact and cross-reference its location in the Compacts volume.

Delegate LeMunyon indicated that the Northern Virginia Transportation Authority has become active and he will advise the authority of this decision.

As a separate matter, the Commission discussed its policy on how compacts are referenced and placed in the Code of Virginia or the Compacts volume. The Commission unanimously agreed that its new policy regarding compacts would be that every compact will have a Code of Virginia section number, which may simply reference the Compacts volume or which may set out the entire compact. In response to a concern previously raised concerning whether changing Code section numbers in a compact is tantamount to changing the compact, Ms. Brenner stated that she concluded from her research that this is not the case and that other states to the compact have changed the numbers.

Regarding naming conventions, Ms. Brenner directed the Commission's attention to the handout "Conventions for proposed Title 33.2. Highways and Other Surface Transportation Systems." Ms. Brenner (i) reviewed the policy previously adopted by the Commission at its November 8, 2012, meeting regarding discontinuance of the use of "and/or" and how this phrase will be replaced; (ii) advised that based on § 1-227 of the Code of Virginia, a word in the singular includes the plural and vice versa; and (iii) indicated that the new Title 33.2 will not include short titles, such as the one currently found in § 15.2-4500 of the Code of

Virginia, based on § 1-244 of the Code of Virginia.

Mr. Wambold and Ms. Brenner reviewed the draft on abandonment and discontinuance of highways and roads and the draft Transportation Act of 1964. A complete record of the discussion can be found on the Commission's website.

## Work Plan

Ms. Chaffin reviewed the Commission's proposed work plan. The first item for discussion is the next title that the Commission should undertake to revise. Mr. Tavenner, Director of the Division of Legislative Services, consulted with Division of Legislative Services managers and suggested that the Commission consider recodifying Title 23 (Educational Institutions) as a two-year project followed by Title 36 (Housing). Neither title has been recodified. Other titles presented as future recodification candidates include Titles 8.01 (Civil Remedies and Procedure), 22.1 (Education), 40.1 (Labor and Employment), 45.1 (Mines and Mining), and 55 (Property and Conveyances).

It was suggested that the recodification of Title 23 would be more complicated than many might believe, especially creating an omnibus authority for the universities and incorporating 2013 legislation geared to a specific university. Members were reminded of pending court cases in which the Attorney General's office is involved. It was also noted that substantive changes are inevitable if the title is recodified.

It was recommended that the Commission seek public comment regarding which titles to recodify. After discussion, the Commission decided to publish the notice in the *Virginia Register of Regulations* and on the Commission website. Also, staff will follow up on the suggestion to submit the notice to *Virginia Lawyers Weekly*. The decision regarding the next title for recodification will be delayed until the next meeting. It was also requested that the work plan be amended to include contract expirations as any occur.

## Other Business

Ms. Chaffin introduced Andrew Kubin-canek, who is replacing Elizabeth Palen as staff support to the Administrative Law Advisory Committee.

## Next Meeting

The next meeting of the Commission will be posted on the Commission and General Assembly websites as soon as information is available.

*The Virginia Code Commission will seek public comment as to which code titles to recodify next.*

### VIRGINIA CODE COMMISSION

SENATOR JOHN EDWARDS, CHAIR  
JANE CHAFFIN, DLS STAFF

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websites that contain  
complete summaries of  
meetings and links to  
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resources.*

## 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 the Code Commission staff at (804) 786-3591 for further information.

## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

**1VAC30-40. Regulations for the Certification of Laboratories Analyzing Drinking Water (repealing 1VAC30-40-10 through 1VAC30-40-370).**

**1VAC30-41. Regulation for the Certification of Laboratories Analyzing Drinking Water (adding 1VAC30-41-10 through 1VAC30-41-500).**

Written public comments may be submitted until August 16, 2013.

#### Summary:

*The proposed regulation (i) updates the drinking water laboratory certification regulation to incorporate by reference the most recent Environmental Protection Agency (EPA)-approved test methods and laboratory-specific requirements in the EPA’s Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition (January 2005) and Supplement 1 to the Fifth Edition (June 2008); (ii) revises the fee provisions and requires local, state, and federal public laboratories, as well as private or commercial laboratories, to pay fees for certification; (iii) adds an alternative for drinking water laboratories to obtain certification by meeting the requirements of 1VAC30-46, Accreditation for Commercial Environmental Laboratories, as an alternative to meeting the drinking water laboratory certification regulation; and (iv) sets out the requirements to certify laboratories that analyze drinking water samples and determine compliance with federal Safe Drinking Water Act (SDWA) contaminant limits.*

For more information, please contact Rhonda Bishton, Regulatory Coordinator, Department of General Services, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

**3VAC5-20. Advertising (amending 3VAC5-20-30).**

Written public comments may be submitted until August 16, 2013.

#### Summary:

*This proposed action carries out the mandate of Chapter 728 of the 2011 Acts of Assembly and Chapters 760 and 818 of the 2012 Acts of Assembly, which require the Alcoholic Beverage Control Board to promulgate regulations establishing reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages. The proposed amendments replace most of the existing language with four provisions that (i) prohibit the use of persons consuming alcohol, cartoon characters, or persons under the legal drinking age in outdoor alcoholic beverage advertising; (ii) prohibit alcoholic beverage advertising within 500 feet of religious institutions, schools, recreational facilities, or residences, with measurements as defined in the Code of Virginia; (iii) prohibit outdoor alcoholic beverage advertising on property zoned for agricultural or residential use or unzoned; and (iv) require that outdoor alcoholic beverage advertising comply with Virginia Department of Transportation laws and regulations. Other proposed provisions prohibit manufacturers, importers, or wholesalers*



*from providing outdoor advertising to retailers or engaging in cooperative advertising with retailers, and prohibit manufacturers or importers from requiring wholesalers to engage in outdoor advertising.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov)

**3VAC5-20. Advertising (amending 3VAC5-20-10, 3VAC5-20-60, 3VAC5-20-90, 3VAC5-20-100).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) clarify existing language, (ii) allow combination packaging for beer and distilled spirits, and (iii) prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons younger than 21 years of age.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-30. Tied-House (amending 3VAC5-30-10, 3VAC5-30-20, 3VAC5-30-30, 3VAC5-30-60, 3VAC5-30-70, 3VAC5-30-80; adding 3VAC5-30-90).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) allow wine wholesalers to merchandise product on Sunday, (ii) transfer the prohibitions of price discrimination between wholesalers and retailers currently in 3VAC5-70 (Other Provisions) to 3VAC5-30 (Tied-House), and (iii) expand ordinary and commercial reasons for product return.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-10, 3VAC5-40-20, 3VAC5-40-30; repealing 3VAC5-40-40, 3VAC5-40-50).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) consolidate and standardize product approval requirements for wine and beer, (ii) remove vague and unenforceable language relating to lewd or indecent labels on wine or beer, (iii) allow for combining previously approved items into a gift package, and (iv) provide standards and definition for certain beer containers.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-50. Retail Operations (amending 3VAC5-50-60).**

Written public comments may be submitted until July 19, 2013.

Summary:

*This proposed regulatory action amends the general procedures for mixed beverage restaurants by (i) prescribing the labeling, container size, and record-keeping requirements for infusing, storing, and selling flavored distilled spirits and (ii) requiring compliance with all applicable state and federal food safety requirements.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-50. Retail Operations (amending 3VAC5-50-110).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendment establishes a \$1,000 minimum monthly food sale requirement of oysters and other seafood for gourmet oyster house licensees. This action is required by Chapter 626 of the 2011 Acts of Assembly.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-50. Retail Operations (amending 3VAC5-50-10, 3VAC5-50-20, 3VAC5-50-40, 3VAC5-50-60, 3VAC5-50-100, 3VAC5-50-110, 3VAC5-50-160).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) clarify the types of restaurants that are eligible for a wine and beer license and further distinguishes restaurants that are eligible for a mixed beverage license; (ii) expand the current statutory provisions for licensees (e.g., ability to read, write, speak, and understand the English language) to managers; (iii) add language prohibiting possession of alcoholic beverages except in certain specified situations by persons to whom such alcoholic beverage may not lawfully be sold; (iv) lower the dollar amount of food that must be sold at gourmet shops in order for them to be licensed from \$2,000 to \$1,000; (v) describe the specific criminal conduct that disqualifies an employee of a business rather than cite specific sections of the Code of Virginia; and (vi) expand a restaurant's ability to advertise that drink specials are offered during specific times, without allowing advertising of specific special prices.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-60. Manufacturers and Wholesalers Operations (amending 3VAC5-60-20, 3VAC5-60-50, 3VAC5-60-80; adding 3VAC5-60-25, 3VAC5-60-110).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) allow required reports of sales to be filed monthly rather than weekly; (ii) allow up to two cases of wine to be peddled to retailers during a scheduled delivery of other wine products that were preordered by the retailers; (iii) add provisions governing situations in which a brewery may manufacture beer bearing the brand name of another pursuant to a contract brewing arrangement; (iv) allow electronic filing of required reports; (v) increase the size of spirits samples that may be given to mixed beverage licensees from 50 milliliters to 375 milliliters; and (vi) allow spirits manufacturers to rent booths, provide hospitality events, and pay for advertising in brochures made for conventions, trade association meetings, and similar gatherings.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804)

213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-70. Other Provisions (amending 3VAC5-70-90, 3VAC5-70-100, 3VAC5-70-150, 3VAC5-70-210, 3VAC5-70-220).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments (i) allow licensees to store records off site; (ii) allow banquet and special event licensees 90 days to file required reports; (iii) add importers, bottlers, brokers, and wholesalers to the list of licensees who are permitted to host events at and donate their products to conventions or educational events; (iv) clarify that each establishment is considered a separate licensee even in cases where one entity owns multiple establishments; and (v) allow licensees to file required monthly activity reports electronically.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

**3VAC5-70. Other Provisions (adding 3VAC5-70-95).**

Written public comments may be submitted until July 19, 2013.

Summary:

*The proposed amendments allows businesses that are licensed by the board to get a prorated refund of their licensure fee if the business is destroyed by an act of God.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

**8VAC20-60. Regulations Governing the Approval of Correspondence Courses for Home Instruction (repealing 8VAC20-60-10 through 8VAC20-60-100).**

**8VAC20-340. Regulations Governing Driver Education (adding 8VAC20-340-5, 8VAC20-340-40).**

A public hearing will be held at 11 a.m. on July 25, 2013, at the Department of Education, James Monroe Building, 101 North 14th Street, Richmond. Written public comments may be submitted until August 2, 2013.

Summary:

*The proposed action repeals 8VAC20-60 (Regulations Governing the Approval of Correspondence Courses for Home Instruction) and moves some provisions of that chapter to new sections added to 8VAC20-340 (Regulations Governing Driver Education). The proposed amendments include the definition section from the repealed regulation, with minor revisions, and add a definition for the term "parent" in the new section. In addition, the proposed amendments require the applicant to submit to the department as part of the application process an affidavit, a schedule of tuition and fees, a description of its refund policy, and copies of all application forms and enrollment agreements used by the correspondence program. The approval criteria have been expanded to add a requirement that the content of each course meets the requirements of the Driver Education Standards of Learning and the Curriculum and Administrative Guide for Driver Education in Virginia, 2010 edition. An appeals process has also been added to clarify the applicant's right to due process.*

For more information, please contact Anne D. Wescott, Assistant Superintendent for Policy and Communications, Department of Education, Richmond, VA 23218, telephone (804) 225-2403, FAX (804) 225-2524, or email [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

**18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-10, 18VAC110-20-240, 18VAC110-20-250, 18VAC110-20-270).**

Written public comments may be submitted until August 2, 2013.

Summary:

*The proposed amendments (i) add a definition of "on-hold prescription"; (ii) allow a prescription to be filed*

*either by the date of initial dispensing or by the date it is entered into an automated data processing system, if the prescription is an on-hold prescription, until the patient needs the prescription; (iii) require verification of the accuracy of the prescription information entered into the data system by the pharmacist who enters the on-hold prescription; and (iv) require a prospective drug review by the pharmacist who subsequently dispenses the on-hold prescription.*

For more information, please contact Caroline Juran, RPh, Executive Director, Board of Pharmacy, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

**18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-490).**

Written public comments may be submitted until August 2, 2013.

Summary:

*As a result of several petitions for rulemaking, the Board of Pharmacy proposes to (i) reorganize the regulations for using automated dispensing devices (ADDs) for clarity; (ii) distinguish audits from reviews so pharmacies understand more clearly when each action is required; (iii) limit the required monthly audit for ADDs with perpetual monitoring systems to discrepancies or exceptions identified through the ADDs; and (iv) provide an exception to the monthly inspection of ADDs if the ADD is capable of performing self-inspections that meet criteria set by the board.*

For more information, please contact Caroline Juran, RPh, Executive Director, Board of Pharmacy, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov).

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