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HJ 135/SJ 89: Joint Subcommittee Studying Development and Land Use Tools in Virginia’s Localities

November 15, 2010

The Joint Subcommittee Studying Development and Land Use Tools in Virginia’s Localities held its first meeting in Richmond, Virginia, and elected Delegate Athey and Senator Vogel as chairman and vice-chairman of the joint subcommittee, respectively.

The joint subcommittee is charged with examining and monitoring the transition to channeling development into Urban Development Areas (UDAs), and determining if additional legislation is needed to help localities as they transition to UDAs. Moreover, the joint subcommittee is required to make a comprehensive evaluation of all existing land use planning tools and infrastructure financing options and make any recommendations deemed appropriate.

Urban Development Areas

Bill Ernst, Policy Manager,
Department of Housing and
Community Development

On behalf of the Commission on Local Government, Mr. Ernst presented the Commission’s findings contained in the *Interim Report on the Progress of Counties, Cities, and Towns Toward Designating UDAs*. Mr. Ernst first noted that House Bill 1071 (2010) and Senate Bill 420 (2010) directed localities to provide the Commission on Local Government with key documents

addressing local compliance with § 15.2-2223.1 of the Code of Virginia (the statute governing urban development areas). He further noted that these bills also required the Commission on Local Government to report to the Governor and General Assembly on overall compliance with UDA requirements.

Next, Mr. Ernst discussed the procedure by which the survey, which formed the basis of the report, was conducted, the response rate to the questions the Commission on Local Government posed to localities, and the questions and response categories contained in the survey. Then, Mr. Ernst described a locality’s compliance with § 15.2-2223.1 based upon local government type, population type, and fiscal stress.

Mr. Ernst concluded his presentation by summarizing that “more populous, less fiscally stressed counties and cities appear to have made or are making the most progress toward designating UDAs in accordance with current statutory requirements” and that “smaller, more fiscally stressed localities—especially towns—are less likely to have made significant progress on adopting UDAs into comprehensive plans.”

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

The Honorable Richard H. Stuart, VA Senate
Cord A. Sterling and Susan B. Stimpson,
Supervisors, Stafford County Board of
Supervisors

*An economic analysis
of urban development
areas found that
commercial
development is
necessary to offset the
cost of residential
development.*

Senator Stuart and Stafford County Supervisors Sterling and Stimpson (the Stafford delegation) gave a joint presentation to the joint subcommittee. The Stafford delegation first discussed the principles by which Stafford County will implement UDAs, such as balancing the legal requirement against fiscal realities and ensuring urban development areas meet community standards for education, parks, and other public facilities.

Next, the Stafford delegation discussed an economic analysis of UDAs conducted by Dr. Stephen Fuller, Director of the Center for Regional Analysis at George Mason University. According to the analysis, “residential development does not pay for itself” and “commercial development is essential to offset [the] cost of residential” development; accordingly, Stafford County’s UDAs “balance residential and commercial growth to achieve fiscal neutrality.” To address the Virginia Department of Transportation’s “concerns regarding [the] impact of larger urban development areas on major transportation nodes,” Stafford County:

- Designated urban development areas that “distribute density across major transportation nodes to minimize impact;” and “incorporate [a] mix of units together with commercial and public facilities to minimize vehicle trips;”
- “[I]dentifie[d] new/upgraded road segments to serve urban developments ([which are] to be funded by proffers).”

Finally, the Stafford delegation suggested that the statutory definition of developable acreage should exclude wetlands, green space, and rights of way.

Ray Utz, Long Range Planning Division
Chief, Prince William County

Mr. Utz began his presentation by giving an overview of Prince William County’s planning initiatives over the past decade. He next discussed the acreage of, and density in, the urban, suburban, semi-rural, and rural areas of Prince William County. Then, Mr.

Utz spoke about the 2010 amendment to § 15.2-2223.1 that limits a locality to basing its population growth on estimates other than the U.S. Census, Virginia Employment Commission, or Weldon Cooper Center. After stating that the statutorily prescribed density requirements may not be appropriate for Prince William County, Mr. Utz suggested that the General Assembly amend § 15.2-2223.1 to:

- Allow counties to utilize metropolitan planning organizations estimates when projecting population and employment growth.
- Make the same density/intensity standards for all jurisdictions.
- Extend the date of compliance to July 1, 2013.

Other Business

The joint subcommittee received public comment from persons representing environmental coalitions, homebuilders, and localities.

HJR 135/SJR 89

Joint Subcommittee Studying Development and Land Use Tools in Virginia’s Localities

Delegate Clifford Athey, Chair

Kevin Stokes, Jeff Sharp, Rebecca Young,
DLS Staff
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<http://dls.virginia.gov/DLUT.htm>

SJR 73: Joint Subcommittee Studying Strategies and Models for Substance Abuse Prevention and Treatment

November 16, 2010

The fourth and final meeting of the Joint Subcommittee Studying Strategies and Models for the Prevention and Treatment of Substance Abuse was held at Youth for Tomorrow in Bristow, Virginia.

Suboxone Program

Keith Shuster, LPC, Prince William County Services Board

Ms. Shuster described the Prince William County Community Services Board's Suboxone program for people with opioid dependence. The program provides 90 days of Suboxone-assisted residential treatment for people with opioid dependence, including residential treatment for individuals in need of stabilization. The program has served 89 clients since 2008. Early results based on the first 16 months of program operations show that retention rates for program participants were significantly higher than retention rates for clients with opiate dependence who did not receive Suboxone as part of their treatment program (73 percent as compared to 34 percent). Recent data shows that program participants are involved with treatment for an average of 343 days, which is close to the recommended 365 days. Studies show that longer treatment involvement correlates with higher rates of success and lower rates of criminal activity.

Prescription Monitoring Program

Ralph Orr, Program Director, Virginia Prescription Monitoring Program

Mr. Orr reported on the Virginia Department of Health Professions' study of Prescription Monitoring Program Utilization, as required by Senate Joint Resolution 73 (2010). Mr. Orr stated that the Prescription Monitoring Program was established in 2003, and in October of 2009 underwent several programmatic changes, making the service available 24 hours a day through an automated service. This change has made the

program more user-friendly. At the same time, the Department of Health Professions has increased public awareness and education activities around the Prescription Monitoring Program, providing educational conferences and materials to health care professionals. The Department and Prescription Monitoring Program staff also continues to work together with Virginia Commonwealth University's School of Medicine to offer an online chronic pain management course that licensed health professionals may take at no cost to satisfy continuing education requirements. As a result, the number of registered users has doubled since October 1, 2009. As of the end of September 2010, the Prescription Monitoring Program had 7,906 registered users. Between January 1 and September 30 of 2010, the Program had processed over 300,000 requests for information; while approximately one million prescriptions are reported to the Program each month.

Even though changes made to the Program have resulted in increased use of the Prescription Monitoring Program, the Department of Health Professions did recommend several enhancements to the Program that can be viewed in their entirety on the joint subcommittee's website at <http://dls.virginia.gov/GROUPS/subabuse/meetings/111610/materials.htm>.

Substance Abuse Insurance Parity

Althelia Battle, Bureau of Insurance, Virginia State Corporation Commission

Ms. Battle presented the Bureau of Insurance's (Bureau) report on Data Collection and Information on Substance Abuse Treatment Services. Ms. Battle reported that the Bureau mailed requests for information to 798 health insurers, health service plans, and health maintenance organizations licensed to sell accident and sickness insurance in Virginia as of August 16, 2010, and received responses from 468

The Virginia Prescription Monitoring Program became available 24 hours a day through an automated service in October of 2009.

Alcoholic energy drinks include alcohol (usually malt liquor) mixed with caffeine and other stimulants.

companies. Of these companies, 34 companies reported issuing policies that included coverage for substance abuse services. These 34 companies reported a total of 30 complaints, with a total of \$23,991,007 paid to settle those claims. During 2009, the Bureau received three complaints related to substance abuse services. The Bureau did not report any recommendations for change.

Alcoholic Energy Drinks

Dr. Randy Koch, Ph.D., Exec. Director, Institute for Drug and Alcohol Studies, Virginia Commonwealth University

Dr. Koch presented information on alcoholic energy drinks. Dr. Koch reported that alcoholic energy drinks include alcohol (usually malt liquor) mixed with caffeine and other stimulants. Premixed alcoholic energy drinks are frequently sold in large cans containing up to 23.5 ounces of beverage, and may contain up to 12 percent alcohol by volume. A study of consumption of alcoholic energy drinks in North Carolina found that 68 percent of college students reported drinking alcohol in the previous month, and that 24 percent of college students reported drinking alcoholic energy drinks on at least one day in the past month. Studies of consumption of alcoholic energy drinks indicate that those who drink alcoholic energy drinks are likely to consume more alcohol per episode of drinking, possibly because stimulants in alcoholic energy drinks counteract the depressant effects of alcohol and interfere with drinkers' perceptions of intoxication. Studies also show that individuals who drink alcoholic energy drinks are:

- More likely to engage in risky behavior.
- Twice as likely to binge drink.
- Nearly twice as likely to be sexually assaulted (females).
- More than twice as likely to sexually assault someone (males).
- Twice as likely to get hurt or injured.
- More than twice as likely to require medical treatment.
- Four times as likely to drive than individuals who consume alcohol that has not been mixed with stimulants.

In response to these risks, Dr. Koch reported that several states have banned the sale of alcoholic energy drinks. Others have reclassified alcoholic energy drinks as distilled spirits. Dr. Koch and the SJR 73 work group recommended that the General Assembly ban the sale of alcoholic energy drinks in the Commonwealth. Alternately, the General Assembly should:

- Provide funding to the Governor's Office of Substance Abuse Prevention to conduct a public awareness campaign about alcoholic energy drinks, their effects, and the associated dangers.
- Provide additional funding to the Department of Alcoholic Beverage Control to conduct compliance checks on sales of alcoholic energy drinks.
- Consider re-classifying alcoholic energy drinks in a manner that would provide for sale of these beverages through package stores only.
- Increase the tax on alcoholic energy drinks to reduce consumption; funds received as a result of this tax should be allocated to substance abuse prevention and treatment services.
- Require warning labels on premixed alcoholic energy drinks sold in the Commonwealth.
- Prohibit the mixing of alcohol and energy drinks in restaurants and other establishments that serve alcohol.

Discussion of Recommendations

Following presentations, the joint subcommittee discussed recommendations developed by the SJR 73 work group and voted to adopt those recommendations. A complete list of the recommendations adopted can be accessed through the study website.

SJR 73

Joint Subcommittee Studying Strategies and Models for Substance Abuse Prevention and Treatment

Senator Emmett W. Hanger, Jr., Chair

Sarah Stanton, DLS Staff

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

Did You Know?

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

DLS Director to Retire

E.M. Miller, Jr., Director of the Division of Legislative Services since November 1, 1988, recently announced his retirement. His last day as Director will be June 30, 2011, which hopefully will permit him to lead the agency through the 2011 Regular General Assembly Session and the Special Session for the redistricting of House of Delegates and Senate seats.

"I have enjoyed my 38 years working with Virginia legislators and legislative staff as a staff attorney, director of the Senate Finance Committee staff, and as the Director of the Division of Legislative Services. It has been an incredible ca-

reer in a job that is always challenging and provides an environment for constant learning. Also, it has been an honor to work with an enthusiastic, dedicated, and talented Division of Legislative Services staff."

E.M. Miller, Jr.
Director



DLS BULLETIN BOARD

- Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.
- All requests for drafts of legislation for prefilng to be submitted to DLS by 5:00 p.m. on December 6, 2010.
- All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 31, 2010.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 7, 2011.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 7, 2011.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 11, 2011.
- All requests for drafts, redrafts, and corrections for first-day introduction bills to be submitted to DLS by 5:00 p.m. on January 11, 2011.
- Prefiling for the 2011 Session ends at 10:00 a.m. on January 12, 2011.
- The 2011 General Assembly convenes on January 12, 2011, at noon.

Virginia Disability Commission -

11/3/10

The third meeting of the Virginia Disability Commission for the 2010 interim was held on Wednesday, November 3, 2010, at the General Assembly Building in Richmond.

Work Group Recommendations

Work Group #1 (Scope and Purpose)

The Commission reviewed a draft of legislation incorporating changes recommended by Work Group #1 (Scope and Purpose) at the September Commission meeting. Commission members will provide feedback and comments to staff, and a final draft of the legislation will be discussed at the next Commission meeting.

Work Group #2 (Services)

Work Group #2 (Services) met immediately prior to the full Commission meeting on November 3, and reported the following recommendations:

- A budget amendment to provide \$2 million to the Department of Rehabilitative Services to provide personal assistance services to all individuals on the waiting list, eliminating the waiting list.
- A budget amendment to restore funding for independent living services through the Department of Rehabilitative Services to the previous funding level for FY 2011 (\$427,000).
- Legislation to increase the maximum amount of allowable earnings under the Medicaid Works program to the federally allowed maximum, \$60,000 per year.
- A budget amendment to restore funding for brain injury services through the Department of Rehabilitative Services to the previous funding level for FY 2011 (\$200,000).
- A budget amendment to provide \$500,000 to the Department of Medical Assistance Services to support in-state, publicly funded neurobehavioral therapy services to persons with brain injuries.
- A budget amendment reestablishing the Consumer Services Fund, and allocating \$500,000 for the Consumer Services Fund program.

The members of the Commission voted to support these recommendations and draft a letter to the Governor describing their recommendations for the 2011 General Assembly Session.

Work Group #3 (Housing and Transportation)

Work Group #3 (Housing and Transportation) met on October 28, 2010, to discuss issues related to housing and transportation needs of people with physical and sensory disabilities. The work group reported the following recommendations:

- Legislation to (i) increase the cap of the Livable Home Tax Credit from \$2,000 to \$5,000 per credit, (ii) make the credit available to home builders, and (iii) reserve one-half of the \$1 million available annually for new construction and one-half for retrofits, except that if one category of funding is not exhausted at the end of a tax year, that money can be used to fund additional credits in the other category. (The work group noted that the Governor's Housing Policy Work Group is also considering this recommendation, as is the Community Integration Advisory Commission.)
- A letter to the U.S. Department of Housing and Urban Development supporting recommended changes to the Housing Choice Voucher process that will be submitted by the Virginia Housing Development Authority.
- Legislation directing the Joint Legislative Audit and Review Commission or other state agency to study housing needs of persons with physical and sensory disabilities in the Commonwealth, including the nature and scope of housing needs, the costs involved in meeting those needs, and any potential savings to the Commonwealth resulting from satisfaction of housing needs.

Following discussion of this recommendation, the Commission voted to request that the Office of Community Integration carry out this task, and to report to the Disability Commission no later than December 1, 2011.

The work group also reported that it had discussed various options for establishing a group to evaluate existing accessibility standards and develop a standardized set of terms and a model standard for the Commonwealth, and concluded that the Disability Commission should wait to act on this issue until after the Governor's Housing Policy Work Group reports its findings and conclusions in late November, as the Governor's Work Group may have a recommendation on this issue. If the Governor's Work Group does not have a recommendation on this issue, the Disability Commission may want to consider establishing a work group to pursue development of uniform accessibility standards for the Commonwealth.

Finally, the work group recommended that the Commission receive information about changes to local housing policy resulting from enactment of the amendment to the Constitution of Virginia authorizing localities to provide tax relief for disabled homeowners.

Virginia's Olmstead Initiative

Carter Harrison, Chair, Virginia Community Integration Advisory Commission

Mr. Harrison provided an update on the status of Virginia's Olmstead Initiative. Mr. Harrison identified legislative priorities from the 2010 General Assembly Session. SB 194 clarifies that nothing in Title 54.1 of the *Code of Virginia* shall prevent any person from performing state or federally funded health care tasks directed by a consumer, which are typically self-performed, for an individual consumer who lives in a private residence and who, by reason of disability, is unable to perform such tasks but who is capable of directing the appropriate performance of such tasks. SB 148 extended the sunset of the Community Integration Advisory Commission through July 1, 2014, and changed the responsibility for staff support from the Virginia Board for People with Disabilities to the Virginia Department of Rehabilitative Services.

Mr. Harrison then identified several recommendations made by the Community Integration Advisory Commission to the Governor for consideration during the 2011 General Assembly Session, including recommendations that the Commonwealth:

- Phase out the Mental Retardation/Intellectual Disabilities (MR/ID) and Individuals and Families Developmental Disabilities Support (DD) Medicaid Waivers waiting lists.
- Restore budget cuts to respite services under the Home and Community-Based Medicaid Waivers scheduled for FY 2012, up to a maximum of 720 hours annually in FY 2010.
- Restore the five percent budget cuts to provider rates in the Home and Community-Based Medicaid Waivers scheduled for FY 2010.
- Support an increase in the Livable Home Tax Credit from \$2,000 to \$5,000 and allow builders to access the tax credit.

In closing, Mr. Harrison identified topics of future work for the Community Integration Advisory Commission, including guardianship, housing, auxiliary grants, family members as caregivers, and the Money Follows the Person Initiative.

Following Mr. Harrison's presentation, the Disability Commission voted to support these recommendations, with a particular emphasis on reducing waiting lists for Medicaid waiver services. The Commission will draft a letter to the Governor stating its support.

Brain Injury Services

Anne McDonnell, Executive Director, Brain Injury Association of Virginia

Ms. McDonnell discussed brain injury services in the Commonwealth, noting that not all individuals who need services are able to access services. She particularly highlighted the lack of in-state, publicly funded neurobehavioral therapy treatment services. Ms. Ruth Anne Walker, Department of Behavioral Health and Developmental Services, stated that she would take Ms. McDonnell's comments to the Commissioner of the Department of Behavioral Health and Developmental Services. Commissioner Jim Rothrock, Department of Rehabilitative Services, described activities improving brain injury services.

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

Virginia Freedom of Information Advisory Council – 11/8/10

The FOIA Council held its final meeting of 2010 in Richmond, Virginia. The Council heard subcommittee reports, voted on subcommittee recommendations, and continued its annual legislative preview.

Subcommittee Reports

Rights and Remedies Subcommittee

Staff reported that the Rights and Remedies Subcommittee met on October 4, 2010, to continue its deliberations. The subcommittee's work had begun with the discussion of HB 449, which would have provided a remedy for public bodies to use against requesters who use FOIA as a tool for harassment, but the subcommittee did not favor the legislation as drafted. The subcommittee generally agreed that there are requesters who misuse FOIA to harass or impede the work of public bodies, but there was no agreement that a legislative fix was necessary. Staff presented a draft proposed by Mr. Wiley, a member of the subcommittee, that would allow a court to decline to order the production of requested records under certain conditions. The Council then took up the draft for consideration as a legislative proposal. After a lengthy discussion that can be viewed in its entirety on the Council's website, the matter was left on the table.

Criminal Investigative Records Subcommittee

Chairman Fifer reported that the Criminal Investigative Records Subcommittee had met three times this year. The subcommittee considered the issue of policy changes regarding access to criminal investigative records, but could not find common ground for substantive changes. Instead, the subcommittee considered a re-draft of § 2.2-3706 of the Code of Virginia intended to make the section easier to read and understand without introducing any substantive changes. The subcommittee agreed by consensus at its meeting to present the draft to the full Council for consideration, but because there was not a quorum present, there was no official recommendation from the subcommittee. Staff then presented the latest version of the redraft, noting that while it made no substantive changes, it reorganized the section into separate subsections addressing definitions, discretionary

releases, required releases, prohibited release, non-criminal records, and conflict resolution. Staff further noted technical amendments contained in the draft, and that it had a second enactment clause stating that it was declaratory of existing law. After brief discussion expressing concern that introducing the draft might open up the entire topic to re-examination, the Council voted 8 - 2 in favor of recommending the draft. However, after the vote, concern was re-expressed by several members that introducing the draft might open up the entire topic to re-examination and unwanted mischief. Given that 2011 was an election year in the House of Delegates, it was suggested that introduction of the redraft of § 2.2-3706 be delayed until the 2012 Session of the General Assembly.

Annual Legislative Preview

David Blount, representing the Thomas Jefferson Planning District, advised the Council that legislation would be introduced affecting certain provisions of § 15.2-1418, outside of FOIA, regarding the notice provided to members of public bodies. He noted that the draft had been presented to the Virginia Municipal League, the Virginia Association of Counties, and Mr. Wiley, all without objection, and that it would not affect the public notice requirements of FOIA. There were no questions or comments on this matter.

Other Business

VITA charges to state agencies for retrieval of public records maintained by the Virginia Information Technologies Agency (VITA); experience of the Department of Environmental Quality (DEQ).

Staff related that DEQ had received a FOIA request for records maintained by VITA. Under FOIA, DEQ remains the custodian of these records and was initially charged \$14,000 by VITA to make the records available to DEQ in response to the FOIA request. Ultimately, this charge was reduced by VITA to \$3,800. VITA's initial estimate came one month after the records were requested by DEQ, and the last estimate was almost two months after DEQ's request. The question was brought forth on whether DEQ can pass on to the requester as part of the actual charges allowed under FOIA this additional charge to retrieve records from VITA, and whether it would be reasonable to do so. After some discussion, the Council

agreed by consensus that more information was needed on the extent of this problem, particularly the frequency of occurrences and the costs involved. The Council directed staff to gather more information so that the matter could be taken up and addressed in detail by the Council in 2011.

Use of the word “archive” in subsection J of § 2.2-3704; implications to the Library of Virginia and the VA Public Records Act.

As an additional item of business, staff reported that the word “archive” is a term of art as used by the Library of Virginia in respect to its responsibilities under the VA Public Records Act (VPRA) and the archiving of public records. Under the VPRA, the Library becomes the custodian of records archived there. The legislative history of subsection J of § 2.2-3704, which was added in 2010, was to capture VITA and the Division of Legislative Automated Systems (DLAS), which provide IT support to the executive and legislative branches, respectively. The use of the term “archive” in this section of FOIA was not meant to capture the Library of Virginia within this provision. Staff presented two optional approaches to amend subsection J. After some discussion, the Council voted to recommend adding language to subsection J stating that “Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.).”

Public Comment

Craig Merritt, on behalf of the Virginia Press Association, suggested taking a hard look at the last matter to make sure that records permanently archived at the Library of Virginia were not inadvertently exempted from FOIA.

Mr. Miller suggested that staff survey local government and state agencies on issues such as harassment and VITA charges in order to provide information to the Council at its next meeting. The Council agreed without objection to examine those issues next year. Senator Houck noted that Delegate Griffith, Vice-Chair of the Council, would be leaving the Council as he had been elected to the United States Congress. Formal recognition of his service will be recognized at the appropriate time.



**Virginia Freedom of Information
Advisory Council**

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The 2011 Regular Session of the
General Assembly will convene on
Wednesday, January 12, 2011.

Virginia Commission on Coal and Energy – 11/15/10

The Virginia Commission on Coal and Energy, chaired by Delegate Terry Kilgore, held its first meeting of the 2010 interim at Dominion Resources' North Anna nuclear facility in Mineral. Delegate Kilgore and Senator Watkins were reelected chair and vice-chair of the Commission, respectively.

Update on North Anna 3

Diane Leopold, Senior VP for Business Development and Generation Construction, Dominion Resources

Ms. Leopold briefed the Commission on the status of Dominion's plans to build a third nuclear reactor at its North Anna site. Ms. Leopold stated that Dominion is evaluating options for the North Anna 3 project and has not committed to moving forward at this time.

The development of North Anna 3 may be part of the utility's response to the growing need for electricity to serve its Virginia customers. Since 1992, the electricity usage of the average homeowner has increased by 8.6 percent, and the number of customers continues to increase. In the next decade, Dominion anticipates that the deficit between the electricity it generates and the peak demand of its customers will increase by 5,600 megaWatts (MW) if the utility's generation capacity remains at around 16,000 MW.

In 2009, 32 percent of Dominion Virginia Power's electricity generation was from its four nuclear reactors. After many years of being out of favor in certain circles, nuclear power is being viewed favorably by many former skeptics. Much of the change in perceptions of nuclear power is attributable to its low level of greenhouse gas emissions. While 0.01 tons of carbon dioxide are produced per MW hour generated at a nuclear plant, between 0.83 and 1.01 tons of carbon dioxide are produced per MW hour generated from coal.

The economic benefits of building North Anna 3 are substantial. Chmura Economics and Analytics has forecast that during the nine years of construction the project could produce an average of 3,873 jobs in Virginia per year and have an annual economic impact of over \$1.1 million. Once it is operational, the direct, indirect, and induced impacts on Virginia's economy were estimated to be \$510 million per year and the

average number of jobs per year in Virginia was pegged at 1,320.

If Dominion builds North Anna 3, the current plans call for it to be a US-Style Advanced Pressurized Water Reactor (US-APWR) built by Mitsubishi Heavy Industries. When operational, the US-APWR would have a rating of 1,463 MW capable of serving approximately 360,000 homes. Dominion has filed a revised application for a combined construction and operating license with the Nuclear Regulatory Commission (NRC) that reflects the Mitsubishi technology. The utility has slowed development of the project, but will continue working with Mitsubishi on licensing, engineering, and preliminary site work.

Ms. Leopold reported that Dominion will reassess a schedule for construction of North Anna 3 as the NRC's issuance of the license approaches, which is expected to occur in 2013. Construction of the facility will take between 50 and 60 months after ground is broken. The need to improve the company's transmission network and to comply with anticipated environmental regulations, including the final Clean Air Transport rules and the MACT rules for mercury, are expected to cause Dominion to make investments in projects other than North Anna 3. As a result of this uncertainty, Dominion has not decided whether or when it will build the facility.

Carbon Capture and Sequestration Legislation

M. Patrick McShane, Legal and Regulatory Analyst, Southern States Energy Board

Mr. McShane briefed the Commission on state legislation addressing issues relating to the capture and long term underground sequestration of the carbon dioxide that is released in the course of burning coal. Carbon capture and sequestration (CCS) is viewed by many as a technique that will permit America to continue to use cheap, domestic, and abundant coal as the predominant fuel source of electricity generation. In the absence of technological solutions such as CCS, pending federal greenhouse gas legislation and federal Clean Air Act regulations implementing the Supreme Court's decision in *Massachusetts v. EPA* may make it much more difficult or expensive to burn coal to generate power. In February 2010 the federal government established an Inter-agency Task Force on CCS, which is charged with developing a plan to overcome barriers to the deploy-

ment of widespread and affordable CCS within 10 years.

Many states are considering legislation to address four issues relating to CCS:

- The first involves identifying the state entity that will be responsible for authorizing and regulating CCS projects.
- The second relates to ownership rights in both the subterranean pore space where the carbon dioxide will be stored and the gas itself.
- The third addresses issues of liability of the state or the operator to third parties for damages resulting from such possibilities as the sudden release or seepage of stored gas.
- Finally, legislation has attempted to address funding issues, including incentives to undertake CCS projects.

Some states are waiting for the EPA to issue its final rules before proceeding with CCS legislation.

In the 2010 Session, SB 247 was introduced, which would have authorized the issuance of permits for the geologic storage of carbon dioxide, required operators to pay fees to fund the administration of the regulatory program, and released the operator from liability stemming from the geologic storage of carbon dioxide after 10 years if the operator demonstrates the integrity of the facility. The bill was passed by with a letter requesting further study of the issues, and Mr. McShane observed that the bill, as well as laws in effect in Montana, Texas, Louisiana, and Kansas, may serve as models if Virginia elects to pursue legislation in this area. He demurred when asked what the effect of CCS would be on electricity rates.

Coalbed Methane Gas

Butch Lambert, David Asbury, and Michael Skiffington, Virginia Department of Mines, Mineral and Energy

Three spokesmen from the Virginia Department of Mines, Minerals and Energy (DMME) reported on issues relating to the ownership and development of coalbed methane gas in Virginia. Much of the presentation addressed issues raised by House Joint Resolution 121 from the 2010 Session. This measure directed the Commission to study ownership rights of coalbed methane and other natural gases under the Virginia Gas and Oil Act and opportunities to encourage production and use of natural gas in Virginia.

Butch Lambert, Deputy Director of DMME and chairman of the Virginia Gas and Oil Board, announced that natural gas production in the Commonwealth has increased from less than 15 billion cubic

feet from 819 wells in 1990 to 140.7 billion cubic feet from 7,303 wells in 2009. He attributed the increase to this Commission's recommendation in 1989 that the legislature enact legislation establishing a procedure for forced pooling. The Commission's recommendations were enacted by the General Assembly in 1990. The legislation established an alternative to the Rule of Capture that prevailed under Common Law. Under this Rule, the law provided no protection of correlative rights, which means that a neighboring well operator could withdraw all of the gas from a pool underlying a surface owner without being subject to a complaint of trespass or a requirement that he compensate others.

The Virginia Gas and Oil Act of 1990 provides for compulsory pooling of the revenues from the well operation in order to provide for the equitable sharing of the resource among all persons with a valid claim to it. The Virginia Gas and Oil Board oversees the implementation of the Act by establishing field rules to protect correlative rights and provide for unitization, under which units consisting of 50 or 80 acres are designated. The Board also designates operators for the units, approves forced pooling orders, approves disbursements from escrowed funds, and hears appeals of agency decisions.

David Asbury, Director of the Division of Gas and Oil within DMME, updated the Commission on several issues related to the implementation of Act. A major issue involves who is an owner of coalbed methane gas. The Act provides that when conflicting claims exist regarding ownership of gas within a unit, the owner may be force pooled with other claimants. The conflicting ownership claims may be resolved either by a court decision, a split agreement among all claimants, or an agreement to have the dispute resolved by binding arbitration.

Recent litigation is clarifying certain relevant issues. In the *Ratliff* case, the Virginia Supreme Court held that a deed conveying "coal only" did not convey the coalbed methane gas. Mr. Asbury spoke briefly to pending class action litigation that, among other things, challenges the constitutionality of the forced pooling mechanism of the Act. Though the Commonwealth is not a defendant in the litigation, the Attorney General is participating to defend the Act's constitutionality. Mr. Asbury cautioned that the class action suits may delay arbitration activity.

Forced pooling rules determine royalty rates and allocation of production and postproduction costs. Though rarely exercised, claimants have the option to be a “participating operator” in a pool, which provides a proportional share of production while sharing in the risks and costs of drilling, completing, equipping, operating, and related activities. Claimants who elect to be “royalty owners” are eligible to receive payment based on the production of gas or oil. A pooling order provides a royalty of one-eighth of the net proceeds received after deducting for the costs of gathering, compression, treatment, transportation, and marketing.

The Commission was advised that there is over \$26 million in escrow accounts. About 80 percent of the moneys placed in escrow are paid out to claimants through split agreements and other mechanisms. Some of the moneys in escrow are owed to persons unknown or unlocatable, and the question has arisen as to whether the Board should be required to turn those funds over to the Treasury Board under the Commonwealth’s unclaimed property laws. Mr. Asbury estimated that between \$1 million and \$1.5 million of funds in escrow are owed to persons unknown or unlocatable.

Mr. Asbury also provided information regarding the Gas and Oil Division’s staffing requirements. While the number of new docketed items has grown from 123 in 2002 to over 400 in 2010, the number of board staff handling docketed items has remained at fewer than two full-time employee equivalents. Similarly, the staff assigned to handle compliance matters has remained stable while the number of producing wells has more than doubled in the past eight years.

Michael Skiffington of the DMME closed this portion of the agenda by reporting on the economic benefits of gas production in Virginia. He noted that exploratory work is underway in the Shenandoah Valley and Scott/Washington County shale areas. Options for “growing the market” for natural gas, and thereby encouraging production, include increasing the number of gas-fired electric generation facilities and developing a natural gas vehicle refueling infrastructure.

In addition to providing localities with revenues from the gas severance tax (which jumped from \$6.9 million in fiscal year 2003 to \$28.8 million in fiscal year 2009), the economic impact of the natural gas industry in Virginia is substantial. A 1995 study by

the Virginia Center for Coal and Energy Research at Virginia Tech found that the industry’s total in-state impact was \$1.5 billion based on 1993 production data. Though the figures cannot be extrapolated with any degree of precision, Mr. Skiffington observed that gas production in 2009 was four times that of 1993. The industry provides between 2,500 and 3,000 high-paying jobs and generates \$5 million in real estate tax revenue.

The DMME report closed with an observation that an amendment to Virginia’s renewable portfolio standard law to provide credit for electricity generated from coalbed methane gas would provide an increase incentive to the gas industry in the Commonwealth. Pennsylvania’s inclusion of coalbed methane as an eligible fuel in that state’s Alternative Energy Production Standard was cited as a model.

Uranium Mining Update

The chair of the Commission’s subcommittee on uranium mining, Delegate R. Lee Ware, Jr., briefed members on the status of two studies underway regarding the proposal that the Commonwealth lift its moratorium on such mining. The removal of the legislative moratorium would allow development to proceed at the Coles Hill site in Pittsylvania County.

The first study, which is focusing on technical, scientific, environmental, and health issues associated with uranium mining, is being conducted by the National Research Council of the National Academy of Sciences. The Council held its initial meeting in Washington on October 26 and 27, 2010. It is scheduled to meet in Danville in December 2010 and in Richmond in January 2011. The group’s final report is due to be delivered to the Commission in December 2011.

The second study involves the socioeconomic impact of uranium mining in Virginia. A request for proposals has been released, and the date of the meeting was the final date for submitting proposals. As of the time of Delegate Ware’s presentation, three proposals had been received. All of the timely proposals will be reviewed and circulated among the subcommittee members prior to making a decision to award the study contract. Chairman Kilgore added that he was aware of at least two other studies of the issue that are being undertaken, one by the Danville Foundation and the other by the City of Virginia Beach.

Public Comment

Mr. Jerry Rosenthal of Louisa County cautioned members of the Commission about Dominion's development of North Anna 3. He recounted the history of the partial construction of two reactors at North Anna in the 1970s, both of which were cancelled prior to completion at a cost to ratepayers in excess of \$600 million. He identified several issues, including escalating construction costs, waste storage, and water temperature in Lake Anna, that he believes should be resolved prior to development of another reactor.

Coal and Energy Commission

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Virginia Code Commission –

11/17/10

The Virginia Code Commission met at the General Assembly Building in Richmond, Virginia.

Administrative Law Advisory Committee

Chris Nolen, Chair, Administrative Law Advisory Committee

Mr. Nolen reported on the Administrative Law Advisory Committee's (ALAC) recommendations resulting from a study by the Regulatory Flexibility for Small Business work group. The work group was charged with evaluating the implementation of legislation passed by the General Assembly in 2005 concerning regulatory flexibility for small business and periodic review of regulations. The work group noted that, although the regulatory flexibility for small business component has been implemented through the routine economic impact analysis and executive review process, it is difficult to determine whether agencies have complied with the review provisions of § 2.2-4007.1 D and E. This is partly because the legislation is not prescriptive in demonstrating compliance and partly because of potential confusion between the statutory requirements for periodic review and the requirements for periodic review set forth in the Governor's executive order.

The Commission agreed with ALAC's recommendation to amend § 2.2-4007.1 of the Administrative Process Act to provide clarification in the statute. Legislation approved by the Commission for introduction at the 2011 General Assembly session:

- Changes the periodic review requirement from five years to four years to conform to the issuance of an executive order every four years.
- Adds a requirement to publish a notice of the review and report of the findings in the *Virginia Register of Regulations* and on the Virginia Regulatory Town Hall.
- Provides for a 21-day public comment period after publication of the notice.
- Defines the Virginia Regulatory Town Hall.

In addition, the Commission approved ALAC's proposal to send a memorandum to regulatory agencies explaining the periodic review requirement and

providing guidance to assist agencies in complying with the statutory requirements.

2011 Code of Virginia Pricing and Replacement Volumes Proposal

Brian Kennedy, Associate Director for Government Content Acquisition, LexisNexis

Mr. Kennedy presented the Code of Virginia proposed replacement volume options and pricing proposal for the 2011 Code of Virginia replacement volumes and supplements.

The Commission approved pricing for issuing six volumes in 2011. The Commission voted to replace Volume 1, consisting of Titles 1 and 2.2; Volume 3, consisting of Titles 11 through 13.1; Volume 6, consisting of Titles 33.1 through 37.2; and split Volumes 5 and 5A into three volumes. Volume 5 will consist of Titles 22.1 and 23, Volume 5A will consist of Titles 24.2 through 28.2, and Volume 5B will consist of Titles 29.1 through 32.1

Barrier Crimes Provisions

Jessica Eades, Senior Attorney, Division of Legislative Services

At the October meeting, Ms. Eades reported problems with the barrier crimes language in Titles 37.2 and 63.2 of the Code of Virginia. Subsequent to Ms. Eades' report, Senator Edwards asked her to draft technical amendments to clarify the language for the Commission's consideration. Ms. Eades presented a draft, which removes the descriptions of and article citations to the barrier crimes, and cites specific code sections, which are inclusive of all sections contained within the article citations. The members debated whether certain crimes, although embedded in the article references of the existing language, were actually intended to be barrier crimes and concluded that the amendments could be considered substantive.

The Commission voted to send a letter from Senator Edwards to the House and Senate Courts Committee chairs explaining the issue and asking for a joint subcommittee to review the matter during the 2011 interim.

Recodification of Title 64.1

David Cotter, Attorney, Division of Legislative Services

Mr. Cotter reported on the recodification of Title 64.1, Wills and Decedents' Estates. The Code Commission continued its review of Chapter 3 (Wills) of Title 64.2 from the last meeting, beginning with Article 5 (Probate). In addition, the Commission completed its review of proposed Chapter 5 (Transfers without Qualification) and Subtitle II (Trusts).

The final recodification report is expected to be issued next fall, and associated legislation is expected to be introduced at the 2012 General Assembly session.

Budget Item

Administrative recommendations were approved transferring sums from the special fund to assist Code Commission staff and DLS more generally in upgrades to their current telephone systems.

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Commission on Energy and Environment – 11/22/10

Senator Whipple, chair, called the meeting to order and introduced the members. Presentations made to the Commission can be found on the Commission's website at <http://dls.virginia.gov/GROUPS/energy/MEETINGS.HTM>.

Development and Status of Virginia' Watershed Implementation Plan

The Honorable Anthony Moore, Assistant Secretary of Natural Resources

Mr. Moore provided the Commission with an overview of the historical timeline on efforts to clean the Chesapeake Bay and the process being followed to develop the Total Maximum Daily Load (TMDL). The administration's goal is to allow flexibility in implementation to ensure that cost-effective practices are given priority and to take into consideration the current economic conditions and the economic impacts of the TMDL. The U.S. Environmental Protection Agency (EPA) will be relying on input from each of the states in the Chesapeake Bay Watershed provided through a Watershed Implementation Plan (WIP). Mr. Moore states that the revised WIP meets 2017 target loads for all basins through management actions, plus use of existing nutrient credits achieve those target loads; proposes a broad expansion of the existing nutrient credit exchange; and includes a plan for the James River to provide an additional study of the current chlorophyll standard.

A primary feature of the revised WIP is the expansion of the nutrient credit exchange program. Mr. Moore suggests that the administration will request that the proposed expansion be studied over the next year and expects that such a study request will be introduced in the General Assembly. Other primary features of the revised WIP include:

- A strategy to address the chlorophyll criteria for the James River.
- Offsets for new small wastewater facilities and dischargers.
- Tax credits and other incentives to reduce nitrogen from septic systems.
- Implementation of resource management plans for agricultural areas.
- Stormwater retrofits.
- A ban on phosphorus in fertilizer.

Members inquired about the process of resource management plans and voluntary practices in the agricultural sector as it relates to milestones. Mr. Moore stated that there would be sufficient time to determine whether such voluntary practices have become effective prior to the implementation of mandatory regulations.

Federal Role in the Chesapeake Bay Restoration Efforts

Jeff Corbin, Environmental Protection Agency

Mr. Corbin discussed the process at the EPA for reviewing the WIPs and developing the TMDL. Mr. Corbin noted the numerous meetings and communications between the EPA and stakeholders in Virginia. In particular, he reviewed the problems noted in the initial WIP submitted by Virginia and the consequences if such deficiencies are not resolved. For stormwater, the EPA had a number of concerns including:

- The lack of contingency actions if the new regulations are not adopted on schedule.
- The lack of strong performance standards.
- The lack of a strong, detailed retrofit program with aggressive performance standards.
- The vague assurances regarding the operations of the expanded nutrient credit exchange program.

For agriculture, the EPA's concerns included:

- The lack of assurance that there would be increased implementation or priority practices.
- Insufficient detail on the procedures for ensuring compliance.
- Failure to address the additional need on water quality impacts from animal feeding operations.
- A limited commitment to address high phosphorus content in soils and related excess manure.

If such deficiencies are not resolved, the EPA might seek certain "backstops" or federal actions intended to mitigate the lack of assurance by the state. The backstops are restricted to those actions over which the federal government exercises jurisdiction and might include additional reductions from regulated point sources, finer-scale allocations for headwater states, expanded NPDES permit coverage to currently unregulated sources, increased permit oversight, increased federal enforcement, conditioned or redirected federal grants, and adoption of local nutrient standards.

A member commended Mr. Corbin on the outreach and communications between EPA and stakeholders in Virginia, but expressed concern about the lack of transparency demonstrated by the EPA's evaluation of the WIPs.

Chesapeake Bay Models

Dr. Carl Hershner, Director, Center for Coastal Resources Management, Virginia Institute of Marine Science

Dr. Hershner discussed the scientific model used to develop the TMDL. The model is actually a suite of models that measure and predict numerous hydrologic forces. As an overall tool and as it is currently used, the model is robust and a leading example of a large-scale demonstration of the influences on the Bay's health and the ability to predict how individual actions impact the Bay. However, the model is not a suitable tool to provide precise information on a fine scale as might be required in the future. Dr. Hershner noted that many of the backstop actions at the disposal of the EPA will lead to a concrete effect on water quality. However, a number of the actions discussed as best management practices for nutrient management, such as stream buffers, have not yet shown measurable water quality improvements. As previously suggested by Mr. Moore, the process over the next decade will be adaptive and require an ongoing cost-benefit review of practices and policies.

Questions were asked about the limitations of the study and the ongoing usefulness of the tool as the process continues. Dr. Hershner continued to stress the importance of measuring and modeling the effectiveness of practices that are adopted. A member asked further about the results of studies on agricultural best management practices. Dr. Hershner said research and monitoring shows that there are no absolute determinations on the success of such practices, which are in effect interdependent in each case on factors such as the slope of the land, the quality of the soils, and the skill of the farmer.

Michael S. Rolband, Wetland Studies and Solutions, Inc.

Mr. Rolband reviewed the analysis of impervious surfaces in the model. The determination of those surfaces that are impervious and pervious are critical because loads attributed to the urban sector are directly related to the impervious surface area. Consequently, EPA backstops are based on retrofitting a

percentage of impervious area and, as such, the cost to do so. Mr. Rolband observed that the current stakeholder process is beginning to resemble sector warfare. He suggests that the WIP is modified through:

- An upgrade of all significant discharger wastewater treatment plants.
- The establishment of urban fertilizer regulations.
- The expansion of the five-year on-site septic pump out requirement.
- The improvement of erosion and sediment control training and specifications.
- The establishment of a "Nutrient Trading Fund" for non-BAT septic users and development offsets.
- New construction with on-site sewage disposal that exceeds NSF/ANSI standards.
- Development exceeding the allowable WIP loads that is allowed to contribute to the nutrient trading fund.

Panel Discussion: Stakeholder Response

Wilmer Stoneman, Virginia Farm Bureau

Mr. Stoneman spoke of the agricultural role in the process to develop the WIP. He expressed his concern about stretching the model to its limits and the role of the EPA in any potential enforcement actions. He stressed the financial impact to agriculture and the cost of those practices that farmers might be required to implement. For instance, the cost to fence streams on an average farm with livestock in Virginia would be \$40,000. Overall, the Virginia Farm Bureau estimates that the cost of implementation, not including critical technical assistance, will reach into the billions for farmers in Virginia. Mr. Stoneman noted his confidence of current programs, such as the Agricultural Stewardship Act (a voluntary reporting and complaint program), in providing a check on enforcement.

Philip F. Abraham, Vectre Corporation, for the Virginia Association for Commercial Real Estate

Mr. Abraham spoke to his concerns about the short time frames for development of the WIP and for public comment on those documents. He hopes that there is a one-year delay in the adoption of the TMDL to provide a better scheme for regulation. He has concerns about the availability of offsets to private developers and hopes that the administration's goal of expanding the nutrient trading program is achieved. He further emphasizes the staggering costs associated with urban retrofits, especially as compared to wastewater treatment, and that the same set of persons, urban resi-

dents, will pay in both scenarios. Mr. Abraham supports banning phosphorus in residential fertilizers. He also stressed that policymakers should review any mandates requiring certain percentages of open space and weigh the impact on redevelopment projects as compared to sprawl.

Joseph Lerch, Virginia Municipal League

Mr. Lerch expressed his concern with the James River strategy. His organization strongly supports the nutrient credit exchange program. Mr. Lerch asks that any legislative proposals impacting the costs of local government operation be referred to the Commission on Local Government.

Ann Jennings, Chesapeake Bay Foundation

Ms. Jennings shared the poll results with the members that show the vast majority of Virginians feel strongly about clean water and disagree that cleaning the Chesapeake Bay would prevent the state's economic recovery. She expressed her disappointment that despite the popularity of such positions, the Chesapeake Bay has remained polluted for 30 years. She hopes that the process is not disrupted by unfounded complaints and that Virginia does not put forth an inadequate WIP requiring the EPA to implement unpopular backstop efforts. Ms. Jennings also discussed the cost of a polluted Chesapeake Bay in contrast to the costs of restoring the Chesapeake Bay. Ms. Jennings recommended that the legislature review measures to reduce phosphorus content in fertilizer and to permit farmers to transfer tax credits earned for best management practices.

Question and answer period

The chair asked Mr. Stoneman about the effectiveness of the Agricultural Stewardship Program and whether farmers have been turning their colleagues in. Mr. Stoneman replied that there were a fair amount of complaints, but that more resources were needed for publication of the program and follow-up enforcement. The importance of training available for erosion and sediment control efforts and enforcement was discussed.

Dr. Schulz, a member of the Commission, spoke to the panelists about courage and asked if each could recommend a bold step that would represent a courageous act on their constituents' behalf. Mr. Stoneman stated that farmers should be operating with a nutri-

ent management plan and that is a policy of member organizations. He qualified his support for this effort by noting that the conservation plans should be achievable and economically feasible, where appropriate. He states that boldness, without a reasonable plan for accomplishment could prove empty. Mr. Lerch suggested that a clean up is not always the best thing to do and that perhaps doing a study prior to spending the funds for a clean up is necessary. Mr. Abraham noted that his organization would accept a 15 percent reduction in phosphorus runoff and an 11 percent reduction in nitrogen runoff. Ms. Jennings noted that the conservation community might consider an approach that would hold a farmer harmless if the farmer has a conservation plan with clear performance measures and if that farmer is otherwise in compliance with state laws.

A member asked how legislators should balance the efforts to clean the Bay with their responsibility to keep taxes low. Ms. Jennings noted that many communities and sectors have already paid with their livelihoods as a result of a polluted Bay. Furthermore, cleaning the Bay itself will generate jobs.

Potential Legislative Initiatives

Due to the late hour of the day, the Commission decided to review the list of potential legislative initiatives privately and request drafts directly from staff. The Commission will review such drafts at a final meeting prior to the General Assembly 2011 Session.

Commission on
Energy and Environment

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Joint Commission on Science and Technology – 12/6/10

VITA Update and Annual Report

Samuel A. Nixon, Jr. Chief Information Officer of the Commonwealth

The Chief Information Officer of the Commonwealth made his annual report to JCOTS. A copy of his presentation is available on the JCOTS website. During his presentation, the CIO highlighted eight major topics of discussion, including:

- The overall vision and mission of the Virginia Information Technology Agency.
- A recap of the preceding year's accomplishments and challenges.
- A snapshot of the Commonwealth's executive branch agency IT environment.
- An update on transformation.
- An overview of the operational improvement initiatives currently underway.
- A look at the rates of service by VITA, opportunities for improvement by agencies seeking to cut costs in IT.
- An update on the audit currently underway by Agilysys regarding the outage experienced by executive agencies during the past year.

The CIO was asked about VITA's contacts with federal agencies regarding the IT systems being utilized throughout the state. The CIO responded that VITA has been in contact with the IRS and the Social Security Administration most recently regarding an audit conducted by the IRS at the Department of Taxation and the Department of Social Services. The IRS audit revealed that agencies that store income tax data may only access such data using state-owned and operated hardware. VITA believes that this audit is mistaken, and is based on an incorrect understanding or interpretation of a directive regarding the use of privately owned hardware to access state agency-stored information. With the potential impact on Northrop Grumman's role within VITA, the CIO said that discussions will continue with these federal agencies to resolve the issue.

The CIO was asked about the cost value of VITA's rates of service. The CIO responded that there is no ready comparison between the Commonwealth and other states because of the varying ways in which other states manage their IT within higher

education, but that VITA's costs are where they ought to be vis-à-vis the services VITA provides.

2010 Advisory Committee Reports and Legislative Recommendations

Computer Crimes Definitions

Senator Howell, chair of the Computer Crimes Definition Advisory Committee, reported on the bill draft completed by the Advisory Committee during the 2010 interim. The bill draft was developed in response to HB 920, a bill introduced in the 2010 Session of the General Assembly and referred to JCOTS for study. HB 920 would have amended the definition of "computer" in the Virginia Computer Crimes Act to include cellular phones and other wireless telecommunications devices. Instead of amending the Computer Crimes Act, the Advisory Committee draft expands the definition of "telephone" within § 18.2-427 to include any electronically transmitted "communication producing a visual or electronic" message, which is transmitted by "cellular" telephone or "other wireless telecommunications device." The intent of the bill is to provide a vehicle for prosecution should a person send an obscene, vulgar, or otherwise objectionable message as outlined in the statute via text message to another person. One Commission member raised a question as to whether the language in the bill was too broad. A copy of the draft is available on the JCOTS website.

A motion was made and seconded to recommend the bill to the General Assembly for passage, and the motion passed with one "no" vote.

Electronic Privacy

Delegate May, chair of the Electronic Privacy Advisory Committee, reported on the bill draft completed by the Advisory Committee during the 2010 interim. The bill was developed in response to HB 670 and SB 599, bills introduced during the 2010 Session of the General Assembly and referred to JCOTS for study. The language of the Advisory Committee draft provides for a Class 3 misdemeanor for the offense of unlawfully installing, through "intentionally deceptive means," an electronic tracking device in or on a vehicle. Staff provided an overview of the various exceptions the advisory committee considered before they settled on the two exceptions written into the bill draft: one for law-enforcement officers and one for parents/legal guardians of minors. Discussion among the Commission members centered on the intent of the

person who installs the tracking device, as well as the ability of employers to track employee-operated vehicles that are owned by the employer.

A motion was made and seconded to recommend the bill to the General Assembly for passage, and the motion passed, with one abstention.

Intellectual Property Ownership

Senator Watkins, chair of the Intellectual Property Advisory Committee, reported on the work of the Advisory Committee over the course of the preceding year. The Advisory Committee was created to review SB 242, which was referred to JCOTS for study by the 2010 Session of the General Assembly. The Advisory Committee did not recommend any legislation to JCOTS, largely because the Secretary of Administration is still developing guidelines for ownership of intellectual property created by state employees, which are soon to be released. The Advisory Committee did note that some larger conceptual issues concerning the state's intellectual property policies exist, such as identifying the goal of any such policy ~ is it to protect the state's return on investment, or to encourage entrepreneurship?

Senator Watkins recommended that the Intellectual Property Advisory Committee be continued in the 2011 interim, so that it may serve as a resource to the Secretary of Administration in developing the statutorily mandated guidelines, and to provide a forum for discussion of the guidelines once they are released.

Energy

Delegate Cosgrove, chair of the Energy Advisory Committee, reviewed the work of the Advisory Committee and recommended that the Advisory Committee be continued for the following year to continue looking at the issues of alternative energy sources. Some discussion ensued regarding various alternative fuels, including the potentiality of mining methane gases. No legislation was submitted by the Advisory Committee for the Commission to consider.

Intelligent Transportation Systems

Delegate Rust, chair of the Intelligent Transportation Systems Advisory Committee, reported on the work done by the Advisory Committee over the preceding year. The Advisory Committee did not recom-

mend any legislation to JCOTS for consideration, but did recommend that the Advisory Committee be continued in the 2011 interim. Possible topics for consideration include vehicle miles traveled programs, multi-modal technologies, and other emerging transportation technologies.

Update on Remote Emissions Testing Technologies

Joel Unverzagt and Drew Rau, Environmental Systems Products

Representatives of Environmental Systems Products (ESP) provided JCOTS with an overview of the Remote Sensing Devices that are currently being used in states where automobiles are required to be emissions-tested. The presentation by ESP is available on the JCOTS website.



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Dr. Martin Luther King, Jr. Memorial Commission

The many initiatives of the Dr. Martin Luther King, Jr. Memorial Commission are designed to perpetuate Dr. King's dream of the "Beloved Community" in Virginia, and to educate citizens concerning the totality of Dr. King beyond his place in history as a great civil rights leader and peacemaker. Working with The King Center in Atlanta, the Commission's efforts include familiarizing the public with Dr. King's work as a scholar, prolific writer, philosopher, historian, educator, humanitarian, gifted orator, theologian, and a man of deep faith. The Commission has also designed its work to emphasize Dr. King's passion for lifelong learning and history, commitment to democracy and freedom, social and economic justice, fiscal responsibility, public and community service, faith and traditional values, sound and equitable public policies that promote employment, housing, public safety, health care, national security, successful international relations and global competitiveness, science and technology, and human dignity for all persons.

The Dr. Martin Luther King, Jr. Memorial Commission and its subcommittees met on October 4 in Norfolk, and on December 7 in Charlottesville to complete the planning for the 150th anniversary of the Emancipation Proclamation, review collaborative projects with institutions of higher education and various organizations, and commemorate the 50th anniversary of the closing of public schools (Massive Resistance) in Virginia. The Commission's subcommittees reported their recommendations to the Commission at each meeting.

Partnership and Expenditure Review Subcommittee

The Partnership and Expenditure Review Subcommittee, chaired by Dr. Kirk T. Schroder, has been tasked with reviewing proposals for collaboration with various agencies and entities with which the Commission shares mutual goals and advising the Commission regarding the feasibility and appropriateness of such arrangements, and whether they enhance the Commission's work and assist it in furthering its mission. The subcommittee recom-

mended that the Commission pursue the following collaborative projects in 2010:

- Lincoln Homestead in Rockingham County, to work with the Lincoln Society of Virginia to preserve the historic homestead of Abraham Lincoln's family in Virginia.
- Lincoln in Petersburg, Phase III, to commemorate the Bicentennial of Abraham Lincoln and his visit to Petersburg in April 1865.
- Northside High School Museum Committee for the preservation of formerly all-Black schools in Virginia.
- "They Closed Our Schools," Prince Edward County documentary and book, to publish the account of desegregation in Prince Edward County.
- Robert Russa Moton Museum, Phase III, to relate the Prince Edward County story during Massive Resistance.
- Desegregation of Virginia Education (DOVE) Project at Old Dominion University to catalog for the purpose of preserving public records and promoting scholarship on Virginia's desegregation history.
- Lincoln Symposium, to commemorate the Bicentennial of Abraham Lincoln and his visit to Richmond in April 1865.

Abraham Lincoln Bicentennial Subcommittee

Dr. Robert C. Vaughan, III, subcommittee chair and Executive Director of the Virginia Foundation for the Humanities and Public Policy, reported that the Lincoln Symposium, a two-day event in Richmond consisting of a reception and lecture by Dr. Edna Greene Medford, a renowned Lincoln scholar, at the State Capitol and a site visit and meeting at the American Civil War Center at Tredegar, its partner for the Symposium, was immensely successful. This commemorative event, a part of the national Lincoln Bicentennial, launched the Commission's commemoration of the 150th anniversary of Lincoln's Emancipation Proclamation. The Commission, through the subcommittee, issued a statement on the relevance of the Commission's endeavor and the commonalities between Dr. King and Abraham Lincoln. Commission plans for the commemoration of the 150th anniversary of the Emancipation Proclamation are well under way and include among other things:

- Slave Burial Ground/African American Cemetery Project with the Institute for Historical Biology at the College of William and Mary.
- Symposium on the Legacy of the Emancipation Proclamation and the Reconstruction Amendments.
- Exhibit of the Emancipation Proclamation and Lincoln's pen with which he signed the document.
- Emancipation Proclamation Jubilee.
- Symphonic tribute.

- Commemorative license plate.
- Support of the Spielberg movie on Lincoln.
- Preservation of the Lincoln Homestead.
- Educational and cultural activities.
- Scholarly writings and editorials.
- Lincoln in Petersburg, Phase III.

The Special Subcommittee on the 50th Anniversary of Public School Closings (Massive Resistance)

The Special Subcommittee is co-chaired by Senator Henry L. Marsh, III, Commission Chairman and Delegate Rosalyn R. Dance, Chairwoman of the *Brown v. Board of Education* Scholarship Committee. As a part of the commemoration of this historic event, the Commission and the Committee have agreed to meet jointly in each of the localities in which public schools were closed to avoid desegregation after the landmark *Brown* decision. The Commission began its commemoration with a town hall in Warren County, in which the subject of the closing of Warren County High School had not been discussed by residents since the closing of the school 50 years ago. The meetings in Norfolk and Charlottesville also featured a town hall to promote public dialogue concerning the effect and legacy of the public policy of Massive Resistance in each locality and throughout the Commonwealth. The co-chairs reported that students, as well as local elected officials, businessmen, educators, and citizens who were directly affected by the public policy, participated in the deliberations, which were often tense, insightful, and reflective. Several of the town hall participants shared intimately the immediate and long-term effects of Massive Resistance, stating that many persons lost an education, jobs, family, and friends due to racial animus and the divisiveness within communities. Other participants cautioned the Commission that many wounds have not healed, that persistent social ills agitate and exacerbate underlying problems resulting from Virginia's and America's past, and that too often policy makers and leaders marginalize minority concerns and fail to see the nexus between the past and the present. Concern was expressed about the need to ensure that students and prospective teachers are taught an unvarnished American history, and that emphasis be placed on reconciliation among the races, addressing the educational needs of students, and reversing disturb-

ing social trends that affect high school graduation and college admissions and persistence. The Special Subcommittee will conclude its work and the commemoration in 2011, with meetings and town halls in Arlington and Prince Edward County, and a final event in Richmond.

Other Responsibilities and Events

The Commission agreed to co-sponsor the African American Teaching Fellows program in 2011, in which qualified minority classroom teachers are recruited for Virginia's public schools. In addition, the Commission voted to incorporate in its commemoration of the 150th anniversary of the Emancipation Proclamation, relevant objectives of House Bill 1200 (2010), which would have established the Slavery Commission. As a part of its duties to lead the King Holiday in Virginia, the Commission agreed to co-sponsor the Community Leaders Breakfast again in January 2011, promote community service, and participate in The King Center's Salute to Greatness Celebration and the year-long programs of Living the Dream, Inc., which promotes the legacy of Dr. King in the Commonwealth. It was the consensus of the Commission to request an appropriate state organization to consider planning the observance of the 400th anniversary of the arrival of the first Africans in America. Also included on the Commission's work plan, in addition to its on-going responsibilities, is support for the annual Emancipation Proclamation Observance in January 2011 in Richmond.

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Virginia Commission on the Bicentennial of the War of 1812

The Virginia Commission on the Bicentennial of the War of 1812, its Brochure Work Group, and the Citizens Advisory Council met on October 19 and December 8 in Richmond to plan Virginia's commemoration of the bicentennial of the War of 1812. The Ground Rules for Legislative Commissions and Subgroups and nonlegislative citizen participation was reviewed at each meeting. In September 2010, the Commission's chair was appointed to represent Virginia on the U.S. Department of Defense's National Executive Steering Committee for the Bicentennial of the War of 1812, which is coordinating the national and international commemoration of the bicentennial of the war. Collaboration with the U.S. National Park Service, state agencies and organizations, localities, and other states is being explored to ensure the availability of programs and events for citizens throughout the Commonwealth. The Commission established a budget for the bicentennial events.

Commemorative Brochure

A commemorative brochure to announce the bicentennial in Virginia was approved by the Commission. The brochure is the premiere of a more detailed and elaborate map of War of 1812-related sites in Virginia that will be designed and distributed throughout the Commonwealth to promote publicity and tourism for the bicentennial. Appropriate grants, in-kind services, and other funding opportunities are being considered by the Commission to cover publication and distribution costs of the brochure and the map.

Virginia War of 1812 Heritage Trail

With the approval of the Commission's 15 new historic markers by the Department of Historic Resources Board, legislation was approved for introduction in the 2011 Session by the Commission that establishes the Virginia War of 1812 Heritage Trail. The trail encompasses existing and new historic markers signifying, among other things, prominent Virginians and other personalities, the contributions of African Americans, the role of Native Americans, battles and water routes, cemeteries in which Vir-

ginia veterans of the War of 1812 are interred, Tangier Island, the Sack of Hampton, the capture of Alexandria, the Virginia Militia, the hiding of the Declaration of Independence, and other sites and edifices related to the War of 1812 throughout the state. The trail will be a focal point to highlight Virginia's significant role in the war and a potential economic development opportunity. Inasmuch as federal law prohibits the extension of the Star-Spangled Banner National Historic Trail to include certain points in Virginia, the Commission and U.S. National Park Service (NPS) agreed to work cooperatively on other matters of mutual interest during the bicentennial, such as the Cultural Resources Diversity Internship Program and inclusion of Virginia's bicentennial activities in NPS newsletters and website.

Bicentennial Signature Events

Montpelier: Prelude to the Bicentennial

On March 16, 2011, the Presidential Wreath Laying Ceremony for President James Madison at Montpelier will kick-off Virginia's bicentennial commemoration of the War of 1812. The Commission will attend the event and present a wreath. Following the ceremony, the Commission will be the guest of Montpelier for other activities, including a private tour of Madison's home.

Virginia OpSail 2012

OpSail Virginia 2012 will be held on June 1-12, 2012, in Hampton Roads. Karen Scherberger, Executive Director, Norfolk Festevents, reported that Governor McDonnell has announced a \$1 million amendment to the budget to support OpSail Virginia 2012 that will help leverage an estimated \$80 million in support from private, foundation, and other public sector entities. Hampton Roads is one of only five U.S. ports of call to host the bicentennial event and commemorate the birth of The Star-Spangled Banner. The United Kingdom and Canada, which were involved in the War of 1812; several NATO countries; the U.S. Coast Guard; the U.S. Army; and other nations with tall ships are partners in the commemoration.

Chesapeake Bay Tour of 2013

In recognition of the British invasion of Hampton Roads, the Commission is planning a water tour that will follow the trail of the Chesapeake Bay military encounters with the British on the Virginia side.

Legacy Symposium 2014

Plans for a significant two-day symposium are being developed as a concluding signature event for the Virginia bicentennial commemoration of the War of 1812. The Commission's Legacy Symposium will be hosted by Fort Monroe in June 2014. A steering committee and various work groups composed of representatives from relevant state agencies, business and industry, the military, public and higher education, historical societies, local governing bodies, and others will be appointed to assist the Commission in the planning and implementation of the symposium.

Fort Meigs and African Americans in the War of 1812

Mr. Patrick Farris, Executive Director, Warren Historical Society, briefed the Advisory Council and Commission concerning the collaboration with the State of Ohio to erect an historical marker at Fort Meigs, a War of 1812 battlefield in Perrysburg, Ohio, to honor Virginia's fallen who are buried at the site. Several of the Virginia veterans were members of the Petersburg Volunteers, a company of young men from Dinwiddie, Amelia, and Chesterfield who fought in the Battle of Fort Meigs during the War of 1812 under General William Henry Harrison. The Commission determined that recognition of the sacrifices of these men was appropriate and efforts are underway to place the marker on their common burial site by 2015.

Commission Collaboration with Richmond Symphony

A partnership between the Commission and the Richmond Symphony was secured at the December 8 meeting. David J.L. Fisk, Richmond Symphony Executive Director, stated that a symphonic tribute featuring period music would be held at CentreStage in Richmond in January 2012 as a part of the Commission's launch of the bicentennial. Further, in 2014, the Symphony will participate in the Legacy Symposium at Fort Monroe, joining other Hampton Roads orchestras and symphonies, and the military bands in a spectacular musical event. The planned event will provide educational experiences and benefits for participating students that integrate and augment several academic disciplines.

War of 1812 Documentary, Book, and Traveling Exhibit

Dr. John V. Quarstein, Executive Director of the Virginia War Museum Foundation, indicated that the table of contents and an outline for the book are being drafted and that the Foundation has received pledges for funding the documentary and exhibit. The documentary, which depicts Virginia's role in the war, will be supplemented by a book that can be used by students and teachers. The exhibit of War of 1812 artifacts and memorabilia will travel to specified locations around the state to engage citizens in the bicentennial.

Legislative Initiatives

The Commission voted to recommend to the 2011 Session legislation establishing the Virginia War of 1812 Heritage Trail and a commemorative War of 1812 license plate.

Next Meeting

The Commission will meet to organize and coordinate its visit to Montpelier for the Presidential Wreath Laying Ceremony in February 2011. The regular meeting schedule for the Commission and its Citizens Advisory Council will resume in the spring.



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REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as "proposed regulations" gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the *Legislative Record* will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS STATE CORPORATION COMMISSION

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

10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10, 10VAC5-160-20, 10VAC5-160-40, 10VAC5-160-50; adding 10VAC5-160-90, 10VAC5-160-100).

A public hearing will be scheduled upon request. Written public comments may be submitted until December 20, 2010.

Summary:

The amendments to this regulation governing mortgage lenders and brokers accomplish three basic goals: (i) address the transition of mortgage lender and broker licensees and new applicants to the electronic National Mortgage Licensing System and Registry (NMLS); (ii) provide basic codes of conduct for licensees in maintaining records with NMLS and supervising mortgage loan originators

(already licensed through NMLS); and (iii) make technical changes and corrections to conform to NMLS, as well as to the recodification of Title 6.1 of the Code of Virginia into Title 6.2. All applications for mortgage lender or broker licenses under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia must be sent through NMLS beginning January 3, 2011. Mortgage lenders and brokers licensed prior to January 1, 2011, are required to transition to NMLS no later than April 1, 2011. Licensees may not employ persons who are not licensed as mortgage loan originators under Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia to take applications for, or offer or negotiate the terms of, residential mortgage loans. Licensees must disclose on all documents provided to a borrower the licensee's NMLS unique identifier, as well as the unique identifier of any mortgage loan originator associated with the loan. Licensees are required to keep their information current in NMLS. The commission may enforce these regulations or Chapter 16 by fines or suspension or revocation of licenses.

For more information, please contact E.J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, Richmond, VA, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

TITLE 12. HEALTH
STATE BOARD OF HEALTH

12VAC5-613. Regulations for Alternative Onsite Sewage Systems (adding 12VAC5-613-10 through 12VAC5-613-200).

Written public comments may be submitted until February 4, 2011.

Summary:

The proposed regulatory action creates an inspection, sampling, and reporting frequency for all alternative onsite sewage systems (AOSS). The proposed regulations (i) establish the performance requirements for AOSS, as well as horizontal setbacks for those designed in accordance with § 32.1-163.6 of the Code of Virginia; (ii) require owners to have a relationship with a licensed operator for the purpose of providing operation and maintenance to the AOSS; (iii) establish nitrogen limitations for all large AOSS and require all small AOSS to reduce nutrient loads within the Chesapeake Bay Watershed; (iv) establish treatment levels for performance and provide a methodology for evaluating treatment unit efficacy; and (v) supplement the existing Sewage Handling and Disposal Regulations (12VAC5-610-20) that contain permitting and enforcement procedures and other requirements for onsite sewage systems, including AOSS.

For more information, please contact Allen Knapp, Director, Division of Onsite Sewage and Wastewater Services, Department of Health, Richmond, VA, telephone (804) 864-7470, or email allen.knapp@vdh.virginia.gov.

DEPARTMENT OF MEDICAL
ASSISTANCE SERVICES

Notice of Extension of Emergency
Regulation

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-131).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-96).

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-380).

Effective Dates: October 29, 2009, through April 28, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:6 VA.R. 651-661 November 23, 2009 (<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>).

The regulation provides operating authority to the Department of Medical Assistance Services for the implementation of new Part C services for preschool children. If the emergency regulation lapses, DMAS will have no state authority to continue the provision of these significant new services to preschool children.

The emergency regulation was effective on October 29, 2009, and is scheduled to expire on October 28, 2010. The Notice of Intended Regulatory Action comment period ended in late November, and the Office of the Attorney General completed its review in early February. The proposed regulation was submitted to the Governor's office for review in May. Once the proposed regulation is approved by the Governor, it must be published for a 60-day public comment period and made permanent by a follow-up final regulation that includes a 30-day post-publication waiting period before the regulation goes into effect. Given this timeline, the regulatory process cannot be completed by October 28, 2010, the expiration date of the emergency regulation.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 28, 2011.

For more information, please contact Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, Richmond, VA, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmass.virginia.gov.

Notice of Extension of Emergency Regulation

12VAC30-120. Waivered Services (adding 12VAC30-120-1000 through 12VAC30-120-1090; repealing 12VAC30-120-211 through 12VAC30-120-249).

Effective Dates: October 29, 2009, through April 28, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:6 VA.R. 619-654 November 23, 2009 (<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>).

The Department of Medical Assistance Services (DMAS) has completely rewritten its large set of regulations for the mental retardation/intellectual disability waiver. This significant regulatory project was conducted in collaboration with the Department of Behavioral Health and Developmental Services, which has daily administrative authority for this waiver. For the two agencies to reach consensus on all aspects of regulatory wording for this project, the agencies held numerous meetings of small work groups of representatives from both agencies over a time span of several months. In addition, DMAS worked with representatives and advocates in the intellectual disability community to obtain their feedback over these changes and incorporate them to the extent possible. Further research into existing policies and statutes was required to reach consensus on numerous issues. Because of the number of parties involved and the size and scope of the regulatory changes, this project has required a significant amount of time beyond that provided for in the ordinary regulatory cycle.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 28, 2011.

For more information, please contact Helen Leonard, Long Term Care Division, Department of Medical Assistance Services, Richmond, VA, telephone (804)

786-2149, FAX (804) 786-1680, or email helen.leonard@dmas.virginia.gov.

12VAC30-120. Waivered Services (amending 12VAC30-120-1600 through 12VAC30-120-1660; adding 12VAC30-120-1605, 12VAC30-120-1670, 12VAC30-120-1680).

Written public comments may be submitted until January 7, 2011.

Summary:

This proposed regulatory action updates the Alzheimer's Assisted Living Waiver to accommodate changes in the industry and clarify the regulations. These changes will bring current Virginia Department of Social Services' licensing standards and Department of Medical Assistance Services' waiver expectations more in sync with each other while reducing provider confusion and duplication of effort.

The proposed changes clarify clinical staff requirements, the number of activity hours, and who is permitted to provide supervision. Initiation of these changes is expected to increase the available provider pool and enhance participation in the waiver by eligible recipients.

For more information, please contact Steve Ankiel, Long Term Care Division, Department of Medical Assistance Services, Richmond, VA, telephone (804) 317-8894, FAX (804) 371-4986, or email steve.ankiel@dmas.virginia.gov.

TITLE 13. HOUSING BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Change in Effective Date

13VAC5-31. Virginia Amusement Device Regulations (amending 13VAC5-31-20, 13VAC5-31-40, 13VAC5-31-50, 13VAC5-31-75, 13VAC5-31-85; adding 13VAC5-31-280, 13VAC5-31-290).

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Amusement Device Regulations, 13VAC5-31, which was published in 27:2 VA.R. 178-183 September 27, 2010, is changed to March 1, 2011.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Notice of Change in Effective Date

13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-21, 13VAC5-51-81, 13VAC5-51-85, 13VAC5-51-121, 13VAC5-51-130, 13VAC5-51-131, 13VAC5-51-132, 13VAC5-51-133, 13VAC5-51-133.5, 13VAC5-51-135, 13VAC5-51-140, 13VAC5-51-145, 13VAC5-51-150, 13VAC5-51-154, 13VAC5-51-155; adding 13VAC5-51-154.5; repealing 13VAC5-51-143).

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Statewide Fire Prevention Code, 13VAC5-51, which was published in 27:2 VA.R. 183-217 September 27, 2010, is changed to March 1, 2011.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Notice of Suspension of Regulatory Process and Additional Public Comment Period

13VAC5-51. Virginia Statewide Fire Prevention Code.

Written public comments may be submitted until December 22, 2010.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the Board of Housing and Community Development is suspending certain provisions of the final Virginia Statewide Fire Prevention Code (13VAC5-51) published in 27:2 VA.R. 183-217 September 27, 2010, and is soliciting additional comments on changes made to these specific provisions between publication of the proposed regulations and publication of the final regulations. The

additional 30-day comment period ends on December 22, 2010.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Notice of Change in Effective Date

13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-10, 13VAC5-63-20, 13VAC5-63-30, 13VAC5-63-40, 13VAC5-63-50, 13VAC5-63-60, 13VAC5-63-70, 13VAC5-63-80, 13VAC5-63-150, 13VAC5-63-160, 13VAC5-63-190, 13VAC5-63-200, 13VAC5-63-210, 13VAC5-63-220, 13VAC5-63-230, 13VAC5-63-240, 13VAC5-63-245, 13VAC5-63-250, 13VAC5-63-267, 13VAC5-63-280, 13VAC5-63-290, 13VAC5-63-300, 13VAC5-63-310, 13VAC5-63-320, 13VAC5-63-330, 13VAC5-63-350, 13VAC5-63-360, 13VAC5-63-400, 13VAC5-63-434, 13VAC5-63-440, 13VAC5-63-450, 13VAC5-63-480, 13VAC5-63-490, 13VAC5-63-500, 13VAC5-63-520, 13VAC5-63-530, 13VAC5-63-540; adding 13VAC5-63-264, 13VAC5-63-365; repealing 13VAC5-63-335, 13VAC5-63-436, 13VAC5-63-437).

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Uniform Statewide Building Code, 13VAC5-63, which was published in 27:2 VA.R. 217-342 September 27, 2010, is changed to March 1, 2011.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Notice of Suspension of Regulatory Process
and Additional Comment Period

13VAC5-63. Virginia Uniform Statewide Building Code.

Written public comments may be submitted until December 22, 2010.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the Board of Housing and Community Development is suspending certain provisions of the final Virginia Uniform Statewide Building Code (13VAC5-63) published in 27:2 VA.R. 217-342 September 27, 2010, and is soliciting additional comments on changes made to these specific provisions between publication of the proposed regulations and publication of the final regulations. The additional 30-day comment period ends on December 22, 2010.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Notice of Change in Effective Date

13VAC5-91. Virginia Industrialized Building Safety Regulations (amending 13VAC5-91-10, 13VAC5-91-20, 13VAC5-91-40, 13VAC5-91-50, 13VAC5-91-60, 13VAC5-91-70, 13VAC5-91-100, 13VAC5-91-120, 13VAC5-91-160, 13VAC5-91-200, 13VAC5-91-210, 13VAC5-91-245, 13VAC5-91-260).

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Industrialized Building Safety Regulations, 13VAC5-91, which was published in 27:2 VA.R. 342-347 September 27, 2010, is changed to March 1, 2011.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Richmond, VA, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

TITLE 18.

PROFESSIONAL AND OCCUPATIONAL
LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD,
AND HOME INSPECTORS

18VAC15-60. Mold Inspector and Remediator Regulations (adding 18VAC15-60-10 through 18VAC15-60-390).

Written public comments may be submitted until January 7, 2011.

Summary:

Chapters 358 and 819 of the 2009 Acts of Assembly charged the board with the creation of a licensure program for the regulation of mold inspectors and mold remediators. The proposed regulation creates the licensure entry requirements, renewal requirements, and standards of practice and conduct for this group of regulants, as well as the disciplinary authority of the board.

For more information, please contact David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, Richmond, VA, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

BOARD FOR BARBERS AND
COSMETOLOGY

18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).

Written public comments may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases,

the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

18VAC41-30. Hair Braiding Regulations (amending 18VAC41-30-110).

Written public comments may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing

will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

18VAC41-40. Wax Technician Regulations (amending 18VAC41-40-120).

Written public comment may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).

Written public comment may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of

Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

18VAC41-60. Body-Piercing Regulations (amending 18VAC41-60-90).

Written public comment may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a

proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

18VAC41-70. Board for Barbers and Cosmetology Esthetics Regulations (amending 18VAC41-70-120).

Written public comments may be submitted until January 7, 2011.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on

consistent, equitable, and cost-effective methodologies.

For more information, please contact William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, Richmond, VA, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

BOARD OF MEDICINE

18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18VAC85-101-10, 18VAC85-101-25, 18VAC85-101-30, 18VAC85-101-55, 18VAC85-101-100, 18VAC85-101-130, 18VAC85-101-145, 18VAC85-101-150, 18VAC85-101-152, 18VAC85-101-153, 18VAC85-101-161; adding 18VAC85-101-27, 18VAC85-101-28, 18VAC85-101-91, 18VAC85-101-92).

A public hearing will be held February 2, 2011, at 1 p.m. at the Perimeter Center, Richmond, Virginia. Written public comments may be submitted until February 4, 2011.

Summary:

The proposed amendments add the new profession of radiologist assistants (RAs) to 18VAC85-101, Regulations Governing the Licensure of Radiologic Technologists and Radiologists-Limited, and change the title of the regulation to Regulations Governing the Practice of Radiologic Technology. The proposed amendments specify (i) the requirements for licensure of RAs, including the education and examination that will assure minimum competency to practice; (ii) provisions for applicant and licensure fees; (iii) requirements for renewal and reinstatement of a license to include evidence of continuing competency to practice; and (iv) provisions for scope of practice, including supervision by a doctor of medicine or osteopathic medicine with a specialty in radiology. Current regulations, such as standards of conduct and renewal schedules, are amended to be applicable to RAs as well as radiologic technologists and radiologic technologists-limited.

For more information, please contact William L. Harp, M.D., Executive Director, Board of Medicine, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

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