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HJR 637: Joint Subcommittee Studying Childhood Obesity in Virginia's Public Schools

November 13, 2007

The Joint Subcommittee Studying Childhood Obesity in Virginia's Public Schools held its final meeting of the 2007 interim on November 13, 2007, in Richmond with Delegate O'Bannon as chair.

The purpose of the meeting was to discuss the joint subcommittee's final recommendations for the 2008 General Assembly Session. Staff presented each of the five proposals the members had discussed at the previous meeting, the members held some discussion, and public comment was heard. The following is a summary of the action taken on each proposal.

Proposed Legislation

EXPANDED COMPETITIVE FOOD RESTRICTION

The proposal would have closed the gap between the breakfast and lunch periods, during which schools are currently not allowed to sell anything that is not part of the official school breakfast or lunch program. The members took no action on this proposal.

BEST PRACTICES DATABASE

The proposal requires the Board of Education to develop a database containing information on successful nutrition and physical activity programs and policies being implemented by individual local school divisions. The information would be made available to all local school divisions, and no local school division would be required to submit information.

The members were supportive of trying to encourage positive behavior without legislative mandates. The proposal was amended to include information on fitness testing results already being done and reported to the Department of Education by the majority of school divisions and to make the information available to the Department of Health, in addition to local school divisions. The members voted to recommend this proposal as amended.

MANDATORY PHYSICAL EDUCATION REQUIREMENT FOR K-12

The proposal would require at least 150 minutes of physical education per week for all students in grades kindergarten through 12. The requirement could be fulfilled through physical education classes or other extracurricular sports or activities that the local school board deems appropriate.

While the joint subcommittee was generally supportive of increasing the physical education requirement, some members were uncomfortable with the financial effect this would have on school divisions and the scheduling impact for students, particularly in high school. The members ultimately agreed to two amendments to the proposal. The proposal would now be gradually phased in at the elementary level over the next five years, and recess cannot be counted towards the weekly requirement. The joint subcommittee voted to recommend the proposal as amended.

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For more information, visit study websites.

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

BUDGET AMENDMENT TO INCREASE STATE REIMBURSEMENT LEVEL FOR SCHOOL LUNCHES

With little discussion, the members voted to support the recommendation to increase the state reimbursement level for school lunches, which has not been increased in over 25 years.

The members voted to recommend an increase in the state reimbursement level for public school lunches, which has not been increased for over 25 years.

Other Recommendations

The members also quickly voted to recommend both a resolution and a letter to all division superintendents encouraging local school divisions to participate in the Governor's Nutrition and Physical Activity Scorecard.

Finally, the joint subcommittee agreed to recommend a resolution continuing the study for another year.

HJR 673

Joint Subcommittee Studying Childhood Obesity in Virginia's Public Schools

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

<http://dls.state.va.us/childobesity.htm>

HJR 692/SJR 401 - 2007: Joint Subcommittee Studying Long-Term Funding Sources to Preserve Open-Space Land

November 20, 2007

The Joint Subcommittee Studying Long-Term Funding Sources for the Purchase of Development Rights to Preserve Open-Space Land and Farmlands held its final meeting on November 20, 2007, in Richmond. The members of the Joint Subcommittee are Senators Emmett W. Hanger, Jr. (chair); John Watkins; and Mark R. Herring and Delegates Robert D. Orrock, Sr.; Thomas C. Wright, Jr.; Benjamin L. Cline; Edward T. Scott (vice-chair); Lynwood W. Lewis, Jr.; and Albert C. Eisenberg. The primary focus of the meeting was the consideration and development of legislative recommendations.

Presentations

STAFF REPORTS

Staff began the meeting by providing an update to the estimated cost of preserving 20% of Virginia's portion of the Chesapeake Bay watershed by 2010. In prior meetings staff estimated that it would cost an additional \$167.4 million to \$278.9 million to reach the 20% goal, taking into consideration the number of acres that could be expected to be preserved under existing tax credit programs and general fund appropriations. The estimate was based upon an estimate developed by the Department of Conservation and Recreation that an additional 238,944 acres were needed to be preserved to reach the goal. However, in a letter to the joint subcommittee members on November 16, the Department revised its estimate of the acreage left to be

preserved. The Department stated that an additional 359,931 acres were needed to be preserved as of June 20, 2007, to reach the goal. With this new estimate staff revised its estimate from a range of \$167.4 million - \$278.9 million to a range of \$348.8 million - \$581.4 million.

The increase in the estimate by 121,000 acres was the result of a quality control review undertaken by the Department that revealed an error in the original baseline estimate developed in 2000. The baseline estimate prepared by the Department in 2000 was, in part, based upon a GIS shapefile for the George Washington National Forest supplied by the U.S. Forest Service. The shapefile included 116,511 preserved acres that are actually located in West Virginia. The Department stated that the shapefile obscured this fact. As a result, the Department inadvertently included this acreage in Virginia's total preserved acreage in 2000. The error came to light during the quality control review.

Staff also presented several funding and other options for the joint subcommittee's consideration. While the Virginia Resources Authority (VRA) can currently issue bonds and other debt to provide funds to finance local land conservation programs, it is unclear whether VRA has the authority to provide funds for the acquisition of parks and parks facilities. Such clarification would require an amendment to the Code of Virginia. Another consideration for the joint subcommittee was whether to provide a "credit" to those localities that rely heavily on use value assessment. The credit would take the form of a reduction in the amount of the matching funds required from the

locality in order to receive a grant from the Commonwealth for land conservation.

Several options for funding of land conservation were presented by staff, including dedicating existing revenue sources to local land conservation programs and a review of new fees, taxes, and charges that could be implemented and dedicated to funding PDR programs.

Staff indicated that revenues from existing state recordation, insurance license premium, and sales taxes could be dedicated for funding of land conservation. Much of the revenues collected from these taxes are deposited into the general fund of the state treasury and are not earmarked for a specific or particular program by the Code of Virginia. For the 2006-2007 fiscal year, \$438 million of the \$583 million collected from recordation taxes and \$257 million of the \$385 million collected from insurance license premium taxes were not earmarked for a specific or particular program by the Code of Virginia. An additional option for funding of local land conservation programs would be to capture the unsubscribed or unallocated portion of the \$100 million in tax credits set aside on an annual basis under the land preservation tax credit program. Thus, in a particular calendar year, if there is less than \$100 million in new tax credits subscribed or allocated under the tax credit program, the amount of the deficiency could be used for funding of local land conservation programs.

Tipping fees for the disposal of municipal solid waste and surcharges on homeowner, farmowner, and commercial multi-peril insurance policies are two options for new revenue sources that can be dedicated for the funding of local land preservation programs. Each \$1 per ton in tipping fees would generate \$12 million on an annual basis. Each 1% charged on the amount paid for homeowner, farmowner, and commercial multi-peril insurance would generate \$21 million on an annual basis.

Staff also reviewed options for funding land conservation programs with local sources of revenue. If each county was authorized to impose a local cigarette tax at the state cigarette tax rate of \$.30 per pack and each county actually imposed the tax, \$88 million in new revenue would be generated on an annual basis which could be used for funding local land preservation programs. Staff stated that authorizing water and sewer authorities to charge a premium for land conservation is another potential new source of local revenue for land conservation.

Particularly in regard to provide funding for the acquisition of parks and parks facilities, increasing the land preservation tax credit percentage from

40% to 60% for land donated for a park or trail access easement is one option for encouraging landowners to donate land for parks and trail access easements. The vast majority of donations under the land preservation tax credit are conservation easements restricting development rights, with few, if any, donations for parks or trail access easements. In addition, dedicating revenues from existing tourism-related taxes and fees is another option for funding the acquisition of parks and parks facilities. These two options were also presented to the members by representatives of Northern Virginia park directors.

Staff concluded its presentation by noting that the issuance of bonds, regardless of repayment source, would allow the Commonwealth to more quickly generate funds to meet the Commonwealth's share in any state and local land preservation program.

Bill Lee, Trust for Public Land

Helen C. Tansey, Virginiaforever

Andy Tuck, The Nature Conservancy

Mr. Lee, Ms. Tansey, and Mr. Tuck reported on the work of Virginia's Conservation Finance Work Group. The Nature Conservancy, the Trust for Public Land, the New River Land Trust, the National Wild Turkey Federation, the Virginia Farm Bureau, the Virginia Association of Counties, the Virginia Municipal League, the Virginia Conservation Network, and Virginiaforever are the member organizations of the work group. The work group conducted a statewide land conservation needs assessment and performed feasibility research of funding mechanisms for land conservation. The work group also financed a poll, the subject of which was conservation in Virginia. The work group believes that Virginia's land preservation tax credit, the Virginia Land Conservation Foundation, and local purchase of development rights programs are all critical elements for land conservation in Virginia.

Between 2000 and 2005 the number of vehicle miles traveled by Virginians increased by more than 10%, and over the same period the Commonwealth's population increased by roughly 7%. Between 1992 and 2002, the average cost per acre of natural areas increased from \$956 to \$1,374 (43.7%), the average cost per acre of state parklands increased from \$3,172 to \$5,576 (75.8%), and the average cost per acre of land purchased under a 1992 bond issue and a 2002 bond issue increased from \$1,904 to \$3,718 (95.3%).

Revenues from existing state recordation, insurance license premium, and sales taxes could be dedicated for funding of land conservation, because these revenues are deposited into the general fund and are not earmarked for a specific program by the Code of Virginia.

A spokesman reported that the annual per capita spending by the state between 1998 and 2005 for land conservation equaled \$0.91, which is well below the per capita spending for land conservation by Delaware, North Carolina, New Jersey, Maryland, and Pennsylvania.

In looking at the feasibility of funding mechanisms for land conservation, the Trust for Public Land assesses any potential funding mechanism for its financial feasibility, political feasibility, and public favorability.

Mr. Lee reported that the annual per capita spending by the Commonwealth between 1998 and 2005 for land conservation equaled \$0.91. This was well below the per capita spending for land conservation by Delaware (\$30.29); North Carolina (\$12.26); New Jersey (\$10.59); Maryland (\$9.22); and Pennsylvania (\$4.57). Only West Virginia (\$0.58) trailed the Commonwealth in annual per capita spending for land conservation between 1998 and 2005. Mr. Lee indicated that the per capita spending statistic for Virginia did not include the amount of revenue forgone by the Commonwealth for conservation easements under Virginia's land preservation tax credit.

The poll financed by the work group was conducted by Fairbank, Maslin, Maullin & Associates and Public Opinion Strategies. Telephone interviews were conducted with 600 registered Virginia voters likely to vote in the 2008 general election. The first poll was conducted between September 29 and October 2, 2007. Ninety-four percent of those polled agreed that Virginia's natural lands and waters are essential to the quality of life in the Commonwealth and part of the Commonwealth's heritage that must be preserved for future generations. Ninety-percent agreed that protecting natural lands and forests in Virginia will help to keep the state's waters clean; eighty-six percent agreed that having clean air and water and undeveloped lands are critical to a strong economy; and seventy percent agreed that government should purchase more land in Virginia for conservation. Finally, a total of seventy-eight percent either strongly supported or somewhat supported the idea of dedicating additional public funding to protect Virginia's lands, waters, and wildlife.

Paul A. Gilbert, Executive Director, Northern Virginia Regional Park Authority

Dinesh V. Tiwari, Director of Parks, Recreation and Cultural Resources, Arlington County

Mr. Gilbert and Mr. Tiwari presented to the joint subcommittee recommendations for funding the acquisition of parks and facilities. The recommendations were developed by a working group that included Northern Virginia park directors and have the support of several park directors.

To encourage landowners to donate land for parks or trail access easements, the park directors

recommended that the land preservation tax credit percentage be increased from 40% to 60% for land donated for a park or trail access easement. The park directors also recommended that water and sewer authorities be authorized to charge a "watershed protection fee" tied to water and sewage usage with the revenues from the fee to be used to acquire parklands abutting rivers and other waters. The park directors support a new bond package with a portion of the proceeds of the bonds to be used as the Commonwealth's match in a partnership with local governments to acquire parks. The park directors suggested that revenues from existing state tourism-related taxes and fees could be dedicated to developing or expanding parks or historical sites, which would attract visitors and revenues from nonresidents as well as residents. The park directors also support allowing the Virginia Resources Authority to issue bonds and other debt to provide funds for the acquisition of parks and facilities.

Recommendations

The joint subcommittee voted on and approved the following recommendations:

- The Virginia Resources Authority should be authorized to issue bonds and other debt to provide funds for the acquisition of parks and facilities.
- In general, any grants provided by the Commonwealth to fund local purchase of development rights programs should require a \$1 for \$1 match from the recipient local governments. However, those localities that rely heavily on use value assessment would be provided a "credit" against the local matching funds required, which would reduce the \$1 match required from such localities to something less than \$1. Localities that rely heavily on use value assessment are those localities with 70% or less of the total fair market value of all land in the locality taxed, because of use value assessment.

HJR 692/SJR 401

*Joint Subcommittee Studying
Long-Term Funding Sources to
Preserve Open-Space Land
and Farmlands*

Senator Emmett W. Hanger, Jr., Chair

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study website

<http://dls.state.va.us/land.htm>

HJR 743: Joint Subcommittee Studying Incentives for Fire and Rescue Squad Volunteers

November 27, 2007

The fourth and final meeting of the Joint Subcommittee Studying Incentives for Fire and Emergency Medical Services Volunteers was called to order by Chairman Rust. The joint subcommittee members then proceeded to discuss the legislation that they had proposed during their third meeting in order to decide which, if any, they wanted to recommend for introduction during the 2008 General Assembly Session.

Drafts of the proposals had been sent in the mail to the members of the joint subcommittee prior to the meeting in order for them to prepare for this discussion. Drafts were also available to all interested parties during the meeting.

Discussion on Legislation

The chairman began by reviewing the following four proposals made during the September meeting:

- An income tax credit ranging from \$500 to \$3,000 for volunteer firefighters and emergency medical services personnel in good standing based on a sliding scale related to length of service and the completion of training requirements;
- Financial assistance for EMS training through the Office of Emergency Medical Assistance Services (OEMS) accredited programs around the Commonwealth;
- A budget appropriation in the amount of \$250,000 for the biennium for the Commonwealth's share of the VOLSAP Fund; and
- A \$2 increase in the \$4-for-Life fee to \$6-for-Life with the money raised applied to cover some of the costs resulting from the proposals in this package.

The joint subcommittee was reminded that the upcoming session is going to be a challenging one with regard to the budget due to the estimated \$641 million revenue shortfall that is currently being projected. Therefore, it is expected that any of the proposals that would create further revenue losses would most likely have difficulty gaining the support needed for passage.

With that in mind, and following a presentation made by a representative from the Department of Taxation regarding the fiscal impact of the tax credit legislation (an estimated minimum loss of between \$12 million and \$22 million annually for the Commonwealth), it was the consensus of the subcommittee not to go forward with the proposal as one of its recommendations.

Next, the subcommittee determined after much discussion that the second proposal that provided for reimbursement of training funds by OEMS was unnecessary because OEMS already has the ability to do that through the Virginia Rescue Squads Assistance Fund. Because it was not needed, that proposal was not recommended.

The joint subcommittee did agree to support the third proposal to seek an amendment to the budget to provide for a \$250,000 contribution for the biennium (\$125,000 annually) to the VOLSAP fund, the retirement fund for volunteer firefighters and emergency medical services personnel. The chairman indicated he would pursue the amendment with the Appropriations Committee staff and would welcome other legislators' support in that effort.

Finally, the subcommittee turned to the fourth proposal to increase the \$4-for-Life automobile registration fee to \$6-for-Life. Some of the legislators expressed concern about how that fee has grown from the original \$1-for-Life amount. Therefore, \$2 increase did not find the support if needed. However, the two citizen members expressed concern about doing more than just seeking the \$250,000 VOLSAP contribution budget amendment which led to the approval of legislation to increase the fee by \$0.25 to \$4.25. Chairman Rust and Delegate Wright will co-patron the necessary legislation for that recommendation.

Recommendations

At the end of the meeting, a majority of the joint subcommittee had agreed to support two of the four initial proposals. The recommendations are:

- An amendment to the budget in the amount of \$250,000 for the biennium for the Commonwealth's share of the VOLSAP Fund.

The members approved a proposed amendment to the budget in the amount of \$250,000 for the biennium for the state's share of the VOLSAP Fund, as well as an increase in the \$4-for-Life fee to \$4.25-for-Life with the money raised going into the Virginia Rescue Squads Assistance Fund

- An increase in the \$4-for-Life fee to \$4.25-for-Life with the money raised going into the Virginia Rescue Squads Assistance Fund to defray some of the costs associated with the certification and recertification training of emergency medical services personnel.

Prior to adjourning the meeting, the chairman thanked the members of the subcommittee, the staff, and the public who had participated for all of their support and efforts during the past several months in trying to develop incentives for volunteer firefighters and emergency medical services personnel.

The members discussed proposing a resolution to seek the creation of a new study that would look at ways to immediately increase the pool of science and engineering students in the Commonwealth.

HJR 611: Joint Subcommittee Studying Science and Technology Education in Graduate Programs

December 5, 2007

The Joint Subcommittee Studying Science and Technology Education in business, law, and policy graduate programs at the Commonwealth's institutions of higher education met on December 5 in Richmond. Because it was the final meeting of the one-year joint subcommittee, the agenda focused on the development of final recommendations.

Throughout the course of the study, conversations of the joint subcommittee frequently turned away from discussions of business, law, and policy programs, and towards the need to encourage more students to complete undergraduate and graduate degrees in science, math, and engineering. These students are needed to fill current job needs in the Commonwealth and to provide a steady stream of qualified persons to attract technology-based companies to locate in the Commonwealth.

The joint subcommittee indicated that it was also important to study and pinpoint ways to improve science and math education in elementary and secondary school and to encourage young students to take the classes necessary to pursue higher education in these areas. However, it was noted that this was the focus of the joint subcommittee formed pursuant to HJ 25, which was completing two years of study and would be submitting its recommendations to the 2008 Session of the General Assembly.

Delegate Purkey, chairman of the joint subcommittee, presented a resolution that would continue the work of the joint subcommittee for an additional year. However, because the members of the committee felt that the charge for the existing subcommittee did not directly address the most pressing needs of the Commonwealth, it was decided that Delegate Purkey would introduce a resolution to seek the creation of a new study that would look at

HJR 743
*Joint Subcommittee Studying
Incentives for Retention of Fire and
Rescue Squad Volunteers*

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study website
<http://dls.state.va.us/volunteers.htm>

ways to immediately increase the pool of science and engineering students in the Commonwealth. The members felt that such a study would complement the efforts of HJ 25.

Potential topics of study for a new study would include looking at ways that tax credits and other incentives could be used to encourage private companies to invest in the educational efforts of interested students. For example, it was suggested that a company might receive a tax credit for a portion of tuition that it pays for a student in an engineering degree program, and would receive an additional credit if the student subsequently was employed by the company and remained in Virginia. In addition, it was suggested that a study might look at examples such as the partnership between Central Virginia Community College and the University of Virginia in offering 4-year engineering degrees on the community college campus.

Because there was not a quorum at the meeting, no formal vote was taken on the new proposed study resolution.

HJR 611

*Joint Subcommittee to Study
Science and Technology in
Higher Education*

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study website
<http://dls.state.va.us/TechHigherEd.htm>

HJR 144: Telework Opportunities in the Public and Private Sector in Virginia

December 5, 2007

The Joint Subcommittee Studying Telework Opportunities for the Public and Private Sector in Virginia completed its two-year study at its December 5, 2007, meeting in Richmond. The joint subcommittee made several recommendations relating to telework:

- Define telework in the Code of Virginia as working remotely at least one day per week. Currently, the Code defines telework as working remotely, but leaves it up to each agency to determine a standard for teleworking. Thus, in reviewing the adoption of teleworking at state agencies, there are no common standards. In reporting the number of teleworkers at each agencies, some agencies may use a standard of "occasionally" working remotely, working remotely at least once a month, or working remotely at least once a week. The definition will provide some consistency.
- Codify the Governor's goal of having 20% of the eligible state workforce telecommuting by January 1, 2010. Currently, the Code provides a goal of having 25% of the eligible state workforce participating in alternative work schedules by July 1, 2009. The joint subcommittee recognized that the 20% goal would be a difficult goal to meet, especially if telecommuting is redefined as one day per week.
- Formally codify the Office of Telework and Broadband Assistance in the Governor's Office. The Governor established this office through Executive Order 35 (2006). The joint subcommittee felt that the role of this office was important, and should be solidified through codification. However, in recognizing that the need for such an "ombudsman" for telework should diminish as telework becomes more widely adopted, the joint subcommittee voted to put a 10-year sunset on the office. It was envisioned that such legislation would be modeled on other agencies and positions statutorily created in the Governor's Office, such as the Governor's Office for Substance Abuse Prevention.
- When state agencies implement a telework program and recognize savings, allow the agency to keep a portion of the savings to use for other agency programs, as an incentive to adopt a policy. On the other end of the spectrum, the joint subcommittee also recommended establishing a monetary penalty for not establishing a telework program (such as a reduction in the next budget's appropriation to the agency), and to use such funds to

reward agencies that have successfully implemented a program.

- Add adoption of a telework program as one of the metrics reviewed on the executive branch's management scorecard system.

Sara Wilson, director of the Department of Human Resource Management, indicated that the management scorecard was currently under review, and she assured the committee that telework would be added and that legislation would not be necessary to accomplish this goal.

- Support the efforts to introduce legislation that would create a tax credit program for private companies establishing telework programs.

Delegate Frederick and Mark Herring introduced such legislation in 2007, and Delegate Frederick stated that they planned to reintroduce the legislation in 2008. The original legislation established a cap on the program at \$2 million; the joint subcommittee recommended that the cap be established at \$1 million in light of the current budget outlooks. In addition, it was recommended that a telework definition be included such that qualifying expenses and projects must relate to persons teleworking at least one day per week. It was also suggested that in pursuing the bills, the patrons seek out savings in the budget to offset the cost of the potential new credit.

- Amend the Code to allow members of a public body to have voting rights and their presence count towards a quorum whether they are physically present or participating via teleconference or video conference.

The members approved a recommendation to reward state agencies that implement a successful telework program by allowing them to keep a portion of the their savings to use for other agency programs, and they recommended a monetary penalty for agencies not establishing a telework program.

HJR 144

Joint Subcommittee to Study Telework Opportunities for State and Private Sector Employees

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[study website](#)

<http://dls.state.va.us/telework.htm>

SJR 96: Joint Subcommittee Studying Comprehensive Services Program for At-Risk Youth and Families

December 5, 2007

Secretary Tavenner noted that the failure to secure permanent placements for foster children has a significant impact on funds budgeted for the CSA and 45% of the \$295 million CSA budget, or \$133 million, is devoted to congregate care.

The fourth and final meeting of the Joint Subcommittee Studying the Comprehensive Services Program for At-Risk Youth and Families was held on December 5, 2007, in Richmond.

Foster Care Initiatives

In a presentation on the current state of foster care and efforts to secure permanency for foster children in Virginia, Secretary Tavenner noted that 23% of Virginia's children age out of foster care without permanent connections, the highest percentage of children in the country. Forty-three percent of teens achieve permanence, a rate which is 28.5% below the national average of 72.2%. After seven years in the foster care system, 24% of younger children had not achieved permanence, resulting in more children "aging into" the teen population of foster children. In 2006, 24% of children that came into care experienced their first placement in a group setting rather than a family-based environment. For teens that figure was 52%. The national average is 18%; however, best practice is closer to 10%. The failure to secure permanent placements for foster children has a significant impact on funds budgeted for the Comprehensive Services Act. Secretary Tavenner noted that 45% of the \$295 million CSA budget, or \$133 million, is devoted to congregate care.

Secretary Tavenner described First Lady Anne Holton's For Keeps Initiative, which is focused on strengthening the voices of youth in foster care and of foster parents, finding permanent families and family connections for children in foster care or at risk of coming into care, and championing to improve family and community supports for all children. The effort has led to partnership with many local and national organizations, including the Annie E. Casey Foundation Strategic Consulting Group.

Tracey Fields of the Annie E. Casey Strategic Consulting Group (CSG) presented information on CSG's work in Virginia. Over the past months, CSG has collected and analyzed quantitative and qualitative data, including reviewing Virginia's residential care policies, the foster care program, the availability of community based services, placement decision making processes, quality assurance efforts, support and guidance provided to localities, data tracking and database compatibility, CSA guidelines and policies, community policy and management, and family assessment and planning team processes and the CSA financing structure, to identify potential areas for improvement and develop strategies for whole system

change. Changes resulting for CSG's efforts would have significant impacts on the number of children entering foster care and the number of foster care children moving into permanent placements.

Ms. Fields noted a series of recommendations for improving the system, including:

- Adopt a statewide philosophy that supports family-focused, child-centered, community-based care with a focus on permanence for all children.
- Establish a state-level practice model focused on family-focused care and permanence that is reinforced by a uniform training program for resource families, as well as local staff in DSS and CSA that would be integrated with DMHMRSAS practice model.
- Implement a statewide strategy to increase availability and utilization of relative care and non-relative foster and adoptive placements to ensure that children can be placed in family-like settings.
- Enhance DSS and CSA capacity to develop and disseminate policies and best practices and provide technical assistance to localities in support of a practice model.
- Build on current state efforts to create a robust performance monitoring/quality assurance system to identify and measure outcomes, monitor quality of practice, and improve accountability.
- Strengthen financial incentives to reduce reliance on congregate care.

Discussion of Legislation

Following presentations by Secretary of Health and Human Resources Tavenner and Ms. Tracey Fields of the Annie E. Casey Foundation Strategic Consulting Group, the joint subcommittee reviewed and took action to recommend potential legislative changes for the 2008 Session of the General Assembly. The potential legislative recommendations included a recommendation to continue the study during the 2008 interim.

SJR 96

*Joint Subcommittee Studying the
Comprehensive Services Act and
At-Risk Youth & Families Program*

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[study website](#)

<http://dls.state.va.us/CSA.htm>

COMMISSIONS and COUNCILS

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

Sesquicentennial of the American Civil War Commission

MEETING OF THE FULL COMMISSION

11-28-2007

The Sesquicentennial Commission meeting was held at the Virginia Historical Society in Richmond. Dr. Charles F. Bryan, Jr., welcomed the members and provided a brief history of the museum and its current exhibition, *Lee and Grant*. Dr. Bryan noted that the exhibition has received criticism by a few who object to the balanced depiction of the historical figures, and that it is likely that the Civil War Commission may encounter similar objections as it plans commemorative activities that include Union, Confederate, and African-American points of view. The members agreed that talking points developed by Dr. Bryan in regard to *Lee and Grant* offer guidance on how to respond to criticism when it arises.

JAMESTOWN 2007

Leaders of the Jamestown 2007 activities shared advice and lessons learned in planning a statewide commemoration for the benefit of members. Phil Emerson, Executive Director of the Jamestown-Yorktown Foundation (JYF), offered an overview of planning structure. In 1996, the General Assembly designated the JYF as the lead agency in coordinating the Jamestown quadricentennial. As a result, the Board of Trustees appointed the Jamestown 2007 Steering Committee to direct the planning efforts. In addition, a federal Jamestown 400 Commemoration Commission was created by Congress in 2000 to ensure a successful national observance of the anniversary. Other planning entities were the Jamestown 2007 Management Committee, which oversaw coordination of efforts between the state and federal commissions; the Jamestown 2007 Executive Committee, which was a sub-set of the larger Steering Committee; and the Historic Triangle Jamestown 2007 Host Committee. Two sites are primarily associated with the commemoration—Historic Jamestowne and Jamestown Settlement.

Jeanne Zeidler, Executive Director of the Jamestown 2007 Office, discussed partnerships and statewide initiatives, and planning steps. Key to success over the 10-year planning period was the involvement of the citizens of Virginia, which was accomplished through statewide

roundtable discussions, and the formation of subcommittees and working groups. Another early strategy for creating awareness, building support and involving citizens statewide was the development of a Speakers Bureau. Volunteers were recruited first to tell the story of the 400th anniversary. The Speakers Bureau became a useful tool for building the most extensive of the statewide programs, the Virginia 2007 Community Program, which eventually consisted of 181 official communities who adopted legacy projects that have a lasting impact on the community. Projects varied as widely, from new visitor centers and museums to festivals, exhibits and more. Partnering with local, state, national, and international groups was also key to the commemoration's success. Planning was divided into three distinct categories:

Planning phase (1996 - 2003)—Key during this period was development and implementation of the *Joint Jamestown Mission Statement*. The various committees held roundtables and brainstormed ideas.

Program development (2003-2006)—The Committee progressed from concept into planning actual programs and events, launched a development campaign, and created a marketing communications program. The "message" became America's 400th Anniversary, and its lasting legacies of Jamestown, democracy, free enterprise, and cultural diversity. In addition, relationships with important stakeholders in the Native American and African American communities were solidified.

Implementation/Production (2006-2007)—An 18-month period of intense activity with widely acclaimed results.

Ms. Zeidler shared several important lessons, which included:

- The Speakers Bureau program must be carefully monitored and evaluated.
- Involvement of communities is beneficial in bringing new organizations and projects to the table, but they must also be carefully overseen to achieve full potential.
- Two grant programs will support effective statewide participation; matching grants to communities and cooperative advertising dollars administered by the Virginia Tourism Corporation.
- Inclusive planning is important, but plans evolve and for every five good ideas, only one will work.

TEACHER PREPARATION FOR THE SESQUICENTENNIAL

Commission members had previously expressed interest in developing programs to inspire teachers and prepare them for the sesquicentennial. The Civil War Preservation Trust (CWPT) and the National Park Service (NPS) both have programs that accomplish such a goal. Teacher Institutes combine workshops with "field trips" to battlefields to prepare teachers to better communicate the history of the Civil War to students. The CWPT has offered to collaborate with the Commission to design and implement new Teacher Institute programs during the sesquicentennial. In addition, the NPS has piloted a Teacher-Ranger-Teacher program in which a teacher is selected by the locality to work in a national park for a summer. The teacher is paid a stipend, and performs tasks that are typical of park rangers. When the assignment is complete, the teacher will share their experiences with their students in the classroom.

DOCUMENT DIGITIZATION, COLLECTION, AND PRESERVATION

Dr. Sandra Treadway, Librarian of Virginia, presented a proposal for a document digitization project that the Commission has previously endorsed in concept. The three-part, six-year program would focus on locating Civil War-era materials currently in private hands, scanning them, and suggesting possible repositories for permanent retention of original materials. The digital collection assembled during the sesquicentennial would become an enduring product of the Commission to be available on the Commission's website, and after 2015, through the Library of Virginia's website. The project would begin in 2010 with the hiring of a full-time project coordinator who would publicize the project throughout the state and plan its logistics. Once underway, a processing archivist would be hired for cataloging and description of the collections. Scanning capabilities would be available on-site at local repositories, especially targeting individuals who are not willing to donate their collections.

A preliminary budget for the project is \$665,432. Staff of the Library of Virginia and the Commission will work on securing additional funding for the project outside of general fund appropriations. A motion to approve the digitization project in concept was made by Del. Landes, and seconded by Del. Eisenberg. The motion passed unanimously.

STAFF REPORTS

Cheryl Jackson, Project Manager and Staff Coordinator, reported on interim activities. Brochures have been created to send to interested parties, many of whom contact the Commission through its website. Staff will be augmented

through a partnership with VCU to provide history interns to the Commission. Ms. Jackson discussed plans for the upcoming meetings of Workgroup 1 (Coordination), chaired by Sen. Chichester, and Workgroup 2 (Signature Events and Activities), chaired by Speaker Howell. Plans for annual Signature Conferences are underway, with the first ("*The Coming of the Civil War*") to be held at the University of Richmond in April 2009. Dr. Edward L. Ayres has agreed to chair the conference. In addition, the first Signature Tour, which will serve as the kickoff for the national sesquicentennial commemoration, has been set for June 25-26, 2009 at Harper's Ferry, West Virginia. Brenda Edwards, Senior Research Associate, delivered the report of Workgroup 3 (Education), chaired by Del. A. T. Howell.

Danielle Watkins, Development Officer, presented a case statement that will serve as the foundation for the Commission's development efforts. During the fundraising process, the case statement is an initial request from a potential donor to gain a better understanding of the Commission's mission, goals, objectives, and funding opportunities. A motion to adopt the case statement was made by Del. Lingamfelter, and seconded by Del. Landes. The motion passed unanimously.

Development staff has also established a phased campaign for fundraising, and begun identifying foundations whose fields of interest are in line with the mission, goals and objectives of the Commission. Last, staff is working closely with the National Endowment for the Humanities for grant-funding of many of the Commission's initiatives.

REPORT OF THE EXECUTIVE COMMITTEE

Speaker Howell offered a report of the Executive Committee, which met earlier in the week. The following items were approved:

Strategic Plan—a plan that pulls together the Commission's statutory mandate, goals, objectives and tentative plans, was reviewed. A motion to adopt the Strategic Plan was approved.

Special License Plate—if enacted by the General Assembly, legislation would authorize a revenue-sharing special license plate for the sesquicentennial commemoration. Modeled on the Jamestown special license plate legislation, a one-time \$15.00 fee is imposed on the purchaser of the license plate, of which \$5.00 goes to the Commission's special fund and \$10.00 goes to DMV to cover administrative costs. The bill would exempt the Commission from the provisions of § 46.2-725, which require 350 pre-paid applications before the license is made and 1,000 license plates be sold before revenue is shared.

A motion to approve the draft legislation for introduction in the 2008 Session of the General Assembly was approved unanimously.

CIVIL WAR PRESERVATION TRUST

Speaker Howell introduced a resolution endorsing the Sesquicentennial Battlefield Initiative of the Civil War Preservation Trust. A motion to adopt the resolution was passed unanimously.

ADDITIONAL INFORMATION

Complete summaries of recent Executive Committee and Work Group meetings, as well as additional information may be found on the websites below.

SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

THE HONORABLE WILLIAM J. HOWELL, CHAIR

Cheryl Jackson, Commission Staff
Danielle Watkins, Development Staff

Telephone (804) 786-3591

<http://dls.state.va.us/CivilWar.htm>

<http://www.virginiacivilwar.org>



Brown v. Board of Education Scholarship Awards Committee

11-1-2007 Meeting

The *Brown* Committee met in work session on November 1, 2007, to review approved disbursements and the Scholarship Fund, receive the report of the Counseling and Technical Advisory Subcommittee, and consider the proposed legislation and the application packet for the 2008-2009 academic year.

APPROVED DISBURSEMENTS

Nearly 200 inquiries have been made this year concerning the scholarship program, of which an increasing number are made by high school and college students, parents, and guidance counselors. However, of this number the Committee has approved 44 persons for scholarships of which 29 awards have been disbursed to approved education programs on behalf of scholarship recipients for the 2007-2008 academic year. *Brown* scholars are enrolled in GED and adult high school diploma programs, community colleges, and public and private institutions of higher education in Virginia. Some of the scholarship recipients will begin their studies during the spring 2008 term. In May 2008, eight additional *Brown* scholars will receive their baccalaureate degrees, and several others will complete non-degree educational programs.

SCHOLARSHIP FUND

The Committee was advised that disbursements from the Fund total \$385,674 for 2005 through 2008. A lengthy discussion ensued concerning the \$1 million gift in aid that was pledged in 2004 and has not yet been received. Suggestions were offered regarding the most appropriate and efficacious way to ensure receipt of the funds. The Committee agreed that the Chairman would communicate with the donor directly to request the release of the contribution.

COUNSELING AND TECHNICAL ADVISORY SUBCOMMITTEE

Delegate Roslyn Dance, chairwoman of the Advisory Subcommittee, reported the Subcommittee's findings and recommendations regarding the proposed Action Plan. The Committee amended the Policies further to provide that the *Brown* scholarship funds will be applied to a student's account after all other financial aid has been applied. The effect of making the *Brown* scholarship the "last dollar," award may, in some instances, reduce the amount of the award. However, because the promised contribution of \$1 million has not been received, this procedure will enable the Committee to ensure a reservoir of funds to meet the educational needs of current and new recipients, and comply with the statutory provision that prohibits awards from exceeding the costs of tuition. The Action Plan, as amended, was adopted by the Committee and made effective immediately. A schedule was also set for the first Information Session for the public and the Training Session for representatives of approved education programs.

11-7-2007 Meeting

The annual Information Session for 2007 was held at Longwood University on November 7, 2007. Committee and Subcommittee members, and staff addressed the public concerning the genesis, statutory requirements, and policies of the *Brown* scholarship program. Members and staff also responded to questions from the audience and provided information and technical assistance to potential applicants and scholarship recipients. It was noted that future Information Sessions will be held throughout the state, giving particular attention to those localities and surrounding areas where public schools were closed to avoid desegregation during Massive Resistance.

During this occasion, the first six college graduates of the *Brown* scholarship program were recognized by the Committee for their achievements. Senator Benjamin J. Lambert, III, Chairman, was honored by the Committee for exemplary statesmanship, visionary leadership, and peerless service to the Committee and the people of the Commonwealth.

11-9-2007 Meeting

The first annual Training Session for representatives of approved education programs was held at John Tyler Community College on November 9, 2007. Community colleges, public schools, and public and private four-year institutions of higher education were represented at the training session, which was organized in two phases: (i) background and overview of the scholarship program, including policies, funding, and statutory requirements; and (ii) implementation of the program, roundtable discussion, and questions and answers from participants.

2008-2009 APPLICATION SCHEDULE AND PROCESS

Application packets for the 2008-2009 application cycle will be mailed to all applicants and recipients who applied for a scholarship in 2007-2008, and persons on the Committee's mailing list in late December. The Application packets will also be available on the Committee's website at <http://dls.state.va.us/Brown.htm>, at designated distribution sites around the state, and upon request by contacting Brenda Edwards at Division of Legislative Services, (804) 786-3591 or by email at bedwards@leg.state.va.us. Advertisements and announcements concerning the scholarship program will be posted with the media. *The deadline for applications for the 2008-2009 academic year is March 1, 2008.*

Distribution Sites*

Charlottesville

Charlottesville City Hall
7th and Market Streets
Charlottesville, VA 22902

Norfolk

Norfolk City Hall
810 Union Street
Norfolk, VA 23501

Prince Edward County

The Farmville Herald
114 North Street
Farmville, VA 23901

Warren County

Warren County School
210 North Commerce Ave
Front Royal, VA 22630

Prince Edward County

The Eggleston Company
914 South Main St
Farmville, VA 23901

Southside Virginia CC

200 Dale Road
Keysville, VA 23947

Robert Russa Moton Museum

900 Griffin Boulevard
Farmville, VA 23901

*Additional sites will be announced.

BROWN V. BOARD OF EDUCATION SCHOLARSHIP AWARDS COMMITTEE

THE HONORABLE BENJAMIN J. LAMBERT III, CHAIR

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Martin Luther King Jr. Memorial Commission

11-28-07 Meeting

Members of the MLK Commission's Abraham Lincoln Bicentennial Anniversary Subcommittee assigned to develop commemorative activities, programs, and events for the commemoration met in Richmond on November 28, 2007. Numerous suggestions were offered and discussed. It was agreed that all activities would be designed to reach multiple audiences, including school children, educators, scholars, researchers, and the public. The special subcommittee will report its recommendations to the King Commission on December 19, 2007.

11-29-07 Meeting

The special subcommittee of the Dr. Martin Luther King Jr. Memorial Commission and the *Brown v. Board of Education* Scholarship Committee on the U.S. Supreme Court decision in *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education* convened for organizational purposes on November 29, 2007 in Richmond. The special subcommittee is co-chaired by Senator Henry L. Marsh, III, and Senator Benjamin J. Lambert, III, and consists of members from both groups and representatives of the school superintendents, school boards, teachers, school principals, and the Department of Education.

On June 28, 2007, the United State Supreme Court, in a landmark decision in *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education*, ruled the school desegregation plans in both cases unconstitutional. These cases have been followed by the King Commission since the two-year anniversary of the 50th anniversary of *Brown v. Board of Education*, as many legal scholars have characterized the cases as the most significant public school desegregation decision since *Brown v. Board of Education* in 1954.

THE FACTS AND DECISION IN *SEATTLE (PICS)* AND *MEREDITH*

SEATTLE

In *Seattle (PICS)*, “students were permitted to apply to any high school in the school district. Since certain schools often became oversubscribed when too many students chose them as their first choice, the District used a system of tiebreakers to decide which students would be admitted to the popular schools. The second most important tiebreaker was a racial factor intended to maintain racial diversity. If the racial demographics of any school's student body deviated by more than a predetermined number of percentage points from those of Seattle's total student population (approximately 40% white and 60% non-white), the racial tiebreaker went into effect. At a particular school either whites or non-whites could be favored for admission depending on which race would bring the racial balance closer to the goal.

A non-profit group, Parents Involved in Community Schools (Parents), sued the District, arguing that the racial tiebreaker violated the Equal Protection Clause of the Fourteenth Amendment as well as the Civil Rights Act of 1964 and Washington state law. A federal District Court dismissed the suit, upholding the tiebreaker.

On appeal, a three-judge panel the U.S. Court of Appeals for the Ninth Circuit reversed. Under the Supreme Court's precedents on racial classification in higher education, *Grutter v. Bollinger* and *Gratz v. Bollinger*, race-based classifications must be directed toward a "compelling government interest" and must be "narrowly tailored" to that interest. Applying these precedents to K-12 education, the Circuit Court found that the tiebreaker scheme was not narrowly tailored. The District then petitioned for an "en banc" ruling by a panel of 11 Ninth Circuit judges. The en banc panel came to the opposite conclusion and upheld the tiebreaker. The majority ruled that the District had a compelling interest in maintaining racial diversity. Applying a test from *Grutter*, the Circuit Court also ruled that the tiebreaker plan was narrowly tailored, because 1) the District did not employ quotas, 2) the District had considered race-neutral alternatives, 3) the plan caused no undue harm to races, and 4) the plan had an ending point.”

Question

- Do the decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger* apply to public high school students?
- Is racial diversity a compelling interest that can justify the use of race in selecting students for admission to public high schools?
- Does a school district that normally permits a student to attend the high school of her choice violate the Equal Protection Clause by denying the student admission to her chosen school because of her race in an effort to

achieve a desired racial balance? (The Oyez Project, Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. ____ (2007), available at: http://www.oyez.org/cases/2000-2009/2006_05_908).

MEREDITH

In *Meredith*, “the Jefferson County Public Schools were integrated by court order until 2000, when it was released. Thereafter, the system implemented an enrollment plan designed to maintain substantial racial integration through school choice. In the instance when schools could not accommodate all of the students, student enrollment was decided on the basis of several factors, including place of residence, school capacity, and random chance, as well as race. However, no school was allowed to have an enrollment of black students less than 15% or greater than 50% of its student population.

Meredith and other parents sued the school district, arguing that the plan's racial classifications violated the students' Fourteenth Amendment right to equal protection of the laws. Under the Supreme Court's decisions in *Grutter v. Bollinger* and *Gratz v. Bollinger*, race-based classifications must be directed toward a "compelling government interest" and must be "narrowly tailored" to that interest. The District Court ruled that the plan was constitutional because the school had a compelling interest in maintaining racial diversity. The court held that though the plan paid "some attention to numbers," it did not constitute a rigid quota system. According to the Supreme Court's precedents, rigid racial quotas are never narrowly tailored. The Sixth Circuit Court of Appeals upheld the District Court without issuing an opinion of its own, and Meredith appealed to the Supreme Court.”

Question

- Do *Grutter v. Bollinger* and *Gratz v. Bollinger* allow a school district to use race as the sole factor to assign high school students to public schools?
- Can a student enrollment plan that requires each school's student population to be between 15% and 50% African-American meet the Fourteenth Amendment's requirement that racial classifications be narrowly tailored to a compelling government interest? (The Oyez Project, *Meredith v. Jefferson County Board of Education*, 551 U.S. ____ (2007), available at: http://www.oyez.org/cases/2000-2009/2006_05_915).

THE DECISION

The summary of the decision is as follows: By a 5-4 vote, the Court applied a "strict scrutiny" framework and found the District's racial tiebreaker plan and Jefferson County's enrollment plan unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. Chief Justice John Roberts wrote in the plurality opinion that "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." The Court acknowledged that it had previously held that racial diversity can be a compelling

government interest in university admissions, but it ruled that "[t]he present cases are not governed by *Gutter*."

Unlike the cases pertaining to higher education, the District's and Jefferson County's plans involved no individualized consideration of students, and they employed a very limited notion of diversity ("white" and "non-white") and ("black" and "other"), respectively. The District's and Jefferson County's goal of preventing racial imbalance did not meet the Court's standards for a constitutionally legitimate use of race: "Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'" The plans also lacked the narrow tailoring that is necessary for race-conscious programs.

The Court held that the District's tiebreaker plan and Jefferson County's enrollment plan were actually targeted toward demographic goals and not toward any demonstrable educational benefit from racial diversity. The District and Jefferson County also failed to show that their objectives could not have been met with non-race-conscious means. In a separate opinion concurring in the judgment, Justice Kennedy agreed that the District's and Jefferson County's use of race was unconstitutional but stressed that public schools may sometimes consider race to ensure equal educational opportunity. (The Oyez Project, *Meredith v. Jefferson County Board of Education*, 551 U.S. ____ (2007), available at: http://www.oyez.org/cases/2000-2009/2006_05_915/).

PRESENTATIONS

Following a briefing by the staff, the Subcommittee conferred by teleconference with Mr. Francis J. Mellen, Jr., of Wyatt, Tarrant & Combs, LLP, in Louisville, Kentucky, who argued cause for Respondents in *Meredith v. Jefferson County Board of Education*, and Sharon Browne, Principal Attorney at the Pacific Legal Foundation, in Sacramento, California, which was instrumental in litigating *Parents Involved in Community Schools v. Seattle School District No. 1*. Professor Henry L. Chambers, Jr. provided a legal analysis of Virginia's pupil assignment law, pursuant to § 22.1-79, Code of Virginia, and implications for public schools in the Commonwealth relative to the High Court's decision.

PROPOSED WORK PLAN—THE MARSH PROPOSAL

The special subcommittee adopted Senator Marsh's proposal as the work plan for the study. He advised that, in view of the decision and Virginia's past history, it was advisable to proactively, systematically, and objectively consider the implications of the Court's decision for Virginia's public schools, particularly given the potential impact of the decision in predominantly minority populated areas of the Commonwealth, the growing population of immigrant students, and in school

divisions with several schools that have not received full state accreditation. The consensus of the special subcommittee is to offer appropriate and feasible solutions only if warranted by its review.

Given the approaching 2008 Legislative Session, the special subcommittee determined that it was not prepared to offer recommendations to the next Session regarding any changes that may be necessary in Virginia. Therefore, the staff was directed to research and compile certain information and data pertaining to pupil assignment plans in the Commonwealth, pursuant to the subcommittee's work plan. The research will be conducted during the interim between December 2007 and the end of Session in March 2008. The special subcommittee will reconvene in April after the Session to review the data and make certain recommendations, if deemed necessary. The staff was requested to provide copies of certain data and reports requested of Ms. Browne during her presentation to all members of the special subcommittee and, during the intervening period before the next meeting, to invite other eminent legal scholars and representatives of Virginia school boards currently involved in developing new pupil assignment plans to speak to the special subcommittee in the spring.

Martin Luther King Jr. Memorial Commission

THE HONORABLE HENRY L. MARSH, CHAIR

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

Freedom of Information Advisory Council

12-3-2007

The Freedom of Information Advisory Council (the Council) held its final meeting of 2007 on December 3, 2007. The meeting included the annual legislative preview for the upcoming session of the General Assembly. The Council heard final reports from its two subcommittees; reviewed legislative proposals, including those from non-Council sources as part of the legislative preview; and received a draft copy of its 2007 annual report to the Governor and the General Assembly. The Council welcomed its newest member, George T. Whitehurst, who was recently appointed by the Speaker to fill Stewart Bryan's seat on the Council. The Council also set its first meeting for 2008 to be held on March 31, 2008, in Richmond.

SUBCOMMITTEE REPORTS

Electronic Meetings Subcommittee

John Edwards, chair of the subcommittee, stated that the subcommittee met three times to address three referred bills. Delegate McClellan spoke to her bill, HB 2293, at the first meeting of the subcommittee. The other patrons did not attend the meetings of the subcommittee. Mr. Edwards advised the Council of the subcommittee's recommendations as follows:

HB 2293 (McClellan)—The subcommittee voted 4-0 to recommend against HB 2293, which would have allowed local public bodies to meet through electronic means only when gathering information and where no action is to be taken at the meeting.

SB 1271 (Whipple)—The subcommittee voted 4-0 to table SB 1271 unless the patron requested further consideration of the bill; the patron has not done so. The bill would have eliminated the requirement that a quorum of a state public body be physically assembled in one primary location in order for the public body to conduct a meeting through electronic communications means. Instead of the quorum, the bill provided that at least two members of the public body be physically assembled at one location.

HB 2553 (Ebbin)—The subcommittee voted 5-0 to recommend a revised draft of HB 2553 to the Council. The draft as revised would allow:

- A local public body to meet by electronic means without a physically assembled quorum.
- When the Governor has declared a state of emergency (and not locally-declared emergencies).

- The catastrophic nature of the emergency makes it impracticable or unsafe to assemble a quorum in one location.
- The purpose of the meeting is to address the emergency.
- The local public body must also give public notice contemporaneously with the notice given the members, using the best possible methods given the nature of the emergency; make arrangements for public access to the meeting; and otherwise comply with the usual rules for electronic meetings.
- The minutes must reflect the nature of the emergency and the fact that the meeting was held electronically.
- Additionally, the draft bill makes a technical amendment in the definition of "meeting" to include the provisions of § 2.2-3708.1 (added in 2007).

PERSONAL IDENTIFYING INFORMATION SUBCOMMITTEE

Senator Houck, chair, reported that the subcommittee has held six meetings to date to deliberate on the nine bills referred for study. Five meetings were joint meetings with a subcommittee of the Joint Commission on Technology and Science (JCOTS) to consider HB 2821 and SB 819, both of which were referred to the FOIA Council and JCOTS. He first discussed the work of the Subcommittee in conjunction with the JCOTS Subcommittee (hereinafter referred to as the subcommittees).

The subcommittees decided to focus on HB 2821, concerning Social Security Numbers (SSNs), because SB 819 was too broad as drafted and the subcommittees were concerned about the possibility of unintended consequences of such far reaching language. Senator Houck noted that the subcommittees have examined extensively the treatment of SSNs under Virginia law, federal law, and the laws of other states, all of which take somewhat different approaches. With regard to HB 2821 specifically, the subcommittees shifted their focus from crafting a FOIA exemption for SSNs to the issue of over collection of SSNs by government. This shift came as a result of public comment at the July meeting that indicated that the real problem was over collection. Additionally, public comment indicated that a FOIA exemption was problematic for certain entities (e.g. print media, data aggregators, private investigators, and others) because of their expressed need for SSNs to verify identity. Further, a FOIA exemption would be harmful to the basic policy of FOIA that motive for a request is immaterial. The discretionary release of a SSN under such an exemption would require the government to ascertain the motive for the request. Additionally, it was argued by privacy advocates that FOIA exemptions are discretionary with the public body having custody of the record and thus would allow a government entity to release records containing SSNs unless expressly prohibited by

some other law. Alternatively, access advocates argued that a FOIA exemption for SSNs, although discretionary, would be treated by government as a prohibition and effectively no SSNs would be accessible. Based on the foregoing and recognizing the complexity of the attendant issues, the Subcommittees agreed that they would address the over collection issue in legislation for the 2008 Session of the General Assembly. The Subcommittees are committed, however, to continuing their examination of public access to SSNs during 2008.

The subcommittees found that increasing privacy concerns over access to personal identifying information contained in public records was due to state and local government routinely collecting too much personal information as part of their operation without a demonstrated need for it—an issue the GDCDPA seeks to limit. The subcommittees felt strongly that the inappropriate over collection of personal identifying information needs to be addressed now. Staff noted that this issue was included in a FOIA Council Advisory Opinion (AO-08-06) issued on August 22, 2006.

The subcommittees unanimously recommended legislation to the Council limiting the collection of SSNs by state and local government to those instances where collection of SSNs is required by law and the collection of SSN is essential to the mission of the agency. The legislation also adds certain specific categories to the definition of personal information, strengthens the remedies provisions of the GDCDPA by adding civil penalties matching those in FOIA, and makes a technical change to allow general district courts to hear GDCDPA cases. Additionally, the draft has enactment clauses giving it a delayed effective date of July 1, 2009, and requiring agencies to study their own collection and use of SSNs and report to the FOIA Council and JCOTS on such collection and use by October 1, 2008. The draft also sets forth protections for the information so received (which might otherwise reveal means of obtaining unprotected SSNs in public records). Senator Houck noted that a press release about this draft was issued to the Office of the Governor and his Secretaries, the Virginia Municipal League, the Virginia Association of Counties, the FOIA Council and JCOTS mailing lists, and other interested parties on November 8, 2007 in order to apprise them of the subcommittees' work and potential legislation.

Senator Houck then reported on the work of the subcommittee, which studied the other bills referred exclusively to the Council by the General Assembly in 2007. He reminded the Council that the PII Subcommittee also gave consideration to the issue of access to concealed handgun permit information. He advised of the following PII Subcommittee actions:

HB 2558 (Brink)—Release of rabies certificate information. The Virginia Treasurers' Association and the Virginia Veterinarians' Association are

working on a form for use state-wide that limits the amount of personal information available to the public. These associations will report directly to the Council.

HB 3097 (Cole)/SB 1106 (Chichester)—Release of constituent contact information. The bills were tabled without objection because no consensus was reached after the subcommittee debated the issues involved and considered draft legislation that attempted to distinguish between personal correspondence and correspondence addressing public business.

HB 3118 (Carrico)/SB 883 (Deeds)—Release of the names, addresses, and social security numbers of holders of boat, fishing, hunting, and other licenses/permits issued by the Department of Game and Inland Fisheries. No action taken by the PII subcommittee.

HB 3161 (Marshall, D.W.)/SB 1404 (Hanger)—Expansion of complainant information for violation of any local ordinance (currently only protected for zoning violations). The bills were tabled by vote of 4 to 0. After discussion there was a consensus that the bills were overreaching.

On the issue of public access to records of holders of concealed handgun permits (CHPs), Senator Houck advised that the subcommittee unanimously recommended legislation that would restrict access to the statewide list of Virginia citizens who hold CHPs compiled by the Department of State Police (DSP), but would allow access to the lists of permittees held by individual court clerks, the lists of out-of-state permittees held by DSP, and any aggregate or statistical information that does not identify individual permittees.

Senator Houck concluded his report by indicating that at every meeting of the subcommittee alone and in conjunction with JCOTS public comment was received that helped guide the work of the subcommittee. He noted, however, that there was some disagreement from interested parties in the legislative direction upon which the subcommittee ultimately agreed.

A complete summary of the meeting, including copies of drafts of proposed legislation appear on the Council's website.



**Virginia Freedom of Information
Advisory Council**

THE HONORABLE EDWARD HOUCK, CHAIR

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

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§62.1-44.2 et seq.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 25 (§62.1-254 et seq.) of Title 62.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of §2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-40, 9VAC25-193-70).

A public hearing will be held January 7, 2008 at 4 p.m. at the Department of Environmental Quality, Piedmont Regional Office, Glen Allen, Virginia. Written public comment may be submitted until 5 p.m. on January 25, 2008.

The proposed amendments reissue the general permit that expires on September 30, 2008. The general permit establishes limitations and monitoring requirements for wastewater discharges from concrete products facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges.

The general permit is amended to include new effective and expiration dates to correspond with the new dates of the reissued permit. In special condition 1 in Part I B a requirement for no solids deposition in surface water as a result of the industrial activity in the vicinity of the outfall has been added. Also, that the visual quality of the receiving stream (including observations of solids deposition from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) should be included in the quarterly visual examination reports of the storm water management section (Part II D). These were added in response to staff concerns about solids depositions (concrete product) entering the receiving stream.

Special condition 10 in Part I B is amended such that where basins are operated in a series mode of operation, the one foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements. This was added to reflect existing practice and design of these basins and to ensure the lower basin will not overflow in high flow rain events.

Special condition 13 in Part I B was modified to reflect liner requirements for settling basins built after February 1998 set forth in §62.1-44.15:5.2 of the Code of Virginia.

Special condition 15 in Part I B was modified to ensure that the permittee reports discharge monitoring at two significant digits. The changes in this section were done to conform to Guidance Memo 06-2016 (Significant Figures for Discharge Monitoring Reports) for consistency within the VPDES program.

For more information please contact Elleanore M. Daub, Department of Environmental Quality, Richmond, Virginia (804) 698-4111, FAX (804) 698-4032, or email emdaub@deq.virginia.gov.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Proposed Regulation

22VAC30-10. Public Participation Guidelines (amending 22VAC30-10-10, 22VAC30-10-20, 22VAC30-10-40, 22VAC30-10-50).

There are no public hearings are scheduled. Written public comment may be submitted until 5 p.m. on February 8, 2008.

The proposed amendments (i) add the Virginia Regulatory Town Hall as an option for providing public notice and public comment; (ii) update references to the Code of Virginia that have changed as a result of recodification and other legislative changes; (iii) authorize the commissioner to purge entries on the public participation notification list when the individual or entity requests to be removed from the list, when notices are returned as undeliverable, or when there is no response to a request from the commissioner; (iv) provide that the failure of any person or entity to receive any notice or any copies of documents provided under these guidelines shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia); (v) require the department to consider all input received within the established comment period; and (vi) provide that any person or entity may petition the commissioner to develop a new or amend an existing regulation, but the department shall have to sole authority to dispose of the petition.

For additional information please contact Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, Richmond, (804) 662-7612, FAX (804) 662-7696, or email vanessa.rakestraw@drs.virginia.gov.



DLS BULLETIN BOARD

Joint subcommittees should submit an executive summary including their findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.

Prefiling for the 2008 Session began on November 19, 2007.

All requests for drafts of legislation for prefiling to be submitted to DLS by 5:00 p.m. on December 5, 2007.

Budget submitted by the Governor on December 17, 2007.

All drafts of legislation to be prefiled returned by DLS for requester's review by midnight December 28, 2007.

All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 4, 2008.

All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 4, 2008.

Covered drafts of legislation to be prefiled available at DLS by noon on January 8, 2008.

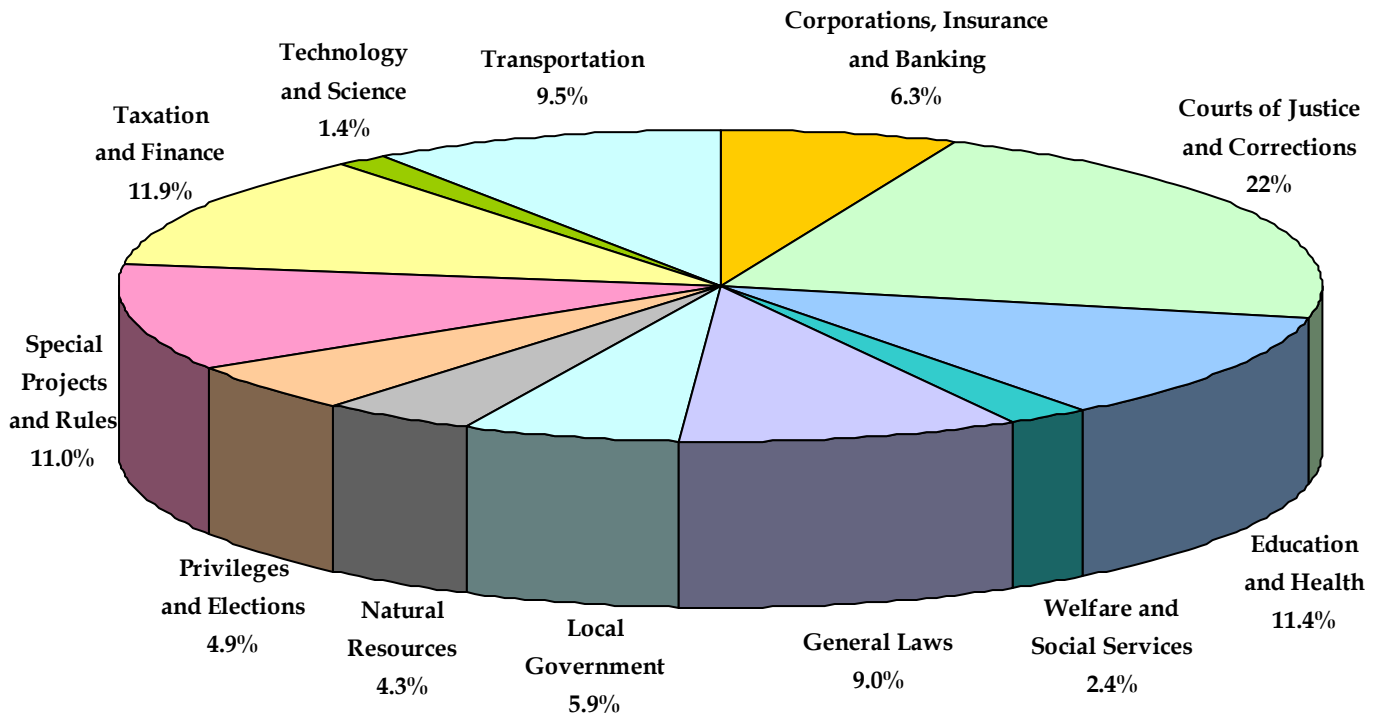
All requests for drafts, redrafts, and corrections for first-day introduction bills to be submitted to DLS by 5:00 p.m. on January 8, 2008.

Prefiling for the 2008 Session ends at 10:00 a.m. on January 9, 2008.

The 2008 General Assembly convenes on January 9, 2008, at noon.

2007 Requests for Draft Legislation *

Total Bills - 6616



* Bill drafts prepared by DLS for the 2007 Session (includes resolutions and substitutions).

2007 Regular Session *

Bill Type	Introduced	Passed House	Passed Senate	Passed Both	Continued	Failed	Approved	Vetoed
H.B.	1599	736	624	623	193	976	616	7
H.J.R.	460	356	337	336	36	123	0	0
H.R.	50	43	0	43	0	7	0	0
S.B.	695	338	446	335	110	360	330	5
S.J.R.	237	193	209	196	19	45	2	0
S.R.	28	0	25	25	0	3	0	0
TOTALS	3069	1666	1641	1553	358	1514	948	12

* Approximately 41% of introduced bills (excluding resolutions) became law and less than 68% of all bills and resolutions drafted by DLS were introduced.

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