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Special Subcommittees of the House Committee on General Laws and the Senate Committee on General Laws and Technology Studying Charitable Gaming Laws

September 15, 2009

The Special Subcommittees of the House Committee on General Laws and the Senate Committee on General Laws and Technology Studying Charitable Gaming Laws met at the General Assembly Building in Richmond.

Presentations

Staff Report

Staff provided a report on the three public hearings that were held on behalf of the Special Subcommittees to obtain comments and suggestions from all aspects of the charitable gaming community in Virginia. A total of 87 people attended the hearings, which were conducted in three regions of the state - Northern Virginia (Annandale), Tidewater (Norfolk), and Southwestern Virginia (Roanoke). Staff reported that while organizations that conduct charitable gaming were well represented, other sectors, including the charitable entities that benefit from the gaming operations and individuals who participate by playing the games, were not as well represented.

Staff advised that after the completion of public comment for each hearing, there was "town hall" type discussion on how charitable gaming is conducted in the state. These discussions were instrumental in developing consensus on some issues and generating several suggestions for legislative changes. In addition, Department of Charitable

Gaming (DCG) staff at each hearing helped answer specific questions regarding the agency's processes and regulatory practices and moved towards developing a dialogue with the charitable gaming community.

Staff advised that over the course of the public hearings several themes appeared with some consistency and around which some consensus developed. These included the following key points:

- General objection to increasing the regular per-game bingo prize amount from \$100 to \$250.
- General agreement that the paperwork involved with obtaining and maintaining a permit is too complicated.
- General objection to increasing the number of gaming nights from two nights to four nights per week.
- General agreement to decrease the amount of time between gaming sessions from one hour to 1/2 hour.
- General agreement to use innovation to make the games more exciting.

For a complete description of the discussion regarding each item above, please see the Special Subcommittee's website. Staff also advised that over the course of the public hearings several specific suggestions were made regarding legislation or changes that would require legislative action to implement. These included:

- Establishing DCG as a special fund agency similar to state entities charged with regulating professions and

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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.

Effective January 1, 2010, the Division of Charitable Gaming will be merged with the Division of Consumer Protection within the Department of Agriculture and Consumer Services.

occupations. This would allow DCG to use permit and audit fees to directly support the agency's operations and provide enhanced service and support to permit holders.

- Reviewing the 10% threshold to ensure that it adequately includes all expenses related to gaming and makes appropriate allowance for the size of the operation and whether the organization owns or rents the gaming location.
- Removing Winner-Take-All games and instead increase the number of Lucky 7-type games from one to three per night and allow each game to start at \$1,000 rather than the current \$500.
- Allowing two \$500 jackpot games rather than one \$1,000 jackpot game.

Mike Sheffield, Division of Charitable Gaming, Department of Agriculture and Consumer Services

Mike Sheffield, a member of the Charitable Gaming Board, stated that he had received a communication indicating that, effective January 1, 2010, the Division would be merged with the Division of Consumer Protection within the Department of Agriculture and Consumer Services. Betty Bowman, current Executive Director of the Division of Charitable Gaming, indicated that she would be retiring.

Chairman Jones asked what would be the level of expertise related to charitable gaming when the transfer would occur in January 2010. Ms. Bowman stated that charitable gaming expertise was not limited to her and that all of the staff as far as she knew would remain. She indicated that when she came to the Division in 2003, there were 35 employees. When the merger with the Department of Agriculture and Consumer Services occurred the number of employees was at 30. This number was lowered to 23 by November of 2008 and as of the date of the meeting there were 21 employees.

Public Comment

Chuck Lessin, Charitable Bingo Association

Mr. Lessin stated that the groups that he represents believes that there needs to be a Department of Charitable Gaming and that more supervision was needed rather than less to prevent misappropriation and misuse. He indicated that most of the members of his organization would adamantly oppose the merger. Mr. Lessin stated that he would be presenting a compilation of 15 points of recommendation on behalf of his organization to the Special Subcommittees at a future meeting.

Bill Tennyson, Hampton Elks Lodge

Mr. Tennyson stated that bingo gaming has significantly decreased in recent years. He asserted that the Elks are against any significant increase in the prize amounts and increasing the number of playing nights. He indicated that his organization was not concerned about the decrease in the amount of time between gaming sessions.

Kevin Carol, Legislative Chair, Fraternal Order of Police of Virginia (FOP)

Mr. Carol provided written comments containing the positions taken by the FOP relating to the regulation of charitable gaming. According to the statement, the FOP supports the recalculation of the use-of-proceeds formula for charitable giving to be based on gross receipts minus actual expenses incurred in the operation of the bingo game. The new adjusted gross use-of-proceeds amount would exclude (i) prize money, (ii) cost of bingo paper/computers used to operate the game, (iii) security needed to keep the players safe, and (iv) cost of audit fees. The FOP opposes raising the jackpot amounts above the present level and changing the allowable playing days from two to four. Finally, the FOP takes the position that the audit fee amounts to a tax and that if an audit fee is charged, then it should go directly to the support of the Division and not to the state's general fund.

Ronald Hicks, Virginia Elks

Mr. Hicks stated that no major changes should be made to the current law. He expressed concern that too many changes would move bingo to more of a gambling situation and less of a recreational activity.

David Bailey, Virginia State Firefighters Association

Mr. Bailey expressed concern on behalf of the Association that the Division was in his view being downgraded. He also stated that according to § 18.2-340.31 of the Code of Virginia, all money collected by the Division in terms of permit and audit fees should go to the Division.

Discussion of Special Subcommittees' Work Plan

The Special Subcommittees then discussed the status of the study and how it will proceed. Chairman Jones asked Ms. Bowman if the current employees are able to handle the workload to which Ms. Bowman replied that the staff struggles

to keep up with the workload. Chairman Jones then asked approximately what percentage of staff time is dedicated to assisting charitable organizations meet the use-of-proceeds requirement. Ms. Bowman stated in the past the practice was to go onsite to assist the organization, but that because of staff cuts assistance has been provided via telephone. She stated that the Division has four auditors, when there used to be 10, and that they try to perform audits every three years. In addition, the Division attempts to perform inspections of every gaming site three or four times per year. Currently the Division takes in approximately \$3.2 million in fees and of that amount, \$1.7 million goes to the direct support of the agency. The remainder is deposited in the general fund. There was discussion among the members on the information received during the meeting.

Chairman Jones directed staff to assemble all suggestions and disseminate them to the members at least one week before the next meeting. Any organization or group that wants to have a suggestion considered would need to send them to staff to be included in the document that will

be sent to the members prior to the next meeting.

Next Meeting

The next meeting dates will be posted on the Special Subcommittee's website and the General Assembly calendar as soon as information is available.

Special Subcommittees of the House Committee on General Laws and the Senate Committee on General Laws and Technology Studying Charitable Gaming Laws

Delegate S. Chris Jones, Chair

Maria J.K. Everett, Amigo Wade

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[study website](#)

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The Division of Charitable Gaming currently takes in \$3.2 million in fees and uses \$1.7 million for direct support of the agency.

Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying the Use of Forest Products as a Renewable Energy Resource

September 23, 2009

The initial joint meeting of the Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying the Use of Forest Products as a Renewable Energy Resource was held in Richmond. The Special Subcommittees appointed Senator A. Donald McEachin and Delegate Benjamin L. Cline as co-chairmen.

Senate Bill 913

Staff Report

Staff outlined the contents of Senate Bill 913 within the context of the Virginia Electric Utility Restructuring Act. Senate Bill 913 strikes language imposing a 1.5 million ton cap on the use of specific forest products including wood chips, sawdust, and bark by investor-owned utilities towards meeting renewable energy generation incentive goals.

The adoption of Senate Bill 1416 and House Bill 3068 of the 2007 Session created the Virginia Electric Utility Regulation Act and established the voluntary renewable portfolio standard (RPS),

which provided an incentive for any investor-owned electric utility that has a reasonable expectation of achieving stated percentages of its generation derived from renewable energy sources including sunlight, wind, falling water, and biomass as well as waste, municipal solid waste, wave motion, tides, and geothermal power.

RPS goals are set at 4% of base year sales for 2010 through 2015, 7% of base year sales for 2016 through 2021, 12% of base year sales for 2022 through 2024, and 15% of base year sales for 2025.

Currently, only Dominion and American Electric Power Company (AEP) are eligible to participate in the RPS program. Each eligible utility may submit a plan showing that it has a reasonable expectation of meeting the RPS percentage goals to receive the 0.5% Performance Incentive.

The current language of § 56-585.2 F of the Code of Virginia limits investor-owned utilities participating in an RPS program to the use of no more than 1.5 million tons of forest products, such as wood chips, bark, sawdust, and trees each

The number of active sawmills in Virginia has declined since 2003.

year, more than was used at wood-fueled generating facilities prior to 2007, towards meeting the section's RPS goals. The 1.5 million ton cap is an industrywide total and will be allocated among utilities participating in the RPS program, based on the proportion of each utility's share of total electric energy sold in the base year.

Proponents of Senate Bill 913

Senator Richard H. Stuart, patron of Senate Bill 913, presented members with a detailed description of Senate Bill 913 and explained the impact of striking the 1.5 million ton cap from the RPS program. Senator Stuart asserted that Senate Bill 913 will encourage and allow Virginia's private forest owners to maintain their forests, assist small businesses engaged in wood product manufacturing by expanding the available market for mill residue, and remove unfair limitations placed on creating carbon-neutral, renewable electric energy. Senator Stuart provided facts related to available timber resources, at least 3,300,000 tons according to the Eighth Forest Survey, and a recent decrease in the number of active sawmills in Virginia, 155 in 2007 showing a net loss of 49 mills since 2003.

Senator Stuart challenged the reliability of assumptions used to determine the need for a cap and the tonnage amount of the cap. These assumptions included (i) the amount of unavailable hardwood that could not be harvested, (ii) the conversion factor between cubic feet and pounds, (iii) a fixed amount of forest resources, and (iv) the predicted rise in the cost of wood products for paper production. He also contended that the current legislation restricts the market of the most abundant and readily available renewable resource in Virginia.

The purpose of Senate Bill 913 is to promote fair competition between forest products consumers, end the protection of the paper manufacturing community at the expense of wood fiber providers, and promote a fair market by removing artificial restraints on the use of wood products. The presentation concluded with a list of supporters of Senate Bill 913, which included the Virginia Forest Products Association, the Virginia Loggers Association, the Virginia Farm Bureau Federation, and the Virginia Alternative and Renewable Energy Association.

Next followed the testimony of 10 individuals representing businesses and associations related to the production and supply of forest

products. Bill Garden of Potomac Supply, a 300-employee sawmill and lumber producer, explained the effects of the recession on sawmills generally and the need for expanded markets. Currently, Potomac Supply ships chips out of state because the demand and the market price for them in Virginia are so low. Mr. Garden stated that one million tons of green sawdust would generate only 80 megawatts of power. Mr. Garden termed the current legislation as a "blunt instrument" and stated that the State Corporation Commission (SCC) would be a better determiner of any dispute about the appropriate amount of biomass to be used toward meeting RPS goals.

Clark Diehl of Arbortech, Dickie Dost of Chips, Inc, Nelson Flippo of Flippo Lumber, Kenny Gibson of Gibson Logging, Bob Norman, an independent forester, Andrew Smith of the Farm Bureau, Jim Mooney of the Virginia Loggers Association, and August Wallmeyer of International Biofuels gave similar testimony. Each proponent of Senate Bill 913 expounded briefly on the state of the economy and a need for expanded forest product markets. Several spoke to the importance of long-term management of forest land and resources that must be preserved, and many pointed to the SCC as the proper arbiter of any forest products use dispute. Randy Bush of the Virginia Forest Products Association provided a handout to the members that explained the basics of Senate Bill 913 and the 1.5 million ton cap and detailed the benefits of Senate Bill 913 for small businesses involved in forest products production, the benefits to Virginia's 350,000 plus forest landowners, the promotion of sustainable forest resources, and the benefits to the Commonwealth's renewable energy goals.

Opponents of Senate Bill 913

W. Scott Johnson and Bill Scarboro of the International Paper Company spoke against SB 913. Mr. Scarboro gave a presentation exploring the sustainability of Virginia's forests. Mr. Scarboro explained that the 1.5 million ton cap was calculated by adding the tons per year of excess merchantable softwood (1,487,923 tons/year) and excess merchantable hardwood (1,356,567 tons/year) produced in Virginia and adjusting for the amount used by announced utility wood boilers (1,300,000 tons/year). He presented information calculating the potential biomass use of utilities participating in RPS with the 1.5 million ton cap in place and found that the utilities would generate zero megawatts under Phase I of the plan, 31.7

megawatts under Phase II, 57.6 megawatts under Phase III, and 216 megawatts under Phase IV. Mr. Scarboro pointed out that in 2009, Dominion reported to the SCC that it used 650,000 tons of wood chips and wood derivative products per year. He stated that the cap was not limiting the amount of wood products utilities could purchase and that the cap was not hindering the use of wood products by utilities.

Mr. Scarboro's presentation also illustrated that even with the cap in place, RPS would have a negative impact on the sustainability of Virginia's forest, with an annual loss of 56.8 million cubic feet and 1.8 million tons of forest area per year. Explaining that local or regional forest products are harvested and used in producing paper, Mr. Scarboro illustrated that forests of the Tidewater Region would experience a net loss of 25,957,067 cubic feet and 908,497 tons as the competing consumer used the resource.

Mr. Scarboro concluded with remarks that the growth and demand of Virginia's forests are closely balanced and that the current RPS plan allows utilities to gain an extra profit for all renewable energy resources in use before January 1, 2007, and an additional profit on the use of up to 1.5 million tons of biomass without limiting the total amount of biomass that the utilities can use.

Use of Forest Products to Generate Electricity

Lisa C. Moerner, Dir. of Environmental Policy, Dominion Resources

Ms. Moerner gave an overview of Dominion's current and projected biomass energy needs as part of its overall renewable assets portfolio. Dominion currently has two biomass facilities - one 83 megawatt facility in Pittsylvania County and one six megawatt facility in Altavista. The planned Virginia City Hybrid Energy Center will burn a mixture of coal and wood, generating up to 117 megawatts of electricity from biomass fuel. Ms. Moerner expressed Dominion's commitment to meet the federal RPS goal of 25% by 2025 under the Waxman-Markey bill, the Virginia RPS goal of 15% by 2025, and the North Carolina RPS goal of 12.5% by 2021. Dominion views the low cost of biomass as a hedge against rising fuel costs and recognizes the need to develop a market for the most attractive and economic biomass fuels.

Ms. Moerner's report detailed the use of wood chips at the 83 megawatt Pittsylvania

power station, the largest biomass station in the eastern United States. Seventy percent of the fuel used by the Pittsylvania power station originates within a 90-mile delivery radius of the station. The six megawatt Altavista power station is fueled by sawdust purchased from local furniture companies.

When evaluating a proposed site for a biomass power station, Dominion reviews the regional "wood basket" and any competing interests. Several of the typical biomass fuels used by Dominion are not limited by the Virginia RPS cap and include slash and logging residues, pre-commercial thinnings, and opportunity fuels such as pallets. Fuels used by Dominion that are affected by the RPS cap include green wood chips, sawdust, and mill residues.

Ron Jefferson, External Affairs Mgr., Appalachian Power Company

Mr. Jefferson reported to members that AEP currently has a 2,000 megawatt capacity, uses no biomass at present, and has no plans to use biomass in the near future.

Impact of Renewable Biomass Energy Generation

The Honorable Robert S. Bloxom, Secretary of Agriculture and Forestry

Secretary Bloxom presented the members with information in advance of a report on the impact of biomass energy generation on the manufacturers, harvesters, and landowners involved in the forest products industry. Secretary Bloxom outlined some of the empirical problems in measuring the impact, which include the varying definitions of biomass and the amount of available forest biomass under the Energy Independence and Security Act of 2007 (EISA) and the more inclusive 2008 Farm Bill.

The 2007 EISA limits the amount of forest biomass from naturally regenerated forest land, and relies primarily on forest biomass from planted stands to meet the fuel standard and qualify for renewable fuel credits. Under EISA, the source of tree biomass delivered to an energy facility would be tracked by a required chain-of-custody system identifying the type of landowner and verifying trees from plantations or natural stands. In addition, federal lands are excluded from such opportunities. In contrast, the 2008 Farm Bill definition of forest biomass does not restrict natural or plantation forest land leaving the available biomass open to most

Seventy percent of the fuel used by Dominion's Pittsylvania power station originates within a 90-mile delivery radius of the station.

The 2008 Farm Bill definition of forest biomass does not restrict natural or plantation forest land.

private forest land. Secretary Bloxom presented maps comparing the amount of biomass in the United States and Virginia according to both EISA and the Farm Bill. The full report is expected to be delivered to members in December 2009.

Other Business

Co-chairman Cline requested staff to track any related developments in the federal Waxman-Markey bill.

Next Meeting

The Special Subcommittees intend to hold a joint meeting in December following the publication of the Department of Forestry report. The meeting date will be posted on the General Assembly calendar as soon as information is available.

Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying the Use of Forest Products as a Renewable Energy Resource

Senator A. Donald McEachin and
Delegate Benjamin L. Cline, Co-Chairmen

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Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying Title Lending

September 24, 2009

The second joint meeting of the Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying Title Lending met in Richmond.

Tennessee's Title Pledge Act

Greg Gonzales, Commissioner, Tennessee Department of Financial Institutions

Mr. Gonzales gave information about the implementation of Tennessee's 2005 amendments to its title pledge laws. Prior to the 2005 changes, title lenders were required to register with the county clerk. The 2005 amendments moved away from this decentralized approach and made title lenders subject to licensing and examination by the Department of Financial Institutions. Another major feature of the 2005 legislation was to require principal reduction of loans starting with their third renewal. Under this feature, the lender is required to reduce the outstanding principal balance subject to interest and fees by five percent per month, whether the payment is received or not. It has the practical effect of reducing the payoff time on a title pledge loan to 22 months.

Other features of the 2005 amendments include requirements that the lender return to the borrower any surplus funds generated from the

sale of the collateralized motor vehicle, sales be conducted in a commercially reasonable manner, borrowers be provided with disclosures, and loan agreements include the Department's address and telephone number for filing complaints. Two dozen complaints were filed in 2007, and 30 were filed last year. Several members commented on the small number of complaints, given that over 139,000 new loan agreements were executed in 2006.

The 2005 legislation required the Tennessee Department to periodically report on the title lending industry. In its first report, released in February 2006, the Department found that 27 percent of lenders were charging their customers more than the 22 percent per month allowed by law. Regular examinations since that time have eliminated these overcharges by title lenders.

The number of title lending locations in Tennessee decreased from 931 in 2005 to 703 in 2006. Unpublished data shows that as of June 30, 2009, there were 764 licensed locations. The Department's 2008 report indicates that the average title loan amount was \$557. Over 18,000 motor vehicles were repossessed following loan defaults. Over \$1.2 million of surplus following sale of reposed vehicles was returned to borrowers. Of the 83,570 agreements outstanding as of December 31, 2006, 88 percent had been renewed at least

one time, and 14 percent had been renewed 10 or more times.

The Department's 2008 report also addressed the profitability of title lending. It reported that licensees earned net income of \$9.3 million on \$72.1 million in total revenue, of which \$5.1 million was distributed to owners and \$4.2 million went to retained earnings. Lenders that charged the maximum of 22 percent per month had a profit margin ratio of 20 percent. The report notes that the average break-even rate for lenders, which is the interest rate a lender would charge on average in order to cover its costs, was 17.6 percent per month. The break-even point is less for lender groups with less bad debt expense. Single-location licensees had bad debt expenses averaging 5.8 percent and had break-even points of 15.8 percent, while lenders with 10 or more locations had bad debt expenses averaging over 20 percent and had break-even points of 20 percent.

The Department's most recent data reveals that approximately 40 percent of title lenders are charging less than the law's cap of 22 percent per month, with the lowest rate charged being 10 percent per month. The 2008 report contains an observation that "[w]ith a wide disparity in bad debt expense among companies, we continue to speculate that the current rate provides enough cushion and perhaps incentive for some companies to operate at a less than optimum efficiency. Whether rates are lowered statutorily or not, there appears to be some competitive market forces in place that might reduce rates where competition exists. However, . . . there appears to be a trend toward consolidation and in those areas of the state where there is little or no competition, rates are not likely to move downward by market pressure."

Mr. Gonzales concluded with a summary of the Department's current efforts to promulgate rules that seek to address issues inadequately addressed in the current Title Pledge Act. Rules are proposed to cover issues involving disclosures, recordkeeping, repossession and sales procedures, and voluntary surrendering of collateral.

David Irvin, Senior Assistant Attorney General, Antitrust and Consumer Litigation Section

At the June meeting of the subcommittees, the Office of the Attorney General and Bureau of Financial Institutions were asked to prepare comments on the Tennessee Title Pledge Act. Mr. Irvin commented on the fee structure and consumer protections in the Tennessee law.

Comparisons were made to Virginia's current law, which allows title loans to be offered under Virginia Code § 6.1-330.78, as well as to other forms of small-loan consumer lending available in Virginia under pawn loan laws and the Consumer Finance Act. Mr. Irvin also compared features of Tennessee's law to other forms of legalized title lending in other states. Mr. Irvin concluded that state laws in this area generally include "tradeoffs," with some states providing lower monthly interest rates but fewer consumer protections in other areas, and vice versa.

E. Joseph Face, Jr., Virginia's Commissioner of Financial Institutions

Mr. Face provided comments on the regulatory aspects of Tennessee's title lending laws. Mr. Face concluded that its provisions with respect to issues such as bonding, licensure, and examinations, are comparable to provisions in chapters in Title 6.1 of the Virginia Code that provide for the regulation of financial services providers with one major exception. He observed that the Tennessee law does not include a prohibition on arranging or brokering loans, such as was recently added to Virginia's payday lending law. Such a feature was viewed as necessary to ensure that unlicensed lenders do not partner with other entities to provide the product. Mr. Face acknowledged that there is no data regarding the number of title lenders to title loans in Virginia because the activity is not regulated by his office. In response to a request by Senator Saslaw, Mr. Face agreed to canvass other states to determine how many title lending locations are operating in those states where this type of lending is permitted.

Staff Report

Staff provided an additional perspective on the Tennessee Title Pledge Act. Asked to determine if there were any national or multistate efforts to enact uniform title lending laws, staff observed that the American Legislative Exchange Council (ALEC) adopted a model title pledge act in September 2005. In many details, the ALEC model act is identical to the Tennessee Title Pledge Act. Further inquiry led to the finding that the ALEC model act was based on the 2005 Tennessee law. The ALEC model act varies from the Tennessee law in about half a dozen substantive areas, including the permitted interest rates and fees (Tennessee limits them to 22 percent per month, while the ALEC model allows such charges as the parties agree); principal reductions (which are required starting with the third renewal under the Tennessee law, but not until the sixth renewal under the ALEC model); and the maximum

Tennessee's Department of Financial Institutions reported that approximately 40% of title lenders charge less than the law's cap of 22% per month.

loan amount (\$2,500 under the Tennessee law and \$10,000 under the ALEC model).

Center for Responsible Lending

Jennifer Johnson, Senior Legislative Counsel, Center for Responsible Lending

Thirty-two states and the District of Columbia restrict car title lending.

Ms. Johnson described title lending as part of the predatory small dollar lending industry. She observed that 32 states and the District of Columbia restrict car title lending, and that Virginia is the only state seriously considering codifying the car-title model. She urged the Special Subcommittees to enact a double-digit interest rate cap on all small dollar lending, require small dollar lenders to determine a consumer's ability to repay a loan, limit the term of consumer indebtedness to 90 days in any year for loans with an annual interest rate exceeding 36 percent, and reject industry proposals to codify the status quo.

Ms. Johnson concluded by describing the assumption that the enactment of consumer protections will create a drag on the market and will impair business as a false dichotomy. In her view, businesses have a symbiotic relationship with their customers, and the health of the business community depends on the financial health of households. Consequently, practices that undermine the financial health of households in the long run undermine the health of the businesses that depend on them.

Her comments sparked discussion among some members, who questioned whether the few complaints filed in Tennessee undercut her characterization of title loans as predatory. One issue raised was whether people who seek small loans would turn to loan sharks if legal alternatives were to be prohibited. An industry representative stated that the average income of persons obtaining title loans was between \$55,000 and \$75,000, and added that of every 100 title loans made, five result in repossession of the collateralized motor vehicle.

Public Hearing

The meeting concluded with a public hearing at which a dozen people shared their perspectives. All but one of the speakers criticized title lending. Several speakers suggested that the Consumer Finance Act, which allows licensed lenders to charge a maximum of 36 percent interest annually on loans of up to \$2,500, should provide an adequate framework for making small consumer loans. Jeff Smith of the Virginia Financial Services Association spoke only to rebut this suggestion. He provided data that the number of loans of less than \$2,500 made by consumer finance companies in Virginia has declined from 219,257 in 1996 to 29,283 in 2008. He attributed the decline to the 36 percent annual interest rate cap, which prevents the companies from operating. Instead of continuing to make loans of less than \$2,500, the companies are making larger loans that are not subject to the statutory interest rate cap. In response to questions about the low number of complaints against title lenders, a few speakers cited the industry's use of confidentiality clauses in settlement documents.

Next Meeting

The Special Subcommittees plan to hold another joint meeting in November or early December. The next meeting dates will be posted on the General Assembly calendar as soon as possible.

Special Subcommittees of the House and Senate Committees on Commerce and Labor Studying Title Lending

Delegate Terry Kilgore, Chair

Frank Munyan and Anne Louise Mason, DLS Staff

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HJR 72: Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia

September 24, 2009

The Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia held its sixth meeting at Old Dominion University in Norfolk.

Presentations

Paul D. Fraim, Mayor, City of Norfolk

Mayor Fraim thanked the joint subcommittee for allowing him to expand upon his remarks from the previous meeting. His comments focused on the proposed tax exemption of privately operated

port operations. He stated that Norfolk is proud to be the home to the Port of Virginia's largest and busiest facility, Norfolk International Terminals. For more than 300 years, international trade has defined the city. Mayor Fraim explained that the Port of Virginia has been developed and nurtured by Virginians for generations and that we owe it to those generations and to future generations to be good stewards of the Port.

Mayor Fraim mentioned the recent Virginia Port Authority (VPA), Virginia International Terminals (VIT), and APM Terminals discussions that have been ongoing since December 2008 under a Federal Maritime Commission Discussion Agreement. Although these discussions are not part of the overall Public-Private Transportation Act (PPTA) process or the bid review currently underway, Mayor Fraim explained that such a development gives greater reason for pause and careful examination. Whatever the outcome, the long-range interests of the Commonwealth and the Port must be kept in view, regardless of how attractive short-term proposals may be.

Mayor Fraim then mentioned the three proposals submitted by CenterPoint, Carrix, and the Carlyle Group. As he understands it, the Virginia Port Authority would remain an asset of the Commonwealth and continue to be exempted from real property, leasehold, and business property taxation under the provisions set forth in the Virginia Code. However, each of the three proposers has structured its proposal to capitalize and enjoy VPA's tax-exempt status. This would be precedent-setting and contrary to prior experience. As discussed with the joint subcommittee during the last meeting, when the U.S. Navy leases base property to a McDonald's restaurant in Virginia, this becomes a taxable event and local taxes are collected on the value of the McDonald's lease in the form of a leasehold tax. Local business taxes are also collected such as meals tax and machinery and tools tax - even though the business is situated on land that is owned by the federal government. For example, the City of Norfolk collected \$1.6 million in calendar year 2008 in business-related taxes from private businesses operating on Norfolk Naval Base. He stated that a private port operator, proposing to lease state-owned property and conduct business as a private entity, should be treated no differently.

Mayor Fraim then mentioned the 1999 Joint Legislative Audit and Review Commission's report titled Review of the Impact of State-Owned Ports and Local Governments (<http://jlarc.virginia.gov/>

reports/Rpt241.pdf). According to the report, port host cities in Virginia have a disproportionate cost to share compared against the actual economic benefits received. In fact, under the current structure, the Port actually costs host communities more than they are compensated for in terms of lost tax revenue; additional police, fire, and rescue services; and added street maintenance and transportation infrastructure impacts on communities, not counting the truck traffic congestion, noise, and pollution that affect citizens' quality of life on a daily basis.

As a result of the JLARC Study findings, the 2000 Virginia General Assembly amended the Virginia Code governing the calculation of a Port Service Fee. This legislation outlined a new Payment in Lieu of Taxes (PILOT) methodology for determining what the Commonwealth and the VPA should contribute annually to VPA host localities. Unfortunately, the PILOT program has not been fully funded to date. As Mayor Fraim explained, since the PILOT program became law more than nine years ago, Norfolk has had to calculate and collect an annual port service charge using the same inequitable formula it used prior to the 2000 PILOT legislation. This consistent underfunding and tax exemption of port operations have placed an ever increasing fiscal burden on communities that are already classified by the Commonwealth as recently as March 2009 as "fiscally stressed." In FY 09, the City of Norfolk received a combined total of \$1.1 million for the city's support and provision of fire-rescue and roadway maintenance costs attributed to port operations. The service charge amount from the VPA totaled \$485,000 and Norfolk's proportional share of Port Highway Funds from the Commonwealth totaled \$610,000. In estimating the City of Norfolk's service charge to be received from the Virginia Port Authority, the city made a variety of assumptions based on the best publicly available information. The 2000 legislation references "Total Tonnage" as a key component of the calculation. It is clear that the City of Norfolk receives a fraction of the potential revenue under existing law, or as would be available to the city if these facilities were fully taxable.

Mayor Fraim explained that the city understands that these are tough economic times for the region, state, and country. The Commonwealth could potentially gain a significant short-term financial benefit if it were

Norfolk is home of the Port of Virginia's largest and busiest facility, Norfolk International Terminals.

In FY 09, the City of Norfolk received a combined total of \$1.1 million for the city's support and provision of fire, rescue, and roadway maintenance costs attributed to port operations.

to accept one of the three competing proposals. However such a decision requires careful evaluation of each proposal, including the adequacy of compensation for host communities. Specific to the PPTA process, representatives from the port host communities should be appointed to the PPTA Independent Review Panel, as is typically accomplished in other PPTA processes. As the three conceptual proposals are considered, either the proposers and/or the Commonwealth must identify how they would address the inadequacy of the currently employed PILOT methodology.

In closing, Mayor Fraim stated that whether the VPA operations remain a state function or ultimately are privatized, any successful model must provide equitable compensation for host jurisdictions as a primary component of its overall business plan.

Dr. Robert Martinez

Dr. Martinez began his remarks by stressing that he was speaking solely from his own perspective, not on behalf of his company, Norfolk Southern. His remarks focused on the primary questions that the Virginia Port Authority and the Secretary of Transportation should consider in their review of the proposals. Fifteen years after its passage, Virginia's PPTA remains one of the most progressive, flexible, and market-oriented pieces of legislation. Dr. Martinez believes it would be a mistake to insert the General Assembly directly into the PPTA process. The current procedures attract private capital to Virginia and allowing direct participation by the General Assembly might hinder the state's ability to attract that capital for other infrastructure projects. He recommends that this joint subcommittee pull together a series of considerations that the oversight board should answer in its deliberations prior to making a decision on these proposals.

Dr. Martinez set out some thoughts to consider as the proposals move through the PPTA process. The VPA has done well over the years. Therefore, it is a business model that works, but that does not mean it should not be questioned. Virginia must focus attention on its surface transportation connections to inland markets (pertaining to road/highway issues and freight rail). In looking at these proposals, it is important to consider how inland transportation connections will be enhanced. Dr. Martinez commented that the timing of this process is not the best. This is perhaps the worst international maritime freight period since World War II. The markets have been in much greater

turmoil than prior to last year's financial meltdown, which makes proper valuation more difficult than in normalized markets. Next, he mentioned the length of the proposed concession and stated that no one can accurately undertake a 60-year valuation. Another important consideration involves looking at the treatment of VPA and VIT debt. Dr. Martinez concluded by stating that there are many great items in the proposals (e.g., financing, operating style, or operating management) that are not necessarily related to a privatization proposal per se and that could be pursued without a public-private transportation agreement.

Dr. Wayne K. Talley, Executive Director,
ODU Maritime Institute

Dr. Talley presented sets of questions that should be asked in connection with the three proposals. The questions regarded the following areas and the entire presentation can be viewed on the joint subcommittee's website:

- Private operator payments.
- Quality of service.
- Penalties and rewards.
- Bankruptcy and goals.
- Length of contract.
- The recent VIT/APM proposal.
- Timing of privatization.

Jerry A. Bridges, Executive Director,
Virginia Port Authority

Mr. Bridges explained that the Port of Virginia is a port that (i) is efficient and, during its best year in 2007, handled more than two million TEUs making it the third busiest container port on the United States East Coast (USEC); (ii) is a very healthy operation that has the necessary infrastructure in place, or is building it, to handle a growing volume of containers; (iii) is continuing to use its natural assets to its advantage; and (iv) has historically had good labor relations with its union. All of these things stem from a long-term, forward-thinking relationship of 29 years between the Virginia Port Authority (governmental agency) and Virginia International Terminals Inc. (private operator). In the industry the VPA-VIT set-up is seen as a model owner-operator relationship. They have a close collaboration and work together on multiple fronts: infrastructure development, customer service, economic development, and advance planning. In 1982, TEUs at the Port of Virginia totaled 289,000 and grew to two million in 2007. For 29 years, the VPA terminals have been run and managed by a private operator. Many of the benefits that the

Commonwealth has enjoyed as a result of the Port's success are the result of a continual collaborative economic development effort among VPA, VIT, the Virginia Economic Development Partnership, other state agencies, and local governments. The most visible result of that effort is that one out every nine jobs in the Commonwealth is in some way tied to the marine cargo operations in Hampton Roads. It is hard to estimate what the job creation and/or impact will be as two out of the three bidders have no experience in maritime operations. Mr. Bridges stressed that job retention and creation are the result of a competitive port and that job loss only comes when the Port cannot compete with other USEC ports.

Next Meeting

The next meeting will be November 12, 2009, at noon at Old Dominion University.

HJR 72

Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia

Delegate Harry Purkey, Chairman

Kevin Stokes and Caroline Stalker, DLS Staff

[study website](#)

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

(804) 786-3591

One out of every nine jobs in the Commonwealth is in some way tied to the marine cargo operations in Hampton Roads.

SJR 357: Joint Subcommittee to Study Creating a Regional Rapid Transit Network

October 6, 2009

The Joint Subcommittee to Study Creating a Regional Rapid Transit Network met in Woodbridge.

Presentations

Eric Marx, Dir. of Planning & Operations, Potomac and Rappahannock Transportation Commission (PRTC)

Mr. Marx began by explaining that the PRTC is a transportation district comprised of five local governments: Prince William County, Stafford County, City of Manassas, City of Manassas Park, and City of Fredericksburg. Under state law, PRTC is authorized to plan and operate transit services for residents of the member governments. PRTC provides express bus, local bus, ride matching, and commuter rail services (the latter in cooperation with the Northern Virginia Transportation Commission). Mr. Marx looked at some of the elements needed to make bus rapid transit (BRT) a competitive transit option. Travel time advantages and reliability require lanes that allow buses to have largely unimpeded movement for the majority of the route. However, new dedicated or shared HOV lanes require a significant capital investment. Another element involves increasing the frequency and ease of use of service to make bus

transit more attractive. However, with fares typically covering no more than 50% of operating costs, a significant amount of new, on-going, and consistent operating subsidies would be required. Finally, providing access is another element to consider. In the current service environment, there is a good chance commuters will only be able to access BRT by walking on one end of their trip. Where walking and/or biking is not feasible, new and expanded parking lots and/or a supplemental feeder bus system is necessary. PRTC's approach to BRT includes:

- Using existing HOV lanes.
- Operating as frequently as every eight minutes.
- Using a comfortable, late model fleet.
- Having well-trained bus operators.
- Using systems to maintain on-time performance and keep customers informed.

Mr. Marx explained that service quality directly correlates to success, which can be achieved to varying degrees by differing levels of investment.

Mr. Marx next discussed what is needed to achieve a quality BRT service. Money is the primary hurdle, especially on the operating side. Simply maintaining existing services is a challenge. Local funding accounts for the majority of operating subsidy, but is yielding less than what is needed to sustain the service. Low

The Potomac and Rappahannock Transportation Commission is a transportation district composed of five local governments.

and fluctuating state assistance makes multiyear planning difficult. The program needs a steady source of state funding tied to achieving the General Assembly's stated aim of covering 95% of eligible costs. Also needed are more proactive efforts to enhance BRT's travel time advantage. Incorporating technology is also needed to achieve a quality BRT service, including real-time transit information, amenities such as wi-fi, and vehicle system remote monitoring to reduce breakdowns. Mr. Marx ended his presentation with comments on the importance of parking and access.

Stephen Del Giudice, Transit Bureau Chief, County of Arlington

Mr. Del Giudice looked at the community development transportation question from the successful Arlington experience. He explained that the reduced reliance on auto travel leads to other ancillary community benefits. Part of what made the Arlington experience a success involved the integration of land use and transportation principles and the alignment of transportation investment, infrastructure, and services with development. Arlington, located at the core of the rapidly growing Washington, D.C. region, is 25.8 square miles in area, including federal lands and major federal facilities (Pentagon and Arlington Cemetery). Arlington's development concepts include:

- Concentrating high and mid-density redevelopment around transit stations.
- Preserving and reinvesting in residential neighborhoods.
- Encouraging a mix of uses and services in station areas.
- Creating high quality pedestrian and bike environments.
- Enhancing open space.

Mr. Del Giudice also looked at various travel trends, such as average weekday ridership, arterial street travel, and commuting and other transit trends.

Mr. Del Giudice closed his presentation by talking about the lessons learned from Arlington's experience. He said that Arlington's strategies have yielded extensive transportation, environmental, economic, and quality of life benefits. Many policies contributed to enhanced performance.

He advised that achieving full benefits is not a short-term commitment and requires sustaining and enhancing programs and policies over time.

Dan Rathbone, Division Chief, Fairfax County Transportation Planning Division

Mr. Rathbone focused his presentation on what was learned from the Tysons analysis. The transit improvements included in the 2030 analysis were Dulles Rail, express bus service on I-66/I-495, I-95/I-495, improved bus service between Tysons and surrounding communities, and within Tysons. It is important to keep vehicle trips constant as Tysons grows beyond the year 2030. Mr. Rathbone presented various charts showing how to keep those vehicle trips constant. The charts can be found at: <http://dls.virginia.gov/GROUPS/transit/meetings/100609/Tysons.pdf>.

In looking at growth beyond 2030, one strategy involves enhanced transportation demand management (TDM). Examples include (i) in-house carpool and vanpool matching services, (ii) on-site bus pass sales and a half-time transportation coordinator, and (iii) significant employee participation in telework. Other strategies include lowering cost improvements in order to increase transit share by identifying transit corridors for improvement, increasing tolling and congestion pricing, and limiting parking and parking pricing. Mr. Rathbone concluded his remarks by explaining that the expansion of highway capacity is limited, TDM and lower cost transit improvements help but are also limited, and additional rail/high quality rapid transit corridors combined with transit-oriented development have the potential to increase the percentage of transit use over time.

Next Meeting

The next meeting dates will be posted on the joint subcommittee's website and the General Assembly calendar as soon as the information is available.

SJR 357

Joint Subcommittee Studying the Feasibility of Creating a Regional Rapid Transit Network

Senator George L. Barker, Chairman

Alan Wambold and Caroline Stalker, DLS Staff
[study website](#)

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

(804) 786-3591

Did You Know?

"Did You Know?" will appear in each issue of the *Virginia Legislative Record*. The article will feature important topics or interesting facts that are relevant to the Virginia legislature. For general questions or suggestions for a future issue, please contact DLS at (804) 786-3591 or emiller@dls.virginia.gov.

National Conference of Commissioners on Uniform State Laws

The National Conference of Commissioners on Uniform State Laws is charged with the responsibility of working with all the states and certain U.S. possessions to adopt uniform laws, when uniformity is desirable and practicable, for presentation to the several state legislatures for enactment. The Conference began in 1892 primarily as a business-friendly and business-oriented promoter of laws that would facilitate various entities as they interacted within and conducted business between the several states. It was early recognized that a confusion or difference of laws between the states would present, in many instances, a deterrent to the free flow of goods, credit, and services and thereby restrain full economic and social development. The Uniform Commercial Code, which was developed in conjunction with the American Law Institute, is the most widely recognized uniform act.

The Conference membership includes practicing attorneys, judges, legislators, law school

professors, and the principal officer from each state charged with the responsibility of drafting legislation. The Conference's organizational plan ensures its nonpartisan nature and objective approach to legislative drafting. Although all interested parties customarily are welcomed to participate in the drafting process, the voting member represents no special interest.

The Conference is funded through state dues allocated according to population and Virginia's portion is budgeted with general funds. The Virginia Commissioners are situated within the legislative branch and are staffed by the Division of Legislative Services. Virginia appointees receive no compensation or salary and contribute many hours of their personal time toward the success of the various acts developed by the Conference. Over 50 such uniform acts have been adopted in Virginia to date.

For the 2010 General Assembly Session, it is expected that the Uniform Power of Attorney Act and the Uniform Adult Guardianship and Protective Proceedings Act will be introduced. For more information go to <http://www.nccusl.org>.

-E.M. Miller, Director

Study Meeting Calendar for November – December '09

<i>Study Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Circuit Court Clerks' Offices	10:00 a.m., Monday, November 9, 2009 Senate Room B, GAB Bldg.	Mary Felch
Public-Private Partnerships Related to Seaports	Noon, Thursday, November 12, 2009 Board of Visitors Room, Webb Center, Old Dominion University, Norfolk	Kevin Stokes Caroline Stalker
Working with Virginia's Private Nonprofit Colleges	10:00 a.m., Monday, November 16, 2009 House Room C, GAB Bldg.	Jessica Eades Nicole Cheuk
Special Subcommittees on Charitable Gaming Laws	2:00 p.m., Monday, November 16, 2009 House Room C, GAB Bldg.	Maria Everett Amigo Wade
Development and Land Use Tools	10:00 a.m., Friday, December 4, 2009 House Room D, GAB Bldg.	Kevin Stokes Jeff Sharp Rebecca Young

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

Virginia Freedom of Information Advisory Council

09/21/09

The Virginia Freedom of Information Advisory Council (the Council) met in Richmond to receive subcommittee reports and hear about possible FOIA legislation.

Subcommittee Reports

Personal Identifying Information Subcommittee

The Council was advised that the Personal Identifying Information Subcommittee (PII Subcommittee) had met briefly at 9:30 a.m. before the Council meeting. Unfortunately, the PII Subcommittee lacked a quorum for this meeting and by consensus of those members in attendance decided to hold another subcommittee meeting if needed or specifically requested by patrons of bills being studied by the subcommittee on November 9, 2009. However, the redraft of SB 880 prepared by staff was reviewed by the Council.

Staff advised that the redraft for SB 880 provides that the name, address, telephone number, email address, and credit card or bank account data of individual applicants for or holders of any hunting, fishing, boating, or trapping license issued by an agent of the Department shall be exempt from FOIA disclosure, provided that such individuals have requested that the Department not disclose such information. A Council member inquired whether there was any general law that protected credit card or other bank card information. Staff responded in the negative. The member also asked whether licensee information should be open, save the bank card information, and further inquired whether the Council was now predisposed to keep licensee information away from the public. The consensus of the Council was that it was not predisposed to protect certain licensee information. Delegate Griffith stated that credit card and bank card information, and perhaps a licensee's email address should be protected. The Council by consensus stated that there should be a general exemption to protect credit card and bank card information; however, it is important that the public know who the licensed people are. The Council asked for public comment on this issue.

Craig Merritt, representing the Virginia Press Association (VPA), expressed that there is a legitimate need to protect people from identity theft and agrees that credit card and bank card information should be

protected. However, he noted that the remainder of the information is already in the public domain via the telephone book, Internet search engines, and the like.

Chris White, representing Reed Elsevier (parent company of Lexis-Nexis), advised the Council that there were legitimate uses for licensee information. For example, in the context of child support enforcement, licensee information (i.e. who has a registered boat) is helpful to track "deadbeat dads" who may be hiding assets.

Other members of the Council felt that while name and address information should be public, telephone numbers and email addresses should be protected. As a result of the discussion, Delegate Griffith directed staff to again redraft the bill in two ways ~ first to protect credit card and bank card information and the second version also to include protection for telephone numbers and email addresses. He indicated that the PII Subcommittee would meet again on Friday, November 6, 2009, at 10 a.m. to review these drafts. He asked staff to post the drafts by November 2, 2009.

Public Records Subcommittee

Staff reported that it was working on publication of a guidance document that would clarify what is covered under the definition of "public records" found in FOIA and give specific examples of those records.

Public Comment

Rob Lockridge, University of Virginia

Mr. Lockridge reported to the Council that it would be seeking an exemption in FOIA for the findings of threat assessment teams created under Chapter 450 of the 2008 Acts of Assembly. Chapter 450 requires public institutions of higher education to implement a crisis and emergency management plan to prevent violence on campus, including assessment and intervention with individuals whose behavior poses a threat to the safety of the campus community. Delegate Griffith inquired whether as a parent he should know about the assessments. He questioned whether there was a difference between an individual who may be behaving badly as a result of alcohol and someone who is truly a threat.

Jim Council, Prince William County Public Schools and Mary McGowan, Counsel to Prince William County Public Schools

Mr. Council and Ms. McGowan told the Council that they had two legislative initiatives. First, to address the serious unintended consequences from SB 1505 (2009) that attempted to clarify that enforcement actions

under FOIA take precedence over other general provisions of law relating to writs of mandamus or injunction. Mr. Council and Ms. McGowan indicated that the changed language could be abused by a plaintiff who would only notice a public body of a petition on the day the petition was to be heard by the court, depriving the public body of any opportunity to prepare. By consensus, the Council agreed that this matter should be an agenda item for its meeting on November 9, 2009.

The second issue presented by Mr. Council and Ms. McGowan involved an exemption for the visitor surveillance system recently implemented in the Prince William County Public Schools, which was the subject of a Council opinion in 2008 (AO-03-08). That opinion held that to withhold any of the requested records relating to the visitor surveillance system from disclosure, whether the records are exempt portions of a school safety audits or may be withheld under other FOIA exemptions, the school must respond in writing, identify with reasonable particularity the volume and subject matter of the withheld records, and cite the specific statutory exemption or exemptions that allow the records to be withheld. Ms. McGowan indicated that this was a case where technology was ahead of the law. In brief, visitors are required to present government-issued identification, then the system scans the identification and performs a multistate background check against various databases. Information retained in the systems is routinely shared with local law enforcement. Mr. Council indicated that essentially the system was a background check for sex offenders and other individuals who may pose a threat to children, and is also useful for locating visitors in the case of any emergency.

A lengthy discussion then ensued regarding the surveillance issue and background checks. The complete report of the discussion can be read in its entirety on the Council's website. As a result of the lengthy discussion and concerns expressed, Delegate Griffith requested that the Public Records Subcommittee study this issue. It was requested that the subcommittee identify what information is collected and then address what should be available and what should not. Delegate Griffith expressed his concern about the speed with which the system runs its checks and the resulting misidentification that can take place. He stated that it is generally held that the faster the processing of information the greater the likelihood of misidentification. He noted that implementation of this system certainly would have a chilling effect on people participating with the school system, especially someone with an old criminal

conviction of which he has not told people (perhaps not even to a spouse). With this system, this would be known. The subcommittee was directed to study these issues and report back to the Council with a recommendation.

Other Business

Staff advised of the dates and locations where the 2009 statewide FOIA Workshops were held. Megan Rhyne for the Virginia Coalition for Open Government (VCOG) advised the Council of the VCOG conference in Staunton on October 15 and 16, 2009.

Next Meeting

The next meeting of the FOIA Council is scheduled to be held at 3:00 p.m. on Monday, November 9, 2009, for the Council's annual legislative preview. The meeting will be held in House Room D of the General Assembly Building.

DELEGATE MORGAN GRIFFITH, CHAIR

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**Virginia Freedom of Information
Advisory Council**

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

Virginia Commission on Energy and Environment

10/6/09

The Virginia Commission on Energy and Environment met at the Institute of Advanced Learning and Research in Danville.

Subcommittee Reports

Senator Petersen reported that the Subcommittee on Energy Efficiency and Conservation met on September 16 and:

- Reviewed energy efficiency legislation that came before the General Assembly in the 2009 Session and focused on dynamic rate policies as an opportunity for encouraging conservation by users.
- Received presentations from utilities on their implementation of demand-side management programs.
- Received an update in the pending matter before the State Corporation Commission on the regulation of achievable, cost-effective energy conservation and demand response targets.

Public comments included the experience of the natural gas industry in decoupling and the opportunities created through inclining block rates, which set electricity prices in a positive relationship to quantity consumed. The subcommittee will meet again prior to the last full meeting of the Commission.

Delegate Poindexter advised that the Subcommittee on Renewable Energy would meet on October 22 and hear presentations on "Green Jobs," distributed generation and biomass, the innovation at Piedmont Bio Products, and green building in a rural environment.

Possible Legislation for Upcoming Session

Senator Whipple began a review and discussion of possible legislation for the upcoming session of the General Assembly. She stressed that this was an initial discussion for the members to explore policies for further investigation and eliminate those ideas with less promise.

Explore capacity of state to issue RFP and enter into long-term power purchase agreement with offshore wind developer and/or provide rate adjustments to ensure a competitive price for electricity produced from offshore wind energy resources.

It was noted that this suggestion arose during the previous meeting that focused on offshore wind energy generation and that the State of Delaware has entered into such an agreement with one of the private developers that presented to the Commission. A member noted his support for having the state step in and be a willing buyer to assist in market creation but hoped the Commission would broaden the policy to include other renewable energies. Another member agreed and stated his concern that the government is not suited for selecting technology standards in such quickly evolving fields.

Support for fuel-efficient driving practices; opportunities with DMV to encourage driver education.

Senator Whipple discussed the importance of driving practices to maximize fuel efficiencies. It was recalled for the Commission that speed limits were decreased during the 1970s to reduce consumption of gasoline during the oil embargo. The Commission agreed that driver education was preferable to changes in the speed limits. It was noted that the Department of Environmental Quality worked with the Department of Education to include environmental education related to driving and automobile maintenance for high school students.

Make recommendations in "Title 67: Virginia Energy Plan" regarding the policy of the Commonwealth for nuclear, wind, and/or solar resources.

Staff reviewed the role of Title 67 of the Code of Virginia. Current policy statements in Title 67 include the Commonwealth's support of clean coal and offshore resources. A member asked about hydropower support and Senator Whipple wanted to ensure that support for biofuels was clearly stated. Another member hoped that the Commission would consider the implications of a policy endorsement as it would apply statewide.

Identify continued funding sources for the Virginia Coastal Energy Research Consortium.

Senator Whipple stated the sense of the Commission that the Virginia Coastal Energy Research Consortium has helped Virginia develop technology and compete amongst other states. It was noted that some proposals were outstanding for federal funds, but state assistance may still be needed. Most importantly, the federal and private grant funds that might become available would require matching funds. Senator Whipple stated that the members would speak to the Senate Finance Committee and the House Appropriations Committee on the issue.

Require that the Climate Change Action Plan is continued and updated.

Senator Whipple expressed her hope that the report of the Governor's Commission on Climate Change

would continue and be updated. It was clarified that the Governor's Commission was annual and had terminated its work. Senator Whipple suggested that the enabling legislation for this Commission, the Virginia Commission on Energy and Environment, could be expanded to include the responsibility of updating the Climate Change Action Plan. This Commission could request assistance from other agencies as needed.

Expand personal tax credit for Energy Star products to those eligible for WaterSense certification.

Add a four-day tax holiday in the spring, similar to the existing four-day tax holiday in the fall, for Energy Star and WaterSense eligible products.

A member spoke to the importance of conservation and energy-efficient products. He would like to look at the policy supporting the tax holidays and, if the policy is worthwhile, provide the tax incentive or credit all year instead of only on several days, and then sunset the tax credit after several years. The benefit to the retailers of sale events was mentioned but a member cautioned of the dim revenue picture faced by the Commonwealth. Another member agreed and expressed his hope that whatever savings were granted to consumers would be spread throughout the year instead of only certain days. It was noted that the sales tax avoided during the four-day Columbus Day weekend was projected to be \$185,000.

Support the second resolution and ballot bill for the constitutional amendment that would allow the General Assembly to pass enabling legislation for localities to provide an exemption or partial exemption on personal and real property taxes for equipment, facilities, or devices constructed or designed to conserve energy and natural resources. The change would encourage the installation of energy and natural resource efficient devices.

It was explained that the constitutional amendment had passed in its first resolution and was up for a second resolution. Amendments must pass in two subsequent years of the General Assembly and then they are placed on the ballot for referendum.

Codify provisions contained in Executive Order 82 requiring certain public buildings to adhere to be built to either the Green Globes Green Building Initiative green building rating standard or the United States Green Building Council Leadership in Energy and Environment Design (LEED) green building rating standard.

It was suggested that the Commission support the policy that is currently embodied in Executive Order 82 and in legislation introduced last year to build public buildings to LEED standards. The question was asked if the legislation would cover local buildings and schools

in addition to state buildings. It was explained that there were different versions of the legislation as it passed through committee that exempted buildings based on size and other factors. Concern was expressed that local governments might construe the requirement as an unfunded mandate. Senator Whipple expressed that the Department of General Services should report on whether, and to what extent, the cost increases when building new construction to LEED standards.

Require the development of policies supporting combined heat and power.

Support was expressed for cogeneration and it was explained that the generation of electricity often produces waste heat that should be utilized and not just burned off into the atmosphere.

Direct the State Corporation Commission (SCC) to develop progressive or inclining block rate structures for residential customers.

The Commission was reminded that this was an issue that the Subcommittee on Energy Efficiency and Conservation has under review. The SCC is looking at this issue closely and reporting back to the subcommittee. A member expressed his belief that a pricing model that encouraged conservation would be perhaps the most significant approach the Commission could take towards its goals. Another member added that the SCC is willing to assist the Commission. The subcommittee will report back to the full Commission at the next meeting.

Encourage adoption of the 2009 International Energy Conservation Code.

Senator Whipple explained that the Department of Housing and Community Development takes the lead on the adoption of regulations and that this issue is under review. Senator Whipple reminded the Commission that there had been discussion as to whether the building code would require a 15% or 30% improvement in energy efficiency. Due to lags in technology and other reasons, the building code will reflect an increase of 15% in 2009 and another 15% in 2012. Senator Whipple hoped that the members would support the efforts to incorporate ambitious energy savings in the Uniform Statewide Building Code through the regulatory process.

Support legislation requiring the adoption of an energy efficiency standard.

The Commission discussed the need to adopt an energy efficiency portfolio standard. Senator Petersen offered to look at this issue during his subcommittee meeting. Legislation from the 2009 Session allowed for cost recovery for the utilities to implement energy

efficiency programs, but did not require that utilities strive for certain of energy efficiency reduction targets.

Increase voluntary Renewable Portfolio Standard to 15% by 2025.

It was clarified for the Commission that legislation from the 2009 Session already included the goal to have a Renewable Portfolio Standard that strived for 15% by 2025. A member suggested that the Commission might consider changing the voluntary program to a mandatory program and evaluate the costs and benefits of each approach. Senator Whipple agreed that the renewable energy industry cannot accept a voluntary program for the purpose of project development and that the long-term financing required to secure such projects demands further assurances. Another member stated that the Commission owes it to itself to thoroughly review this issue. It was noted that the developers who presented to the Commission at the last full meeting expressed concern that the voluntary standard was simply not sufficient. Mr. Wallmeyer hoped to have testimony on this issue at the Commission's last meeting.

Ensure net metering parity.

A member noted that customer-generators should be paid fairly for the electricity sold back to the grid. The Commission noted that there might be both interconnection and rate issues outstanding for legislative attention. SB 1339 from the 2009 Session passed with a reenactment clause. That bill required that rates paid by utilities to customer-generators shall be based on avoided generation costs and the average market value for renewable electricity.

Expand the solar photovoltaic manufacturing grant to other non-emitting technologies.

The current program found in § 45.1-392 of the Code of Virginia has never been utilized by a manufacturer. Senator Whipple noted her concern that funding may not be available for the existing program. Another member added that no manufacturer currently qualifies. Senator Whipple asked that the Subcommittee on Renewable Energy look into this issue.

Facilitate the permitting of individual energy-generating devices in residential and agricultural applications.

Senator Whipple also asked that the Subcommittee on Renewable Energy look into this issue.

Provide personal property or sales tax credits for consumer purchased electric or other alternative-fuel vehicles, specifically Extended-Range Electric Vehicles.

Expand and extend HOV lane access for electric or other alternative-fuel vehicles.

Require government fleet purchasers to consider Extended-Range Electric Vehicles.

Promote installation of workplace and public charging stations.

Encourage free or preferred parking for Extended-Range Electric Vehicles.

Ease building and other codes to allow for 240V home charging in the garage.

The Commission considered these proposals together as incentives for the purchase and use of electric vehicles. Concern was expressed about the distinctions among alternative fuel vehicles and with providing HOV lane access. Another member agreed and commented that, while there is potential benefit to switching gasoline fuels for electricity, the market should still be a strong determinant in standard selection. Senator Whipple also stated that it would be within the proper scope of government action to encourage public charging stations until the users become more numerous. Another member added that the Commission should look at the whole picture of the benefits and drawbacks of different alternative vehicles.

Other Business

The Commission discussed biofuel legislation. Senator Whipple suggested that the full Commission or the Subcommittee on Renewable Energy review the issue for possible legislative approaches. The Commission members also discussed opportunities posed by hydropower capacity, natural gas conversion of existing vehicles, and since nuclear power is a generation resource whether its exploitation should be pursued.

Public Comment

Mr. Dell from the Advanced Vehicle Research Center, which has recently opened its headquarters in Danville, spoke to the Commission about options for hybrid conversions and electric cars. Mr. Dell offered to speak with the Commission at a later date regarding alternative vehicles and the importance of recognizing the broad scope of technologies that are or may be available.

Another member of the public commented on the importance of pursuing avenues with waste products that are useful and questioned the availability of grant funds for nuclear power. Senator Whipple was unaware of such funds or programs. Another member of the public asked about smart meters and questioned the wisdom of nuclear power when less harmful renewable

technologies are available. Senator Petersen clarified the use of smart meters and inclining block rates.

Mr. Marshall Ecker, with the Pittsylvania County Board of Supervisors, stated his agreement with a member's concern that green building requirements would be unfunded mandates to the localities that are already struggling with reduced budgets. Mr. Ecker further stated that incentives for biofuels should accompany incentives for the vehicles that use those biofuels.

Next Meeting

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

SENATOR MARY MARGARET WHIPPLE, CHAIR

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Commission on
 Energy and Environment

**NOTE: For this issue, there were
 no regulations to include in the
 Regulatory Alert section.**

Commission Meeting Calendar for November - December '09

<i>Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Civil War Sesquicentennial Commission	10:00 a.m., Monday, November 9, 2009 6th Floor Speakers Conference Room, GAB Bldg.	Cheryl Jackson
State Water Commission	2:00 p.m., Monday, November 9, 2009 House Room D, General Assembly Building	Marty Farber Ellen Porter
JCOTS Executive Committee	10:00 a.m., Tuesday, November 10, 2009 GAB Bldg, Room to be determined	Patrick Cushing Lisa Wallmeyer
Commission on Energy and Environment	1:00 p.m., Tuesday, November 24, 2009 Location to be determined, Fredericksburg	Ellen Porter Patrick Cushing
Commission on Civics Education	10:00 a.m., Tuesday, December 1, 2009 Senate Room 3, State Capitol	Jessica Eades
Special Subcommittee 50th Anniversary of Public School Closing	Tuesday, December 1, 2009 Warren County High School, Front Royal, VA	Brenda Edwards
Joint Commission on Technology and Science	10:00 a.m., Wednesday, December 2, 2009 GAB Bldg, Room to be determined	Patrick Cushing
Virginia Code Commission	10:00 a.m., Thursday, December 3, 2009 6th Floor Speakers Conference Room, GAB Bldg.	Jane Chaffin
MLK Commission's Lincoln Bicentennial Subcommittee	10:00 a.m. Wednesday, December 9, 2009 House Room C, GAB Bldg.	Brenda Edwards
Civil War Sesquicentennial Commission Executive Committee	10:00 a.m., Thursday, December 10, 2009 6th Floor Speakers Conference Room, GAB Bldg.	Cheryl Jackson
Dr. Martin Luther King, Jr. Memorial Commission	1:00 p.m., Friday, December 18, 2009 House Room C, GAB Bldg.	Brenda Edwards
Virginia Housing Commission	See website for ongoing meeting information http://dls.virginia.gov/VHC.HTM	Elizabeth Palen

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

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