

Virginia Legislative Record

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Small Business Commission

September 8, 2010

The Small Business Commission (Commission) met in Richmond, with Delegate Oder, one of the Commission's co-chairs, calling the meeting to order. Presentations made to the Commission can be found on the Commission's website at <http://dls.virginia.gov/business.htm>.

Virginia Department of Minority Business Enterprise

Ida Outlaw McPherson, Director, Virginia Department of Minority Business Enterprise (DMBE)

Ms. McPherson provided the Commission with an overview of the mission, objectives, and achievements of DMBE. DMBE:

- Promotes the growth and development of small, women-owned, and minority-owned businesses (SWaM), as well as service-disabled, veteran-owned businesses in the Commonwealth.
- Enhances the participation of these small businesses in Commonwealth procurement opportunities.
- Promotes access to Commonwealth contracting opportunities.
- Ensures fairness in the procurement process.
- Certifies qualified businesses and works to pair certified businesses with state contract opportunities.

Notable achievements of DMBE include:

- Increasing the total number of certified businesses in Virginia from 4,956 in fiscal year 2006 to 17,346 in fiscal year 2010.
- Establishing regional business connection offices throughout the Commonwealth.
- Increasing contracts awarded to certified businesses by 20 percent annually since 2006.
- Streamlining the certification and application process from a 90-day paper application process to a faster, user-friendly, web-based process that applicants can track online.
- Implementing an electronic document management system to increase operational efficiency.
- Implementing a certification program for service-disabled, veteran-owned businesses without requiring a budget increase.
- Reducing the cost of processing each certification from \$650 in fiscal year 2009 to \$187 in fiscal year 2010.

Ms. McPherson presented the issues and concerns of the small businesses served by DMBE, which include:

- A more user-friendly way to find state contracts.
- Eliminated or graduated user fees for small businesses accessing the Virginia web-based purchasing system (eVa) for state contract awards.
- A centralized small business development center and services.
- Bonding service assistance.
- Assistance with contract negotiation with prime contractors and partnering agreements.

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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.

Virginia Small
Business
Development Centers
Network clients
experienced job
growth of 10.4
percent in 2008,
compared to -1.4
percent for Virginia
businesses.

- Simplified access to capital expansion to meet the needs of a new state contract award.
- An integrated reporting system.

A lengthy question and answer period then followed, which can be viewed in its entirety on the Commission's website.

Virginia Small Business Development Centers Network

Jody Keenan, Director, Virginia Small Business Development Centers Network (SBDC)

Ms. Keenan gave a report on SBDC programs, services, and results. SBDC is a partnership between the United States Small Business Administration, George Mason University, and 18 education and economic development institutions throughout Virginia. SBDC is a statewide economic development program with 29 offices whose objectives are to:

- Deploy job creation initiatives.
- Assist firms in job creation, job retention, access to capital, marketing, start-up, and survival.
- Provide individual, ongoing assistance to small businesses.

In addition to confidential business counseling, SBDC provides clients with small group training seminars, conference and workshop series, and resource referral to government and private resources. From 2003 through 2009, SBDC:

- Counseled 26,412 clients.
- Created 12,261 jobs.
- Retained 15,485 jobs.
- Generated \$20,581,924 in state and \$20,217,281 in federal taxes.

Eighty-five percent of current and all new SBDC counselors are credentialed as Certified Business Analysts and many hold advanced business degrees. SBDC as a whole is part of a national accreditation process as well.

SBDC has developed strong relationships with local partners, and hopes to have an office within an hour's drive from any Virginia small business. Specialized SBDC programs include partnering with the Virginia Department of Transportation, Veterans Assistance, the Small Town and Merchant Program, and Developing Strategies for an Economic Downturn, as well as participation in the Entrepreneur Express, a

collaborative effort between business assistance groups. SBDC is also developing programs for "growth firms" and international trade assistance. SBDC clients experienced sales growth of 3.2 percent in 2008, compared to -0.2 percent for Virginia businesses and job growth of 10.4 percent, compared to -1.4 percent for Virginia businesses. SBDC clients generate \$3.66 in new tax revenues for every \$1 spent on the SBDC program. Total investment in SBDC from 2007 through 2009 equaled \$14 million (including \$6.5 million in federal and \$7.5 million in local funds, but not including free rent and use of computer systems), which resulted in \$305.6 million output (6,551 jobs, \$122.4 million increase in sales, \$173.5 million in investments, and \$9.7 million in state tax revenues). There are no state funds allocated to SBDC.

Ms. Keenan also explained that clients were often referred to SBDC by a banker, a local department of development or chamber of commerce, or another business. Most businesses can receive counseling within a week to 10 days after submitting an application, but SBDC can accelerate the process in an emergency situation. Ms. Keenan advised that SBDC works with clients over multiple years and through different stages of their small business development and that SBDC only reports increased revenue, job growth, and other positive gains for businesses with which SBDC has an established relationship involving five or more hours of counseling per year. Approximately 15 percent of SBDC clients drive job growth and other reported gains.

Members requested a regional breakdown of the figures relating to job creation and return on investment in SBDC as well as further information on the types of businesses serviced by SBDC and regional investment. Support was expressed for SBDC's effort to secure state-level funding. A lengthy question and answer period followed, which can be viewed in its entirety on the Commission's website.

House Bill 1258

Ben Lacy, Sands Anderson

Mr. Lacy gave information in favor of House Bill 1258 (2010), which concerns contract provisions limiting the liability of contractors for damages arising from negligence at construction sites. Mr. Lacy described the bill as

a subcontractor's small business bill that will assist subcontractors in their work with contractors and owners of construction sites. Delegate Oder gave several examples of how current Virginia law allows contract provisions to indemnify contractors and pass liability on to subcontractors who (i) take actions according to contractor instructions, (ii) are required to carry expensive insurance policies on construction sites, and (iii) bear the burden of liability for damages outside of the scope of their work.

David Bright, President/Owner, United Masonry

Mr. Bright explained that construction contracts transfer the risk of construction site accidents to the subcontractors. Contractors are not allowed to transfer liability for accidents for which they are solely liable, but few accidents are the sole liability of one party at a construction site. Mr. Bright pointed out that the construction industry is second only to the mining industry for on-the-job accidents resulting in death or maiming and stated that the current law does not create any incentive for contractors to ensure safety at construction job sites. The law puts the onus and the insurance cost on the subcontractors, who do not have control over the safety of the worksite and property.

The Honorable Bill Axselle, Williams Mullen

Mr. Axselle spoke against House Bill 1258. Mr. Axselle stated that the amendments to the law would change all aspects of construction law and would affect all parties, not just subcontractors. Mr. Axselle pointed out that in the two years the bill has been before the General Assembly, there has been no litigation regarding the current law, which has been in place for 37 years. Implementing this change in the law would interfere in private contract rights and increase construction litigation and costs as all parties involved would attempt to determine liability in court. He argued that changing the laws would not increase workplace safety at construction sites, but that parties are safe because they are required to be safe by the Occupational Safety and Health Administration and other applicable laws.

In response to questions, Mr. Axselle noted that he believed that the law implemented 37 years ago replaced unlimited freedom of contract and that he had not researched laws in

neighboring states to compare their laws to Virginia's. He also underscored that the current law provides certainty as to which party would bear the burden of liability and the proposed changes would remove this certainty.

Delegate Oder concluded the discussion by noting that the Associated General Contractors of Virginia, Inc. has proponents and opponents of the suggested change and that it would be the appropriate group to develop a compromise to bring before the General Assembly in the future.

HB 309/HB 310

Delegate Oder reported to the Small Business Commission Work Group on House Bill 309 (2010), related to the use of depositions and other documents as the basis of a motion for summary judgment, and House Bill 310 (2010), related to the assignment of court costs based on settlement offer and verdict amounts. House Bill 309 and House Bill 310 were thoroughly discussed, and opposing sides were unable to reach a compromise. The Commission decided not to recommend House Bill 309 and encouraged the Virginia Trial Lawyers Association and the Virginia Association of Defense Attorneys to work out a compromise for House Bill 310 to present to the Commission at a later date.

Next Meeting

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

Small Business Commission

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DELEGATE ODER, CO-CHAIRS
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The construction industry is second only to the mining industry for on-the-job accidents resulting in death or maiming.

Freedom of Information Advisory Council – 9/13/10

Virginia is one of six states with citizenship limitations on access.

The FOIA Council held its second meeting of 2010 in Richmond. Members heard subcommittee reports, voted on subcommittee recommendations, and began the annual legislative preview.

Subcommittee Reports

Rights and Remedies Subcommittee

Staff reported that the Rights and Remedies Subcommittee met on August 30, 2010. The subcommittee first discussed HB 449 (2010), which would have provided a remedy for public bodies to use against requesters who use FOIA as a tool for harassment. The subcommittee was sensitive to the issue, recognizing that though infrequent, sometimes requesters may use FOIA with the intent to slow down government. The subcommittee looked at what other states have done, and also is considering other novel approaches, such as the charges provisions added in 2002 to address similar issues. The subcommittee will continue its deliberations on this matter at its next meeting.

The next bill addressed was HB 641 (2010), which would have granted FOIA access rights to all United States citizens. The subcommittee recommended no action be taken on this matter at this time. The subcommittee was made aware that Virginia is one of six states with citizenship limitations on access, that there was a federal case in the 3rd Circuit that found a citizens-only FOIA limitation to be unconstitutional, and that a similar case is currently on remand to the federal District Court for the Eastern District of Virginia. The subcommittee recommended no action while waiting for the federal court decision, and that staff continue to provide advice to work with out-of-state requesters to provide records, including advice on prepayment and supplying records in a reasonable time, rather than letting the requesters' status as a citizen (or not) control.

The last bills to be considered were HB 976/SB 147 (2010), identical bills regarding the provision of notice of the filing of a petition for mandamus or injunction. The subcommittee voted unanimously to recommend a draft to the FOIA Council that revises the current language to specify that the defendant must receive a

copy of the FOIA petition three working days before the petition is filed.

Finally, regarding the suggestion to provide FOIA training to legislative agencies, it was reported that leadership in the House and Senate, as well as both Clerks' offices, was receptive to the idea. Staff will work on logistics and contacting legislative commission and agency heads, as well as continuing to work on related issues.

Criminal Investigative Records Subcommittee

Chairman Fifer reported that the Criminal Investigative Records Subcommittee met on August 19, 2010, to consider SB 711 (2010), which would have provided greater access to criminal investigative files after criminal cases were closed. There was a great deal of interest in the subcommittee's work, with over 50 people attending, including many sheriffs, police chiefs and officers, and Commonwealth's Attorneys. The subcommittee found it difficult to reach agreement on any wholesale change in policy, but instead looked for common ground. An idea was proposed to put in a mechanism for a requester to go to court to get records if he could demonstrate harm that would occur if the records were not released. The subcommittee will consider draft language at its next meeting, after which it may have a recommendation for the full FOIA Council to consider.

Action on Subcommittee Recommendation

The Rights and Remedies Subcommittee recommended draft language to address the notice requirements for filing a petition for mandamus or injunction. Staff presented the draft bill. Jim Council spoke on behalf of Prince William County Schools (PWCS), who had requested the original bills under consideration. He indicated that he had spoken with the patrons and the school board of PWCS, and all were in favor of the new draft.

The chair stated that the bill has been before the legislature for two years now, that a compromise could not be reached previously during the rush of the General Assembly Session, and that he hoped that those involved

would resist any temptation to tinker with the bill. Two technical amendments to the draft to clarify the language without changing its substance were suggested and adopted by unanimous voice vote. The FOIA Council then voted to recommend the draft, as amended, to the 2011 Session of the General Assembly. It was also adopted by unanimous voice vote.

Annual Legislative Preview

Mr. Fifer reminded the FOIA Council that he hoped to have a draft bill from the Criminal Investigative Records Subcommittee after its next meeting. The vice chair asked that if anyone knew of any upcoming FOIA bills to let staff know so that the FOIA Council might be able to have a subcommittee address it before the upcoming 2011 Session, as otherwise it might just get referred to the FOIA Council by the General Assembly and thus delayed for a year.

James Conrad, a former law-enforcement officer, suggested that law-enforcement officers be able to get the results of their own background investigations. Currently such records are exempt from disclosure generally, and there are no special provisions for the subject of the record to be granted access. This is in contrast to the general exemption for personnel records, which allows records to be withheld from third parties but affirmatively grants access to the subject of the records. Mr. Conrad noted that as it is, there is nothing stopping someone from lying to background investigators or defaming an applicant for law-enforcement agency employment. He suggested that a mechanism was needed to ensure the agency at least verifies that the background information it receives is truthful. The FOIA Council took no action on this matter.

Other Business

The chair spoke about efforts to provide FOIA education to the legislative branch, and his concerns regarding access to committees of conference, particularly the budget committees. He noted that while the judicial and executive branches have plenty of opportunities for private deliberations, the legislative branch does not. He stated that the goal was not leave people out of the process; but that the

demands of time and frank conversation lead to “cat and mouse” games among budget conferees and the public. He suggested that a way be explored to maintain the integrity of the process while giving relief to budget conferees in certain limited instances. A lengthy discussion then ensued among the members, which can viewed in its entirety on the Commission’s website.

Public Comment

Megan Rhyne, Executive Director of the Virginia Coalition for Open Government (VCOG) noted that VCOG would hold its annual conference October 21-22, 2010.

Ginger Stanley, Executive Director of the Virginia Press Association (VPA), spoke in regard to the issue of access to budget conference committee meetings. She noted it was unusual to rush to change the law, and suggested considering the whole process, not just budget conferences, but also the compromise made previously to including committees of conference under FOIA while excluding political party caucuses. She also handed out new copies of the *Reporters' Guide to FOIA* published by VPA.

Next Meeting

The next meeting of the FOIA Council will be held November 9, 2010.

FOIA staff will work to provide FOIA training to legislative agencies.



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Virginia has been allocated \$80 million of low-interest federal bond money for energy efficiency programs.

The Commission on Energy and Environment met in Richmond with Senator Whipple calling the meeting to order. Presentations made to the Commission can be found on the Commission's website.

Virginia Energy Plan

Al Christopher, Department of Mines, Minerals and Energy (DMME)

Mr. Christopher presented the 2010 Virginia Energy Plan (the Plan), which was updated by DMME on July 1, 2010, and will be updated every four years following. Mr. Christopher gave figures showing energy consumption by sector, energy import information, energy production, current rates, and projected new capacity requirements based on annual peak demand growth. The full text of the plan is available online at <http://www.dmme.virginia.gov/DE/VAEnergyPlan/2010-VEP/VEP-2010.pdf>. A lengthy question and answer session then followed that can be viewed on the Commission's website.

Financing Clean Energy Programs

Ben Taube, Exec. Director, Southeast Energy Efficiency Alliance (SEEA)

Mr. Taube spoke on energy efficiency financing instruments and programs. He discussed barriers to energy efficiency improvements, the variety of financing instruments available, and lender concerns. Mr. Taube explained that each state has potential access to an allocation of low-interest federal bond money that can be used for energy efficiency programs. It was clarified that \$80 million has been allocated for Virginia and that DMME is developing plans for using the funds, but only 30 percent of the funds could be made available for private use.

Generally, a financing district is created and property owners voluntarily sign up for a clean energy program. Following an audit, a property owner selects a certified contractor to perform the improvement and the property owner pays the contractor or the locality pays the contractor directly. Unlike a commercial building improvement loan, which is paid over a period of three to five years, residential property owners pay the cost of the loan over a longer period of up to 20

years. It was noted that no Virginia localities have adopted the ordinance to put a clean energy financing program in place because energy efficiency loans are subordinate to an existing lien or deed of trust. Mr. Taube confirmed that this spring, Fannie Mae and Freddie Mac issued letters stating that they would not refinance properties with energy efficiency loans attached, but that several states were continuing to develop legislation to encourage residential energy efficiency gains. Mr. Taube discussed the efforts of communities in Virginia to create a statewide loan-loss reserve and the possibility of attracting private investment and using the federal bond money in connection with this reserve.

Cynthia Adams, Executive Director, Local Energy Alliance Program (LEAP)

Ms. Adams spoke to the Commission about LEAP, which was funded by a \$500,000 grant awarded by SEEA to the County of Albemarle and the City of Charlottesville. The goals of LEAP include:

- Recognition of a 20 to 40 percent energy efficiency gain per structure.
- Reaching 30 to 50 percent market penetration over a five- to seven-year performance period.
- Creating a self-sustaining approach.
- Establishment of a replicable model for other localities to institute energy efficiency loan programs.

Ms. Adams also provided examples of an energy retrofit and how a homeowner would work with LEAP to complete a retrofit from the initial audit process through final consumer education. LEAP has also partnered with other organizations across the state to aid in developing programs in other localities. Ms. Adams explained that LEAP launched residential services in July 2010 and that 50 to 60 people had applied.

Ms. Adams has also worked with an informal coalition of representatives from localities to draft a model ordinance to implement § 15.2-958.3 of the Code of Virginia (Financing clean energy programs). She reported that municipalities have questions on who would implement and oversee local programs and how to manage debt ratios and maintain a capital pool as well as concerns over set-up costs and staffing to sup-

port a program. Municipal legal offices raise concerns over the legality of issuing bonds to finance an energy efficiency program, the definition of private lenders under the statute, and language identifying who may fund programs as well as a specific mechanism for recovering on default loans. It was clarified that representatives of the banking industry objected to language in an early version of SB 1212 (2009) that would have allowed local governments to collect repayments in the same manner as real estate taxes, and the language was removed before the bill's passage. Ms. Adams suggested adding language similar to legislation concerning services such as snow removal and weed removal. Localities have requested the creation of a statewide energy financing program for energy efficiency.

Virginia Rate Impact Study

Al Weed, Chair, Public Policy
Virginia

Mr. Weed presented the Virginia Rate Impact Study (Impact Study), a report developed by La Capra Associates for the Virginia Alliance for a Better Renewable Energy System and based on information from the Virginia Energy Plan. The Impact Study found that under the current voluntary Renewable Portfolio Standard (RPS), the plans filed by utilities did not create new renewable energy and had limited impact on the rates. The Impact Study predicts the impact of an increase in the mix of renewable energy sources as a result of a mandatory federal renewable energy standard (RES) of 25 percent in 2025. The Impact Study found that the model RES goals of 7,358 MW could be met by a portfolio relying on biomass (2,340 MW), offshore wind (2,000 MW), onshore wind (1,682 MW), solar power (1,143 MW), hydropower (166 MW), and landfill gas (27 MW). The Impact Study found that this mix would raise the cost to the ratepayer by one cent per kWh, compared to the cost of nuclear and carbon capture sequestration by 1.6 cents per kWh. As an example of the job creation potential, the increased use of biomass will create 22 new construction jobs and 10 operating jobs per MW. A lengthy question and answer session then followed that can be viewed on the Commission's website.

Net Metering in Virginia

Lawrence T. Oliver, State Corporation
Commission (SCC)

Mr. Oliver explained what net metering is and reviewed enabling legislation and amendments as well as the SCC process for adopting rules and rule amendments. The SCC has received notification that nearly 2.2 MW of installed facilities are net metered. There are currently 1.3 MW of primarily solar installations in Dominion Virginia Power's service territory.

The increased use of biomass will create 22 new construction jobs and 10 operating jobs per MW.

Dominion Update

William L. Murray, Dominion Virginia
Power (Dominion)

Mr. Murray provided an update from Dominion that included:

- A description of the diverse generation mix.
- Projected emissions reductions through 2015.
- Projected increased demands for electricity.
- Natural gas pricing.
- Managing high energy demands over a record-setting summer.
- The projected timeline for environmental regulatory requirements for utilities.

Mr. Murray noted that Virginia is one of the PJM states where it is possible to develop and permit new generation and cited supply chain availability and air quality permitting as the largest factor in determining biomass facility placement. The presentation also included Dominion's renewable energy capacity, conservation and demand management programs, consumer education programs, and an update on traditional fuel sources such as nuclear and fossil fuels.

Next Meeting

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

SENATOR WHIPPLE, CHAIR

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Meeting Calendar for November - December 2010

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Disability Commission	2:00 p.m., Wednesday, November 3, 2010 General Assembly Building, House Room D	Sarah Stanton
Freedom of Information Advisory Council	Tuesday, November 9, 2010	Maria Everett Alan Gernhardt
Coal and Energy Commission	2:00 p.m., Monday, November 15, 2010 8:30 a.m., Tuesday, November 16, 2010 North Anna Nuclear Information Center 1022 Haley Drive, Mineral	Ellen Porter Marty Farber
Development and Land Use Tools	9:30 a.m., Monday, November 15, 2010 General Assembly Building, House Room D	Kevin Stokes Jeff Sharp Rebecca Young
Substance Abuse Prevention	10:30 a.m., Tuesday, November 16, 2010 Youth for Tomorrow, 11835 Hazel Circle Dr., Bristow	Sarah Stanton Robie Ingram
Virginia Code Commission	10:00 a.m., Wednesday, November 17, 2010 General Assembly Building, 6th Floor Speakers Conf. Rm.	Jane Chaffin
JCOTS	10:00 a.m., Monday, December 6, 2010 General Assembly Building, House Room D	Lisa Wallmeyer Wenzel Cummings
Hampton Roads Transportation Network	2:00 p.m., Tuesday, December 7, 2010 Virginia Modeling Analysis and Simulation Center, Suffolk	Alan Wambold Caroline Stalker
MLK Commission	Abraham Lincoln Subcommittee, Partnership & Expenditure Review Subcommittee, School Closings Subcommittee, King Commission Town hall mtg. of the School Closings Subcommittee Tuesday, December 7, 2010 Charlottesville High School, Charlottesville	Brenda Edwards
Brown v. Board of Education Scholarship Committee	December 2010, Richmond	Brenda Edwards
War of 1812	Advisory Council—11:00 a.m., Commission—2:30 p.m. Wednesday, December 8, 2010 General Assembly Building, House Room C	Brenda Edwards Jeff Sharp Rebecca Young
Unemployment Compensation Commission	10:00 a.m., Monday, December 13, 2010 General Assembly Building, Senate Room B	Frank Munyan
Civil War Commission	10:00 a.m., Tuesday, December 14, 2010	Cheryl Jackson
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.

Joint Commission on Technology and Science — Energy Advisory Committee – 9/21/10

The Energy Advisory Committee met in Richmond with Delegate Plum calling the meeting to order. Copies of the presentations for all the committee meetings are available on the JCOTS website at <http://jcots.dls.virginia.gov>.

Advisory Committee Process Overview

JCOTS staff reviewed the advisory committee process and the role of JCOTS in the General Assembly.

2010 Virginia Energy Plan

Stephen A. Walz, Director, Department of Mines, Minerals and Energy

Mr. Walz provided the committee with an update on the 2010 Virginia Energy Plan (Plan). He started by explaining the statutory mandate for the Plan, and highlighted some general information about Virginia's energy landscape. He touched on the mix of fuels used to produce the state's electricity. Virginia's balanced economy is reflected in the fact that the transportation, industrial, commercial, and residential sectors contribute roughly equally to Virginia's overall energy consumption. Virginia, however, is a net energy importer, second only to California in kilowatt hours imported and among the worst six states for total energy imports per capita.

The presentation then turned to electricity production in the state. The investor-owned utilities produce approximately 84 percent of Virginia's electricity. Electricity rates from 2009 are approximately 90 percent of the national average, contributing to Virginia's economic competitiveness and growth. Virginia's growth over the next decade will require approximately 7200 MW of new capacity.

Mr. Walz then focused on the sources of Virginia's energy. He touched on coal, nuclear, natural gas, renewables, and petroleum. He showed a table from the 2010 Plan explaining the state's capacity for electricity generation from different renewable sources. He drew special attention to the state's sizeable offshore wind and solar power potential. Committee members questioned these figures. Mr. Walz explained that the predictions came from a study conducted by Virginia Tech.

The Plan also includes several findings, goals, and recommendations. He highlighted the Governor's

energy goals, including making Virginia the Energy Capital of the East Coast. He explained that the Governor and other members of the administration would expound on this goal and others at the Governor's Energy Conference, October 12-14.

Mr. Walz concluded his presentation by describing numerous initiatives in the state that are already working towards some of the Energy Plan's goals and recommendations.

Uranium Mining

John I. Kyle Vice President, Lyntek Inc.
Douglas L. Beahm, President, BRS, Inc.

Mr. Kyle and Mr. Beahm provided an overview of uranium mining and milling methods and technologies. Mr. Beahm began the presentation by explaining the regulatory history of uranium mining. He explained that if uranium is mined in Virginia, the methods likely to be used would be open pit and stripping. The mine would look like a quarry. Many new technologies have made this method of mining incredibly safe, reduced externalities, and held down costs. These improvements have resulted, in part, from the deployment of remote-controlled mining equipment.

Mr. Kyle then explained the technological improvements in uranium milling. He noted that acid leaching and carbonate (i.e. baking soda) leaching are the most common methods. He highlighted the fact that the greatest technological improvements have emerged in the areas of crushing and grinding the ore, as well as collecting the dust from these activities.

The final section of the presentation highlighted the technologies and methods used to reclaim the mine tailings and restore mined lands back to their pre-mined state. Mr. Beahm explained the long-term tailings treatment.

Other Business

Delegate Plum urged the members of the committee to communicate with JCOTS staff any ideas they have for the future work of the committee. He suggested the committee attempt to coordinate its efforts with other energy and technology activities taking place within state government.

Next Meeting

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

Intellectual Property Ownership Advisory Committee – 9/21/10

The Intellectual Property Ownership Advisory Committee met in Richmond with Senator John Watkins, chair of the committee, calling the meeting to order and member Kirk Schroeder participating via teleconference.

HB 716/SB 242 (2010)

Senator Watkins gave background information on HB 716/SB 242 (2010), which he and Delegate Peace proposed to update § 2.2-2822 of the Code of Virginia (Ownership and use of patents and copyrights developed by certain public employees; Creative Commons copyrights) in order to help the state government address intellectual property issues. Senator Watkins explained that he was motivated in part by the idea that taxpayers could be getting some return on their investment of tax dollars in state agencies.

History of State Intellectual Property Laws and Policy

JCOTS staff made a presentation on the history and development of the state's intellectual property laws and policy. Among other things, the presentation explained that the administration of Governor George Allen had promulgated a state-level intellectual property policy with Executive Memorandum 4-95, which did not appear to have been widely circulated.

It became apparent that agencies and localities across the state share and enforce intellectual property rights in a number of different ways with varying degrees of effectiveness. Senator Watkins noted that this issue is becoming increasingly important. He singled out the state's use of contractors to develop new health care information systems. The state, and the taxpayers, may have the opportunity to benefit from new intellectual property created in the field.

2009 Committee Work on Intellectual Property

Patrick Cushing, former JCOTS Staff Attorney

Mr. Cushing advised that last year's work revealed several points that needed to be addressed. Some issues that merited further consideration included:

- The extent to which decision making on intellectual property issues might be centralized at the Secretary of Administration level or the agency level.

- The thresholds that might determine when the state collects or commercializes intellectual property created by employees.
- The means and methods of monitoring the creation and development of intellectual property.

Mr. Cushing noted that last year's group had observed that the state might avoid creating a large bureaucracy by setting a high threshold for collecting and commercializing intellectual property. Ideas with less commercial value could be left to the employees to develop on their own. A member noted that some state intellectual property need not necessarily be commercialized, but could be disseminated through open intellectual property mechanisms, such as Creative Commons.

Committee members who had worked on this issue in the past noted that Creative Commons had been explored as a tool for sharing intellectual property created in the field of education. However, any state intellectual property policy would apply not only to education, but also to all agencies in the executive branch of government. State institutions of higher education, however, would maintain their own intellectual property policies.

Members also discussed the philosophical questions of how to monitor state-developed intellectual property as well as who might conduct the monitoring. The Committee considered whether a policy should centralize intellectual property in the Governor's administration, as Governor Allen's policy had envisioned. Some members thought that creating a library of the state's intellectual property might be a good starting point. With an understanding of what the state already had, it might be easier to develop appropriate governance structures to monitor intellectual property in the future.

Senator Watkins asked JCOTS staff to work with several committee members on fine-tuning the proposed legislation to take into account issues discussed at the meeting. Particularly, JCOTS staff should look at what other states have done in the field.

Committee members and JCOTS staff were directed to consider a list of questions that new legislation and the state intellectual property policy should answer. Secretary Hicks-Thomas indicated that she would consult the Governor to hear his opinion on these issues.

Next Meeting

The Committee is to reconvene in 30 to 45 days.

Computer Crimes Definitions Advisory Committee – 9/22/10

The Computer Crimes Definitions Advisory Committee met in Richmond with Senator Howell, chair of the committee, calling the meeting to order.

Computer Crimes Act

JCOTS staff presented a brief history of the Computer Crimes Act (the Act). JCOTS worked with the Virginia State Crime Commission in 2004 to draft the existing Act. The Act was crafted in a manner to avoid mention of specific technologies so as to remain effective and current even as new technologies emerged and existing technologies evolved and changed. Delegate Rob B. Bell III noted that the legislation he proposed last session, HB 920, was meant to clarify the definition of “computer” in the Act. This bill was referred to JCOTS for study, and provides an opportunity to ensure that the definition of “computer” is still up-to-date.

Delegate Bell noted that § 18.2-427 of the Code of Virginia provides for the punishment of obscenities spoken on the telephone. To the extent that someone is harassed by another using a computer, the computer harassment provisions in the Act may apply. Harassing or obscene text messaging, though, does not necessarily fit neatly as either a computer crime, or as a telephone obscenity crime.

From a technology perspective, it would not be sufficient to clarify that a threat falls under the Act if it is transmitted via the Internet. Text messages are transmitted through a method known as “short code,” which is distinct from the method used for emails or instant messaging. Even if a “smart phone” such as an iPhone or other Internet-enabled phone is used, the text message still is not transmitted via the Internet.

The Committee agreed that if the definition of computer were to be changed, it should be done in the interest of promoting clarity in the courts. A representative from the Attorney General’s office noted that he had not encountered any problems in applying the definition of computer, though he had not sought to apply it to a cellular phone. He suggested that the proposed legislation might add some clarity by explicitly including cellular phone or wireless device in the definition of computer, although he reiterated that he did not see a problem with the existing language.

Members, however, questioned the best means of arriving at statutory clarity. Some discussion suggested that amending § 18.2-427 might provide the simplest

means of assuring that obscene or threatening text messaging could be prosecuted. However, amending the definition of computer under the Act could give prosecutors and judges flexibility to bring charges under either the Act or § 18.2-427.

The Committee expressed great interest in avoiding unintended consequences from any possible amendment. Senator Howell asked Stewart Petoe, Director of Legal Affairs for the Virginia State Crime Commission, to comment on the discussion. He indicated that the drafters of the Act in 2004 conscientiously worked to exclude telephones from the definition of computer. At that time, cellular phones were predominantly used for voice communication. Though text messaging existed in 2004, it was not as widespread as it is today.

Senator Howell requested that JCOTS staff work with Stewart Petoe at the Crime Commission on draft language for review at the next meeting.

Next Meeting

The next meeting of the Advisory Committee will be on November 1, 2010.

Intelligent Transportation Systems Advisory Committee – 9/22/10

The Intelligent Transportation Systems Advisory Committee met in Richmond with Delegate Purkey calling the meeting to order.

Transportation Technology

Delegate Purkey urged the Committee to consider how transportation technologies might help alleviate some of the long-term economic and budgetary issues the state might face. He expressed particular interest in finding ways to reduce government expenses. He also urged the Committee to consider how Virginia might become a center for transportation technology companies by supplying an educated labor force.

Committee members expressed great interest in learning more about vehicle miles traveled (VMT) as an alternative to the fuel tax. VMT would tax drivers based on their total miles traveled instead of total fuel purchased, potentially creating a stronger link between actual road usage and transportation revenues. Members discussed programs in other states, like the pilot program in Oregon and the tiered monitoring program in Minnesota.

Members from the tolling industry explained that they are developing technologies that will allow for multimodal use of tolling systems, particularly by advancing the transponders that identify vehicles. Multimodal transponders might be able to communicate with a range of facilities including tolling stations, parking lots, and ferry boats. Limits on the amount of data transponders can carry, as well as interoperability, are challenging the potential expansion of tolling and traffic monitoring systems. The intelligent transportation systems of the future, such as the U.S. Department of Transportation's IntellidriveSM, will likely require that vehicles communicate and receive significant amounts of data.

The Committee spent considerable time discussing several aspects of intelligent transportation systems. Topics of conversation included intelligent monitoring cameras, vehicle data collection and exchange technologies, data collection, and privacy issues.

In addition to intelligent transportation systems, the Committee considered how technologies and policies might be employed to help promote safer, more intelligent drivers. For example, improved breath alcohol ignition interlock systems make it more difficult for drivers to trick the interlock systems, increasing the effectiveness of driving under the influence laws. Additionally, the Virginia Tech Transportation Institute (VTTI) has continued conducting naturalistic driving studies. Naturalistic driving studies investigate drivers under real-world conditions with the goal of making driving safer.

Next Meeting

The next meeting of the Commission will be held on December 6, 2010, at 10:00 a.m. in Richmond, Virginia.



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Virginia Code Commission – 10/6/10

Senator Edwards called the meeting to order and welcomed new member Judge Patricia West of the Virginia Beach Circuit Court.

Administrative Law Advisory Committee

Chris Nolen, Chair, Administrative Law Advisory Committee

Mr. Nolen presented the proposed 2010-2011 budget for the Administrative Law Advisory Committee (ALAC). ALAC is requesting a \$20,000 allocation from the Virginia Code Commission budget for the conduct of meetings; hiring interns and, if needed, consultants; conferences and training; and publications and supplies. This figure is \$10,000 less than the amount requested previously. A motion was made and carried to approve the proposed budget.

Mr. Nolen submitted the name of Elizabeth Andrews for consideration by the Commission to fill the current vacancy on ALAC. Ms. Andrews currently serves as Section Chief of the Environmental Section of the Office of the Attorney General and chairs the office's Administrative Process Act committee. A motion was made and carried to appoint Elizabeth Andrews to the Administrative Law Advisory Committee.

Mr. Nolen advised the Code Commission members that the Administrative Law Conference will be held at the Omni Hotel in Richmond on November 4.

Mr. Nolen updated the members on the status of this year's ALAC studies. The work groups have been meeting throughout the summer and the full committee is scheduled to meet on October 19 to adopt recommendations to bring before the Commission at its November meeting.

Recodification of Title 64.1, Wills and Decedents' Estates

David Cotter, Division of Legislative Services

Mr. Cotter reported on the recodification of Title 64.1, Wills and Decedents' Estates. The Code Commission reviewed and discussed the majority of proposed Chapter 3 (Wills) of Title 64.2. Proposed Chapter 3 consists of Articles 1 through 6 of Chapter 3 of Title 64.1. At its next meeting, the Commission will complete Chapter 3 and review proposed Chapter 5 (Transfers without Qualification) and Subtitle II (Trusts).

2011 Code of Virginia Pricing and Replacement Volumes Proposal

Brian Kennedy, Associate Director,
Government Content Acquisition, LexisNexis

Mr. Kennedy presented the Code of Virginia proposed replacement volume options and pricing proposal. He stated that the pricing proposal was derived from an analysis of LexisNexis costs and the Producer Price Index for Book Publishing and reflects approximately a five percent increase from 2010. The proposed pricing table sets out three pricing options based on the replacement of 4, 5, and 6 volumes, respectively.

The chair deferred discussion of the proposal until the next meeting to give staff a chance to review the proposal and make recommendations to the Commission.

Technical Drafting - Barrier Crimes

Jessica Eades, Division of Legislative Services

Ms. Eades explained that the listing of barrier crimes in Titles 37.2 (Behavioral Health) and 63.2 (Social Services) frequently are not amended to correspond with crimes that the legislature adds in Title 18.2 of the Code of Virginia. Ms. Eades suggested that there are better ways to draft the barrier crimes statutes to clearly denote each crime. The Commission discussed the difficulty of getting such legislation passed through the General Assembly and the feasibility of asking the Division of Legislative Services to institute a protocol so that when barrier crimes are amended in Title 18.2, the respective sections in Titles 37.2 and 63.2 are considered. The chair asked Ms. Eades to draft proposed language rewriting the barrier crimes provisions in Titles 37.2 and 63.2 to present to the Commission at its next meeting.

Next Meeting

The Code Commission is scheduled to meet again on Wednesday, November 17, 2010, in Richmond.

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codehome.htm](http://codecommission.dls.virginia.gov/codehome.htm)

Virginia Sesquicentennial of the American Civil War Commission – 10/12/10

Speaker Howell called the meeting to order and welcomed those in attendance. He introduced Delegate T. Scott Garrett, the newest member of the Commission.

Civil War 150 HistoryMobile

Rick Holcomb and Ashley Hall, DMV
Cheryl Jackson, Executive Director
Roy Knox, Virginia Tourism Corporation

Commissioner Holcomb reported that discussions regarding the donation of a tractor and trailer for the HistoryMobile continue to progress favorably. The Foundation is working with a Core Leadership Team that includes representatives from the Wilson Trucking Company, the Virginia Trucking Association, and the American Trucking Association to secure partnerships for the HistoryMobile. Commissioner Holcomb will continue to work with the partners and report back to the Executive Committee or the Foundation.

Ms. Jackson reported that the Commission received outstanding offers in response to its Request for Proposals to secure a design/build contractor for the HistoryMobile. It is hoped that a contract with a contractor will be in place by the end of October.

Ms. Jackson briefly outlined a draft Memorandum of Understanding (MOU) between the Commission, Department of Motor Vehicles, and the Virginia Tourism Corporation regarding staffing and operation of the HistoryMobile. Each entity will have distinct roles with the DMV being primarily responsible for getting the HistoryMobile to each venue by hiring drivers, and coordinating all routing, mapping, and permitting. VTC will be responsible for hiring a program manager and up to two support staff to work with localities and serve as on-site ambassadors to ensure the successful deployment of the HistoryMobile at each venue. Ms. Jackson reviewed estimated budget proposals from the DMV and VTC. The Commission will be billed for actual expenses incurred pursuant to the MOU and in accordance with the proposed budget, reimburse the billing agency quarterly.

Ms. Hall outlined the DMV's plan for providing drivers and logistical support for the HistoryMobile. The DMV estimates two and a half positions will be required for this project to include one full-time driver, one part-

time driver to back-up the full-time driver when necessary, and one logistics coordinator to handle all applicable licensing and permitting of the HistoryMobile as well as work with the Virginia Tourism Corporation's representative in mapping out a travel schedule.

Mr. Knox provided an overview of VTC's responsibilities, including a plan for utilizing exterior tents at each site to generate revenue and offset a significant portion of the yearly operating expenses. Committee members inquired as to the look of the proposed tents and what types of exhibits would be allowed to occupy the tents. It was explained that the information in the tents would be analogous to that provided at a Virginia Welcome Center and primarily be used to advertise the local area via tourism agencies or museums. The Commission would also have its own tent to promote its projects and sell its merchandise.

The Executive Committee agreed to move forward with the proposed plan for staffing and operation of the HistoryMobile, pending review of the MOU and signature by all parties.

Report of the Advisory Council

Sandy Treadway, Librarian of Virginia

Dr. Treadway provided committee members with a summary of the recent Advisory Council meeting hosted by the Library of Virginia. The meeting included a walkthrough of the Commission-sponsored museum exhibition, *An American Turning Point*, presented by Virginia Historical Society staff. Also included was a summary of *The Legacy Project*, the signature document digitization effort sponsored by the Commission and presented by two archivists with the Library of Virginia. Dr. Treadway reported that the best part of the meeting occurred when council members divided into groups to provide feedback on the Commission's projects. The comments were positive and indicated satisfaction that all perspectives have a place in the Commission's plans for the commemoration.

Signature Conference Series: Norfolk State University and Virginia Tech

Staff reported that the 2010 Signature Conference, *Race, Slavery and the Civil War: The Tough Stuff of American History and Memory* was held at Norfolk State University on September 24, 2010, and by all accounts was a resounding success. Staff presented some of the outstanding feedback the Commission has received via email to the members. The conference boasted over 1,500 attendees from 23 different states and three

different countries and received excellent press coverage from most every major new outlet in the Commonwealth. Additionally, C-SPAN and The History Channel[®] filmed parts of the conference to air at a later date. Dr. Levensgood commented that he was unable to attend the conference in person but was able to view the webcast and was pleased with the quality of the program.

Planning is also well underway for the 2011 Signature Conference at Virginia Tech, *Military Strategy in the American Civil War*, to be chaired by James I. Robertson, Jr., and held on May 21, 2011. The Commission will be charging a nominal admission fee to help offset the costs of the conference. Registration is expected to open in early November. Capacity for the venue, Cassell Coliseum, is 11,000; however, attendance will be capped at a more manageable number.

In response to a question about social media outlets to promote the conference series, staff indicated that an intern has been coordinating social media communications, including managing questions and answers through Facebook[®] and Twitter in real time during the 2010 conference. The Commission regularly updates information on Facebook[®], Twitter, and on its website. It was also asked if the registration fee would be waived for Virginia Tech students who attend the conference. Staff indicated that the logistics of waiving the registration fee for students are being considered.

Logo Usage Requests

In accordance with the procedure established by the Executive Committee, staff presented a list of applications to affix the Commission's logo that have been pre-approved by staff. The list includes the following:

- Fairfax Genealogical Society (Website)
- Mathews County Sesquicentennial Committee (Brochure)
- York County Historical Museum (Letterhead)
- Brunswick County Sesquicentennial Committee (Program and flyer)

Staff also mentioned that the Occoquan Historical Society, Inc. requested use of the logo on a commemorative plate featuring a photograph of a Civil War reenactment to be sold by the society, but as the Logo Use Policy prohibits use in commercial enterprises, the request was not approved. A motion passed to approve staff recommendations.

Other Business

Speaker Howell recognized Waite Rawls, President and CEO of the Museum of the Confederacy, who updated committee members on the groundbreaking ceremony recently held for the new Museum of the Confederacy in Appomattox, as well as a program planned for April 23, 2011, to commemorate the 150th anniversary of Robert E. Lee's acceptance of command of the Virginia forces. Gary Gallagher has agreed to be the keynote speaker at the event.

Speaker Howell then recognized a member of the Arlington County Local Sesquicentennial Committee who updated committee members on planned activities of the Arlington committee.

Next Meeting

The next meeting will be held at 10:00 a.m. on Tuesday, December 14, 2010.



VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

SPEAKER WILLIAM J. HOWELL, CHAIR
Cheryl Jackson and Michele Howell, DLS Staff

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

<http://www.virginiacivilwar.org>



DLS BULLETIN BOARD

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

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

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

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

TITLE 9. ENVIRONMENT STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The following regulation filed by the State Air Pollution Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, 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.

9VAC5-520. Biomass Energy Generator General Permit for a Pilot Test Facility (Rev. Cg) (adding 9VAC5-520-10 through 9VAC5-520-230).

A public hearing will be held on December 1, 2010, at 9:30 a.m. at the Department of Environmental Quality, Richmond, Virginia. Written public comments may be submitted until January 5, 2011.

Summary:

The regulation will create a mechanism for sources to construct and test to determine the type and quantity of emissions from a qualified energy generator that meets the requirements of the regulation. It applies to qualified energy generators that generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product per year from biomass. Biomass includes organic material available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

2. *Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;*

3. *Animal waste, including manure and slaughterhouse and other processing waste;*

4. *Solid woody waste materials, including landscape trimmings, waste pallets, crates, and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;*

5. *Crops and trees planted for the purpose of being used to produce energy;*

6. *Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and*

7. *Municipal solid waste, excluding tires and medical and hazardous waste.*

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

For more information, please contact Mary E. Major, Department of Environmental Quality, Richmond, VA, telephone (804) 698-4423, FAX (804) 698-4510, or email memajor@deq.virginia.gov.

STATE WATER CONTROL BOARD

9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (adding 9VAC25-800-10 through 9VAC25-800-60).

Public hearings will be held as follows:

November 16, 2010 - 7 p.m. - Department of Environmental Quality, Tidewater Regional Office, Virginia Beach, Virginia.

November 18, 2010 - 7 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, Roanoke, Virginia.

December 7, 2010 - 3 p.m. - Department of Environmental Quality, Piedmont Regional Office, Glen Allen, Virginia.

Written public comments may be submitted until December 27, 2010.

Summary:

The proposed regulation develops and issues a Virginia Pollutant Discharge Elimination System (VPDES) general permit for discharges from pesticides applied directly to surface waters to control pests, or applied to control pests that are present in or over, including near, surface waters. The general permit regulation is needed to comply with court-ordered requirements for the federal Environmental Protection Agency (EPA) and states to issue national pollutant discharge elimination system (NPDES) permits for both chemical pesticide applications that leave a residue or excess in water and all biological pesticide applications that are made in or over, including near, waters of the United States.

Since the court ruling, the EPA collected and analyzed data on pesticide applications, including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides. The EPA proposed a NPDES pesticides general permit, issued by the EPA, for areas where the EPA remains the NPDES permitting authority and for Virginia and other delegated NPDES states to use in drafting their permit.

The following pesticide uses will be covered under the general permit per the court order for operators that apply pesticides in or near water: (i) mosquito and other flying insect pest control, (ii) aquatic weed and algae control, (iii) aquatic animal pest control, and (iv) forest canopy pest control.

The proposed regulation generally follows the EPA's proposed pesticide general permit with (i) definitions, (ii) eligibility requirements (authorizations to discharge), (iii) technology effluent limitations (integrated pest management considerations), (iv) water quality-based limitations, (v) monitoring requirements, (vi) pesticide discharge monitoring plan, (vii) corrective actions, (viii) adverse incident and spills and leaks reporting, (ix) recordkeeping and annual

reporting requirements, and (x) conditions applicable to all permits. However, the EPA proposed general permit was adjusted for Virginia users for clarification, flexibility, and ease of implementation. No regulation currently exists for this permit.

For more information, please contact William K. Norris, Department of Environmental Quality, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, or email william.norris@deq.virginia.gov.

TITLE 12. HEALTH
DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES

Notice of Extension of Emergency
Regulation

12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210).

Effective Dates: October 5, 2009, through April 4, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services (DMAS) requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:4 VA.R. 396-399 October 26, 2009 (<http://register.dls.virginia.gov/vol26/iss04/v26i04.pdf>).

This emergency regulation was implemented on October 5, 2009. Because of the controversial nature of the changes being made to make the Health Insurance Premium Payment Program (HIPP) more cost effective, DMAS has been engaged in both appeals on this issue and in discussions with members of the public. As a result of this process, there was a delay in submitting the proposed regulation for executive review. This proposed regulation was approved by the Office of the Attorney General on March 9, 2010, by the Department of Planning and Budget on April 2, 2010, and by the Secretary of Health and Human Resources on June 23, 2010. It has been pending in the Governor's office since that time.

Once the proposed regulation is approved by the Governor, it must be published for a 60-day public comment period, and then made permanent by a follow-up final regulation, which includes a 30-day post-publication waiting period before the regulation goes into effect. Given this timeline, the regulatory process cannot be completed by October 4, 2010, the expiration date of the previous emergency regulation.

For this reason, DMAS requested an extension of six months to complete the necessary changes while maintaining the integrity of the changes made in the emergency action. The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 4, 2011.

For more information, please contact Patricia Taylor, Program Operations Division, Department of Medical Assistance Services, Richmond, VA, telephone (804) 371-6333, FAX (804) 786-1680, or email patricia.taylor@dmas.virginia.gov.

BOARD OF BEHAVIORAL HEALTH AND
DEVELOPMENTAL SERVICES

Notice of Extension of Emergency Regulation

12VAC35-220. Certification Requirements for Early Intervention Professionals and Early Intervention Specialists (adding 12VAC35-220-10 through 12VAC35-220-100).

Effective Dates: November 3, 2009, through May 2, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Behavioral Health and Developmental Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act fast-track rulemaking process. The existing emergency regulations are set to expire on November 2, 2010. The emergency regulations were published in 26:6 VA.R. 664-668 November 23, 2009.

(<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>)

In February 2010, the Department of Behavioral Health and Developmental Services submitted a request to establish permanent regulations related to the certification process for early intervention personnel through the Administrative Process Act fast-track rulemaking process. In April 2010, the Department of Planning and Budget approved this request. In July, the Secretary of Health and Human Resources forwarded the request to the Governor's office. To date, the request has not been released by the Governor's office for publication in the Virginia Register of Regulations.

Federal officials have advised the Department of Behavioral Health and Developmental Services that federal guidelines require that adoption of permanent regulations include a 60-day comment period. It is the department's intent to extend the comment period allowed for fast-track adoption to 60 days in order to meet these guidelines. With the extended comment period required by federal regulations, it will not be possible to have permanent regulations in place before the emergency regulations expire.

In order for providers to receive Medicaid payments for early intervention services, regulations governing personnel qualifications must be in place. Therefore, the department is requesting a six-month extension of the expiration date of the emergency early intervention personnel certification regulations in order to allow sufficient time for the publication and adoption of permanent replacement regulations.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through May 2, 2011.

For more information, please contact Karen Durst, Department of Behavioral Health and Developmental Services, Richmond, VA, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@dbhds.virginia.gov.

Complete information on all Commissions and Advisory Councils, as well as ongoing Interim Studies staffed by the Division of Legislative Services, may be found on the DLS website at:

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

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

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