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Virginia Division of Legislative Services



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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 Housing Commission

September 6, 2011

Delegate John Cosgrove, chair, began the meeting by noting the recent passing of Frank Eck, who worked extensively with the Commission on housing issues. The chair expressed his condolences on behalf of the Commission.

Energy Efficient Affordable Housing

Dr. Phil Parrish, Anselmo Canfora, and John Quale, University of Virginia

The presentation began with an overview of the Partnership for Design and Manufacture of Affordable, Energy Efficient Housing Systems, a partnership between the University of Virginia (Project ecoMOD, Project ecoREMOD, and Project reCOVER), Cardinal Homes, People Inc., SIPS of America, the Southern Virginia Higher Education Center, Riverstone Energy Center/American Wood Finishing Institute, the Southside Outreach Group, and the Tobacco Indemnification and Community Revitalization Commission. The partnership focuses on providing affordable, energy-efficient housing systems with the goal of developing a robust housing industry in Southside Virginia and has two different market thrusts, disaster recovery systems and affordable permanent systems.

PROJECTS ecoMOD and ecoREMOD

Project ecoMOD creates sustainable housing units for affordable housing organizations with a focus on new construction. Project ecoREMOD rehabilitates existing properties. Project ecoMOD continues to be developed with multifamily units now being designed for the Partnership for Design and Manufac-

ture of Affordable, Energy Efficient Housing Systems. Between the two projects, nine housing units have been completed, including seven in the Charlottesville area. Future housing projects will be located in South Boston, Abingdon, and Charlottesville. Housing units built or remodeled for the projects focus on sustainability and affordability. The houses use local and regional materials and are built to LEED and Passive House standards. Once built or renovated, the houses are monitored and evaluated to assess climate response and environmental impact.

PROJECT reCOVER

Project reCover focuses on transitional disaster recovery housing systems. Disaster recovery housing systems provide a shelter alternative to tents and other temporary structures. Project reCover's Breathe House, a transitional disaster recovery housing system, won first place in an international design competition that revolved around disaster recovery housing in Haiti. Project reCover has four basic objectives:

- Have Virginia take the lead role in revolutionizing disaster recovery housing, and look at design and engineering problems anew to improve on what is currently available in the market.
- Address the current temporary housing solutions and the various health hazards associated with these types of housing.
- Rethink manufacturing and deployment strategies and design for sustainable reuse. The design for the Breathe House is based on a panelized system that is remountable, and can be taken down, repacked, repaired if necessary, and put back together.
- Reconnect victims of disasters to their communities through a process of occupant-centered rebuilding.

A question and answer session then followed that can be read in its entirety on the Virginia Housing Commission website.

Consumer Financial Protection Bureau

Joe Face, Commissioner of Financial Institutions, Virginia State Corporation Commission

As of July 2011, the State Corporation Commission had received 9,257 mortgage loan originator license applications.

Mr. Face explained that the Nationwide Mortgage Licensing System (NMLS) was initiated by state regulators in 2004 in response to the rise in mortgage loan originators (MLOs). The Secure and Fair Enforcement for Mortgage Licensing (SAFE) Act, which became effective in 2009, mandated that MLOs meet minimum licensing requirements. States were required to enact legislation that brought MLOs into compliance with the SAFE Act by December 31, 2010.

As of July 2011, the State Corporation Commission (SCC) had received 9,257 MLO license applications. Of those, 5,989 are now registered and licensed by the SCC through NMLS. Over 700 existing mortgage-licensed companies have now transitioned onto NMLS as well. All states are now part of, and using, NMLS. In January 2011, MLOs were required to register with NMLS by July 29, 2011.

The Consumer Financial Protection Bureau (CFPB) was established by the Dodd-Frank Wall Street Reform and Consumer Protection Act as an independent entity. CFPB has the authority to promulgate regulations and rules and examine and enforce regulations for banks and credit unions with over \$10 billion in assets, all mortgage-related businesses, and non-backed financial firms.

State regulators have calculated that CFPB will be required to issue at least 243 rules and must conduct at least 67 studies over the next couple of years, and there will be at least 123 rulemakings that will affect regulations regulated by state regulators.

Under Dodd-Frank, state regulators can bring actions against state-regulated licensed entities for violations of any rules or regulations promulgated by CFPB. This will likely require changes to Virginia law, but because these rules and regulations have yet to be written, there is no way to know at this point which laws this will affect. There are multiple provisions in Dodd-Frank that require the CFPB to coordinate, consult, and share information with state regulators. Many states have entered into memorandums of understanding with CFPB to promote and coordinate this sharing of information. The SCC is currently working on such a memorandum with CFPB.

The CFPB now has oversight of the SAFE Act. CFPB is also the regulator of NMLS and assumed responsibility for the contract between NMLS and federal banking agencies for federal MLOs.

At this point, most experts agree that there is uncertainty as to what CFPB may or may not do with its broad powers. However, CFPB has informed the SCC that it does not expect to exercise its authority to determine that a state does not have a system in place for licensing MLOs that complies with the SAFE Act until at least December 31, 2012. Fortunately CFPB did recognize that with the new Housing and Urban Development (HUD) ruling that was issued over the summer, many states needed additional time to bring state laws into compliance with the SAFE Act. This ruling sets forth the minimum rules and standards with which state-licensed MLOs need to comply. The SCC is currently reviewing the HUD ruling and will be advising the General Assembly as to whether amendments to current legislation will be required.

A question and answer session then followed that can be read in its entirety on the Virginia Housing Commission website.

Municipal Water Services

L. Preston Bryant, Jr., McGuire Woods Consulting
Mark K. Flynn, Virginia Municipal League
Chip Dicks, FutureLaw

Mr. Bryant explained that he represented Virginia Water and Waste Authorities Association, and that they had been working extensively with the Virginia Municipal League, Virginia Association of Counties, realtors, and property owners to develop a draft bill that would address water and sewer authorities' ability to collect past due water and sewer fees.

He addressed the recurring problem of water and sewer authorities' inability to collect past due water and sewer fees from tenants. Currently, water and sewer authorities have the authority to put a lien on the property. Concern has been expressed regarding the ability of authorities to place a lien on an owner's property for past due fees owed by the tenant. There have also been problems with enforcing these liens in a uniform manner. This is largely due to two conflicting sections of the *Code of Virginia*: §§ 15.2-2119 and 15.2-5139. Property owners and local governments tend to rely on the *Code* section most beneficial to their situation, resulting in confusion.

Stakeholders have been attempting to align the *Code* sections and in the process develop a protocol for placing a lien on property that is agreeable to all interested parties. The draft presented at the meeting is not final, but it shows the direction stakeholders are moving toward. It includes notice and process provisions to ensure a uniform collection effort. Liens are intended to be a last resort. Mr. Bryant and stakeholders hope to have developed a final draft by the Commission meeting in November.

Mr. Flynn explained that for nonpayment of a water bill, there currently are not many requirements that must be met before a city, county, or town may place a lien on property. A judgment in district court is required, but the problem is that court costs exceed the past due fees in many cases. The solution to this has been to develop a process with additional requirements placed on the locality or water authority to advise the owner of the real estate prior to a tenancy that this lien provision exists to ensure that the landlord is informed ahead of time. He noted that the draft Mr. Bryant referenced includes:

- That the locality must also send notice to the landlord that the tenant owes past due water and sewer fees prior to placing a lien on the property.
- The use of the Setoff Debt Collection Program if the locality is a participant.
- A provision that allows a locality to obtain a security deposit under certain circumstances.

The biggest achievement is that this draft aligns the two conflicting *Code* sections.

Mr. Dicks explained that the landlord community would like to ensure that no landlord is responsible for the bills of a delinquent tenant. However, the credit rating of water and sewer bonds is based, in part, on the ability of localities and authorities to place a lien on property for unpaid fees. He noted that the draft Mr. Bryant referenced has taken steps in the right direction, but the landlord community still has concerns.

Neighborhood Transitions and Residential Land Use Work Group

The Affordability, Real Estate Law, and Mortgages Work Group met jointly with the Neighborhood Transitions and Residential Land Use Work Group earlier in the day. The

Neighborhood Transitions and Residential Land Use Work Group discussed proposals from the Virginia Poverty Law Center involving landlord-tenant issues. Of the three proposals, none are ready to be presented to the full Commission yet.

Receivership

Jon Baliles, Planning and Development Review, City of Richmond

Mr. Baliles began by providing background information on the receivership proposal, which began in the 2011 Session and has been significantly changed since then. The bill was based on a process known as receivership whereby a locality can appoint a receiver to repair a vacant, derelict home and then sell the home to recoup the costs of the work done and any amount leftover from the sale would be given to the original owner of the home. This process involves a taking power by the locality. That power has been removed from this proposal.

The bill is an effort to breathe new life into declining neighborhoods by repairing homes that are currently beyond acceptable living conditions. Vacant properties have been shown to attract crime, and the longer those properties are blighted the worse the situation becomes. Current enforcement tools cannot compel evasive or insolvent owners to rehabilitate their property, and government initiatives—tax sales and spot blight abatement—are inefficient.

This proposed legislation sets out specific guidelines to be followed using existing law. The property must first be declared derelict, then the locality proceeds to spot blight abatement. Receivership would only be allowed after the property is declared derelict and spot blight abatement has taken place; then the localities, through the courts, can repair the property. The goal of receivership is to incentivize owners to restore their property to a livable condition rather than just boarding it up and allowing it to fall apart. The owner retains title to the property until the spot blight abatement proceeding is completed. The owner can negotiate a sale of the property at any time, including after spot blight abatement and during the receivership process.

Chip Dicks, FutureLaw

Mr. Dicks explained the proposed legislation does not compromise existing eminent domain statutes. Instead of forcing a locality to take title to blighted property and condemn the house, under this legislation it can make necessary repairs before taking title to the house. He

The Virginia Housing Commission heard information about proposed legislation regarding receivership.

mentioned that although the Virginia Association of Realtors has not yet been asked for a position on the legislation, he does not anticipate any opposition.

The chair told the Commission that he would not entertain a motion on this bill, and asked Mr. Dicks to bring his recommendations to the full Commission meeting in November.

The Affordability, Real Estate Law, and Mortgages Work Group reported on efforts concerning Fair Housing Law legislation.

Affordability, Real Estate Law, and Mortgages Work Group

It was reported that the joint work group had decided that the proposed legislation involving manufactured home titling was not yet ready to be presented to the full Commission. The Affordability, Real Estate Law, and Mortgages Work Group also discussed the Fair Housing Law bill that was introduced last session. Discussion came from Connie Chamberlin, with Housing Opportunities Made Equal (HOME) and Mark Flynn, Virginia Municipal League, who both agreed that the current language is too broad, and Mr. Flynn was also concerned about the lack of feedback regarding the bill. They will revise the bill and will hopefully be able to make a presentation at the full Commission meeting in November.

Next Meeting

The next meeting will include information about foreclosure on lien for unpaid assessments. The next meeting of the Virginia Housing Commission will be on November 16 in Hampton.



VIRGINIA HOUSING COMMISSION

DELEGATE JOHN COSGROVE, CHAIR
ELIZABETH PALEN, EXECUTIVE DIRECTOR

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Did You Know?

“Did You Know?” appears in each issue of the *Virginia Legislative Record*. The article features important topics or interesting facts relevant to the Virginia legislature. For general questions or topic suggestions, please contact the Division at (804)786-3591 or email mtanner@dls.virginia.gov.

2012 Session Prefiling Calendar

- Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly’s Regular Session.
- All requests for drafts of legislation for prefilng to be submitted to DLS by 5:00 p.m. on December 5, 2011.
- All drafts of legislation to be prefiled returned by DLS for requester’s review by midnight December 30, 2011.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 6, 2012.
- All requests for redrafts and corrections for legislation to be prefiled to DLS by 5:00 p.m. on January 6, 2012.
- Covered drafts of legislation to be prefiled available at DLS by noon on January 10, 2012.
- Prefiling for the 2012 Session ends at 10:00 a.m. on January 11, 2012.
- The 2012 General Assembly convenes on January 11, 2012, at noon.

Virginia Code Commission

September 7, 2011

Senator Edwards, chair, welcomed members to the meeting held in Richmond, Virginia.

Administrative Law Advisory Committee Work Plan

Chris Nolen, Chair, Administrative Law Advisory Committee

Mr. Nolen reported that the Administrative Law Advisory Committee (ALAC) has met twice this interim. At ALAC's first meeting, Lane Kneedler, Virginia Uniform Law Commissioner, provided an overview of the Model State Administrative Procedures Act as adopted by the Uniform Law Commission in 2010. ALAC divided into two work groups—regulatory and judicial—to further assess Virginia's existing Administrative Process Act and compare it with the model act, noting where improvements could potentially be made to Virginia's regulatory process. The Commission approved ALAC's plan to continue studying the model act as presented. The Commission approved ALAC's proposed 2011-2012 ALAC budget, which was consistent with the budget approved last year.

Code of Virginia Notice Delivery Provisions

Lisa Wallmeyer, Division of Legislative Services

Ms. Wallmeyer summarized the issues previously addressed concerning the expansion of *Code* provisions requiring delivery of notices by U.S. postal carrier to include commercial delivery services and presented a bill draft for the Commission's review.

Ms. Wallmeyer stated that the issue is not as straightforward as she thought it would be leaving the last meeting. The terms "registered mail" and "certified mail" seem to be used interchangeably throughout the *Code*, although there are differences in how each are processed through the mail system. Registered mail is insured, but both services provide a return receipt as opposed to only a tracking mechanism. The current *Code* states that registered mail can be used in place of certified mail, but does not allow for the reverse.

One issue that arose at the July meeting was whether the term "commercial delivery" should be defined. Ms. Wallmeyer said that the term is currently used in the *Code of Virginia* and *Rules of Supreme Court of Virginia*, but it is not defined in either. Also, her research indicates that other states have not defined the term.

Another outstanding issue concerns the addition of § 1-206 B in the 2011 Session, which states if state agencies send notice by certified mail, subsequent mail may be sent by regular mail. Also, a 2011 bill added similar language for local governments in § 15.2-107.2. Ms. Wallmeyer contacted the Virginia Association of Counties and the Virginia Municipal League and neither are opposed to incorporating the language for local governments into § 1-206 B.

Further discussion suggested that consideration should also be given to (i) whether a commercial delivery receipt would be admissible as evidence in court, (ii) the fact that commercial delivery companies do not require a signature for every delivery, (iii) the logistical reasons that regular mail might be used, and (iv) how to address the use of private couriers, which generally require a signature.

Ms. Wallmeyer stated that as an alternative to amending § 1-206, another drafting option would be to identify each instance in the *Code* where notice is required and make a policy determination on each reference and amend the provision accordingly.

After further discussion, the Commission decided that further study is needed. Ms. Wallmeyer will follow up and return with more information at a future meeting.

Uniform Electronic Legal Material Act

Wenzel Cummings, Division of Legislative Services

Wenzel Cummings briefed the Commission on the Uniform Electronic Legal Material Act (UELMA) adopted by the Uniform Law Commission this year at its annual meeting. UELMA establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in printed form. UELMA requires that official electronic legal material be (i) authenticated by providing a method to determine that it is unaltered, (ii) preserved in either electronic or printed form, and (iii)

The Administrative Law Advisory Committee reported on its study of the Model State Administrative Procedures Act.

accessible for use by the public on a permanent basis.

Topics discussed included:

- Whether Virginia has an official version of the *Code of Virginia* and, if so, what makes it official.
- Whether there should be a disclaimer on the Legislative Information System (LIS) website that the LIS version of the *Code* is not the official version.
- How a copy of a *Code* section is authenticated.
- How to electronically preserve each version of the *Code* from year to year.
- The possibility of someone hacking the electronic version of the *Code* and possible liability for the Commonwealth.

The Virginia Code Commission decided that the Legislative Information System (LIS) versions of the Code of Virginia and Virginia Administrative Code are not yet ready to be designated as official.

It was explained that some sections of the LIS version of the *Code* can be misleading because the annotations and other explanatory notes are omitted from the electronic version. An example is a section with a contingent effective date or a fee that is changed by the appropriation bill, but the section that specifies the fee is not amended. Also, a few complicated tables are missing and many tables lose formatting when electronic files are transferred back and forth between the Commonwealth and the publisher.

The Commission agreed that Virginia is not yet prepared to designate the LIS versions of the *Code of Virginia* and *Virginia Administrative Code* as official and decided to take no action on UELMA at the present time. The Commission also agreed that it would be helpful to add language to LIS that notifies the user that the online *Codes* are not official.

Recodification of Title 64.1

David Cotter, Division of Legislative Services

HEALTH CARE DECISIONS ACT

The Commission revisited the issue of relocating the Health Care Decisions Act (Act), which is currently in Title 54.1. Mr. Cotter explained that the Commission agreed to separate the Health Care Decisions Act from the recodification at the July meeting. Originally, the Act was included in the proposed organization of the Title 64.1 recodification, which is currently under review. Given the close association between advance medical directives that are governed by the Act and powers of attorney, it was thought that the Act and the statutes governing powers of attorney would logically fit together in the portion of the revised Title 64.1 dealing with guardian and fiduciary relationships.

However, stakeholders raised objections to the proposed relocation of the Act, noting that it had been the subject of sometimes contentious legislation in recent years, as well as noting that some of the provisions of the Act address the conduct of health care providers.

The Code Commission agreed that the Act should be moved to a more logical location in the *Code*. After hearing a recommendation from staff and further discussing proper placement of the Act, the Commission concluded that Title 32.1 (Health) appeared to be a better fit for the Act.

Mr. Cotter said that stakeholders continue to be concerned that any legislation introduced to implement a renumbering change is a potential target for substantive amendments during the legislative process. There is also a financial concern because forms would have to be reprinted to reflect the new *Code* sections.

In light of the objections raised, the Code Commission discussed effecting this relocation using its statutory authority in § 30-149 to renumber the Act rather than by introducing legislation.

The Commission agreed to relocate the Health Care Decisions Act from Article 8 (§ 54.1-2981 et seq.) of Chapter 29 (Medicine and Other Healing Arts) of Title 54.1 (Professions and Occupations) to Title 32.1 (Health) on its own motion during the annual *Code* supplementation process.

The chair asked Mr. Cotter to bring a draft of the renumbered Act to the next meeting. In addition, the chair requested a detailed proposal and suggested that notice be provided to the appropriate legislative standing committee chairs at a suitable time.

PROPOSED SUBTITLE III, PARTS B, C, AND D

The Code Commission began its work on Subtitle III (Fiduciaries and Guardians), reviewing Parts B (Powers of Attorney), C (Guardianship of Minor), and D (Guardianship of Incapacitated Persons).

The presented changes are primarily technical in nature. However, in proposed Chapter 17, Appointment of Guardian, Mr. Cotter pointed out a change that eliminates the requirement that parents are only the natural guardians of “legitimate” children, which may be viewed as substantive. This change is arguably necessary as the section’s current distinction between parents of legitimate and illegitimate children is possibly unconstitutional. This change was approved by the Commission by a vote of 7-3.

Additionally, Mr. Cotter explained why the work group recommends changes to the definitions section of a uniform act. He stated that the term “protective order,” which is defined as an “order appointing a conservator,” has been replaced with the term “conservatorship order” in Chapter 21, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, to avoid confusion with how the term “protective order” is typically used in the *Code of Virginia*. Although uniform acts are not often changed, the work group does not see a problem with the change in definition. Mr. Cotter noted, however, that this change would make Virginia the single state with a different defined term. The Commission agreed that the change provides clarity to Chapter 21 and approved staff’s recommendation.

The final recodification report is expected to be completed in time for associated legislation to be introduced at the 2012 General Assembly session.

Other Business

As a follow up from the last meeting, the Commission discussed potential candidates for title recodification. The Commission adopted Title 33.1 (Highways, Bridges and Ferries) as its next recodification effort.

Next Meeting

The Code Commission met on October 3 and the next meeting will be held on December 5 in Richmond.

VIRGINIA CODE COMMISSION

SENATOR JOHN EDWARDS, CHAIR
JANE CHAFFIN, DLS STAFF

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The Virginia Code Commission continued its work on the recodification of Title 64.1 and decided to adopt Title 33.1 (Highways, Bridges and Ferries) as its next recodification effort.

Meeting Calendar for November–December 2011

JCOTS Medical Database Breach Subcommittee Wenzel Cummings	10:00 a.m., November 14, 2011—6th Floor Speaker’s Conference Room, GAB
VA Freedom of Information Advisory Council Maria Everett/Alan Gernhardt	1:30 p.m., November 14, 2011—House Room C, GAB
JCOTS Energy Advisory Committee Wenzel Cummings	1:00 p.m., November 15, 2011—House Room C, GAB
Virginia Housing Commission Elizabeth Palen	1:00 p.m., November 16, 2011—Hampton Roads Convention Center, Grand Ballroom C, Hampton Roads
JCOTS Electronic Privacy Advisory Committee Wenzel Cummings	1:00 p.m., November 21, 2011—House Room C, GAB
Virginia Code Commission Jane Chaffin	10:00 a.m., December 5, 2011—6th Floor Speaker’s Conference Room, GAB
JCOTS Wenzel Cummings	10:00 a.m., December 7, 2011—House Room C, GAB
Virginia Coal and Energy Commission Uranium Mining Subcommittee Marty Farber	2:00 p.m., December 12, 2011—House Room D, GAB
Virginia Housing Commission Elizabeth Palen	10:00 a.m., December 13, 2011—House Room C, GAB

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

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 *Virginia 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 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Notice of Effective Date

1VAC20-40. Voter Registration (adding 1VAC20-40-10 through 1VAC20-40-60).

Effective Date: October 13, 2011.

On November 22, 2010, the State Board of Elections adopted this regulation relating to requirements for residency for voter registration. The final regulation was published in Volume 27, Issue 9 of the January 3, 2011, edition of the Virginia Register of Regulations (27:9 VA.R. 765-768 January 3, 2011) with an effective date upon filing a notice of the United States Attorney General’s preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General’s approval of this regulation via a letter dated March 7, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is October 13, 2011. Copies are available by calling 1-800-552-9745 or (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

For more information, please contact Martha Brissette, Policy Analyst, State Board of Elections, Richmond, VA, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

Notice of Effective Date

1VAC20-40. Voter Registration (adding 1VAC20-40-80).

Effective Date: September 30, 2011.

On July 6, 2011, the State Board of Elections adopted this regulation relating to requirements for registering to vote using the Federal Post Card Application (FPCA). The final regulation was published in Volume 27, Issue 24 of the August 1, 2011, edition of the Virginia Register of Regulations (27:24 VA.R. 2581 August 1, 2011) with an effective date upon filing a notice of the United States Attorney General’s preclearance with the Registrar of Regulations or September 1, 2011, whichever is later. The State Board of Elections hereby notices the United States Attorney General’s approval of this regulation via a letter dated September 23, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is September 30, 2011. Copies are available by calling 1-800-552-9745 or (804) 864-8910; by written request to

FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

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Notice of Effective Date

1VAC20-60. Election Administration (adding 1VAC20-60-30, 1VAC20-60-40, 1VAC20-60-50).

Effective Date: October 5, 2011.

On January 31, 2011, the State Board of Elections adopted this regulation restating board policies relating to election administration. The final regulation was published in Volume 27, Issue 13 of the February 28, 2011, edition of the Virginia Register of Regulations (27:13 VA.R. 1485-1486 February 28, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated September 29, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is October 5, 2011. Copies are available by calling 1-800-552-9745 or (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

For more information, please contact Martha Brissette, Policy Analyst, State Board of Elections, Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

9VAC25-194. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities (amending 9VAC25-194-10, 9VAC25-194-20, 9VAC25-194-40 through 9VAC25-194-70).

9VAC25-810. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Coin-Operated Laundry (repealing 9VAC25-810-10 through 9VAC25-810-70).

A public hearing will be held on December 1, 2011, at 1:30 p.m. at the Department of Environmental Quality, Richmond, Virginia. Written public comments may be submitted until December 27, 2011.

Summary:

This rulemaking proposes to replace and update VAG75 (the VPDES car wash general permit), which expires October 16, 2012, and combine into this permit VAG72 (the VPDES coin-operated laundry general permit), which expires February 8, 2016. A secondary action associated with this rulemaking is the repeal of the VPDES coin-operated laundry general permit since the requirements of that permit (VAG72) are being incorporated into VAG75. The general permit will establish limitations and monitoring requirements for point source discharge of treated wastewaters

from vehicle wash facilities and laundry facilities to surface waters. The general permit regulation is being reissued in order to continue making it available as a permitting option for these types of facilities.

This general permit covers vehicle wash wastewater generated from the fixed manual, automatic, or self-service washing of vehicles where the exterior washing of vehicles is conducted. During this rulemaking, coverage under the regulation was expanded to include more types of vehicle-washing activities. This was done because most vehicle washing produces similar quality effluent and permittees and Virginia Department of Environmental Quality staff have requested expanded coverage.

This general permit also covers laundry facility wastewater from any self-service facility where the washing of clothes is conducted, as designated by Standard Industrial Classification Code 7215. However, it does not include facilities that engage in dry cleaning.

Substantive proposed changes add: (i) three reasons authorization to discharge cannot be granted (if the discharge violates the antidegradation policy in the Water Quality Standards at 9VAC25-260-30, if an approved TMDL contains a waste load allocation for the facility, or if central wastewater treatment facilities are reasonably available); (ii) language to allow for administrative continuances of coverage; (iii) effluent limits pages for laundries and combined laundry and vehicle wash facilities; and (iv) five new special conditions. These changes are made to make this general permit similar to other general permits issued recently and in response to staff requests to clarify and update permit limits and conditions.

For more information, please contact George E. Cosby, Department of Environmental Quality, Richmond, VA, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming exemptions from §§ 2.2-4007 through 2.2-4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

9VAC5-240. Variance for Open Burning (Revision I11) (repealing 9VAC5-240-10 through 9VAC5-240-50).

A public hearing will be held on November 9, 2011, at 10 a.m. at the Department of Environmental Quality, Richmond, Virginia. Written public comments may be submitted until November 9, 2011.

Summary:

This regulation created a variance to provide relief to Gloucester County residents from the regulatory seasonal restrictions on open burning. The variance expired on December 31, 2008; therefore, this chapter is being repealed.

For more information, please contact Gary E. Graham, Department of Environmental Quality, Richmond, VA, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

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

14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (repealing 14VAC5-215-10 through 14VAC5-215-130).

14VAC5-216. Rules Governing Internal Appeal and External Review (amending 14VAC5-216-20, 14VAC5-216-40, 14VAC5-216-70; adding 14VAC5-216-45).

A public hearing will be scheduled upon request. Written public comments may be submitted until November 21, 2011.

Summary:

The proposed action repeals 14VAC5-215 because §§ 38.2-5901 through 38.2-5905 and parts of § 38.2-5900 of the Code of Virginia were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of Title 38.2 of the Code of Virginia. External review under 14VAC5-215 will not be available after May 15, 2012. Amendments and an added section to Chapter 216 are proposed because on June 22, 2011, the federal government issued amendments to its "Rules Relating to Internal Claims and Appeals and External Review Process," (amending 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Part 147), addressing exhaustion and notice issues. The amendments and added section to Chapter 216 conform to these federal requirements. These amendments are required to be effective by January 1, 2012.

For more information, please contact Julie Blauvelt, Senior Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, Richmond, VA, telephone (804) 371-9865, FAX (804) 371-9944, or email julie.blauvelt@scc.virginia.gov.

Members of the House of Delegates and Senate of Virginia requesting multiple copies of the *Virginia Legislative Record* should contact the Division of Legislative Services.

The 2012 Session of the Virginia General Assembly begins on January 11, 2012.



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