

# Virginia Legislative Record

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## HJR 72: Joint Subcommittee Studying Public-Private Partnerships Regarding Seaports in Virginia

August 26, 2008

The joint subcommittee held its first meeting in Richmond. Delegate Harry Purkey was elected chair and Senator Frank Wagner was elected vice-chair.

### Presentations

#### **Jerry A. Bridges, Executive Director, Virginia Port Authority**

The Port of Virginia, the third largest port on the East Coast and the fifth largest port in the United States in 2007, is an economic engine for the Commonwealth, providing 343,000 port and port-related jobs statewide, \$41 billion in business revenues, and \$1.2 billion in state and local taxes. Jerry Bridges described the growth plans like Craney Island Marine Terminal, estimated to bring to the Hampton Roads region 54,000 new jobs, \$1.7 billion in wages, and \$155 million in annual state and local tax revenue that amount to a \$3 billion commitment to accommodate projected cargo demand. He identified financing options available to the Port of Virginia to remain competitive and listed factors that contribute to the East Coast competitive environment in which it operates.

#### **Joseph A. Dorto, President/CEO, VIT**

Joseph Dorto delivered an overview of port operations. Mr. Dorto explained that Virginia International Terminals (VIT) is a nonstock, nonprofit company created in 1983 by the Virginia Port Authority to operate the state's ports. Because VIT receives no state general fund dollars, terminal revenue funds the entire operations of VIT and the Virginia Port Authority. Transportation Trust Fund money received by the Virginia Port

Authority can only be used for maintenance and capital improvements. In addition, Mr. Dorto stated that VIT has 448 full time employees and hires approximately 800 longshoremen per day. VIT's fiscal year budget for 2009 is \$239,969,000 gross income and VIT's fiscal year budget for 2009 is \$59,293,000 net income.

VIT has negotiated 10-year agreements with all but one of its customers, and these agreements ensure the steady flow of cargo through the Virginia Port Authority ports for the next 10 years, allowing the Virginia Port Authority/VIT to better plan their improvements and expenditures in the future. Moreover, VIT/Virginia Port Authority has been successful in attracting major distribution centers to the Hampton Roads area in the past five years. VIT has a good balance of import/export containers, 49% and 51% respectively in 2007, which enables truck and rail to have two-way moves and equipment balance. Mr. Dorto told the members that \$465 million has been reinvested in the ports' infrastructure and has paid the cost of operations for the Virginia Port Authority. *The entire presentation is available on the study website.*

#### **Pierce R. Homer, Virginia Secretary of Transportation**

Secretary Homer explained that the Port of Virginia has the ability to be competitive with other ports. He explained that the Port of Virginia "will be competitive well into the future because of external factors" such as:

- The completion of the Panama Canal expansion by 2015.

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#### **Regulatory Alert**

*For more information, visit study websites.*

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

*The Port of Virginia is the third largest port on the East Coast, the fifth largest port in the United States in 2007, and an economic engine for the Commonwealth.*

- Deep natural channels that accommodate the largest cargo ships.
- Existing freight rail network along with significant rail improvements by the federal and state government, Norfolk Southern, and CSX.

However, Secretary Homer noted that securing capital funding for a port expansion in Virginia Port Authority's 2040 plan and road and rail improvements consistent with the Commonwealth Transportation Board's long-range plan are constraints on the Port of Virginia's future competitiveness.

Secretary Homer also discussed how cargo truck traffic will increase as business grows and how road and rail networks will support or constrain growth. He stated that road connections to the Port of Virginia are strained, but rail is a competitive advantage for the Port of Virginia. He explained that the Port of Virginia could maintain its competitiveness through operational improvements such as dwell time reductions for containers, expansions at APM and Craney Island, and expanded road and rail networks. Specifically, Secretary Homer suggested that for the future competitiveness of the Port of Virginia, the critical highway corridors and rail networks are necessary. He also warned that the slowing economy will reduce public funding for port-related infrastructure. *The entire presentation can be found on the study website.*

**Dr. Roy Pearson, Mason School of Business, The College of William & Mary**

Dr. Roy Pearson discussed how the Virginia Port Authority operations added value for Virginia businesses, governments, and households in fiscal year 2006. Dr. Pearson first explained the components impacting his findings (i.e., impact components): direct impact, indirect impact, induced impact, and total impact. Direct impact is the production and sale of goods or services being analyzed; indirect impacts are purchases from other businesses to carry out the direct activities; induced impacts are earnings created by direct and indirect impacts that are spent by households, businesses, and state and local governments; and total impact is the sum of the three types of impacts. The impacts were modeled using IMPLAN Professional 200, which is based on government data about national, state and local production of goods and services and market transactions and other specific state and local information from surveys and other sources. Dr. Pearson then remarked that the Virginia Port Authority's full contribution to Virginia's economy includes

contributions flowing from exports produced in Virginia and imports used in Virginia.

Dr. Pearson stated that Virginia Port Authority-related port operations impacts, which include the Virginia Port Authority, Virginia International Terminal, port service companies, and companies transporting goods to and from the terminals, included \$4.46 billion in revenue/sales, \$1.6 billion in employee compensation, and 35,665 employees. Total Virginia economic impacts of the Virginia Port Authority include \$41.07 billion in revenue/sales, \$13.52 billion in employee compensation, and 343,000 employees. With regard to exports, of \$14.7 billion in exports handled, \$8.1 billion was made in Virginia. Virginia Port Authority Virginia-made export impacts included \$16.28 billion in revenue sales, \$4.29 in employee compensation, and 93,520 employees. By contrast, with regard to imports, of \$21.5 billion in imports handled, \$8.5 billion stayed in Virginia. Impacts of Virginia use of Virginia Port Authority imports include \$20.31 billion in revenue/sales, \$7.59 billion in employee compensation, and 213,816 employees. The presentation can be found on the study website.

**Chick Rosemond, Wyatt Transfer Inc.**

Chick Rosemond expressed concerns of truck drivers who are independent-operators and deliver cargo to and from the ports. He noted, however, the good relationship with such truck drivers and the Virginia Port Authority, which is due in part to the monthly meetings in which Mr. Bridges, Executive Director of the Virginia Port Authority, meets with the truck drivers.

**David Mills and Nobuo Ishida, "K" Line America, Inc.**

David Mills discussed "K" Line America, Inc.'s history, corporate principles, and financial highlights (e.g., \$13.3 billion in revenues; \$1.3 billion in operating income). He discussed the international operations of "K" Line America, Inc., such as its containership, dry bulk carrier, car carrier, logistics, short sea and coastal shipping, energy transportation, and tanker and heavy lift businesses. Mr. Mills shared why "K" Line America, Inc. decided to relocate from New York, New York and headquarter in Richmond, Virginia. A low cost of living, enjoyable climate, and a well-educated, quality workforce were found in Richmond, Virginia. Also, locating in Virginia allowed "K" Line America, Inc., as an ocean carrier, to enjoy:

- A strategic location within the Mid-Atlantic Coast.
- A superior inland rail network.
- Favorable relationships with labor.
- State economic development efforts.
- A deep harbor.

- Close proximity to open ocean.
- No ice free or air draft from bridges.

Mr. Mills discussed factors affecting port competition such as good infrastructure to deliver goods to customers, high productivity for vessels, and fast rail connections to and from inland destinations, as well as means to enhance a port's competitiveness, including recruiting exporters and manufacturers and investing in Virginia's infrastructure. The entire presentation can be found on the study website.

## September 24, 2008

The joint subcommittee held its second meeting at Old Dominion University in Norfolk with Delegate Purkey as chair and Senator Wagner as vice-chair.

## Presentations

### Edward L. Brown, Sr., Port of Hampton Roads, International Longshoremen's Association

Edward Brown described the membership and charitable activities of the International Longshoremen's Association in Hampton Roads. By detailing his many experiences working at the ports over the past decades, he explained why he prefers the current operations of the ports. He suggested that the current operations of the ports in Virginia have contributed to increased economic growth and attractiveness in the Hampton Roads region. Mr. Brown explained that longshoremen have received extensive training in containerization and higher incomes due to the current operations of the ports.

### Captain Patrick B. Trapp, Commander of Coast Guard Sector Hampton Roads, U.S. Coast Guard

Captain Trapp delivered a presentation in which he discussed the Coast Guard's relationship to Virginia's

seaports. In doing so, Captain Trapp first stated the mission statement of the Coast Guard with respect to the Sector Hampton Roads area. In addition, he explained that the Commander, Sector Hampton Roads serves, concurrently and ex-officio, as the Captain of the Port; Officer in Charge, Marine Inspection; Federal On-Scene Coordinator; Federal Maritime Security Coordinator; and Search and Rescue Mission Coordinator. After explaining the duties associated with the aforementioned titles, Captain Trapp shared some local port security challenges facing the Coast Guard, for example nearby chemical and power plants, and nearby major pipelines. Finally, Captain Trapp discussed the new regulations relating to the Transportation Worker Identification Credentials and the mandates and composition of the Area Maritime Security Committee.

### Dr. Wayne K. Talley, International Maritime Ports & Logistics Management Institute, ODU

Dr. Wayne Talley delivered a presentation entitled "Global Port Governance, Privatization and Operation." After delivering opening remarks about Old Dominion University's business programs that relate to port management, Dr. Talley described four types of ports: the service port, tool port, the landlord port, and the private port. *See table below.*

Dr. Talley reported that service ports have decreased in number as privatization of port operations has increased. Privatization is a process in which governments seek "to increase the efficiency of port operations" through asset and service privatization. Note that asset privatization, according to Dr. Talley, is the transfer of assets from a public port to the private sector (e.g., to a

*The Craney Island Marine Terminal is expected to bring 54,000 new jobs to the Hampton Roads Region.*

Port Type	Owned by:	Managed by:
Service Port	Government (owns land/all assets)	Port Authority (operations controlled by port authority)
Tool Port	Government (owns land and assets)	Port Authority (staff operates port-owned equipment; private cargo-handling firms operate other cargo handling activities)
Landlord Port	Government	Port Authority (leases port's infrastructure to private terminal operator, who may hire dockworkers, purchase and install own equipment, and maintain own buildings, to operate port)
Private Port	Private Owner (owns land and infrastructure)	Private Operator (leases port operations)

\* Information used in chart is solely attributable to Dr. Talley and can be found in his presentation on the study website.

private port terminal operator)" and service privatization is "the transfer of a public port service (but not public port assets) to the private sector its provision."

After explaining port privatization in the United Kingdom, Dr. Talley detailed the process by which port privatization has occurred. He also shared examples of the works of and speculative interests in private port terminal operators.

## Other Comments

Jerry A. Bridges, Executive Director, Virginia Port Authority; Joseph A. Dorto, President & CEO, Virginia International Terminals, Inc.; and Barbara Reese, Deputy Secretary, Office of the Secretary of Transportation all offered statements in response to the presentations and discussions. In particular,

Ms. Reese discussed the Public-Private Transportation Act with members of the joint subcommittee.

## Next Meeting

The next meeting of the joint subcommittee is scheduled for October 22, 2008.

HJR 72

### *Joint Subcommittee Studying Public-Private Partnerships Regarding Seaports in Virginia*

Delegate Harry Purkey, Chair

Kevin Stokes, DLS Staff

(804) 786-3591

[study website](#)

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

## Joint Meeting of the Special Subcommittees of House General Laws and Senate Rehabilitation & Social Services Committees Studying Certain ABC Issues

**August 26, 2008**

The third meeting of the special subcommittees charged with studying certain ABC issues was held in Richmond with Delegate David B. Albo presiding. Topics included:

- Alternatives for the food-beverage ratio for mixed beverage licensees.
- Limiting the proliferation of specialty licenses (day spa and meal assembly kitchen licenses).
- Feasibility of creating a bar license as a separate mixed beverage license.

Delegate Albo stated that the ABC Board was asked to work on a method whereby a licensee that is having trouble meeting the food-beverage ratio could petition the board. The request is based on the assumption that licensee's failure to meet the ratio may be anecdotal only. *The testimony given by all speakers may be found on the study website.*

## Presentations

### **Curtis Coleburn, Department Alcoholic Beverage Control**

Curtis Coleburn discussed a draft that would allow a mixed beverage licensee to petition the ABC Board to remain qualified to hold the license when the licensee could not meet its 45% food-beverage ratio. Because the ratio is found in the Code of Virginia, it was thought advisable to amend the statute directly. The draft, amending § 4.1-210, provided that the ABC Board may allow a mixed beverage restaurant licensee who does not meet the 45% food-beverage

ratio to continue to hold the license if the licensee can establish to the satisfaction of the ABC Board that the failure to meet the ratio is primarily the result of the sale of mixed beverages made from high-priced brands of distilled spirits.

Delegate Bulova stated that the phrase "to the satisfaction of the Board" left too much discretion with the ABC Board. Staff advised that if board action was challenged, the administrative standard of review was a preponderance of the evidence. If the language were adopted, further limitations on the discretion of the board could be added. Mr. Coleburn explained that the real issue is the recent 20% decrease in food sales and not so much an increase in the sale of alcoholic beverages. He advised that the food-beverage ratio is reviewed annually by the ABC Board.

### **Specialty Licenses**

Staff reported on proposed legislation that would create a new limited service license, which would subsume day spa and meal assembly kitchen licenses and allow for the addition of future types of licenses meeting the criteria established in the draft.

A limited service license could be granted to commercial establishments that offer personal services to the public, where alcoholic beverages served to customers is incidental to the principal business. The proposed legislation would require that food be available and offered by the licensee at substantially all hours that wine and beer are served. Staff advised that the problem with this approach was that the term "personal services" is not defined and licenses could be issued to dry cleaning, automotive care, and other businesses, which the members agreed was problematic.

The special subcommittee members discussed draft language for possible new Class A, B, and C licenses.



Margaret Bower, representing the meal assembly kitchen licensees, stated that her group was not in favor of requiring food to be available when wine or beer is served to customers and noted that the food requirement may subject the licensees to unwanted food safety inspections by the Department of Health. Jack Knapp, Independent Assembly of Baptists, stated his opposition to limited service licenses, stating it was an expansion of the service of alcoholic beverages. Two restaurant licensees testified that every retail on-premises licensee should have the same set of rules.

### **Class A, B, & C Restaurant Licenses**

The subcommittees discussed legislation on Class A and B restaurant licenses, which proposes new names for the existing mixed beverage restaurant license and the limited mixed beverage restaurant, respectively, and the Class C license, which would be a new license category for bars. The requirement for each class of license is as follows:

**Restaurant Class A:** Nothing changes from the current requirements for mixed beverage restaurant licenses. Calculated on a monthly basis, the revenue from the sale of food plus nonalcoholic beverages exceeds 45% of the total revenue from the sale of food, nonalcoholic beverages, wine, beer, and mixed beverages. Licensees would also retain the current minimum monthly food sale requirement of \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.

**Restaurant Class B:** Nothing changes from the current requirements for limited mixed beverage restaurant licenses. The sale of liqueur-based drinks shall not exceed 10% of the total annual gross sales. There is currently no minimum monthly food sale requirement.

**Restaurant Class C:** No food ratio requirement, but licensee would have to maintain minimum food sale requirements. Food must be available at all times alcohol is served. There will be some form of limit on the number of licenses issued and the license fee and annual tax would be significantly higher than any current license.

Testimony from current mixed beverage restaurant licensees on the draft was generally in opposition. The new Class C license was seen as unnecessary when the focus should be on fixing the ratio.

The subcommittees discussed the purposely high license fee of \$25,000 for the Class C license in order to limit the number of new licenses. Consensus was that perhaps \$5,000 to \$7,000 would make the license more affordable. It also was noted that the 45% ratio is based on dollar to dollar sales when perhaps it should be based on volume of alcohol sold. Mr. Coleburn explained that if the ABC Board based the ratio on volume, it would involve the calculation of proof of the alcohol. He noted that no matter what the basis, some licensees will be helped and some hurt. In 1968, with the advent of liquor by the drink, the policy was that mixed beverages would be allowed

only in restaurants and the ratio was set to establish that the licensee was a bona fide restaurant. Delegates Cosgrove and Bulova stated that there needs to be a new formula instead of the 45% food-beverage ratio. Delegate Albo stated that licensees have to keep food costs low to meet the ratio.

### **Tom Lisk, Virginia Hospitality & Travel Assoc.**

Tom Lisk stated that the industry preferred one standard ratio for all on-premises licensees over a new Class C license. He suggested the focus should be to establish a standard for what it means to be a restaurant and not how much alcohol is sold. He noted that there is no similar standard for wine and beer licensees and no distinction in proof of wine and beer. The standard for determining that a business is a restaurant should be based on a required sale of a certain monthly dollar amount of food prepared in a full service kitchen. Once that dollar threshold is met, it doesn't matter how much alcohol is sold. He stated that the focus should be on maintaining safe, peaceful establishments and protecting the public safety.

### **Walter Marston, Virginia Beer Wholesalers Association, Inc.**

Walter Marston explained that it was the hospitality industry that asked for the ratio and noted that wine and beer have always been treated differently in the law. He disagreed with the suggestion to treat all alcoholic beverages the same. He stated that the law should not change based on a small number of mixed beverage licensees that are unable to meet the ratio.

## **Next Meeting**

The special subcommittees will meet again in Richmond on November 14, 2008. Staff will prepare a draft that has a volume calculation for the food-beverage ratio, maintaining current wine and beer dollar sales standards. Other topics may include a discussion on increasing the monthly dollar food sales requirement and a revisiting of the Class C license draft.

### *Joint Meeting of the Special Subcommittees of House General Laws and Senate Rehabilitation & Social Services Studying Certain ABC Issues*

Senator Linda "Toddy" Puller, Chair  
Delegate Terrie Suit, Chair

Maria Everett and Patrick Cushing, DLS Staff  
(804) 786-3591

[study website](#)

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

*A speaker  
noted that  
historically  
wine and beer  
have been  
treated  
differently  
in the law.*

# HJR177/SJR101: Joint Subcommittee Studying Benefits of Adopting a Single Sales Factor for Corporate Income Tax Purposes

August 27, 2008

*The study will decide whether the current double-weighted sales factor formula used to calculate a corporation's taxable income should be changed to a single sales factor formula.*

The joint subcommittee met in Richmond and elected Delegate Kathy Byron and Senator Walter Stosch as co-chairs. The study will decide whether the current double-weighted sales factor formula used to calculate a corporation's taxable income should be changed to a single sales factor formula in order to attract new manufacturers to the Virginia and encourage those already here to expand.

## Staff Presentations

Staff outlined the history of Virginia's corporate income tax from a license tax in the early 1840's to the current system based on a corporation's net earnings. The tax applies to all domestic and foreign corporations doing business in the state with a few exceptions. Virginia's six percent corporate income tax applies to a corporation's Virginia taxable income, which is computed by using federal taxable income as the base. Most states in general conform their corporate tax to the federal system. For Virginia tax returns, modifications are made to federal taxable income in order to determine Virginia taxable income.

Virginia permits corporations engaged in multistate activities that have income taxable by Virginia and out-of-state political subdivisions to apportion their Virginia taxable income through the following three-factor formula, so that different states do not impose a tax on the same income:

- Property Factor—25%: Ratio of the average real and tangible personal property value of the firm in Virginia to the firm's total average real and tangible personal property value.
- Payroll Factor—25%: Ratio of the payroll in Virginia to the firm's total payroll.
- Sales Factor—50%: Ratio of the sales in Virginia to the firm's total sales.

These ratios are added together with the sales factor doubled and divided by a denominator of four to determine the portion of total taxable income subject to the Virginia corporate income tax. Because the sales factor is doubled, this is referred to as the double-weighted sales factor formula. If there is no sales factor, then the denominator will be the number of existing factors and where there is a sales factor but no payroll or property factor, the denominator will be the existing factors plus one. A corporation can petition the Tax Commissioner to use a different allocation formula if the three-factor

formula is inherently unfair to the particular corporation.

A second presentation provided a look at other states that have an apportionment formula that includes a sales factor for computing the corporate income tax. Twenty states use the single sales factor or offer it as an option for businesses. Neighboring states that use the single sales factor formula or offer it as an option are Kentucky, Georgia, Maryland, and South Carolina. A sales factor that is at least double weighted is used in 16 states, including Virginia, while 11 states impose an equally weighted payroll, property, and sales factor formula.

## Public Comment

The executive director of Net Choice, an IT company in the Washington, D.C. area, asked for consideration of the single sales factor for manufacturers and also an examination of the method used by service providers (cost of performance) in calculating their taxable income. He suggested using a customer base/where the service is delivered rather than where the service originates as a better method for service providers and other technology companies.

The executive director of the Commonwealth Institute urged an examination of the effect on manufacturing when the state adopted the double-weighted sales factor formula in the first part of this decade. He reminded members about the property and payroll factors and their importance to the process. He suggested that if the single sales factor is adopted in Virginia it should be performance based in order to measure job growth or loss among manufacturers following its enactment.

## Next Meeting

The next meeting will be October 21. The meeting agenda will be posted on the study's website.

HJR 177/SJR101  
*Joint Subcommittee Studying  
Benefits of Adopting a Single Sales Factor  
for Corporate Income Tax Purposes*

Senator Walter Stosch and  
Delegate Kathy Byron, Co-Chairs

Mark Vucci and Joan Putney, DLS Staff  
(804) 786-3591

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

# HJR 194: Joint Subcommittee to Study the Transportation Network of Hampton Roads

**September 10, 2008**

The joint subcommittee met on September 10, 2008, at the Virginia Modeling, Analysis, and Simulation Center (VMASC) in Suffolk with Delegate Chris Jones as chair.

## Presentation

### Mike Robinson, VMASC

Mike Robinson gave the members a project update, based on the discussions at the joint subcommittee's previous meeting on June 10. The projects include:

- Construction of the Third Crossing.
- Construction of the Southeastern Expressway/Dominion Boulevard.
- The Midtown Tunnel/Martin Luther King extension.
- Improvements to US Route 460.
- Widening of I-64 on Peninsula to Route 199.
- Widening of I-64 on Southside (including the High Rise Bridge) from Battlefield Boulevard to Bowers Hill.
- Expansion of the Hampton Roads Bridge-Tunnel (HRBT).

Mr. Robinson made a presentation that included two alternatives for the HRBT. One plan adds two lanes (one in each direction) and one plan adds four lanes (two in each direction), and they visually contrast regional traffic congestion in 2000 with two scenarios of projected congestion in 2030. In the 2030 models, one shows none of the projects constructed (the "no-build" scenario) and one shows all the projects as constructed. While these visual displays showed some significant preliminary results, Mr. Robinson

emphasized that VMASC's analysis would not be complete until some time in mid-November and that the final product would include additional consideration of large trucks and cargoes; impacts from tourism; and consequences of traffic accidents, breakdowns, and similar incidents.

In discussions following the presentation, several members commented on the less-than-hoped-for impact of project construction on traffic congestion on Interstate Route 64 (I-64) on the Peninsula between the HRBT and Virginia Route 199 near Williamsburg. Representatives from the Peninsula suggested the need for more analysis of traffic that uses I-64 between the HRBT and the Hampton Coliseum, but does not travel through the HRBT itself.

## Next Meeting

The chairman suggested considering VMASC's final product in December. The next meeting date will be posted on the General Assembly calendar as soon as the information is available.

*The members  
heard a  
presentation  
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alternatives for  
expansion of the  
Hampton  
Roads  
Bridge-Tunnel.*

HJR 194

## *Joint Subcommittee to Study the Transportation Network of Hampton Roads*

Delegate Chris Jones, Chairman

Alan Wambold and Caroline Stalker, DLS Staff

(804) 786-3591

# HJR 178/SJR 70: Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities

**September 11, 2008**

The joint subcommittee held its first meeting in Richmond and Delegate Athey was elected chair and Senator Vogel vice-chair.

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

## Presentations

### Matthew G. Bolster, DHCD

Matthew Bolster of the Virginia Department of Housing and Community Development described land use planning in Virginia and how planning and tools available in planning relate to urban development areas. He explained the statutory purpose and mandates of the statutes governing comprehensive plans. He explained that planning by localities is affected by regional and state public entities, such as the Virginia Department of Transportation, park authorities, and metropolitan planning organizations, which plan independent of localities. Mr. Bolster

Planning by  
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independently.

suggested the lack of a mandate requiring localities to follow their comprehensive plans or to adopt zoning ordinances to match their plans that limit the effectiveness of comprehensive plans. He discussed land use regulation and infrastructure financing, including the requirements and purposes of subdivision and zoning ordinances, proffers, bonded debt, and impact fees. The relevance of urban development areas was also discussed.

#### **Ted McCormack, Virginia Association of Counties**

Ted McCormack discussed the counties' views towards the statute governing urban development, statutorily authorized infrastructure financing, and areas for further investigation. Mr. McCormack explained the statutory policy behind and requirements of the statute governing urban development areas. He detailed the different reactions counties have expressed towards the statute. After noting potential conflicts between the statute regulating urban development areas and state regulations, Mr. McCormack suggested that there must be incentives to developers to direct growth in urban development areas, such as fast development approval process for developers who develop according to prescribed densities in urban development areas. Likewise, incentives must exist for counties to direct growth in urban development areas for such areas to thrive. He transitioned from the idea of financing mechanisms incenting counties to direct growth in urban development areas to the current means by which counties fund infrastructure caused by growth, including real property taxes, proffers, road impact fees, and bonds.

#### **Other Comments**

Lisa Guthrie, Executive Director of Virginia League of Conservation Voters, introduced and outlined the presentations to be given to members. Chris Miller of the Piedmont Environmental Council illustrated the large increase in planned growth in Northern Virginia through the use of the 1967 Regional Plan for Northern Virginia and the 1994 Northern Virginia Planning District Commission composite general land use plan. Oliver A. Pollard III of the Southern Environmental Law Center discussed legislative measures that tied together transportation and land use planning, including urban development areas, impact fees, urban transportation service districts, expanded proffer authority, mandatory clustering ordinances, etc. He suggested the General Assembly promote revitalization of cities, towns and older suburbs

where infrastructure currently exists, promote investments in existing infrastructure, and provide incentives for regional cooperation. Stewart Schwartz of the Coalition for Smarter Growth shared case studies that demonstrate planning by Albemarle, Arlington, Fauquier, Frederick, and Loudoun Counties "for growth and efforts to design development" within designated growth areas.

#### **Next Meeting**

Representatives from the Virginia Municipal League and the Home Builders Association of Virginia will make presentations at the next meeting on October 9, 2008.

HJR 178/SJR 70

#### *Joint Subcommittee Studying Development and Land Use Tools in Virginia's Localities*

Delegate Clifford Athey, Chairman

Kevin Stokes and Jeff Sharp, DLS Staff  
(804) 786-3591

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

#### **DLS Bulletin Board**

- **Prefiling of legislation for the upcoming General Assembly Session began July 21, 2008.**
- **Final meetings for Interim Studies should be held before November 30, 2008.**
- **Committee action on continued legislation must be completed by midnight December 4, 2008.**
- **All requests for drafts of legislation to be prefiled need to be to DLS by 5 p.m. on Monday, December 8, 2008.**
- **Joint subcommittees should submit an executive summary, including their findings and recommendations, to DLAS by the first day of the General Assembly's Regular Session.**
- **2009 General Assembly Session begins at noon on January 14, 2009.**



## *Did You Know?*

**"Did You Know?" appears in each issue of the Virginia Legislative Record, featuring important topics or interesting facts relevant to the Virginia legislature. For general questions or issue suggestions, please contact the Division of Legislative Services at (804) 786-3591 or e-mail [emiller@leg.state.va.us](mailto:emiller@leg.state.va.us).**

### *Effect of Legislation on Pending Virginia Court Cases*

What happens when legislation appears to affect the outcome of a case pending before a Virginia court—will that new legislation apply to the pending case? It depends on whether the new legislation affects substantive or procedural rights. Substantive rights "are included within that part of the law dealing with creation of duties, rights, and obligations . . ." *See Shiflet v. Eller*, 228 Va. 115, 120, 319 S.E.2d 750, 754 (1984). Procedural rights concern "methods of obtaining redress or enforcement of rights." *Id.* Determining which type of right has been affected is not always an easy matter and there are few bright lines.

In general, changes to statutes affecting substantive rights apply prospectively, to future conduct and future court cases arising out of such conduct. *See Riddett v. Virginia Electric and Power*, 255 Va. 23, 29, 495 S.E.2d 819, 822 (1998). *See also* Va. Code § 1-239 (stating the general rule of construction that new statutes are

presumed to be prospective). This protection of substantive rights "was incorporated by the General Assembly into Virginia civil procedure with the enactment of Title 8.01." *See Shiflet*, 228 Va. at 120, 319 S.E.2d at 753. Virginia Code § 8.01-1 provides for retroactive application of the Title, unless "in the opinion of the court any particular provision (i) may materially change the substantive rights of a party (as distinguished from the procedural aspects of the remedy) or (ii) may cause the miscarriage of justice." *Shiflet*, 228 Va. at 120, 319 S.E.2d at 753.

Therefore, when new legislation affects cases pending before the courts, those courts will look to whether that new legislation concerns procedural or substantive rights. Generally, changes involving substantive rights will not apply to pending cases. As evidenced by the many Virginia cases on this issue, determining whether a statute affects substantive or procedural rights is the source of much legal debate.

- Caroline Stalker, DLS Attorney

## Study Meeting Calendar for October - November '08

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Feasibility of Creating a Regional Rapid Transportation Network	10:00 a.m., Wednesday, October 1, 2008 Northern Virginia Community College, Seefeldt Building, Woodbridge Campus Theater, Woodbridge, Virginia	Alan Wambold
Comprehensive Services for At-Risk Youth and Families	10:00 a.m., Monday, October 6, 2008 General Assembly Building, Senate Room B	Sarah Stanton
Development and Land Use Tools	10:00 a.m., Thursday, October 9, 2008 General Assembly Building, House Room C	Kevin Stokes Jeff Sharp
Ways the Commonwealth May Work with Virginia's Private Nonprofit Colleges to Meet State Higher Education Needs	1:00 p.m., Monday, October 20, 2008 General Assembly Building, House Room C	Jessica Eades
Local Incentives to Private Businesses for Economic Development	8:30 a.m., Tuesday, October 21, 2008 General Assembly Building, House Room C	Amigo Wade
Development and Land Use Tools	10:00 a.m., Thursday, November 13, 2008 General Assembly Building, House Room C	Kevin Stokes Jeff Sharp
Special Subcommittees of the House General Laws and the Senate Rehabilitation and Social Services Committees Studying Certain ABC Issues	10:00 a.m., Friday, November 14, 2008 Capitol, House Room 1	Maria Everett Patrick Cushing

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

## COMMISSIONS AND COUNCILS

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

### Manufacturing Development Commission 8/22/08

The Manufacturing Development Commission's first meeting of the 2008 Interim was held at the McDemmond Center at Norfolk State University.

#### Presentations

##### **Stephen A. Walz, Senior Adviser for Energy Policy, Office of the Governor**

Stephen Walz discussed reducing energy costs in the Commonwealth. Energy costs can be lowered by reducing electricity use during periods of high system wide demand (demand response), reducing the energy input per unit of product (energy efficiency), and conserving energy.

The cost of electricity is at its highest at peak demand. Mr. Walz stated that demand response, or reducing electricity use during peak demand, reduces the average cost per kilowatt hour. Utilities and companies have developed programs for off-peak pricing and emergency load shedding.

The State Corporation Commission's 2007 energy efficiency study made recommendations relating to a statewide goal for capacity reduction, utility demand response programs with cost recovery, real-time or near real-time rate pricing, incentives for demand response programs, use of curtailment service providers, and defining emergencies for backup generator use.

Between 1960 and 2005, industrial energy use in the Commonwealth increased at a rate of 2.2 percent per year (greater than the national average of 1.1 percent per year for the same period); however, between 1990 and 2005, industrial energy use in the Commonwealth increased at a rate of 0.5 percent per year (greater than the national average of 0.2 percent per year for the same period). Save Energy Now is a program of the United States Department of Energy to reduce industrial energy use by 25 percent over the next 10 years.

Mr. Walz also discussed the Virginia Energy Plan, which sets a target to reduce the anticipated growth rate of energy use by 40 percent. The Plan has a goal of reducing electric use by 10 percent, natural gas consumption by 7 percent, and the consumption of fuel oils by 10 percent.

##### **Tim Wilkins, Virginia Coastal Energy Resource Consortium**

Tim Wilkins discussed the scientific and economic viability of harnessing Virginia's offshore winds to produce

power. The Hampton Roads region is a favorable candidate for the harnessing of offshore winds because of:

- Class 6 winds located within 10-15 miles of the shoreline.
- Robust coastal transmission grid.
- Minimal probability of major hurricane strikes.

Mr. Wilkins explained that if there is no reduction in demand for electricity through conservation by 2016, then approximately 5,100 MW of new electricity generation will be needed to maintain electricity imports into Virginia at current levels. If conservation efforts account for a 6-7 percent energy savings by 2016, then approximately 3,600 MW of new electricity generation will be needed to maintain electricity imports at current levels. Additionally, 1,985 MW of additional generation is anticipated by 2012 from currently planned projects. After taking into consideration conservation efforts and currently planned projects, Mr. Wilkins projected that an additional 1,600 MW of new electricity generation will be needed from projects that are not currently identified in order to maintain electricity imports into Virginia at current levels.

Norfolk State University and Science Applications International Corporation are preparing a report that will address the timetables and economic development impact to harness offshore wind potential. Mr. Wilkins estimated that the total capital investment to produce 2,000 MW of installed offshore wind capacity is \$6.2 billion over a 10-year build-out period. Mr. Wilkins also estimated the value of local fabrication and installation contracts to install offshore wind capacity over this same 10-year period at \$200 million per year, and the value of local offshore service contracts after completion of the build-out at \$155 million per year.

##### **Chairman Wagner**

Senator Wagner stated that Minerals Management Service estimates that there are 66.6-115.3 billion barrels of oil and 326.4-565.9 trillion cubic feet of natural gas that are undiscovered technically recoverable resources beneath the offshore waters of the Outer Continental Shelf. He said that the average estimates are 85.9 billion barrels of oil and 419.9 trillion cubic feet of natural gas. These estimates represent quantities that can be conventionally produced without consideration of economic feasibility.

##### **Michelle Vucci, Department of Education**

Michelle Vucci gave an update on the development of the standard technical diploma and the advanced technical diploma established by the 2007 General Assembly. The Virginia Board of Education has published draft regulations for implementa-

tion of the diplomas. The regulations are in the public comment phase. She indicated the regulations include academic and career plans for students and a graduation and completion index that will be used in accrediting schools. The academic requirements meet or exceed the requirements for the Standard and Advanced Studies Diplomas.

A student must earn four standard credits in career and technical education in a career concentration approved by the board for both the standard and advanced technical diplomas. If a career concentration includes a specific assessment approved by the board, the student must take this assessment in order to earn the diplomas. Twenty-two credits must be earned to receive a standard technical diploma, which is the same number of credit requirements for a standard diploma. Twenty-six credits must be earned to receive an advanced technical diploma, which is the same number of credit requirements for an advanced studies diploma.

### **Gloria Westerman, Virginia Community College System**

Gloria Westerman discussed Virginia's Career Readiness Certificate (CRC). The CRC gives employers a uniform measure of workplace skills and workplace readiness. CRC measures skills that are easily understood by employers, educators, and recipients. The CRC is based on the WorkKeys comprehensive skills assessment tool, which is a widely accepted common language for skills definition among employers, educators, and employees. In order to earn the certificate, individuals must test in reading for information, applied math, and locating information. As of August 18, a total of 19,372 persons have taken the three tests with a total of 17,109 certificates being awarded.

Legislation passed by the 2008 General Assembly creating the CRC program makes instruction and remediation easily accessible, requires a statewide online data system that incorporates services for employers and individuals, and requires the Virginia Workforce Council to develop policies and guidelines to administer the CRC program.

### **Joseph Mayer, Department of Taxation**

Joseph Mayer discussed the constitutionality of using tax preferences to foster business investment and expansion in the Commonwealth. He stated that the use of tax preferences to stimulate economic development, as opposed to general fund appropriations, will be scrutinized by courts to determine if there has been a transgression of the federal Commerce Clause.

### **Joseph Croce, Virginia Manufacturers Assoc.**

Joseph Croce discussed a stormwater control fee that local governments may impose upon businesses and other persons contributing to stormwater runoff. Section 15.2-2114 of the Code of Virginia provides that a locality imposing the fee may provide for a full or partial waiver of the fee to any person "who develops, redevelops or retrofits outfalls, discharges or property so that there is a permanent reduction in post-

development stormwater flow and pollutant loading." Some manufacturers who have implemented stormwater runoff improvements that led to a permanent reduction in post-development runoff have not seen a partial or full waiver of the fee. The Virginia Manufacturers Association believes that at least some of the fee should be waived for businesses that have implemented improvements.

### **Nikki Rovner, Deputy Sec. of Natural Resources**

Nikki Rovner reported to the Commission on the Governor's Commission on Climate Change (the Governor's Commission). Ms. Rovner stated that the Governor's Commission is charged with preparing a Climate Change Action Plan that will:

- Inventory the amount of and contributors to Virginia's greenhouse gas emissions. Evaluate the expected impacts of climate change on Virginia's natural resources, the health of its citizens, and the economy.
- Identify actions to take to prepare for climate change.
- Identify the actions that need to be taken to achieve a 30 percent reduction in greenhouse gas emissions by 2025.
- Identify climate change approaches being undertaken by other governmental entities.

Ms. Rovner noted that the impacts of climate change will include higher coastal water levels and greater salinities, ocean acidification, shoreline erosion, increasing nutrient inputs and decreases in oxygen content in estuarine waters, and significant ramifications for coastal, bay, and estuarine plants, animals, food webs, and ecosystems. These impacts put Norfolk Naval Facilities at risk for sea level rise and put Virginia's roads, rail, airports, and ports also at risk.

Climate change approaches being taken by other governmental entities include state greenhouse gas emission targets, renewable portfolio standards, regional cap-and-trade initiatives, vehicle emission standards, and the U. S. Mayors Climate Protection Agreement.

## **Next Meeting**

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

### **Manufacturing Development Commission**

### **SENATOR FRANK WAGNER, CHAIR**

*Mark Vucci, DLS Staff*  
*Joan Putney, DLS Staff*

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## Small Business Commission 9/9/08

The Small Business Commission met in Richmond for a work session. The topic for the meeting was the cost and availability of health insurance for small businesses. The Commission invited representatives from other Virginia governmental entities and private organizations interested in this area to participate. Invited participants included:

Robert Nealon—chairman of the Virginia Small Business Advisory Board

Anne Colley—representative of the Bureau of Insurance, Virginia State Corporation Commission, which provides staff for the Virginia Special Advisory Commission on Mandated Health Insurance Benefits

Elizabeth Moran—director of Legislative and Community Affairs for the Virginia Department of Business Assistance

Hal Greer—representative of the Joint Legislative Audit and Review Commission (JLARC)

Julia Ciarlo Hammond—state director of the National Federation of Independent Business

Tyler Craddock—representative of the Virginia Chamber of Commerce

Doug Gray—executive director of the Virginia Association of Health Plans

Also participating in the work session were Stephen Bowman from the Virginia Joint Commission on Health Care and Mark Pratt of Anthem Blue Cross and Blue Shield.

The Commission members and the participants in the work session discussed numerous issues related to the cost and availability of health insurance to small businesses and their employees. It was noted that the number one concern of small businesses was rising health care costs and that an increasing number of small businesses are either not offering health insurance to their employees or dropping the coverage they currently provide. The Commission and the participants in the work session discussed several specific options to address this issue including:

- Allowing small businesses to participate in the Virginia state employee health plan. It was noted that no other states have taken this step and that it would possibly lead to raising the cost of the state insurance as the size of the risk pool would be increased by the participating small businesses.
- Encouraging the use of health savings accounts where the employee is able to save money, tax-free, for current or future health care needs. Health savings accounts result in the employee being more invested in his health care as his savings are used to fund it.
- Encouraging the use of 125 plans, also known as cafeteria plans. These plans, authorized under the U.S. Internal Revenue Code, allow employees to purchase health insurance using pre-tax dollars, resulting in savings between 25%-40% per dollar. These plans may also decrease the tax liability of employers.
- Allowing the sale of limited benefit health insurance plans that exclude some or all of the health insurance mandates currently required by the Virginia Code.

- Providing tax credits or subsidies to small employers as an incentive for them to offer their employees health insurance.
- Establishing a program similar to the VirginiaShare Health Insurance Program (HB 593, SB 578) proposed during the 2008 Session of the General Assembly. This pilot program would have divided the cost of health insurance for employees of small businesses whose income is at or below 200% of the federal poverty level between the state, the employer, and the employee. Although the bills did not pass, the Riverside Health System is attempting to set up a similar pilot program using private funds.

The Commission concluded that it should attempt to reach a consensus on some general principles or guidelines regarding the cost and availability of health insurance for small businesses that would be circulated to the other members of the General Assembly for their consideration when drafting legislation on this topic for the 2009 Session. The Commission is also planning to consider whether or not to propose legislation on any of the options discussed at the work session.

### Next Meeting

The Commission plans to hold two more meetings during the interim. The next meeting date will be posted on the study's website and the General Assembly calendar as soon as information is available.

### Small Business Commission

**DELEGATE JEFFREY M. FREDERICK, CHAIR**  
**SENATOR W. ROSCOE REYNOLDS, CHAIR**

**David Cotter, DLS Staff**

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# Virginia Sesquicentennial of the American Civil War Commission 9/9/08

## Presentations

### **Lisa Schultz, Out of Bounds LLC**

Ms. Schultz reported her recommendations and proposed budget for the HistoryMobile. The interactive exhibit would be housed within a tractor-trailer and educate attendees about the American Civil War, its influence on history, and the people involved with the war. The exhibit would be taken to schools and other public venues as well as high-traffic events and provide the foundation for a public relations campaign. The Virginia Historical Society is creating a museum exhibit that will be unveiled in 2011 and will include a number of elements that can be utilized in the proposed mobile exhibit.

Ms. Schultz provided projected costs associated with operating tours of varying lengths. The costs did not include design and fabrication expenses. She recommended using a single expandable trailer rather than a double expandable trailer due to challenges that she encountered with other mobile museums. Delegate Lingamfelter expressed concerns about ensuring sufficient space for the mobile exhibit without size limitations. The Commission also noted the importance of balancing where the HistoryMobile travels in order to reach the maximum number of people in as many localities as possible. Speaker Howell suggested creating an ad hoc subcommittee for members to express input on the content of the mobile exhibit.

A motion extended the Commission's working relationship with Out of Bounds, LLC until January 2009 with a comparable rate as the previous agreement. In January 2009, Lisa Schultz will report back to the Commission.

### **Dr. Sandra G. Treadway, Advisory Council**

Dr. Treadway reported that the Advisory Council met on June 24, 2008, to receive an update on the Commission and to discuss several questions posed by the Commission. Dr. Treadway said the Advisory Council felt the Commission members were on the right track, commended them on their efforts, and offered additional suggestions to the Commission in the report.

## Program Reports

### **DVD**

Dr. Robertson informed the Commission that filming is on schedule for the DVD and a preview will be shown at the next Commission meeting. The production features the Salem High School band in the opening of the DVD. Speaker Howell requested that Dr. Robertson provide an outline of the DVD to Cheryl Jackson.

### **Museum Exhibition**

Jim Kelly briefed the Commission on the progress of the Museum Exhibition. The exhibit will have many interactive components and focus on several key areas of the Civil War relating to the Commission's goals. Many of the components developed for the exhibit can also be tailored for use in the HistoryMobile.

### **Strategic Marketing Plan**

Richard Lewis outlined the strategic marketing plan for the sesquicentennial, which focuses on a universal message and promotes tourism to Virginia. Mr. Lewis continues to stay in contact with multiple media outlets to keep the plans on the Commission on their radar.

## Staff Reports

Danielle Watkins discussed pending grant proposals, recent awards, and the deadlines of upcoming applications. Cheryl Jackson reported that she and E.M. Miller, Jr., will travel to Washington, D.C., to meet with the members of the Virginia Congressional Delegation and inform them of the Commission's progress. The members will also be working with the Virginia Sesquicentennial of the American Civil War Foundation. An unanimous motion allowed the Foundation to use the Commission's logo.

## CWC Executive Committee Meeting 9/15/08

Speaker Howell introduced Dr. Paul A. Levensgood who will succeed Dr. Charles F. Bryan, Jr., at the Virginia Historical Society in November.

## Presentations

### **Hollis Sullivan, Virginia Tourism Corporation**

Hollis Sullivan briefed the committee on the application procedure and administration of the micro-grant program. The micro-grant program is a 1:1 matching grant for tourism promotion efforts and expenses related to the sesquicentennial. The Commission will have a role in scoring applicants and determining recipients.

### **Dr. Bryan, Virginia Historical Society**

Dr. Bryan discussed a possible venue change for the museum exhibition due to the Fredericksburg Area Museum not meeting certain conditions set forth by the Virginia Historical Society. A motion unanimously approved by the Executive Committee concurred with the recommendation to change the exhibit venue and the letter that will be sent to the Fredericksburg Area Museum.

Dr. Bryan proposed taking the exhibit to the Museum of the Confederacy in Appomattox. The museum is currently being constructed and will be required to meet certain conditions.

## Next Meeting

Workgroup 1 (Coordination) will meet October 15, 2008. Other meeting dates will be posted on the Commission websites and the General Assembly calendar as soon as information is available.

VIRGINIA SESQUICENTENNIAL OF THE  
AMERICAN CIVIL WAR COMMISSION

### SPEAKER WILLIAM J. HOWELL, CHAIR

**Cheryl Jackson, Brenda Edwards, and  
Danielle Watkins, DLS Staff**

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<http://www.virginiacivilwar.org>

## Commission on Unemployment Compensation 9/10/08

The Commission on Unemployment Compensation monitors and evaluates Virginia's unemployment compensation system relative to the economic health of the Commonwealth. The General Assembly in the 2008 Session directed the Commission to examine House Bill 1314, which would transfer the Virginia Employment Commission's tax collection responsibilities to the Tax Department, and to study, pursuant to House Joint Resolution 51, whether the Commonwealth should exclude workers in seasonal industries from eligibility for unemployment compensation benefits.

## Employment Data

While the economic slowdown is detrimentally affecting employment data across the country, Virginia is performing better than the nation as a whole. Virginia's job rate growth is expected to be 0.3 percent in 2008 and 0.2 percent in 2009, while the average unemployment rate for those years is forecast to be 3.9 and 4.0 percent, respectively.

Total initial year-to-date claims for unemployment benefits through July 2008 are up 12 percent from the same period in 2007 and up 16.9 percent from the same period in 2006. The average duration for receipt of unemployment benefits was 12.6 weeks in July of this year; for the same month last year, the average duration was 12.4 weeks. The exhaustion rate, which

reflects the percentage of unemployment compensation recipients who use up all of the weeks that they are eligible to receive benefits, was 35.4 percent in July 2008; in July 2007, it was 34.1 percent. For claims filed after the first week of July 2008, Virginia's maximum weekly unemployment benefit is \$378, up from its previous limit of \$363. The new maximum weekly benefit reflects a weekly benefit replacement rate of 44 percent of the state's average weekly wage.

## Unemployment Trust Fund Solvency

VEC Commissioner Dolores Esser reported that the Unemployment Trust Fund solvency level is projected to be 64.4 percent as of June 30, 2008; one year ago it was 70.4 percent. The solvency level is projected to decline to 43 percent in 2009 and to 34 percent in 2010 as a result of increased benefits payments and declining tax revenue. Thereafter, it is expected to rise to 44 percent in 2011 and 61 percent in 2012. In years that the solvency level falls below 50 percent, employers will be assessed a fund builder tax of 0.2 percent of the first \$8,000 of each employee's wages. The balance in the Unemployment Trust Fund is projected to fall from \$708.2 million on January 1, 2008, to \$553.9 million at the end of the year.

The average annual state unemployment tax paid by Virginia's employers, on a per-employee basis, is projected to be \$88 in 2008, which is less than the averages of \$121 in 2007, \$155 in 2006, and \$162 in 2005. Between 2009 and 2012, the average tax per employee is projected to increase to \$96 in 2009, \$140 in 2010, \$157 in 2011, and \$163 in 2012. The increase in the average tax per employee in 2010 and subsequent years is attributable in part to assessment of the fund builder tax. Virginia's average tax per employee for the year ending September 30, 2007, of \$112 is the lowest among the six jurisdictions in the Fourth Appellate Circuit. The average tax in the other five jurisdictions ranges from \$153 in Maryland to \$338 in North Carolina; the national average is \$267.

## Administrative Funding

Deputy VEC Commissioner Nicholas Kessler briefed the Commission on state and federal legislative issues and outlined concerns with declining administrative funding provided by Congress. None of the agency's administrative expenses are appropriated from the general fund. The VEC receives funding to administer the unemployment insurance, job service, labor market information, and veterans employment service programs from allocations of Federal Unemployment Tax Act (FUTA) payments by Virginia employers to the federal government. The federal government's reductions in the FUTA payments that are returned to the Commonwealth for program administration continues to cause concerns.

In fiscal year 2006, Virginia received from the federal government \$57 million for administration of the VEC's programs, or 27.6 percent of the amount of FUTA taxes paid in by Virginia's employers. In fiscal years 2005 and 2004, Virginia received \$60 million and \$63 million, respectively, exclusive of

\$12 million of Reed Act allocations. Virginia ranks 52nd of 53 jurisdictions in terms of the percentage of FUTA funds returned by the federal government.

Reasons given for Virginia's low level of administrative funding include the relative low statewide unemployment rate and the efficiency of the VEC. The VEC and Office of the Secretary of Commerce and Trade continue to lobby Virginia's Congressional delegation to increase the percentage of FUTA taxes returned to the Commonwealth. Congressman Tom Davis has written to the General Accounting Office asking that it examine the resource justification model currently used to allocate administrative funds among the states. The VEC has worked through a national association of similar agencies to require that Congress provide each state with at least 50 percent of the FUTA taxes paid in by its employers, while holding harmless those states currently receiving a greater percentage.

Two items of federal legislation were brought to the Commission's attention. The Unemployment Insurance Modernization Act, patroned by Congressman McDermott, has passed the House of Representatives but is not expected to gain Senate approval. The measure would provide \$65 million in Reed Act funds for Virginia. Also, the 2008 legislation that provided extended unemployment benefits included \$110 million for program administration by states, of which Virginia received approximately \$1 million.

The Commission was advised that the VEC is anticipating administrative funds from FUTA taxes will pay for 80 percent of the VEC's administrative costs. In anticipation of the projected shortfall, the VEC has closed offices, laid off employees, and eliminated 80 positions.

## House Bill 1314

Delegate Kathy Byron introduced House Bill 1314 in the 2008 Session. The bill transfers responsibility for collection of employment taxes from the VEC to the Department of Taxation. Delegate Byron told the Commission that the bill sought to spur an examination of whether the current system was the most efficient way to deliver services. She stated that the "cost-cutting caucus" anticipated that the transfer would generate savings by allowing the VEC to focus on its core mission while taking advantage of the Tax Department's expertise in collecting taxes.

Analyses of House Bill 1314 were provided by the VEC and Tax Department. The VEC observed that employers are required to file quarterly payroll and tax reports. The VEC collects on average \$411 million annually in unemployment insurance (UI) taxes, which are deposited in the Unemployment Trust Fund. Of the \$57 million received from the federal government to administer VEC programs, \$33-\$36 million is for UI administration, of which 26 percent, or \$9.7 million, is earmarked for UI-related tax activities.

Commissioner Esser noted that transferring the UI tax program will not save the VEC administrative funds, because the funding for these activities would flow to the agency responsible for the function. Any savings achieved from a transfer would benefit the federal government. While implementing the transfer would involve substantial start-up costs, federal funds would not be available to defray them. Moreover, a transfer would increase

administrative complexity by involving two agencies in the tax collection process, which involves receiving and processing quarterly wage and payroll reports and reconciling reports. Finally, the VEC is in the process of evaluating bids for a new integrated UI benefits and tax system and transferring the UI tax program would require re-scoping the project and would delay the project by at least 12 months.

VEC and the Department of Taxation analyzed House Bill 1314 as being capable of three interpretations. Under the first, the entire UI tax program (including rate setting and return processing) would be transferred. Under the second interpretation, the Tax Department would be given responsibility for providing "lockbox services" (including receiving nonelectronic payments and returns and collection of delinquencies). Under the third interpretation, the Tax Department would provide "lockbox services" and process returns. The first interpretation was estimated to require 103 full-time employees (which it was assumed would be transferred between the agencies), start-up costs of over \$3.8 million, and ongoing costs of between \$7.5 million and \$9 million. The other two alternatives were substantially less costly, with estimated ongoing costs in the range of \$4.1 million and \$4.3 million, respectively, by 2015.

Joe Mayer, Lead Tax Policy Analyst at the Department of Taxation, cautioned that it is unclear that the Commonwealth would benefit from any savings that would occur from the transfer of functions from the VEC. While there may be savings in the Tax Department's taking over the processing of payments and returns from the VEC, the set-up and programming costs may be more expensive for the Tax Department. He noted that the cost estimates do not include costs of continued operation of the VEC systems until it is proven that the Tax Department's systems are operating acceptably. While savings may result at present from use of the Tax Department's up-to-date technology, the VEC is in the process of acquiring a new system that may provide similar savings. While the Tax Department has legal powers not available to other agencies (including lien and garnishment powers), it is not looked at as an outsourcing agency for other state agencies' tax collection duties other than collecting delinquencies.

In her closing remarks, Delegate Byron noted that the current FUTA funding system punishes VEC for its efficiency, and that the need exists to start looking for alternatives to address the agency's looming funding shortfall.

## House Joint Resolution 51

House Joint Resolution 51 of the 2008 Session, introduced by Delegate Harvey Morgan, directs the Commission to study the need for limitations on the eligibility of seasonal or temporary employees for unemployment compensation benefits.

Currently, a claimant's last 30-day employer is chargeable for the claimant's unemployment compensation benefits. Allowing employees who lose seasonal jobs upon the end of the season to receive unemployment benefits arguably penalizes the employers who hired them by raising the employer's state unemployment tax rate. The rate of the state unemployment tax (SUTA) paid by an employer depends on its experience rating, as well as factors

as the solvency status of the Unemployment Trust Fund. For new for-profit employers generally, the SUTA rate is 2.5% of the first \$8,000 of wages per employee. This rate remains in effect until the VEC provides a computed tax rate based upon claims made against the employer, with employers having more claims paying a higher SUTA rate.

There are two situations where Virginia provides that workers in two seasonal employment categories - educational institutions and professional athletics - are ineligible for unemployment benefits. For other seasonal jobs, an employee is not ineligible for unemployment compensation benefits when the term of the job ends, even if the employee is informed and understands at the commencement of employment that the job will end on a fixed date. This result was upheld in *Hutter, Inc. v. VEC*, Va. Ct. App., No. 0537-07-2 (November 6, 2007).

The seasonal employment issue has been previously addressed by the General Assembly. In 1948, the General Assembly enacted legislation establishing a process for the VEC to designate an employer as a seasonal employer. The bill provided that no seasonal worker shall be paid benefits except for unemployment occurring during the operating season determined for his base period seasonal employer. Virginia's seasonal worker provisions were repealed in 1978. The specific reason for the measure's repeal is not known. Possible reasons include difficulty in administration and inconsistent results depending on whether a particular employer applied for designation as seasonal.

The VEC's Chief Administrative Law Judge Coleman Walsh reported that in the 1940's as many as 33 states had laws that limited UI eligibility for workers in seasonal occupations. A majority of these laws have since been repealed. Fears that the laws were necessary to avoid depletion of UI trust funds and that seasonal workers would have high tax rates were not generally realized, and the provisions proved difficult to administer. In 1996, the Congressionally created Advisory Council on Unemployment Compensation recommended that seasonality provisions be abolished.

Currently 15 states have laws that limit unemployment compensation benefits based on seasonal work. One category of laws, in effect in eight states, applies to industries that customarily operate during regularly recurring periods of less than a certain duration, which ranges from 16 to 41 weeks. The other category of laws, in effect in seven states, applies to specific industries, such as processing agricultural or seafood products, and may include a requirement that a certain percentage of the workforce is laid off.

Judge Walsh identified several policy issues relating to seasonality provisions. Some seasonal workers are among the lower paid members of the workforce and may not be able to save money to offset lost income during the off-season. Unemployment because a season is over is not the fault of the worker or the employer. Some seasonal employers use UI as a fringe benefit to attract and retain workers. The loss of UI benefits for seasonal employment may shift some workers to public assistance programs funded through the general fund. He offered that two existing measures provide alternatives to seasonality provisions. First, the two-quarter earnings requirement effectively screens out workers with limited base period employment that is concentrated in less than 15 weeks. Second, diligent enforcement of the work search requirement ensures that

claimants are available for work and actively looking for work.

A Commission member voiced concern that the outcome of the *Hutter* case seems to abrogate the intent of the employment contract, which contained an acknowledgement that the work was seasonal and would end on a fixed date. Virginia law provides that any waiver of the right to UI benefits is void. The opinion of the Attorney General regarding the impairment of contract issue will be requested. Senator Watkins also voiced concern that the court's decision may encourage employers to use independent contractors rather than employees, which may result in a decline in withholdings of income and other taxes.

During the public comment portion of the meeting, the president of the employer in the *Hutter* case observed that while UI benefits are intended to address an unexpected loss of employment, the loss of seasonal work is not unexpected. Thomas Hudson cautioned the Commission that this is a complicated subject, and it should be mindful of unintended consequences of any action it may recommend. For example, denying seasonal workers the ability to draw UI benefits would impede the ability of the VEC to recommend seasonal work to unemployed persons who are receiving benefits. It may also affect the ability of workers to draw UI benefits if they are separated from employment at industries that regularly shut down operations for a few weeks each summer, if shutdowns render them seasonal employers.

## Next Meeting

The Commission will hold a meeting later in the year, at which the VEC will be asked to present figures on the Trust Fund's actual June 30 solvency level. The Commission will also complete its examination of the issues raised by House Bill 1314 and House Joint Resolution 51.

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

### Commission on Unemployment Compensation

**SENATOR JOHN WATKINS, CHAIR**

**Franklin Munyan, DLS Staff**

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



## Commission on Energy and Environment 9/9/08

The Commission on Energy and Environment held its second meeting in Richmond with Senator Whipple as chair.

### Presentations

Staff's initial presentation surveyed existing energy policies established in the Code of Virginia and Executive Orders including regulatory incentives, grant programs, and tax credits. A surprising number of these initiatives are inactive because they have either been allowed to expire, the funding has disappeared, or the target population is not aware of the available benefits. Senator Petersen asked why Virginians might not know of some of the incentives, such as the various tax credits that might be claimed for alternative fuel vehicles and energy efficient appliances. Staff noted that further investigation may be needed to determine the steps necessary to publicize and market those programs that are funded. Senator Whipple asked that staff continue to identify and provide further information on inactive programs.

Staff also provided a presentation on innovative energy efficiency and conservation policies in other states. Notable policies include:

- Four-day work week for state employees.
- Revolving loan program for energy efficient projects.
- Mandated installation of solar water heaters in new homes.
- Accelerated phase-out of incandescent light bulbs.
- Creation of an independent entity to manage energy efficiency programs for customers of various utilities.

Mr. Wallmeyer asked staff to elaborate on which programs have provided the best results. Staff noted that it is difficult to measure success since many of the programs are very new. Dr. Schultz asked staff's opinion of programs best suited for Virginia. Staff replied that, while some of the programs such as mandatory solar water heaters would be wholly inappropriate for Virginia, others such as mandatory labeling and independent administration of energy efficiency programs may prove to be a good fit.

#### **Thomas Thompson, Virginia Energy Management Program**

Thomas Thompson provided the Commission with an overview of progress made towards implementing the recommendations of the Virginia Energy Plan. Senator Whipple asked for clarification on the demand response program payments with regional transmission organization PJM. Mr. Thompson explained that the program allowed a reduction in load during peak times to change rates and permit users to opt out from consuming the most expensive energy.

Senator Petersen asked about the role of switchgrass in the pilot project at Piedmont Geriatric Hospital in light of its potential as a feedstock for cellulosic ethanol. While the switchgrass is burned to co-fire a generator at the facility, such a use is not incompatible or exclusive to its cellulosic ethanol potential. Overall, the project creates a market for switchgrass grown by Virginia farmers.

Delegate Hogan asked about the degree to which the Commonwealth is vulnerable to sudden increases in the price of natural gas. Mr. Thompson noted that the state actually consumes more natural gas than petroleum and that supply interruptions would have a significant impact on our economy. Senator Whipple and Delegate Nixon asked for additional clarification and data on some of the points covered in the report. The Commission would like to know the degree of actual progress made towards goals instead of general statements about activity in certain areas.

#### **Dr. Patrick G. Hatcher, VCERC**

Dr. Hatcher provided the Commission with a brief overview of Virginia Coastal Energy Research Consortium (VCERC), its mission, and its members. Currently, there are two primary thrusts of the research funded through VCERC: algae-to-biodiesel conversion technology and the capacity for wind energy in the Atlantic Ocean off the coast of Virginia.

#### **Neil Rondorf, Science Applications International Corporation**

Since the Commission will tour Mr. Hatcher's laboratories at the next meeting, the presentation was turned over to Neil Rondorf, a VCERC industry partner, to discuss wind energy. Mr. Rondorf stressed the importance of taking a responsible environmental and economic approach to developing the wind potential off Virginia's coast while adapting technology to meet our resources. Senator Petersen asked for clarifications on the permits necessary to proceed on a large scale wind farm in the Atlantic. Mr. Rondorf responded that the federal government hoped to develop permits that would be analogous to and complementary of any state permits to ease the regulatory burden on the developer. Delegate Hogan questioned the reliability of the wind power. Mr. Rondorf responded that although wind generation produces a low power factor, the electricity could be used cooperatively with natural gas fired turbines to relieve congestion.

#### **Dr. Michael Karmis, Dept. of Mining and Minerals Engineering, Virginia Tech**

Dr. Karmis gave the Commission an overview of work being done at the Center to advance carbon capture and sequestration and noted the wide discrepancy between funds appropriated to Virginia Center for Coal and Energy Research (VCCER) by the Commonwealth and those appropriated to comparable organizations in other states. While initial tests of carbon capture technology will begin shortly, a large volume test is needed. Dr. Karmis notes that Virginia is fortunate to have geologic formations that are suitable to store carbon and that policy makers should view the formations as a valuable natural resource. The Department of Energy will provide \$65 million towards the large volume tests, leaving an additional \$40 million in cost share commitment to be raised from other sources in the next few months. Dr. Karmis

stressed the urgency and importance of identifying these funds for the project so that the Commonwealth will not lose its competitive advantage. Delegate Sickles inquired about the relationship between his research and the Virginia City Power Plant in Wise County. Dr. Karmis explained that the large volume test targeted storage integrity and not sequestration. Any initial projects should place the geologic storage close to the source of the carbon dioxide.

#### **Kelly Hobbs, Wal-Mart's Public Affairs and Government Relations Team**

Kelly Hobbs provided the Commission with an overview of policies implemented by Wal-Mart, the country's largest corporation and second largest employer, to improve energy efficiency and environmental sustainability. Delegate Nixon questioned whether the unique "green" packaging Wal-Mart had developed with certain manufacturers was considered proprietary. Ms. Hobbs responded that it was not and that Wal-Mart hoped innovations could be shared with other manufacturers across the industry. Dr. Hatcher expressed his hope that Wal-Mart would provide some oversight with respect to the validity of claims presented on packaging, such as the useful life of a compact fluorescent bulb.

#### **Hugh E. Montgomery, Jr., Institute for Defense and Homeland Security**

Hugh Montgomery provided the Commission with a perspective of energy issues from the Department of Defense. Mr. Wallmeyer agreed that one of the primary shortcomings of the Virginia Energy Plan is the absence of prioritization for the recommendations and asked what actions the General Assembly should take. Mr. Montgomery noted that the Commonwealth will find the highest return on investment in conservation measures. Delegate Hogan further commented that increased investment in conservation need not occur at the behest of government. Mr. Montgomery spoke about his personal hope that waste to energy would take hold as a viable option.

#### **Ellen Matthews Davis, USDA Rural Development**

Ellen Davis discussed the availability of funding for loans from the Rural Energy for America Program (REAP), formerly known as the Renewable Energy Systems and Energy Efficiency

Improvements Program. Like its predecessor, REAP provides grant and loan guarantees to farmers, ranchers and rural small businesses to promote energy efficiency and renewable energy. The authorized funding for REAP between 2009 and 2012 is \$255 million, which is more than double the funding authorized in the previous Farm Bill. The moneys can be used to purchase renewable energy systems and to provide energy efficiency improvements to a facility or process that reduces energy consumption. Sample funds have been provided to:

- Install factory-made wood-burning furnace to heat water that will be pumped through insulated underground pipes.
- Install geothermal renewable energy system at a winery and farm.
- Install wind turbines and solar PV array pumping system.
- Build a 12,000,000 gallon bio-diesel plant.

Mr. Wallmeyer questioned whether personal guarantees would be required of loan recipients. Ms. Davis replied that personal guarantees should not be required and stressed the importance of getting the word out to potential borrowers.

#### **Next meeting**

The next meeting date will be on October 14, 2008, at Old Dominion University in Norfolk. Information will be posted on the study's website and the General Assembly calendar as soon as it is available.

### **Commission on Energy and Environment**

#### **SENATOR MARY MARGARET WHIPPLE, CHAIR**

##### ***Ellen Porter, DLS Staff***

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General Assembly Building, 2nd Floor  
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<http://dls.state.va.us/energy.htm>

## **Commission & Council Calendar for Oct - Nov '08**

<i>Commission</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
JCOTS/FOIA Personal Identifying Information Subcommittee	10:00 a.m., Monday, October 6, 2008 General Assembly Building, 6th Floor Conference Room	Lisa Wallmeyer Patrick Cushing
Virginia Freedom of Information Advisory Council	1:00 p.m., Monday, October 6, 2008 General Assembly Building, House Room D	Maria Everett Alan Gernhardt
American Civil War Commission Workgroup I-Coordination *Full Commission	1:00 p.m., Wednesday, October 15, 2008 General Assembly Building, 6th Floor Conference Room *Monday, November 17, 2008, Manassas, VA	Cheryl Jackson Brenda Edwards Danielle Watkins
Virginia Housing Commission	For ongoing meeting information see website at: <a href="http://dls.state.va.us/HousComm.htm">http://dls.state.va.us/HousComm.htm</a>	Elizabeth Palen

*Meetings may be added at anytime, 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 Legislative Record will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://legis.state.va.us/codecomm/register/regindex.htm> or contact [epalen@leg.state.va.us](mailto:epalen@leg.state.va.us) or the Code Commission staff at (804) 786-3591 for further information.

### TITLE 3. ALCOHOLIC BEVERAGES

#### ALCOHOLIC BEVERAGE CONTROL BOARD

**3VAC5-50. Retail Operations (amending 3VAC5-50-40, 3VAC5-50-50, 3VAC5-50-80, 3VAC5-50-100, 3VAC5-50-130, 3VAC5-50-140).**

A public hearing will be held on October 6, 2008 at 11 a.m., Alcoholic Beverage Control Board, Richmond, Virginia. Written public comment may be submitted until October 17, 2008.

*The proposed amendments (i) provide a process for licensees to apply for permission to employ individuals with certain criminal convictions, (ii) allow persons 18 and over to serve wine at a counter in establishments selling wine only, (iii) allow wine to be placed in containers of ice by farm wineries at wine festivals, (iv) simplify food requirements for grocery stores and convenience grocery stores, (v) simplify the limitations of nonmember use of licensed club facilities, and (vi) clarify the rules with respect to partially nude entertainers at licensed establishments to define the separation that must be maintained from customers, specify the minimum clothing required at mixed beverage establishments, and clarify that this regulation does not restrict legitimate theatrical productions.*

For more information, please contact W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, (804) 213-4409, FAX (804) 213-4411, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

### TITLE 4. CONSERVATION AND NATURAL RESOURCES

#### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to §29.1-701 E of the Code of Virginia, which provides that proposal and adoption of regulations implementing Chapter 7 (§29.1-700 et seq.) of Title 29.1 shall take place as described in Article 1 (§29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia. The department is required by §2.2-4031 of the Code of Virginia to publish all proposed and final regulations.

**4VAC15-450. Watercraft: Commercial Parasail Operations (adding 4VAC15-450-10 through 4VAC15-450-40).**

A public hearing will be held on October 23, 2008 at 9 a.m., Department of Game and Inland Fisheries, Richmond, Virginia. Written public comment may be submitted until 5 p.m. on October 6, 2008.

*The board has proposed a new boating regulation regarding commercial parasail operations. The proposed regulation will not have any effect on general boating activities by the recreational boating public, but will apply only to the commercial operations of parasail operators on the waters of the Commonwealth. The proposal defines "commercial parasail operation" and "parasailing;" and establishes provisions to which commercial parasailing operators must comply for lawful operation, including a requirement that all commercial parasail operators shall have a valid Coast Guard license for carrying passengers for hire, and other provisions addressing the safety of persons taking*

part in the parasailing activity. For additional information, please contact Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, (804) 367-8341 or email [phil.smith@dgif.virginia.gov](mailto:phil.smith@dgif.virginia.gov).

## **TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

### **DEPARTMENT OF CORRECTIONS**

**6VAC15-80. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (amending 6VAC15-80-10; adding 6VAC15-80-211).**

Written public comment may be submitted until 5 p.m. on October 17, 2008.

*The proposed amendment allows local and regional correctional facilities to receive cost reimbursement, to define limits for required value management assessment studies that serve to keep construction costs lower while promoting quality and efficient designs. The value management assessment will analyze a project design including systems, products/materials used, quality, efficiency, functionality, long-term design, and operational needs beyond 10 years and cost.*

For more information, please contact Brooks Ballard, Architectural & Engineering Services, Department of Corrections, (804) 674-3102, FAX (804) 674-3529, or email [brooks.ballard@vadoc.virginia.gov](mailto:brooks.ballard@vadoc.virginia.gov)

## **TITLE 8. EDUCATION**

### **STATE BOARD OF EDUCATION**

**8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-5, 8VAC20-131-30, 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-140, 8VAC20-131-210, 8VAC20-131-270 through 8VAC20-131-360).**

The following public hearings will be held:

*October 30, 2008 at 7 p.m., Jolliff Middle School, Chesapeake, Virginia*

*October 30, 2008 at 7 p.m., Waynesboro High School, Waynesboro, Virginia*

*October 30, 2008 at 7 p.m., Highland Springs High School, Highland Springs, Virginia*

*October 30, 2008 at 7 p.m., George Wythe High School, Wytheville, Virginia*

*October 30, 2008 at 7 p.m., Thomas A. Edison High School, Alexandria, Virginia*

Written public comment may be submitted until November 5, 2008.

*Section 22.1-253.13:3 of the Code of Virginia requires the Board of Education to promulgate Standards of Accreditation for Virginia's K-12 public schools. The current regulations were adopted by the Board of Education on May 24, 2006, and became effective September 7, 2006. In July 2006, the president of the board, Dr. Mark Emblidge, formed a special committee of the Board of Education to research and recommend policies to reduce the number of students who drop out of high school and to improve graduation rates, especially among minority students. The proposed revisions are an outgrowth of the work both of that committee and of the board's adoption of a graduation rate formula in November 2006: Graduation rate = [On-time graduates in Year X] / [(First-time entering ninth graders in Year X-4) + (Transfers in) - (Transfers out)]. In the fall of 2008, the records of first-time ninth graders in 2004-2005 will be able to be linked to their records four years later to determine their graduation status.*

*The proposed revisions are also in response to Chapter 859 and 919 of the 2007 Acts of Assembly, which require the Board of Education to establish the requirements for the Standard Technical and Advanced Technical Diplomas. The legislation requires the board to establish the requirements for a technical diploma. This diploma shall meet or exceed the requirements of a standard diploma and will include a concentration in career and technical education, as established in board regulations. A student who meets the requirement for the advanced studies diploma who also fulfills a concentration in career and technical education shall receive an advanced technical diploma. The board may develop or designate assessments in career and technical education for the purposes of awarding verified credit.*

*Finally, in 2007, the House Education Committee, while not taking action on HB 3201, related to removing students from classes, requested the chairman write a letter to the Board of Education asking that the board consider this issue in its review of applicable regulations, and report back to the patron and the committee. Language in response to this bill is included in the proposed revisions.*

For more information, please contact Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, (804) 225-2403, FAX (804) 225-2524, or email [anne.wescott@doe.virginia.gov](mailto:anne.wescott@doe.virginia.gov).



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-560).**

**12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-141; repealing 12VAC30-20-140).**

Written public comment may be submitted until November 14, 2008.

*The proposed amendments update and clarify the current regulations regarding Medicaid estate recovery carried out by the Department of Medical Assistance Services.*

*This regulatory action more closely reflects current agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and*

*Medicaid Services, in its guidance document publication titled "State Medicaid Manual." This change repeals 12VAC30-20-140 (Estate Recoveries) in order to repromulgate this section in a restructured and revised format as 12VAC30-20-141. This regulatory action will add new definitions for "cost effective" and "homestead*

*of modest value." The definitions for "estate" and "applicable medical payments" will be deleted from 12VAC30-10-560 and moved into new 12VAC30-20-141. This revision also includes the exemption from Medicaid estate recovery for American Indian/Alaska Native income, resources and property as defined in the federal State Medicaid Manual. Consistent with the State Medicaid Manual, assets or resources that were disregarded due to an authorized State Long-Term Medicaid Insurance Partnership policy are being exempted from estate recovery actions.*

For more information, please contact Kathy Colley, Fiscal Division, Department of Medical Assistance Services, (804) 786-3839, FAX (804) 786-1680, or email [kathy.colley@dmass.virginia.gov](mailto:kathy.colley@dmass.virginia.gov).

**12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-500).**

Written public comment may be submitted until November 14, 2008.

*The proposed amendments establish a voluntary alternative benefit package (known as the Healthy Returns<sup>SM</sup> program) that combines traditional Medicaid services with comprehensive disease management (DM) services. Previous emergency*

*regulations provided that (i) both adults and children in fee-for-service who are determined to have asthma and diabetes could participate in this program and (ii) individuals 21 years and older having coronary artery disease (CAD), congestive heart failure (CHF), and chronic obstructive pulmonary disease (COPD) were eligible for the Healthy Returns<sup>SM</sup> program. The substantive change recommended in the proposed regulations is to drop the age limit of 21 years for CHF, CAD, and COPD to age 18 years and older.*

For more information, please contact Meredith Lee, Health Care Services Division, Department of Medical Assistance Services, (804) 786-5040, FAX (804) 786-1680, or email [meredith.lee@dmass.virginia.gov](mailto:meredith.lee@dmass.virginia.gov).

**12VAC30-120. Waivered Services (amending 12VAC30-120-370, 12VAC30-120-380).**

Written public comment may be submitted until November 14, 2008.

*This proposed change, generally referred to as Phase I of the Integration of Acute and Long-Term Care, will permit persons who become newly enrolled home-based and community-based care (CBC) waiver recipients (HIV/AIDS, Individual and Family Developmental Disabilities Support (IFDDS), Mental Retardation (MR), Elderly or Disabled with Consumer Direction (EDCD), Day Support, and Alzheimer's Waiver programs) to retain their enrollment in their managed care organization for purposes of obtaining needed acute medical care. Excluded from this change will be persons newly admitted to the Technology Assisted waiver, to nursing facilities, and those persons who become dual eligibles (eligible for both Medicare and Medicaid). Prior to the agency's current emergency regulation, these persons have been disenrolled from their managed care organization (once they qualify for certain CBC waivers) and have been required to seek needed acute care services in the unmanaged fee-for-service environment. The persons who will be affected by this change will have their home-based and community-based waiver services, including necessary transportation to waiver services, reimbursed by the Department of Medical Assistance Services (DMAS) through a fee-for-service mechanism. The managed care organizations will be financially responsible for these affected persons' acute medical care.*

For more information, please contact Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, (804) 786-4112, FAX (804) 786-1680, or email [adrienne.fegans@dmass.virginia.gov](mailto:adrienne.fegans@dmass.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.

**14VAC5-323. Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values (adding 14VAC5-323-10 through 14VAC5-323-70).**

A public hearing will be held upon request. Written public comment may be submitted until November 14, 2008.

*The proposed regulation increases the reserves required for preneed insurance policies by not allowing the 2001 Commissioners Standard Ordinary Mortality Table to be used (mandatory after January 1, 2012) and instead requiring that reserves be based on the older Commissioners 1980 Standard Ordinary Life Valuation Mortality Table. The proposed regulation is based on the Preneed Life Insurance Minimum Standards for*

*Determining Reserve Liabilities and Nonforfeiture Values Model Regulation (Model), which was adopted by the National Association of Insurance Commissioners in March 2008. The higher reserves may qualify as tax reserves (tax deductible) per the Internal Revenue Code if 26 states adopt the Model by January 1, 2009.*

For more information, please contact Raquel Pino-Moreno, Principal Insurance Analyst, State Corporation Commission, Insurance Bureau, (804) 371-9499, FAX (804) 371-9511, or mail [raquel.pino-moreno@scc.virginia.gov](mailto:raquel.pino-moreno@scc.virginia.gov).

## **TITLE 16. LABOR AND**

### **EMPLOYMENT**

#### **SAFETY AND HEALTH CODES BOARD**

**16VAC25-90. Federal Identical General Industry Standards (29 CFR Part 1910)**

**(repealing 16VAC25-90-1910.269 (p)(1)(ii)). 16VAC25-97. Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry (adding 16VAC25-97-10 through 16VAC25-97-70).**

**16VAC25-175. Federal Identical Construction Industry Standards (29 CFR Part 1926) (repealing 16VAC25-175-1926.601 (b)(4), 16VAC25-175-602 (a)(9)(ii), 16VAC25-175-1926.952 (a)(3)).**

#### **Extension of Public Comment Period:**

The Safety and Health Codes Board noticed an initial public comment period on the above-referenced proposed regulations (16VAC25-97) in the August 20, 2007, issue of the Virginia Register of Regulations (23:25 VA.R. 4347-4351 August 20, 2007). However, a number of comments were received after the close of the initial comment period and the board noticed a second public comment period on this regulation in the April 14, 2008, issue of the Virginia Register (24:16 VA.R. 2291 April 14, 2008).

Following the close of the second comment period, extensive changes were made to the text of the proposed regulation. Therefore, the board has issued a third 30-day comment period that will begin on September 29, 2008, and end on October 29, 2008.

For more information, please contact Jay Withrow, Department of Labor and Industry, [jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov).

**16VAC25-90. Federal Identical General Industry Standards (repealing 16VAC25-90-1910.151).**

**16VAC25-95. Medical Services and First Aid Standards for General Industry (adding 16VAC25-95-10).**

**16VAC25-175. Federal Identical Construction Industry Standards (repealing 16VAC25-175-1926.50).**

**16VAC25-177. Medical Services and First Aid Standards for the Construction Industry (adding 16VAC25-177-10).**

Written public comment may be submitted until 5 p.m. on November 29, 2008.

*The proposed amendments change the medical services and first aid regulations for general industry and for the construction industry such that in high hazard industries and on worksites containing job classifications or workplace hazards that could potentially expose employees to serious physical harm or death, employers must designate and train at least one employee during all work shifts to render immediate first aid and cardiopulmonary resuscitation (CPR). The person or persons would have to*

have a valid, current certificate in first aid and CPR training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence. Alternatively, an employer would be allowed to make written arrangements with and reasonably rely on another contractor or employer on the same job site to provide the first aid/CPR-trained employees. The proposed amendment would not apply to worksites containing job classifications or workplace hazards that do not expose employees to serious physical harm or death (e.g., office settings).

For more information, please contact Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, (804) 786-0610, FAX (804) 786-8418, or email [regina.cobb@doli.virginia.gov](mailto:regina.cobb@doli.virginia.gov).

### **VIRGINIA WORKERS' COMPENSATION COMMISSION**

**16VAC30-90. Procedural Regulations for Filing First Reports Under the Virginia Workers' Compensation Act (repealing 16VAC30-90-10 through 16VAC30-90-80).**

**16VAC30-91. Claims Reporting (adding 16VAC30-91-10, 16VAC30-91-20, 16VAC30-91-30).**

Written public comment may be submitted until 5 p.m. on November 14, 2008.

*This action repeals 16VAC30-90 and promulgates 16VAC30-91 to conform the electronic filing method for mandatory reports to the commission to the industry standard for such reports.*

For more information, please contact Matthew Bryant, Director, Technology Alignment Program, Virginia Workers' Compensation Commission, (804) 367-2253, FAX (877) 432-5423, or email [matthew.bryant@vwc.state.va.us](mailto:matthew.bryant@vwc.state.va.us).

## **TITLE 22. SOCIAL SERVICES**

### **STATE BOARD OF SOCIAL SERVICES**

**22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-30, 22VAC40-705-40, 22VAC40-705-50, 22VAC40-705-70, 22VAC40-705-80, 22VAC40-705-120, 22VAC40-705-140, 22VAC40-705-150, 22VAC40-705-180).**

Written public comment may be submitted until October 17, 2008.

*These proposed amendments incorporate current Code of Virginia requirements and clarify existing regulations. These changes include (i) expanding the definitions of physical and medical neglect, (ii) clarifying the use of state criminal history searches in child protective services investigations, (iii) clarifying the requirement to electronically record victim interviews and the exceptions to that requirement, (iv) revising the length of time local departments have to validate a report or complaint, and (v) amending training requirements.*

For more information, please contact Nan McKenney, Child Protective Services Policy Supervisor, Department of Social Services, Division of Family Services, (804) 726-7569, FAX (804) 726-7895, or email [nan.mckenney@dss.virginia.gov](mailto:nan.mckenney@dss.virginia.gov).

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