

Virginia Legislative Record

SJR 372: Joint Subcommittee to Study the Feasibility of a Statewide Health Insurance Experience Pool for Educators and Local Government Employees

September 5, 2007

Senate Joint Resolution 372 establishes a joint subcommittee to study the feasibility of a statewide health insurance experience pool for educators and local government employees. The joint subcommittee held its first meeting on September 5, 2007, in Richmond. The members elected Senator Thomas Norment, the patron of SJR 372, as chair of the joint subcommittee and Delegate S.C. Jones as vice-chair. Other legislative members are Senators Steve Martin and Frank Ruff and Delegates David Bulova, Kathy Byron, Frank Hall, and Chris Peace. Three nonlegislative citizen members are Dr. Joseph O. Cox, Mr. Wayne C. Carruthers, and Mr. Thomas W. Long. Secretary Viola Baskerville serves as the ex-officio member of the joint subcommittee.

Overview

Staff presented an overview of the mandates of SJR 372. Primarily, the joint subcommittee is charged with reviewing current health insurance coverage available for active and retired school employees and other local government employees, including state and local early retirees not eligible for Medicare. The resolution also specifies that the Department of Human Resource Management is to provide technical assistance to the joint subcommittee.

Presentations

VIRGINIA STATE AND LOCAL HEALTH BENEFITS PROGRAMS

Walt Norman, Department of Human Resource Management Program Manager for The Local Choice Program, provided the members with an overview of the state and local health plans. The state health plan began in the early 1970s and evolved into two self-funded plans in the 1990s. The two plans merged to form COVA Care in fiscal year 2004. Currently, over 94,000 state and early retirees are enrolled in the state health plan. There is a 4.5% increase in state premiums in fiscal year 2008, and a single digit increase is projected for fiscal year 2009.

By contrast, The Local Choice (TLC), established in 1990 by an act of the General Assembly, is exclusively for political subdivisions and schools and is funded entirely through group premiums. To be eligible for TLC enrollment, an entity must be created by or under an act of the General Assembly. While no minimum participation is required for TLC, an employer must make a minimum contribution, for example 80% for full-time employees and 40% for part-time employees. An employer is not required to make a contribution for retirees.

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Currently, 238 school and local government groups and 82 other groups, such as commissions, authorities, and regional jails participate in The Local Choice Program (TLC) with an enrollment of nearly 25,000 employees and 43,000 members.

The Department of Human Resource Management manages TLC and program specialists administer self-funded plans. The advantages of TLC are numerous and include:

- Procurement savings.
- Multiple plan choices.
- Low administrative costs.
- Access to Department of Human Resource Management benefits expertise.
- Disease management, employee assistance program (EAP), and CommonHealth wellness program.
- Large provider network with substantial network discounts.
- Shared risk multiple employer pooling.
- Drug, behavioral, dental, and Medicare component pooling.
- Specific stop-loss protection.
- Adverse experience adjustment (AEA) protection.

Currently, 238 school and local government groups are enrolled in TLC. Specifically, eight community service boards; 25 independent school groups; and 119 local governments are enrolled in TLC. Four school groups are enrolled in TLC as a part of a local government group, such as a local school division when the locality participates in TLC as a single group. Finally, there are 82 other groups, such as commissions, authorities, and regional jails that participate in TLC.

TLC's enrollment consists of nearly 25,000 employees and nearly 43,000 members. Fifty-five percent of all groups enrolled in TLC have fewer than 50 employees. In addition, 36% of all TLC-enrolled groups each have between 50 and 299 employees. Only 9% of groups enrolled have over 300 employees. TLC plan choices for active employees and early retirees include:

- Key Advantage Expanded.
- Key Advantage 200.
- Key Advantage 300.
- Key Advantage 500.
- TLC HDHP (High Deductible Health Plan).
- Fully insured regional Kaiser HMO.

In 2007, the number of groups offering Key Advantage Expanded is 176 with an average monthly premium of \$475; the number of groups offering Key Advantage 200 is 74 with an average monthly premium of \$458; and the number of groups offering Key Advantage 300 is 41 with an average monthly premium of \$446. In 2007,

23 groups offered Key Advantage 500 with an average monthly premium of \$406 and only four groups offered TLC HDHP (high deductible) with an average monthly premium of \$343. In addition, TLC offers an optional Medicare supplemental plan. With regard to rating pools, medical experience, which comprises 60% of claims, is pooled based on group size. Drug, behavioral health, dental, and Medicare experience comprises 40% of claims and are pooled across all TLC groups. Demographic adjustments are made for smaller groups.

VIRGINIA EDUCATION ASSOCIATION PERSPECTIVE

Robley S. Jones, Director of Government Relations for the Virginia Education Association (VEA), testified before the joint subcommittee, beginning with how the VEA initiated legislation 20 years ago to reduce the costs of health insurance and bring economy of scale to all of Virginia's school divisions. The legislation led to the creation of the Local Choice Health Benefits Program. Mr. Jones further stated that the average total cost of health insurance increased about 60% between 2001-2002 and 2006-2007. Moreover, the out-of-pocket cost to a teacher for family coverage is as high as \$12,372 per year; thus, while some VEA members receive pay increases, their take-home pay declines as a result of increased health premiums. Mr. Jones posed the following questions for the joint subcommittee's consideration:

- *How much will health care cost Virginia's school divisions in the years ahead?*
- *Is the current voluntary pool (TLC) approach working, and why aren't more localities participating?*
- *Studies in Minnesota, Michigan, Pennsylvania, Ohio, and Montana have all concluded that pooling saves substantial money; so with no studies contradicting these findings, how much money could be saved in Virginia?*
- *What additional information is needed to reach an informed decision regarding a pooling program in Virginia?*
- *Does the Constitution of Virginia allow mandatory participation in the pool? If not, what incentives would lead to widespread participation, and what steps need to be taken to gain support for this approach?*
- *What governance structure should oversee a statewide program?*

EXPERIENCE RATED POOLS

Carol Forrester and Beth Phares, both vice-presidents and senior consultants for Hilb, Rogal & Hobbs (HRH), delivered an overview of experience rated pools. To begin, the two presenters discussed the type of funding for experience rated pools. Namely, an experience rated pool can be fully insured or self-insured. To be a fully insured experience rated pool, a carrier assumes the risk. All administration, stop-loss coverage, as well as claims risk are included in the fully insured rate. The employer's risk is limited to the amount of premiums paid. To be a self-insured experience rated pool, however, the pool assumes the risk. Specifically, the pool is at risk for claims and administration, and the pool generally purchases specific/aggregate stop-loss coverage, or reinsurance, to protect against catastrophic claims, which can be paid by the carrier, third party administrators, or the pool.

According to HRH, experience rated pools have numerous advantages and disadvantages. The benefits of experience rated pools include:

- Risk being shared between several entities/ organizations.
- Pool of risk for small organizations.
- Increased premium volume increases leveraging position with carriers.
- Flexibility in funding/plan options.
- Possibility of favorable plan performance and competitive rate increases.
- Reduced administrative costs.

These benefits are limited, however, by geographical limitations; complexities of funding, underwriting, and pricing; benefit design restrictions, such as the inability of a carrier to offer unlimited options; and the threat of what is known as a "death spiral," when lower risk insured leave a pool resulting in adverse risk for the carrier. The pool may then become unable to sustain an appropriate rate structure and viability.

VIRGINIA MUNICIPAL LEAGUE PROGRAMS

Greg Dickie, Director of Member Services for Virginia Municipal League (VML) Insurance Programs, and Claire Holbrook, Senior Consultant with Wachovia Insurance Services, gave testimony regarding VML insurance programs. Mr. Dickie stated that VML offers an employee-retiree program in conjunction with

Wachovia. Ms. Holbrook, by contrast, testified that Wachovia assists VML in the marketing, implementation, and administration of the program. Moreover, a VML employee-retiree health insurance plan is underwritten on a fully insured plan and is in place for a year. Ms. Holbrook conceded that the VML plan has achieved "limited success." That is, success of the VML program cannot be judged solely on the number of participating political subdivisions because political subdivisions made decisions regarding health care plans before the unveiling of the VML program. Finally, Ms. Holbrook testified that the VML program cannot compete with TLC plans.

Next Meeting

The joint subcommittee held its second meeting on October 10, 2007, and will be reported in the next issue and on the study website.

Some of the possible advantages of experience rated pools include risk being shared among several organizations, increased leverage with insurance carriers, flexibility in funding and plan options, and reduced administrative costs.

SJR 372

Joint Subcommittee Studying Feasibility of a Statewide Health Insurance Experience Pool for Educators and Local Government Employees

Senator Thomas K. Norment, Chair

David Rosenberg and Kevin Stokes, DLS Staff
(804) 786-3591

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

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

SJR 385: Joint Subcommittee Studying Fuel-Efficient Vehicles and Transportation Funding

September 12, 2007

The members will study long-term solutions for transportation funding that are not dependent upon a motor vehicle fuels tax, as well as explore ways to promote the use of hybrid and fuel-efficient vehicles, including possible tax credits.

The joint subcommittee held its first meeting with Senator Frank W. Wagner as chair and Delegate G. Glenn Oder as vice-chair. Other legislative members of the joint subcommittee are Senators Patricia S. Ticer and John C. Watkins and Delegates Jeffrey M. Frederick, L. Scott Lingamfelter, Stephen C. Shannon, and Shannon R. Valentine. The two nonlegislative citizen members are Hugh Montgomery and Thaddeus J. Nowak. The Secretary of Transportation, Pierce R. Homer, and the Secretary of Finance, Jody M. Wagner, serve as the ex officio members.

Overview

The joint subcommittee is charged with studying long-term solutions for transportation funding that are not dependent upon revenues generated from a motor vehicle fuels tax, as well as exploring ways to promote the use of hybrid and fuel-efficient vehicles, including the possible development of tax incentives for use of these vehicles.

The staff provided a review of the key provisions of the Virginia Fuels Tax Act. The definitions and characteristics of motor fuels and alternative fuels; the tax rates for the four relevant motor fuels of gasoline/gasohol, diesel fuel, motor fuel blended with gasoline, and motor fuel blended with diesel fuel; as well as liquid alternative fuel and other alternative fuels were reviewed for the members.

An overview of fuel economy, alternative fuels use, and road use at the national level was presented based on *The Fuel Tax and Alternatives for Transportation Funding*, a report published by the Transportation Research Board of the National Academies. The report noted that although the present highway finance system can remain viable for some time, travelers and the public would benefit from a transition to a direct mileage-based user fee. To achieve this goal, the report offered a roadmap of short-term and long-term solutions. Short-term solutions included increasing the number of toll roads and toll lanes and increasing fuel taxes and registration fees. Long-term solutions included the use of mileage-based user fees, as well as time and location-based user fees.

Presentations

**John R. Layman, Director/Chief Economist
Virginia Department of Taxation, Office of
Revenue Forecasting**

Mr. Layman, in his presentation "Motor Fuels Tax Revenues," discussed the three components of Virginia's motor fuels usage. Gasoline represents 66% of the total share of fuel consumption, diesel fuel represents 34% by mostly nonpassenger-carrying vehicles, and alternative fuel represents only slightly above 0%. He explained that the parameters that impact Virginia's motor fuel demand are population growth, economic growth, fuel prices, and driving habits and vehicle mix. Since 2000, the Commonwealth has had a slower population growth and appears to have begun a phase of decelerating growth in its economy. Mr. Layman noted the following:

- Gasoline prices have increased 80% since January 2004.
- The Energy Information Administration estimates gasoline prices will steadily decline over the next decade.
- There is a broad, long-term, but gradual movement to smaller vehicles with sales of large SUVs down 19% in 2005 and 26% in 2006.
- Gasoline demand is relatively inelastic over the short term, and research suggests it takes years for higher gas prices to meaningfully reduce consumption.

He also noted that gasoline demand is generally correlated to the demand for highways, because highway demand is the ratio of the number of vehicle miles traveled to the average vehicle fuel efficiency. Over the last 10 years, vehicle miles traveled in the Commonwealth and gasoline consumption have increased by 1.5%.

Mr. Layman discussed motor fuels tax collections and the components of the Commonwealth Transportation Fund (CTF). The 2007 CTF components consist of:

- 38% motor fuels tax collections.
- 27% motor vehicle sales tax collections.
- 22% state sales tax collections.
- 7% motor vehicle registration fees collections.
- 6% other revenue sources.

Over the last 20 years, motor fuels tax collections have increased at a steady pace and represented an average of 44% of total CTF revenues. Since fiscal year 1990, the average annual percent change in motor fuels tax collections has been 1.9%. Over the last three years, the average annual growth has been 0.5%. Adjusted for inflation, motor fuels tax collections are at levels seen in the early 1990s. More specifically, motor fuels tax collections have declined for three consecutive years when adjusted for inflation. Also, fiscal year 2007 collections of the motor fuels tax were 6.7% below the level recorded in fiscal year 1990 when adjusted for inflation. The official forecast for motor fuels tax collections, however, anticipates trend growth over the next few years. Mr. Layman noted that the transportation funding and reform included in House Bill 3202 in 2007 would help drive trend growth in CTF revenues in fiscal years 2008 and 2009.

Mr. Layman concluded his presentation by noting that long-term trends in motor fuel demand are difficult to predict, because of geopolitical events, weather patterns, worldwide economic growth, exploration efforts, energy prices, and technological advances. With respect to the cost of energy, crude oil prices are estimated to be \$95 a barrel by 2030. Alternative vehicle technologies, including diesel, are expected to account for 28% of new light duty vehicle sales by 2030, compared to the 8% in 2005.

**George E. Hoffer, Ph.D., Professor of Economics
Virginia Commonwealth University**

Professor Hoffer's presentation entitled "The Impact of New Technology Motor Vehicles on Virginia Highway User Fee Revenues" began with a discussion of the fuel-efficient vehicles that will be available in the next five years. More diesel-powered, light vehicles are expected in Europe, but the fate of such vehicles in the United States depends on the success of Ford's diesel light truck. Professor Hoffer predicted more full hybrids will come into the market as the price of these vehicles falls, making them more attractive, but he emphasized that tax credits on hybrid vehicles applied to too few units to make a difference in the full hybrid market. In contrast, Professor Hoffer explained that mild-hybrid vehicles are "more hype than anything." He noted that a third version of the hybrid, a plug-in electric vehicle, may have more of a real future, if the lithium-ion battery proves to be viable. Further, the United States market can expect more new technology gasoline engines and Class "A" and "B" vehicles, as fuel-inefficient truck-based SUVs retire over time.

Professor Hoffer proposed a model highway user tax system with the following three components:

- A fixed fee per month for the right to drive in Virginia, which is equivalent to the current registration fee and license plates.
- A variable fee based on the number of miles driven per month equivalent to the current motor fuels tax, which could vary by region, by type of roads traveled, and/or by weight of the vehicle. The fee would also be designed to cover highway growth and variable maintenance costs per mile.
- A variable congestion user tax, which would be a tax/fee designed to better utilize existing roads and cover the capital cost for new roads where excess demand exists. The fee would vary by time of day and day of use.

The highway user tax system would be GPS satellite-based with a monthly bill itemized by fixed charges, the number of miles driven, place and time of day traveled, and data on suggested driving alternatives.

Professor Hoffer listed some of the problems he felt existed in many transportation reform proposals, including:

- Higher gasoline taxes do not take into account an increase in fuel-efficient vehicles.
- Odometer mileage-based fees, as part of a state vehicle safety inspection, may be based on altered or fraudulent readings.
- Registration fees identifying new technology vehicles would discourage the sale of these vehicles and users purchasing the vehicles may choose to register in Washington, D.C., or an area outside of Virginia.
- Charging hybrid and plug-in vehicle owners with higher registration fees is inefficient, because the fees would not take into account miles driven and when and where driven.

Professor Hoffer concluded by noting that reasons for increasing taxes for diesel fuel users are that diesel-powered vehicles:

- Are heavier and more damaging to the roads.
- Get much better fuel mileage.
- Are driven by a great number of nonresidents.

**Al Christopher, Executive Director
Virginia Clean Cities**

Mr. Christopher testified before the joint subcommittee as to how he believes Virginia can help promote vehicle fuel efficiency and advanced technology transportation like hydrogen and hybrid electric vehicles, as well

A state economist noted that long-term trends in motor fuel demand are difficult to predict for many reasons, including geopolitical events, weather patterns, global economic growth, exploration efforts, energy prices, and technological advances.

Executive Order 48 encourages state agencies to buy and use hybrids and other fuel-efficient vehicles, as well as alternative fuels like biodiesel and E85, a high blend of ethanol that can be used in flexible fuel vehicles or FFVs.

as alternative fuels like biodiesel and ethanol. He stated that the first step toward the goal of fostering greater fuel efficiency, wider acceptance of new fuel-saving technology, and encouraging the use and production of renewable alternative fuels is for large fleet owners to lead by example by purchasing efficient vehicles and using alternative fuels.

For 15 years, the Clean Cities program has emphasized that government has a special obligation to lead and the capacity to help build early markets for fuel-efficient vehicles and alternative fuels, primarily just by using them. In Virginia, Executive Order 48 is an excellent promotion mechanism. Specifically, Executive Order 48 encourages state agencies to buy and use hybrids and other fuel efficient vehicles, as well as alternative fuels like biodiesel and E85, a high blend of ethanol, which can be used in flexible fuel vehicles or FFVs.

Mr. Christopher's second step towards the accomplishment of long-term goals is to dedicate a source of funds so that it is possible to purchase fuel-efficient vehicles and use alternative fuels, even during negative economic conditions. In the short term, he suggested that Virginia might be able to obtain badly needed refueling infrastructure to make biodiesel and E85 available to state agencies and the public by incurring an opportunity cost, such as leasing out real estate to third party alternative fuel providers. Moreover, he noted that public access to the limited infrastructure is vital.

Virginia has in place a framework to foster a long-term solution to part of the petroleum addiction problem. The Biofuels Production Incentive Grant Fund and Program was established two years ago by House Bill 680 and amended last year by House Bill 3089. Mr. Christopher noted, however, that the producer incentive program lacks adequate and consistent appropriations. He explained that Virginia's fund is too small today to support one-year capacity production by the Commonwealth's three biodiesel refiners, none of which have attempted to qualify, because production threshold criteria are set higher than current sales will support. The Virginia fund would need additional revenues in order to provide a full 10-cent per gallon incentive to an ethanol producer.

Mr. Christopher discussed Illinois' innovative rebate incentive program to

encourage consumers to purchase hybrid electric and a limited number of other fuel-efficient vehicles. He concluded his presentation by noting that a dedicated source of money derived from new revenues produced by the alternative fuel industry itself is one option of providing a sustainable funding source that is large enough to compete with similar incentives offered by other states.

Next Meeting

The next meeting of the joint subcommittee has not yet been scheduled; details will be posted online on the General Assembly Calendar and the study website sponsored by DLS when available.

SJR 385

Joint Subcommittee to Study Fuel-Efficient Vehicles and Transportation Funding.

Senator Frank W. Wagner, Chair

Kevin Stokes and Patrick Cushing, DLS Staff
(804) 786-3591

study website

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

Most joint subcommittees shall complete their meetings for the first year by November 30, 2007, and for the second year by November 30, 2008, and submit to DLAS an executive summary of their findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year.

SJR 378: Joint Subcommittee Studying Revision of the Curriculum for Driver Training Programs

September 18, 2007

The Joint Subcommittee to Study Revision of the Curriculum for Driver Training Programs, held its second meeting of the 2007 interim on September 18, 2007, with Senator Jay O'Brien as chair and Delegate Matt Lohr as vice-chair.

Presentations

MARYLAND'S GRADUATED LICENSING SYSTEM AND ROOKIE DRIVER PROGRAM

Jennifer Hine, Operations Manager of the Driver Services Division for the Maryland Vehicle Administration, informed the members about Maryland's Graduated Licensing System that was adopted in 1998. The system applies to all novice drivers, not just teens. Since the system has been in place, the crash rate has declined among novice drivers.

Aspects of the Maryland program that differ from Virginia's program include the minimum age to obtain a learner's permit, the number of hours of driving practice required to obtain a provisional license, sanctions for being convicted of a moving violation during the learner's permit phase, and completion of a practice driving skills log documenting a minimum of 60 hours of supervised driving practice. A learner's permit must be held for six months, and the provisional license with restrictions must be held for 18 months, conviction-free, before a permanent driver's license may be obtained. For the first five months, the provisional license restrictions include a prohibition from transporting any passenger under the age of 18.

Maryland is also promoting the participation of parents and their children in a parent/teen driving agreement. In the voluntary program, parents and teens set their household rules for driving.

USE OF SIMULATORS IN DRIVER EDUCATION

Vanessa Wigand, Principal Specialist for Driver Education, Health Education and Physical Education for the Virginia Department of Education, made a presentation to the members on the prevalence of simulators in the driver education programs around the state, the costs of simulators, and the average cost to provide driver education per pupil. According to Ms. Wigand, simulators have been in use in Virginia for over 30 years and can cost

anywhere from \$25 for desktop software to \$150,000 for a full-sized vehicle body.

Twelve school divisions in the Commonwealth currently utilize some form of simulation. The average crash rate in localities that use simulation is 10% compared to the average crash rate of nonsimulation localities, which is 10.3%. Ms. Wigand pointed out that the localities utilizing simulation often include a parental involvement requirement, as well as the use of multiple car and crash avoidance ranges and skid cars.

Ms. Wigand also discussed localities that offer a 90-hour program, rather than the minimum requirement of a 45-hour program. Currently, of the 10 localities that offer a 90-hour semester program, four have a lower crash rate than the state average and six have a significantly higher crash rate than the state average. On average, the cost of a public school in-car program is approximately \$189 with a fee of \$72 compared to the cost of a commercial driving school fee of around \$275. During the current school year, 35 school divisions will also be offering "Partners for Teen Safe Driving," which is a program that assists parents in their efforts to guide children safely through the first years of driving.

LOCAL SCHOOL DIVISION INITIATIVES

Bonnie Conner-Gray, the Secondary Health, Physical Education and Driver Education Specialist for Henrico County Public Schools, spoke specifically about Henrico County's Driver Education Program and how it goes beyond the minimum requirements of state law and regulation. The program offered in Henrico County is a semester long, 90-hour program. It affords students a wide variety of experiences, including simulation and the opportunity to attend a crash avoidance range. The newer simulators in use in Henrico cost \$3,000 to \$3,600 per unit, but offer a highly advanced virtual driving experience. The simulation is in addition to three weeks of behind-the-wheel range driving. Since the new simulators have been in use, the Henrico County Public School crash rates have decreased to 8.4% in 2006, down from 21% in 2003.

The use of Henrico County's crash avoidance range is not a requirement, but currently 20% of

During the current school year, 35 school divisions will offer "Partners for Teen Safe Driving," a program that assists parents in their efforts to guide children safely through the first years of driving.

Since graduated licensing requirements went into effect in 2001, the rate of 15-17 year-old drivers involved in crashes, as well as the rate of injuries have decreased, while the rate of accident fatalities has fluctuated.

the students attend the three-hour program offered on a Saturday. It is Ms. Conner-Gray's hope that by the 2008-2009 school year attendance in the crash-avoidance program will be mandatory.

Ms. Conner-Gray also discussed the importance of instructor training, which she emphasized may be the best insurance for effective driver education programs. All Henrico County driving instructors must attend an eight hour advanced crash avoidance training course with International Training, Inc., a company that also trains secret service drivers.

COMMERCIAL DRIVING SCHOOL OVERSIGHT AND GRADUATED DRIVER'S LICENSE REQUIREMENTS

Karen Grim, Assistant Commissioner for Driver, Vehicle and Data Management for the Virginia Department of Motor Vehicles (DMV), gave additional information about the auditing of commercial driving schools and crash data since Virginia adopted graduated driver's license requirements in 2001. She noted that the heaviest population of commercial driving schools appears in Northern Virginia and Roanoke. There were a total of eight complaints regarding commercial driving schools in 2006, and so far there have been seven in 2007.

Currently, sanctions are available to DMV to impose disciplinary measures on commercial driving schools for violations. New regulations going into effect in January 2008 will give the DMV the opportunity to discipline individual driver instructors as well.

Ms. Grim noted that crash data available since the graduated license requirements went into effect reveals that the rate of 15-17 year-old drivers involved in crashes and the rate of injuries have decreased, while the rate of fatalities has fluctuated.

Public Comment

During the public comment period the members heard comments from Robin Thompson of Fairfax, a mother who lost a child in a fatal car crash. She urged the joint subcommittee to consider incorporating crash avoidance components to the current driver education curriculum. Ms. Thompson also advocates widespread use of simulators and more extensive instructor training.

Sherry Bollhorst of Hampton City Schools spoke about accountability on the part of driver

education instructors. She assured the joint subcommittee members that there is strong oversight from the Department of Education and that the instructors in Hampton meet all insurance and driving record requirements.

Next Meeting

The joint subcommittee plans to have one more meeting in November after Thanksgiving. Information will be posted on the study website hosted by DLS when available.

SJR 378

Joint Subcommittee Studying the Revision of the Curriculum for Driver Training Programs

Senator Jay O'Brien, Chair

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[study website](#)

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

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HJR 144: Joint Subcommittee Studying Telework Opportunities for State and Private Sector Employees

September 19, 2007

The Joint Subcommittee Studying Telework Opportunities for State and Private Sector Employees met on September 19, 2007, in Richmond with Delegate Timothy D. Hugo as chair.

Presentations

**Chuck Wilsker, President and CEO
Telework Coalition**

The Telework Coalition is a nonprofit organization founded six years ago to promote telework. Mr. Wilsker discussed the three main current drivers of telework, which are the need for work continuity in the event of a disaster, increased gasoline prices, and environmental concerns. He emphasized that because of these drivers, the adoption of telework is a question of "when" not "if" and to get employers and employees to invest in the need for telework, they need to be encouraged to try it. One driver for businesses may be requirements of built-in resilience in the supply chain. For example, in order to be on an entity's supplier list, a business could be required to have resiliency built into its operations, such as maintaining a telework program to ensure continuity in the event of a disaster or disruption at the primary work site.

**Kay LyBrand
Telework Program Overview**

Ms. LyBrand provided an overview of the award-winning telework program that she coordinated at her previous place of employment and offered suggestions on how to successfully develop a program. The program she implemented included telework agreements, work checklists, training, and a 360 degree feedback evaluation system. She stated that building trust between managers and employees is also key. Ms. LyBrand recommended that a telework program should identify metrics of success in order to measure progress. Her company, for example, was able to identify and measure that teleworking employees saved 193,000 miles on the road and that each employee saved about \$800 a year on commuting costs. Ms. LyBrand's complete presentation is available on the study website.

**Steve Waltz, Virginia Department of Mines,
Minerals, and Energy**

Mr. Waltz provided a brief update on the recently released state energy plan. He said that transportation is a key focus of the plan and that telework needs to be included in discussions in order to reduce the number of miles traveled by consumers. Mr. Waltz noted that transportation is responsible for large end-use energy consumption.

Work Plan

The joint subcommittee reviewed a list of possible legislation compiled by the staff, and the chairman directed the members to review the list in order that final recommendations could be discussed in detail at the next meeting.

The chairman also requested that a representative of the Department of Human Resource Management be present at the next meeting to provide updated statistics on the number of state employees that participate in a telework program.

Next Meeting

The next meeting of the joint subcommittee is scheduled for Tuesday, November 13, 2007, in Richmond.

A representative of the Department of Human Resource Management will be present at the next meeting to provide updated statistics on the number of state employees that participate in a telework program.

HJR 144

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

Delegate Timothy D. Hugo, Chair

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Amigo Wade, DLS Staff
(804) 786-3591

study website

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

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

September 24, 2007

In the case of Benshoff v. City of Virginia Beach, the court at every level, all the way up to the 4th Circuit Court of Appeals, found in favor of the city and denied firefighters overtime pay.

The third meeting of the Joint Subcommittee Studying Incentives for Fire and Rescue Squad Volunteers was held on September 24, 2007, with Delegate Tom Rust as chair. Scott Kezman, an attorney with Kaufman & Canoles, attended the meeting to provide the members with information concerning *Benshoff v. City of Virginia Beach*.

Benshoff v. City of Virginia Beach

Scott Kezman, an attorney with Kaufman & Canoles, discussed the Fair Labor Standards Act (FLSA) case [*Benshoff v. City of Virginia Beach*, 180 F.3d 186 (1999)] involving the City of Virginia Beach and several of its career firefighters who also volunteered to do the same jobs for volunteer rescue squads within the city. The firefighters argued they should be paid overtime in accordance with FLSA for the hours they served as volunteers. The court at every level, all of the way up to the 4th Circuit Court of Appeals, found in favor of the city and denied the overtime pay to the firefighters. The courts determined that because the firefighters were not required to volunteer with the rescue squads and the city did not control the rescue squads, their schedules, and who their volunteers were, the FLSA overtime pay regulations were inapplicable.

The problem, however, is that each locality and volunteer situation in the Commonwealth is different so that in order to decide whether the FLSA is applicable in situations similar to Virginia Beach, the locality needs to apply for an opinion letter from the Department of Labor or be subject to a case-by-case court analysis. Neither of these options are inexpensive. The only other real way to fix any perceived problem would require action at the federal level.

Proposed Legislation

Next, the chairman led the joint subcommittee in a discussion about whether they want to make recommendations for legislation to be introduced in the 2008 General Assembly Session and if so, what would it be? He gave a thorough review of the legislative proposals

which had been mentioned in their first two meetings and asked the members which if any they could support. He also asked them for any other proposals they might have.

A majority of the members agreed on the following four proposals, for purposes of an initial draft to be taken up at the final meeting:

- \$3,000 income tax credit for volunteer firefighters and rescue squad members in good standing based on a sliding scale related to specific criteria.
- Financial assistance for EMS training at state higher education facilities as well as advanced life support training at accredited sites around the Commonwealth.
- \$250,000 appropriation for the biennium for the Commonwealth's share of the VOLSAP Fund.
- \$2 increase in the \$4-for-Life fee to \$6-for-Life with the money raised applied to cover some of the costs resulting from the proposals in this package.

Staff was directed to prepare draft legislation as well as an executive summary draft of the joint subcommittee's work. In doing so, they are to work with the interested parties in order to develop the appropriate language. Once the drafts are complete, they will be mailed to the subcommittee members for their review prior to the final meeting.

Final Meeting

The final meeting of the joint subcommittee will be held in Richmond in November, at which time the members will decide if they can make recommendations for the upcoming Session of the General Assembly on any of the draft legislation explored during the study. Meeting information will be posted as soon as it is available on the study's website.

HJR 743

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

Delegate Thomas D. Rust, Chair

Joan Putney and Amigo Wade, DLS Staff
(804) 786-3591

study website

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

House HWI Committee Studying Mental Health Care Laws and Issues

September 6, 2007

On September 6, 2007, the House of Delegates' Health, Welfare and Institutions Committee met for the third time to study the Commonwealth's mental health laws and system of mental health care. Four guest speakers from the Chief Justice's Commission on Mental Health Law Reform were invited to report on the commission's activities.

Presentations

OVERVIEW OF COMMISSION ACTIVITIES

Professor Richard J. Bonnie, Esq., Director, University of Virginia Institute of Law, Psychiatry and Public Policy and chair of the Chief Justice's Commission on Mental Health Law Reform, described the background of the Chief Justice's Commission, including the reasons for its creation, its structure, goals, guiding principles, and work plan. Professor Bonnie highlighted some general findings from the commission's studies of commitment hearings conducted in May of 2007 and crisis contacts with Community Services Boards conducted in June of 2007. He identified three strategic prongs of reform upon which the commission had reached consensus, including timely access for services, increased empowerment and self-determination for people with mental health problems, and fair and effective involuntary interventions. Professor Bonnie also discussed the activities of the Task Force on Commitment, highlighting activities in the areas of emergency custody and transportation; revisions to criteria for involuntary treatment; redesign of the commitment process; mandatory outpatient treatment; and training, compensation and oversight of persons participating in the commitment process.

TASK FORCE ON ACCESS TO SERVICES

Charles Hall, M.Ed., CAS, Executive Director, Hampton-Newport News Community Services Board and chair of the commission's Task Force on Access to Services, presented information on the group's activities and identified several recommendations and suggestions for improving the current mental health system in the Commonwealth. Mr. Hall began by highlighting the need for statutory reform, increased service capacity, and greater resources. He identified capacity components including early intervention and

treatment services; crisis response services including crisis intervention, crisis stabilization, and crisis intervention teams; and intensive support services including case management and assertive community treatments necessary to improve access to community-based services. Mr. Hall provided a detailed two-year action plan for implementing recommended changes to increase access to care.

SITE VISIT TO MONTGOMERY COUNTY (PENNSYLVANIA) EMERGENCY SERVICES

Allyson K. Tysinger, Assistant Attorney General and member of commission's Task Force on Access to Services, described the Montgomery County (Pennsylvania) Emergency Services (MCES) model of crisis support services and identified several "best practices" that could be adapted from MCES for use in the Commonwealth.

TASK FORCE ON CHILDREN AND ADOLESCENTS

Charlotte V. McNulty, Executive Director, Harrisonburg-Rockingham Community Services Board and vice-chair of the Task Force on Children and Adolescents, identified the core values of the group and stressed the need for greater access to services for children and adolescents. She spoke regarding a number of capacity components necessary to improve access to community-based services, which were similar to those identified for adults. She concluded by discussing several options to improve the mental health system for children and adolescents.

Next Meeting

The next meeting of the HWI Committee will be on October 9, 2007, in Richmond and will feature public comment.

*House Health, Welfare
and Institutions
Mental Health Law Study*

Delegate Phillip A. Hamilton, Chair

Sarah Stanton and Greg O'Halloran, DLS Staff
(804) 786-3591

study website

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

The Chief Justice's Commission on Mental Health Law Reform has focused on three aspects of reform—timely access for services, increased empowerment and self-determination for people with mental health problems, and fair and effective involuntary interventions.

HJR 75: U.S. Route 460 Communications Committee

September 26, 2007

Presentations

Richard Walton, Jr., of Virginia Department of Transportation (VDOT)

Mr. Walton gave an overview of the Independent Review Panel (IRP) recommendations. The IRP, which was appointed by the Secretary Transportation in February 2007, is chaired by Commonwealth Transportation Board member Alan Witt. The IRP made the following recommendations:

- All three submitted proposals be advanced.
- I-64 be developed as a PPTA project independent of Route 460.
- Coordination with the Hampton Roads Transportation Authority.
- A detailed proposal (RFDP) to be submitted after each metropolitan planning organization (MPO) includes the project in its long-range plan.

The Commonwealth Transportation Board met in July 2007 and adopted a resolution to accept the IRP recommendations, as well as advance all three US Route 460 proposals.

The U.S. Route 460 Communications Committee met in Richmond on September 26, 2007, with Delegate Leo C. Wardrup, Jr., as chair. Several guest speakers were invited to the meeting to provide information to the members.

Prior to the presentations, Delegate Joannou inquired to whether consideration had been given to obtaining easements for passenger rail service. The chairman indicated that the Department of Transportation and Department of Rail and Public Transportation would be contacted to address the issue.

Cintra 460, Itinere, & Virginia Corridor Partners (VCP) Proposals

	<u>Cintra 460</u>	<u>Itinere</u>	<u>VCP</u>
Concession Period	50 years	60 years	50 years
Estimated Completion	January 2014	December 2013	June 2014
Estimated Cost	\$1,051M (2006)	\$1,550M (2006)	\$1,535M (2006)
Public Funding	\$174.5M (base case)	\$1,056M (state/federal)	—
Other Funding	\$450M (TIFIA loan)	\$477M (private activity bonds) \$144M (TIFIA loan)	\$1,849M (private activity bonds) \$219M (TIFIA loan)
Toll Rate	\$0.07 to \$0.24/per mile	\$0.14/per mile	\$0.24/per mile
Equity Contribution	"provide equity in substantial amounts"	\$98M	\$363M (base case)

The IRP's recommendations also included aspects of the project that VDOT should address, including:

- Identify changes in scope that could improve the project and/or reduce costs.
- Conduct a multidisciplinary review, including engineering, operating, and environmental features, of project termini to determine the minimum number and location of corridor interchanges.
- Develop a method for determining phased development of interchanges.
- Determine bicycle and pedestrian requirements.
- Determine the project's hydraulic requirements.
- Analyze financing methods to determine feasible mix to support project development.

The Commonwealth Transportation Board also met in July 2007 and adopted a resolution to accept the IRP recommendations, as well as advance all three proposals concerning the project with the exception of removing the requirement that I-64 be developed as a PPTA. The Commonwealth Transportation Board, however, revised its financial support from it "will" to it "may" support allocations to advance the project.

Mr. Walton stated that VDOT will make its detailed proposal (RFDP) in the Fall 2007. The deadline for detailed proposals will be Spring 2008. Negotiation and execution of an interim or comprehensive agreement will occur in Fall 2008.

Delegate Joannou inquired about why the Commonwealth Transportation Board decided to take the southern route, which puts it on the other side of the railroad tracks, and whether the proposals included crossing of the tracks.

Delegate Jones wondered how it was determined by the Commonwealth Transportation Board that the southern route be used. Chairman Wardrup remarked that the committee had recommended using the northern route. He stated that the Commonwealth Transportation Board would be contacted to have someone provide the members with an explanation of why the southern route was chosen over the northern route.

Arthur Collins, Executive Director, Hampton Roads Planning District Commission

Mr. Collins informed the members that the Hampton Roads MPO has placed Route 460 back into its long-range planning and will make its final approval of the project in October 2007.

Joseph Vinsh, Crater Planning District Commission

Mr. Vinsh explained that the Crater Planning District Commission and the Tri-Cities MPO first became involved in a potential Route 460 project during the late 1990s during the TransAmerica Corridor Study, which addressed a segment of road between Beckley, WV and Virginia Beach. Since that time, the Tri-Cities MPO and the Crater Planning District Commission have consistently presented Route 460 improvement as a number one regional transportation priority, stressing the need for a new four lane divided facility.

Delegate Jones stated that a way must be found to make the road all that it can be and that forward thinking is necessary, exploring what needs to be done and having the courage to do it. The members also discussed the economic development that Route 460 would bring to the region.

Next Meeting

The date of the next meeting of the U.S. Route 460 Communications Committee will be posted on the study website and online on the General Assembly calendar when the information becomes available.

*U.S. Route 460
Communications Committee*

Delegate Leo C. Wardrup, Jr., Chair

Alan Wambold and Caroline Stalker, DLS Staff
(804) 786-3591

[study website](#)

<http://dls.state.va.us/RT460.htm>

The deadline for detailed proposals or RFDPs on the US Route 460 project will be Spring 2008 with negotiation and execution of an interim or comprehensive agreement occurring in Fall 2008.

HJR701/SJR390: Joint Subcommittee Studying Liability Protections for Health Care Providers

September 27, 2007

The declaration of a state of emergency becomes effective upon the Governor's verbal order and there is little time lapse between the issuance of the verbal order and the subsequent written order.

Overview

The Joint Subcommittee to Study the Feasibility of Offering Liability Protections to Health Care Providers Rendering Aid During a State or Local Emergency held its second meeting on September 27, 2007, with Delegate Phillip A. Hamilton as chair.

Staff addressed the issue of liability protections available on military bases and explained that service members are precluded from bringing suits for injuries sustained while on active duty under the provisions of a United States Supreme Court case, *Feres v. United States*, 340 U.S. 135, 71 S. Ct. 153, 95 L. Ed. 152 (1950). Information was given concerning the prosecution of health care providers for decisions made during emergencies or disasters. Concern regarding the criminalization of health care decisions has arisen in the aftermath of Hurricane Katrina where Dr. Anna Pou was accused of euthanizing patients at New Orleans' Memorial Medical Center, although a grand jury decided not to pursue criminal charges. The AMA has issued policies opposing the criminalization of medical judgment and the criminalization of health care decision making. It has also developed a Model Act to Prohibit the Criminalization of Health Care Decision Making; however, to date no states have adopted the model.

Presentations

STATE OF EMERGENCY DECLARATION PROCESS

Michael Cline, State Coordinator of Emergency Management for the Virginia Department of Emergency Management (VDEM), explained that the Governor is the Director of Emergency Management and has the statutory authority to declare a state of emergency. The typical declaration process begins with a verbal recommendation that a state of emergency be declared made by the VDEM and based on the input of the Virginia Emergency Response Team, which includes state agencies as well as representatives of the public and private sectors. In response to the oral recommendation, the Governor issues a verbal order. After input from state agencies, the VDEM and occasionally the Virginia Department of Health (VDH), issues a written order. The order is reviewed by the Attorney General's office,

other agencies that may be affected by the order, as well as the Secretary of Public Safety before being issued by the Governor.

There is an exception when a disaster is expected, such as the forecast of a severe winter storm. The Governor would not declare a state of emergency and only a written declaration would be issued. Mr. Cline further explained that some state agencies, such as the Virginia Department of Transportation, can respond to a disaster within their existing authority without a state declaration of emergency. He noted that the Virginia National Guard, however, can only be activated in the event of a state declaration of emergency. The declaration of a state of emergency becomes effective upon the Governor's verbal order and there is little time lapse between the issuance of the verbal order and the subsequent written order. The longest such lapse that Mr. Cline could recall was approximately 45 minutes.

VIRGINIA HEALTHCARE AND HOSPITAL ASSOCIATION

Katharine M. Webb, Senior Vice-President of the Virginia Hospital and Healthcare Association (VHHA), made a presentation on the topic of providing care with limited resources. The VHHA began a public/private partnership in 2001, working with a group of hospital leaders. In 2006, the group expanded to include various hospital systems, other interested organizations, and representatives from the VDH and the General Assembly. The issues related to providing care in the face of normally adequate resources that are depleted by extraordinary demand during a disaster were addressed. The group focused on the ability of hospitals to continue to provide care during extraordinary events when faced with limited resources.

The work group developed a Critical Resource Shortage Planning Guide, which addresses the allocation of scarce resources during an emergency situation and establishes a process for hospitals to follow in planning for the provision of care in the face of scarce resources. The Guide rests on four assumptions:

- Hospitals will be responsible for making decisions regarding resource shortages at the institution and health system level.

- Hospitals will need to allocate resources during a shortage in a way that does the greatest good for the greatest number.
- Resource shortage plans should fall within the hospital's existing incident command system.
- The Guide only applies during emergencies and disasters.

Ms. Webb stated that legislation is still necessary in order to protect health care providers, because of the unusual nature of care rendered during a disaster to that provided under normal circumstances. She gave five legislative principles needed for comprehensive protection of health care providers:

- An all-hazards approach applied to both natural and man-made disasters.
- Application to all health care providers, including hospitals.
- Protections not limited to just volunteers.
- Application both pre- and post-declaration of a state of emergency.
- Inclusion of all care provided during the emergency or disaster.

LIABILITY INSURANCE AND LIABILITY PROTECTIONS

J. Christopher LaGow, J.D., representing the Property Casualty Insurers Association of America, briefly spoke on the relation of liability protections and insurance. He expressed his support for liability protections, such as the Good Samaritan statute, as they further the public policy of encouraging the provision of emergency care. However, Mr. LaGow indicated that there is a lack of any quality studies regarding the impact of such protections on paid claims or insurance premiums.

HEALTH CARE PROVIDER LIABILITY PROTECTIONS IN OTHER JURISDICTIONS

Staff reported that almost every state has its own version of a Good Samaritan statute as well as civil defense/emergency services laws. Other states' Good Samaritan statutes are similar to Virginia's and provide that care must be rendered without compensation at the scene of an accident or emergency before the liability protections may be invoked. California, Indiana, Louisiana, Maryland, Michigan, and Minnesota have civil defense/emergency services laws that expressly afford liability protections for health care providers. All except one of these statutes require that a declared state of emergency exist before they

will apply. Indiana also requires that a declaration of emergency exist, but provides that the statute's liability protections cover the provision of health care that occurred prior to the declaration.

Public Comment

Steve Pearson, representing the Virginia Trial Lawyers Association, expressed his belief that the issue of health care provider liability being addressed by the subcommittee already fits into the current legal framework in Virginia involving the standard of care and that current law affords sufficient liability protections to health care providers to ensure an effective emergency response. He also emphasized his opposition to broad grants of immunity, including immunity that would apply during time periods prior to the declaration of a state of emergency. In response to questioning from the members, Mr. Pearson acknowledged differences between the statutory standard of care and Model Jury Instructions' standard of care and discussed the claims brought against health care providers for failing to plan for emergencies, such as some of the claims filed in the wake of Hurricane Katrina or the SARS outbreak in Canada.

Beverly Soble, representing the Virginia Health Care Association, expressed her preference that the joint subcommittee recommends extending liability protections to all health care providers, including nursing homes and assisted living facilities. She stated that such facilities would likely assist with any surge in the provision of health care associated with an emergency.

Scott Johnson, representing the Medical Society of Virginia, stated his preference that the protections already afforded to health care providers in Va. Code § 8.01-225.01 be extended to include natural disasters, in addition to the man-made disasters that are already covered, and that liability protections cover both pre- and post-declaration of emergency time periods. He supports several changes to Virginia's Good Samaritan statute, including permitting providers rendering services under the statute to be reimbursed for actual expenses and expanding the statute's scope so that protections are not limited to care provided at the scene of an emergency.

Dr. Lisa Kaplowitz, Deputy Commissioner for Emergency Preparedness and Response for the VDH, stated that physicians who would be willing to respond to a disaster are worried about the risk that they may be subjecting themselves to by doing so. Dr. Kaplowitz said that such concerns could be

Almost every state has its own version of a Good Samaritan statute as well as civil defense/emergency services laws.

Utilizing the legislative principles contained in the VHHA presentation as a guide, the members agreed to consider several legislative alternatives.

ameliorated if the physicians were aware that they were afforded greater liability protections. She expressed her skepticism that greater physician education concerning the currently available liability protections would be sufficient.

Recommendations

Utilizing the legislative principles contained in the VHHA presentation as a guide, the members agreed to consider several legislative alternatives.

- Any liability protections should extend to all health care providers, and not be limited to institutional providers, such as hospitals.
- Any liability protections should cover both natural and man-made disasters and, if possible, the current definitions of these types of disasters contained in the Virginia Code should be condensed into one single definition of "disaster."
- An amendment to the definition of natural disaster be made to clarify that disease outbreaks would be covered.
- Volunteer health care providers would be allowed to recover their actual expenses incurred during the rendition of care.
- Protections should apply both before and after the declaration of a state of emergency.
- Liability protections would apply to all care provided during a disaster or emergency with no dual standard of care applied during an emergency or disaster.

The members approved a legislative draft prepared by staff which amended the exceptions

to the definition of a patient found in Va. Code § 8.01-581.1 to add a reference to Va. Code § 44-146.23, the liability provision of the Emergency Services and Disaster Law, in addition to the already existing reference to the Good Samaritan statute.

It was also decided to attempt to broaden the Good Samaritan statute to expand its application from care rendered at the scene of the accident or emergency to care rendered in response to an accident or emergency.

Next Meeting

The joint subcommittee's next meeting will be held on October 16, 2007, in Richmond.

HJR 701/SJR 390

Joint Subcommittee to Study Liability Protections for Health Care Providers in Emergencies

Delegate Phillip A. Hamilton, Chair

David Cotter and Greg O'Halloran, DLS Staff
(804) 786-3591

study website

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

Study Meeting Calendar for October '07

<i>Study/ Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Statewide Health Insurance Experience Pool	9:30 a.m., Wednesday, October 10, 2007 General Assembly Bldg, Senate Room A	David Rosenberg, Kevin Stokes
Liability Protection for Health Care Providers	10:00 a.m., Tuesday, October 16, 2007 General Assembly Bldg, House Room D	David Cotter, Greg O'Halloran
Childhood Obesity in Public Schools	10:00 a.m., Monday, October 22, 2007 General Assembly Bldg, House Room C	Jessica Eades
Open Space Land and Farmland Preservation	1:00 p.m., Wednesday, October 24, 2007 Pocahontas State Park, Chesterfield County	Mark Vucci, David Rosenberg, Kevin Stokes
Science, Math and Technology Education	10:30 a.m., Thursday, October 25, 2007 Haymarket Elementary School	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.

Virginia Freedom of Information Advisory Council 9-10-2007

The Freedom of Information Advisory Council (the Council) held its third meeting on June 6, 2007, to receive progress reports from two subcommittees. The Council also welcomed new Council member Dr. Sandra G. Treadway, Librarian of Virginia, who replaces Nolan Yelich, who retired from state service effective July 1, 2007. In addition, the Council heard from the University of Virginia (UVA) regarding a proposed exemption for certain donor records held by UVA.

SUBCOMMITTEE REPORTS

Electronic Meeting Subcommittee

HB 2293

The Electronic Meeting Subcommittee has met three times to address three bills referred to it for study with Senator John Edwards as chair. At the first meeting in May 2007, Delegate McClellan, patron of House Bill 2293, spoke to her bill that would have allowed local public bodies to meet through electronic means only when gathering information and no action is to be taken at the meeting. The members voted 4 to 0 to recommend against the bill. The members voted 4 to 0 to table Senate Bill 1271 (Whipple), unless the patron requests further consideration. The bill would have eliminated the requirement that a quorum of a state public body be physically assembled in one primary location in order for the public body to conduct a meeting through electronic communications means. Instead of the quorum, the bill provided that at least two members of the public body be physically assembled at one location.

HB 2553

The subcommittee voted 5 to 0 to recommend a revised draft of House Bill 2553 (Ebbin). The draft as revised would allow a local public body to meet by electronic means without a physically assembled quorum when the Governor has declared a state of emergency, the catastrophic nature of the emergency makes it impracticable or unsafe to assemble a quorum in one location, and the purpose of the meeting is to address the emergency. The

local public body must meet the following conditions:

- Give public notice contemporaneously with the notice given the members, using the best possible methods given the nature of the emergency.
- Make arrangements for public access to the meeting.
- Comply with the usual rules for electronic meetings.

Also, the minutes must reflect the nature of the emergency and the fact that the meeting was held electronically. Additionally, the draft bill makes a technical amendment in the definition of "meeting" to include the provisions of § 2.2-3708.1 (added in 2007). Mr. Edwards moved that the full FOIA Council vote to recommend this draft, which was carried by unanimous vote.

Policy Statement on Electronic Meetings

The members discussed a possible statement by the Council of principles governing electronic meetings, because over the past three years that the subcommittee has met to consider various issues regarding electronic meetings, it has consistently favored requiring face-to-face meetings of local public bodies and the physical assembly of quorums of state public bodies. The members considered adopting these two guiding principles as a starting point in future discussions of electronic meetings. Points made by several members on the issue included the following:

- As a practical matter, electronic meetings will be a part of our lives, they increase efficiency and greatly reduce transportation costs, and since it is difficult to get good people to serve without being paid, the Council should make it as easy as possible to do so.
- The statement of principles would provide guidance and a starting point for discussion, but if agreed upon it could be discontinued or changed if needed by the Council.
- Live human discourse cannot be captured by technology and citizens want and expect face-to-face meetings.

The Council's strength lies in an independent forum for relevant topics and adopting a statement may give the appearance that the body has already determined limits on electronic meetings.

The Council voted on the statement of principles as a resolution of the Council. Because the vote was tied 4 to 4, the resolution did not pass and the statement of principles was not adopted.

Personal Identifying Information Subcommittee

The Personal Identifying Information Subcommittee has held three meetings to deliberate on the nine bills referred to it for study with Senator Edward Houck as chair. Two meetings were joint meetings with a subcommittee of the Joint Commission on Technology and Science (JCOTS) to address two bills, House Bill 2821 (Sickles), concerning access to Social Security Numbers (SSNs), and Senate Bill 819 (Cuccinelli), concerning access to personal information including date of birth, social security number, driver's license number, bank account numbers, credit or debit card numbers, personal identification numbers, electronic identification codes, automated or electronic signatures, biometric data, or fingerprints.

HB 2821

The joint subcommittee has examined the treatment of Social Security Numbers under Virginia law, federal law, and the laws of other states, all of which take somewhat different approaches and also looked at what personal information is collected by government from a practical perspective using real-life examples. The joint subcommittee found that government collects too much personal information and that this over-collection needs to be addressed, but decided that these issues are best addressed by legislation outside of FOIA for two reasons:

- The law should address the treatment of Social Security Numbers in the private sector as well as in public records and FOIA only applies to public records.
- Under FOIA, a requester's purpose in requesting records does not matter and any proposed law may need to account for good or bad intent of the request.

SB 819

The has found that definition of "personal information" in the Government Data Collection and Dissemination Practices Act needs to be updated. The members will continue its work to attempt to draft legislation that will best address the issues identified to date. The next meeting of the joint subcommittee has yet to be scheduled.

The Personal Identifying Information Subcommittee also considered seven other bills and the issue of concealed carry handgun permits:

- HB 2558 (Brink), which provides an exemption for certain information in rabies vaccination certificates-Vote was postponed until the Virginia Treasurers' Association and the Virginia Veterinarians' Association complete work on a form for use state-wide that limits the amount of personal information available to the public.
- HB 3097 (Cole) and SB 1106 (Chichester), identical bills concerning the release of certain information in constituent correspondence-Tabled without objection.
- HB 3118 (Carrico) and SB 883 (Deeds), identical bills exempting certain records held by the Department of

Game and Inland Fisheries (DGIF)-Vote was postponed dependent on the members' decision regarding the larger issue of SSNs and personal information generally.

- HB 3161 (Marshall, D.) and SB 1404 (Hanger), identical bills expanding a current exemption regarding certain complainant information to include information in complaints for violations of any local ordinance-Bills were tabled by vote of 4 to 0.

CCH Permits

CCH permits became an issue of concern to the Council earlier this year after the Roanoke Times published on its website a list of CCH permit holders obtained from the Department of State Police (DSP). Shortly thereafter the newspaper removed the list from its website after a great deal public outcry concerning the online publication of permit holders' personal information. Lisa Wallmeyer, of the Division of Legislative Services, presented draft legislation that would codify the opinion of the Attorney General issued in April, 2007, by providing that DSP shall withhold from public disclosure permitted information submitted to DSP for purposes of entry into the Virginia Criminal Information Network (VCIN). Additionally, the draft presented today addresses a concern that arose at the last subcommittee meeting by clarifying that that records about nonresident permits issued by DSP remain open to the same extent that records held by the clerks of court concerning resident permits are open.

Craig Merritt, Virginia Press Association (VPA), suggested that further revision be made to the draft to keep personal information confidential, but to allow statistical information to be released. Senator Houck recommended that further consideration be postponed until the next Council meeting, which was agreed upon by the members. A draft concerning SSNs will also be prepared by the next full Council meeting.

UVA DISCLOSURE EXEMPTION

On behalf of University of Virginia, Robert Lockridge, Executive Assistant to the President for State Government Relations, presented draft legislation that would exempt certain donor records held by UVA from the mandatory disclosure requirements of FOIA. The proposed exemption would be added to § 2.2-3705.4. Mr. Lockridge noted that UVA is one of the most successful universities in the country in its fundraising efforts. In regard to donor records, Mr. Lockridge listed three confidentiality concerns:

- Donor does not want to be solicited for donations by other organizations.
- Donor has a child attending UVA and does not want the child's educational experience to be affected by the donation.

- Donor does not wish for his or her other family members to know of the donation.

Mr. Lockridge stated that not being able to promise anonymity to donors would lead to the erosion of donor confidence and a decrease in donations. As safeguards for public access, Mr. Lockridge pointed out that a requestor may obtain the total number of donors and total amount of donations, there would still be access to procurement records, the Auditor of Public Accounts would continue to have full access to all donation records, and UVA has two committees to ensure academic freedom and prevent undue influence from any anonymous donor, the Gift Policy and Gift Acceptance Committees. After further clarification that the exemption sought would still permit the disclosure of the amount, date, and purpose of a donation, Senator Houck opened the floor to public comment.

PUBLIC COMMENT

Jennifer Perkins, Spokesman for the Coalition for Open Government (VCOG), acknowledged that UVA made some good points, but that it is the university's choice to include foundation records in its files, thus subjecting foundation records to disclosure under FOIA. Ms. Perkins suggested the possibility of using a separate database for anonymous donors and leaving the main database completely open, noting that ideally the public should have the right to access both foundation and university records, especially in situations where a donor's name may be important.

Delegate Griffith noted that in the past there were many questions raised concerning the flow of money between foundations and universities. He asked whether the UVA approach was preferable to a foundation controlling all information regarding donations. Mr. Merritt noted that Delegate Griffith was correct, that in the late 1990s there had been an unsuccessful movement to open to public disclosure university foundation records. He explained that UVA and its Board of Visitors have chosen to maintain a commingled system of both private and public operations in its public database, and consequently, the database should be subject to the same presumption of openness as any other public record. Mr. Merritt stated that as a matter of public policy a donor should not make a gift anonymously to a public body, but foundations do provide a vehicle for these anonymous donations. Lynwood Butner, representing the Virginia Association of Broadcasters (VAB), reiterated that since UVA is a public entity, donations to the university should be subject to public scrutiny just as are campaign contributions.

Chairman Houck suggested, considering the many viewpoints expressed regarding the proposed exemption, that it would not be appropriate for the Council to take immediate action on the exemption. He suggested that interested parties should continue to meet and seek common ground regarding the issue and report on their efforts at the next Council meeting.

NEXT MEETING

The next meeting of the Freedom of Information Advisory Council is scheduled for December 3, 2007. Additional information on this meeting and other FOIA Council activities is available on the Council's website.

VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

THE HONORABLE R. EDWARD HOUCK, JR., CHAIR
MARIA J.K. EVERETT, EXECUTIVE DIRECTOR
ALAN GERNHART, FOIA STAFF ATTY

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910 Capitol Street
Richmond, Virginia 23219
Telephone (804) 786-3591

website—<http://dls.state.va.us/foiacouncil.htm>

Virginia Sesquicentennial of the American Civil War Commission 9-26-2007

A meeting of the full Commission was held in Fredericksburg at The Gari Melchers Home and Studio at Belmont. David Berreth, Director of Belmont Estate, welcomed members and provided a brief history of the artist and his home. Edwin Watson, President of the Fredericksburg Area Museum and Cultural Center, also welcomed the members and discussed the area's rich Civil War history.

BATTLEFIELD PRESERVATION

Linda Wandres, Executive Director of the Central Virginia Battlefields Trust (CVBT)

Ms. Wandres provided an overview of the organization, which was organized as a nonprofit lands trust in October 1996. The singular focus of the CVBT is to preserve the hallowed grounds of central Virginia's Civil War battlefields from development and destruction. Over the past 11 years, the CVBT has worked to save over 700 acres at each of the four major battlefields in the Fredericksburg area, with the most recent success being a collaborative effort to preserve the Slaughter Pen Farm at a price of \$12 million. Ms. Wandres stated that unless battlefields are preserved soon, they will be lost to development forever. She pledged the continued proactive support of the CVBT to the Commission's endeavors, and asked for state support, through grants and other financial initiatives, for battlefield preservation.

Jim Lighthizer, President Civil War Preservation Trust (CWPT)

Mr. Lighthizer presented a Sesquicentennial Battlefield Initiative to save sacred land prior to 2015. The CWPT has identified more than 50,000 acres of threatened Civil War battlefields in Virginia located in the state's fastest growing regions, such as Hanover, Henrico and Spotsylvania counties, as well as the Shenandoah Valley. He reiterated that land not saved before or during the sesquicentennial will be lost forever. To that end, the CWPT requests an appropriation of \$5 million each year for the Virginia Civil War Battlefield Preservation Fund. The Fund requires a 2:1 match of nonstate funds, thus making a \$5 million annual investment result in \$15 million that goes to battlefield protection per year. The members agreed that the Initiative is important and could be the lasting legacy of the sesquicentennial.

SESQUICENTENNIAL PLANNING - LOCAL AND FEDERAL

Henry Connors, Jr., member of the Spotsylvania Board of Supervisors, briefed the Commission on the plans of the

Spotsylvania Sesquicentennial Committee, the first local committee established to coordinate with the state commission. The Spotsylvania committee is just beginning to meet, but includes 15 representatives from county administration, tourism, the education community, National Park Service, museums, and other partners from both the public and private sectors. The committee agreed to focus on three things: tourism, education and legacy. The hope is to work together regionally, partnering with other jurisdictions and the National Park Service battlefields to coordinate and co-sponsor events. The committee also desires to leverage assets by working with museums, such as the Museum of the Confederacy, the American Civil War Center and the National Slavery Museum. A core goal of the committee is education - making Civil War history interesting and compelling to a new generation in an effort to spark, cultivate and nurture a lifelong love of history.

Russ Smith, Superintendent Fredericksburg and Spotsylvania National Military Park

Mr. Smith updated the members on planning at the federal level. Federal legislation (H.R. 1131) continues to be stalled in Congress, which hinders planning throughout the National Park Service (NPS). However, superintendents have come together to start developing action plans. There are over 70 parks in the NPS having ties to the Civil War. Themes developed for the sesquicentennial to date include:

- Preserving and restoring landscapes.
- Restoring parks.
- Making better use of technology.
- Preserving documents.
- Connecting existing stories.
- Developing a national tourism strategy.
- Implementing education initiatives, such as the Teacher-Ranger-Teacher program.
- Establishing a "Sister City" program.

STAFF REPORTS

Speaker Howell introduced Danielle Watkins, the commission's new development officer. Ms. Watkins is working with Pam Seay, Vice President for Advancement at the Virginia Historical Society, to establish fundraising goals and apply for grants to fund commission programs. Cheryl Jackson reported that the commission's website is being met with positive feedback, getting hundreds of hits in the first few weeks, and delivered reports from Workgroup 1-Coordination and Workgroup 2-Signature Events and Activities. Brenda Edwards updated the members on the progress of Workgroup 3-Education.

PROGRAMS UPDATE

Senator Chichester gave a report of the Executive Committee, which has met twice since the last full commission meeting to receive updates on current activities and consider programs. The following programs were considered and approved by the members:

HistoryMobile - A mobile exhibition which would travel to every county and city in Virginia during the commemoration period was approved in concept by the members. As a model, three current and past tractor trailer exhibitions, all of which were extremely successful, were explored, which included the Kentucky Historical Society's "HistoryMobile," the Tennessee State Museum's "Tennessee Treasures," and the Newseum's "NewsCapade." A task force will be created to examine further options, address logistical issues, and submit recommendations to the Executive Committee.

Educational DVD - The members approved a Blue Ridge Public Television partnership with the Virginia Center for Civil War Studies at Virginia Tech to create a three-hour DVD on Virginia and the Civil War, which will be distributed free of charge to every school, library, historical society, and archive in the state beginning in August 2009. The DVD will consist of nine 20-minute segments on the coming of war, military campaigns, the African-American experience, the life of the common soldiers, personalities, the home front, and the legacy of the war. Dr. Robertson will work with the Department of Education to ensure that the DVD is incorporated into the history curriculum and that teacher resources are developed.

Signature Conference Series and Signature Tours - A series of Signature Conferences and Signature Tours to be developed in cooperation with Virginia's public and private institutions of higher education were approved in concept by the members. The activities will address broad political, social, and economic themes, as well as the military history of the Civil War. In cooperation with public television, the conferences could be televised and recorded for use in secondary schools and colleges and viewing on the commission's web site. The staff will work with members of Workgroup 2 to develop the proposal further.

Grants to Localities - A micro-grant program to aid localities and their sesquicentennial committees was approved in concept by the members. Examples of projects were transcribing the 1860 Census and supporting the document preservation project. It was

agreed that grants would be handled through the standard appropriations process that award grants to nonstate agencies. The staff was asked to develop criteria for the program for further review by the Executive Committee.

Formation of 501(c)(3): Virginia Sesquicentennial of the American Civil War Foundation - The Executive Committee's endorsement to form a nonprofit corporation to accept donations, grants, gifts and bequests in furtherance of the work of the commission was approved in concept by the members. Articles of Incorporation and Bylaws are being drafted, which will be reviewed and approved by the Executive Committee and filed with the State Corporation Commission at the appropriate time.

FUTURE MEETINGS

Information on the next meeting of the full commission and workgroup meetings will be posted on the commission's websites as soon as available.

VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

THE HONORABLE WILLIAM J. HOWELL, CHAIR

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<http://www.virginiacivilwar.org>*

Commission on Unemployment Compensation 9-27-2007

The Commission on Unemployment Compensation is charged with evaluating the impact of legislation on unemployment compensation and the Unemployment Trust Fund, assessing the Commonwealth's unemployment compensation program, and monitoring the current status and long-term projections for the Trust Fund. At its first meeting of 2007, the Commission received reports from the Virginia Employment Commission (VEC) addressing each of these topics.

UNEMPLOYMENT DATA

Virginia's unemployment data continues to reflect a healthy and diversified job market in comparison to other jurisdictions. In July 2007, the Commonwealth's unemployment rate was 3.1%, while the national rate was 4.6%. Among the other four states in the Fourth Appellate Circuit and the District of Columbia, the unemployment rate for July 2007 ranged from 4% (in Maryland) to 5.9% (in South Carolina). Virginia's unemployment rate has not been above 4% since January 2004. However, for each month of 2007 except July, unemployment rates were at or above the rate for the corresponding month of 2006.

Total initial year-to-date claims for unemployment benefits through July 2007 are up 4.4% from 2006 and down 2.6% from 2005. First payments of unemployment insurance benefits from January through July 2007 are up 7.7% compared to the first seven months of 2006, but down one percent from the corresponding period in 2005. 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. Final payments of benefits in the first seven months of 2007 were up 4.3% from the same period in 2006 but down 8.4% from the same period in 2005. 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 34.1% in July; in July 2006, the rate was 33.6%.

Virginia's maximum weekly unemployment benefit for 2006 is \$363, which reflects a weekly benefit replacement rate of 44% of the state's average weekly wage. Legislation enacted in the 2007 Session (House Bill 2066, patroned by Delegate Nixon) increased the maximum benefit to this level from its previous limit of \$347.

SOLVENCY OF THE UNEMPLOYMENT TRUST FUND

The Trust Fund is funded by state unemployment taxes, which are paid by employers at a rate that varies depending on the solvency level of the Trust Fund and the employer's

claims experience over the preceding four years. The Trust Fund solvency level is determined by dividing the balance in the Trust Fund on June 30 of each year by an amount, determined in accordance with a statutory formula, that represents an adequate Trust Fund balance. VEC Commissioner Dolores Esser reported that the Trust Fund solvency level is projected to be 67.8% as of June 30, 2007; one year ago it was 71.9%. The Trust Fund solvency level is projected to range between 59% and 67% in each of the next six fiscal years. The balance in the Trust Fund is projected to be \$707.1 million as of December 31, 2007, up from \$644.9 million at the end of 2006 and \$498.9 million at the end of 2005.

The average state unemployment tax paid by employers, on a per-employee basis, is projected to be \$109 in 2007, which compares to an average of \$162 in 2005 and \$155 in 2006. Between 2008 and 2012, the average tax per employee is projected to range between \$94 and \$102. The decline in the average tax per employee from the level in 2005 is attributable in part to the cessation of levying the Fund Builder Tax, which is assessed in years when the Trust Fund solvency level falls below 50%. Virginia's average tax per employee in 2006 (\$155) is the second lowest among the six jurisdictions in the Fourth Appellate Circuit. The average tax in the other five jurisdictions ranges from \$154 in South Carolina to \$346 in North Carolina; the national average is \$289.

STATE AND FEDERAL LEGISLATION

Nicholas Kessler, Deputy Commissioner of the VEC, briefed the Commission on state and federal legislative issues. Kessler noted that the recent increase in the federal minimum wage may prompt some to seek modifications to Virginia's minimum earnings requirement and minimum weekly benefit amount. The rationale for changing these amounts is that there had been interest group consensus that the minimum weekly benefit amount should equal the product obtained by multiplying the federal minimum wage rate by 40 hours by 13 weeks, and that a change in the minimum wage justifies a recalculation of these amounts.

Two items of pending federal legislation were brought to the Commission's attention. The Unemployment Insurance Modernization Act, currently pending in Congress, may provide \$65 million for Virginia's Trust Fund. The Act also provides annual payments of \$2.7 million for program administration and the prospect for an additional \$130 million if Virginia broadens unemployment benefit eligibility in certain specified ways, including providing benefits to certain trailing spouses.

Other federal legislation that has passed the House of Representatives and is awaiting action in the Senate provides federal recognition to six Indian Tribes in

Virginia. The Commission was advised that, regardless of whether the Indian Tribe recognition legislation in enacted, the Department of Labor has advised the VEC that Virginia needs to amend its Unemployment Act to be in conformity with a requirement of federal law that Congress enacted in 2001 pertaining to the status of Indian Tribes as employers for purposes of unemployment taxation. Amendments to the federal Unemployment Compensation Law made by the Consolidated Appropriations Act of 2001 require that Indian Tribes be provided the option to pay unemployment taxes by reimbursing the Trust Fund based on actual claims, which is the method by which state and local governments and some nonprofit organizations are currently assessed. The Commission received copies of draft legislation that tracks model legislative language provided by the Department of Labor. The Chairman asked that the legislation be forwarded to the Attorney General's Office and representatives of Virginia's Indian Tribes for their review.

PROGRAM ADMINISTRATION ISSUES

The VEC obtained General Assembly approval in the 2007 Session to access \$67 million of Reed Act funds for three administrative initiatives. The Commission was briefed on the status of the three business projects, which pertain to unemployment insurance systems modernization, the Virginia Workforce Network Information System, and a financial management system.

The federal government continues to reduce the percentage of the Federal Unemployment Tax Act (FUTA) payments, collected from Virginia employers, that is returned to the Commonwealth for program administration. The FUTA tax is imposed at a rate of 0.8% of each employee's first \$7,000 of wages, for a cost of \$56 per employee per year.

In 2004, Virginia received back from the federal government 32.8% of the amount of FUTA taxes paid by Virginia's employers; in 2005, the rate fell to 30.2%; and in 2006, Virginia's return of FUTA taxes fell to 27.6%. This continues to be the second-lowest rate among all jurisdictions. Adjusting for inflation, over the past four years the VEC has lost funding of over \$2 million for Job Service programs and over \$6 million for the Unemployment Insurance program. Commissioner Esser projected that the VEC will face a shortfall of \$21 million in 2009.

Steps taken to address the inequities in FUTA funding include testifying before Congress and meeting with Virginia's Congressional delegation, the Governor's staff, and staff of the Department of Labor and Congressional committees. The Virginia Liaison Office is coordinating efforts with other states to address this issue. Members of the Employer Advisory Committee and the Virginia Chamber of Commerce are also actively involved in the

effort to raise the percentage of FUTA funds returned to Virginia to 50%.

The VEC expects to request the General Assembly to authorize the allocation of \$12 million of the approximately \$16.5 million of Reed Act funds currently in the Trust Fund. The funds would be used for administration of VEC programs. The removal of \$12 million in the Trust Fund would not cause a change in employer taxes at the current levels of benefits and current earnings requirement.

During the public comment portion of the agenda, Jeff Smith urged the Commission to involve the Office of the Attorney General in its review of the Department of Labor's model legislation giving Indian Tribes the option to be treated as reimbursing employers, in order to ensure that it does not affect the Commonwealth's ability to collect excise taxes.

The members of the Commission will be polled for their availability to meet next on November 27, 2007. At that time, the Commission will review proposals for legislation relating to the Commonwealth's unemployment compensation program that members plan to introduce in the 2008 Session.

COMMISSION ON UNEMPLOYMENT COMPENSATION

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Commission on Electric Utility Restructuring & Coal and Energy Commission 9/19/2007

The Commission on Electric Utility Restructuring and the Virginia Coal and Energy Commission met jointly to receive a presentation of the Virginia Energy Plan and to conduct other business relating to the Commonwealth's energy needs.

VIRGINIA ENERGY PLAN

On September 12, 2007, Governor Kaine released the Virginia Energy Plan, which was developed by the Department of Mines, Minerals and Energy in accordance with legislation enacted in 2006. The Energy Plan was drafted to establish a path that will provide reliable energy supplies at reasonable rates and increase the use of conservation and energy efficiency measures in the Commonwealth over a 10-year period. Stephen A. Walz, Senior Advisor to the Governor for Energy Policy, provided the members with highlights of the Energy Plan.

The Energy Plan establishes the following four goals:

- Increase energy independence, with an emphasis on conservation and clean fuel technologies, by (i) reducing the rate of growth of energy use by 40%, resulting in a leveling of per-capita energy use per year, and (ii) increasing in-state energy production by 20%.
- Expand consumer energy education in order to overcome barriers to implementing energy-efficiency and conservation actions.
- Reduce 2025 baseline greenhouse gas emissions by 30%.
- Capitalize on economic development opportunities through business expansion and increased research and development in areas of nuclear technologies, alternate transportation fuels, coastal energy production, and carbon capture and storage.

Recommendations in the Energy Plan include:

- Expanding the Energy Star sales tax holiday.
- Addressing the need for stronger building energy codes.
- Creating investments by Virginia's electric utilities of \$100 - \$120 million annually to support energy-efficiency and conservation programs, which would be matched by \$180 to \$200 million annually from utility customers.
- Acknowledging the need to build new electric generation and transmission infrastructure to serve areas of growing electrical load.
- Requesting the federal Minerals Management Service to revise its procedures for drawing boundaries for offshore jurisdictional areas.
- Expanding the Yorktown petroleum refinery.
- Acknowledging the need for a third natural gas pipeline crossing in Hampton Roads.

- Creating a Climate Change Commission, which would assess the level of Virginia's carbon emissions, assess what the consequences might be for Virginia if climate change is not addressed, and address what other actions Virginia should take to meet this goal.
- Requiring the reporting of greenhouse gas emissions using The Climate Registry protocol.
- Increasing investments in energy research and development by \$10 million annually, with half of that amount from state resources.
- Establishing the Virginia Energy Research and Development Organization to set priorities for public energy research and development funding.
- Developing several energy technology business parks.
- Ensuring Virginia's energy infrastructure is secure from disasters.

The members questioned whether implementation of the Plan's recommendations would require legislative action, and asked the administration to inform the legislature on the recommendations' effects on the state budget and the conduct of current state agency activities.

NEED FOR ADDITIONAL ELECTRICAL GENERATING CAPACITY

The Energy Plan notes that if the Commonwealth reduces its electricity usage by 14% through energy efficiency and conservation by 2016, then, in order to maintain the current level of 29.4% electricity imports, the state would still need to add an additional capacity of 1,220 MW. David Heacock, Dominion's Senior Vice President for Fossil & Hydro, told the members that the rate of growth in the utility's service area is expected to be 1.9% during the next decade. Over this period, peak demand will increase by 4,000 MW by 2017. Some of the rapid demand growth rate was attributed to 45 data centers, which are between 15 and 25 times more energy intensive than an office building, built or planned for the utility's Northern Virginia service area.

Currently Dominion has the capacity to generate 17,750 MW. The actual peak demand in 2007 was 19,688 MW, producing a deficit that is met by importing electricity. Dominion has announced major capital investments to ensure reliable service, including conservation programs, renewable generation sources, the Virginia City Hybrid Energy Center, and a third nuclear unit at North Anna. Heacock concluded that the 2007 re-regulation legislation provides a solid foundation for investments in conservation and new generation.

The comments of R. Daniel Carson, Vice President of Appalachian Power (APCO), echoed many of the themes outlined by Dominion. The load growth utility, which also serves customers in West Virginia, is expected to grow at a rate of 1% over the next decade. By 2012, at least 687 MW of new generation will be required to meet the

resource obligations of American Electric Power (AEP). By 2017, 3,262 MW will be required.

Of the five AEP companies of which APCO is a member, APCO will have the largest reserve margin deficit by 2012. APCO's responsibility to add generating capacity through 2017 will total 1,863 MW. Of this amount, the company plans to build a 635 MW coal-fueled Integrated Gasification Combined Cycle plant in West Virginia by 2012 (for which an application was filed with the State Corporation Commission on July 16, 2007), and develop 72 MW of capacity from wind energy facilities between 2008 and 2011. The balance of 1,156 MW may be met through other capacity resources, including demand-side management, and intermediate and peaking generation units.

Jackson E. Reasor of Old Dominion Electric Cooperative (ODEC) provided the perspective of Virginia's electric cooperatives. Distribution cooperatives obtain some of their power through ODEC, which owns interests in the North Anna nuclear facility, the Clover coal plant, and gas peaking plants. However, over half of the power of distribution cooperatives is purchased on the wholesale market or through long-term contracts. Member cooperatives face unusually high growth over the next several years, attributed in part to the impact of several data centers on a small system.

To alleviate the need for new generation, cooperatives are looking at conservation measures, demand response programs, and new renewables technologies. However, even if these three measures are successful, they will meet only a small percentage of demand growth.

As a result, cooperatives are looking at other generation options, including the North Anna expansion. Mr. Reasor noted that funding for these projects will be critical. He urged that all options remain "on the table," even if the facilities may be less clean than others. Finally, he observed that all of the options will be expensive. Cooperatives have higher rates than the state average now in part because they must buy power from the wholesale market, and this may be addressed by building additional generation capacity within the Commonwealth.

August Wallmeyer, representing a group of competitive, independent electricity generators, advised the members that there is a definite and serious need for new sources of generating capacity in Virginia in the near future. He observed that independent generators invested more than \$3.5 billion in generation facilities in Virginia in the 1980s and early 1990s, largely as a result of Dominion's use of competitive bidding to secure new generating capacity. He applauded the legislature's inclusion of provisions in the 2007 re-regulation bills that retained the competitive bidding process. He noted that independent generators bear the risk of project cost overruns, which can save ratepayers money. Competitive

bidding will ensure that money spent on new generation and fuel over the next several decades will be spent wisely.

VIRGINIA CITY HYBRID ENERGY CENTER

Jim Martin, Vice President of Technical Services at Dominion and a member of the Coal and Energy Commission, provided an update on the status of the Wise County generation facility. Current plans call for 585 MW plant to have a hybrid design that utilizes circulating fluidized bed combustion, a clean coal technology that is capable of burning waste coal and wood wastes. The design will accommodate carbon capture and storage technologies when commercially available. The carbon sequestration technology envisions the injection of carbon dioxide from the plant into nearby coal seams not capable of being mined, thereby preventing the escape of this greenhouse gas into the atmosphere.

Another unique feature of the plant is an air cooled condenser technology, which will reduce overall water consumption. Applications for environmental permits and regulatory approvals have been, or soon will be, filed and Dominion anticipates approval of the SCC application and issuance of the air permit by April 2008. Mr. Martin reported that failure to obtain permits by this time, will severely delay construction and power generation. If the approvals are granted by that date, commercial operations are expected to start in April 2012. In response to questions from Delegate Hogan regarding the cost of the technologies used in the plant, Mr. Martin observed that Dominion expects to add approximately 10% to the cost, plus additional costs resulting from a reduction in the plant's power output.

VOLUNTARY RENEWABLE ENERGY PROGRAMS

HJR 686 (Plum) directs the Commission on Electric Utility Restructuring to evaluate the efficacy of a voluntary program to encourage the production of electricity from renewable resources. The study is to be completed prior to the 2008 Session. The resolution cites North Carolina's "NC GreenPower program" as an example of an initiative that may offer an efficient, voluntary way to encourage the use of electricity generated from renewable resources, and concludes that an analysis of whether the NC GreenPower initiative should be the model for a similar program in Virginia is timely.

The Commission on Electric Utility Restructuring unanimously adopted a motion to establish a four-member subcommittee to examine the issues in HJR 686. The subcommittee, which will consist of Delegate Plum, Delegate Scott, Delegate Tata, and Senator Watkins, is authorized to meet twice and to report on its findings and recommendations to the full commission prior to the 2008 Session.

DEVELOPMENT OF A COMPETITIVE RETAIL MARKET

Howard Spinner, Director of the SCC's Division of Economics and Finance, presented the SCC's annual report on the status of the development of a competitive retail market for electric service in Virginia as required by Virginia Code § 56-596. A copy of the report is available on the SCC's web site at http://www.scc.virginia.gov/caseinfo/reports/2007_ceur.pdf.

Two issues involving PJM Interconnection, the regional system operator of which Virginia's major electric utilities are members, dominated Spinner's presentation. The first involved the ongoing dispute over the extent to which PJM is failing to provide the SCC with data. Matt Laroque of PJM responded that the issue involved the SCC's refusal to sign agreements that it requires to protect confidential and proprietary information. Senator Norment asked Spinner to provide additional information regarding PJM's refusal to provide information sought by the SCC.

The second issue involves the independence of PJM's market monitoring unit (MMU). In 2006, the SCC wrote that it could not represent with confidence that the PJM-administered wholesale market is, in fact, competitive and transparent. In April of this year, PJM Market Monitor Dr. Joe Bowring advised the Federal Energy Regulatory Commission that the MMU was not independent of PJM and that PJM management was inappropriately interfering with his duties as market monitor. The states that are members of PJM, including Virginia, are in litigation over a complaint that PJM violated its own tariff by interfering

with the operations of PJM's MMU. The chairman indicated that he may establish a subcommittee to further examine issues relating to PJM.

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Commission Meetings for October and November '07

Disability Commission	1:00 p.m., Tuesday, October 16, 2007 General Assembly Bldg, House Room D	Greg O'Halloran
Martin Luther King Jr. Commission Abraham Lincoln Bicentennial Anniversary Subcommittee	10 a.m., Wednesday, October 24, 2007 General Assembly Bldg, House Room C	Brenda Edwards
FOIA Personal Identifying Information Subcommittee and JCOTS Subcommittee on HB 2821/ SB 819	10:00 a.m., Friday, November 9, 2007 General Assembly Bldg, 6th Floor Conference Room	Maria Everett, Alan Gernhardt
Civil War Commission	10:00 a.m., Tuesday, November 13, 2007 Virginia Historical Society	Cheryl Jackson, Brenda Edwards

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 or the Code Commission staff at (804) 786-3591 for further information.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

4VAC15-270. Game: Firearms (adding 4VAC15-270-90).

A public hearing will be held on October 16, 2007 at 9 a.m. at the Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA.

The proposed amendment fulfills the requirement of Chapter 642 of the 2007 Acts of Assembly and §29.1-528 A of the Code of Virginia by promulgating model local government ordinances for hunting with firearms. The model ordinances address such matters as the caliber of the firearm, the type of firearm, and the type of ammunition used when hunting within a locality; individual Virginia county or city governments subsequently would have the option of adopting or not adopting one or more such model local government ordinances. The proposed amendment would not enact the model local government ordinances either statewide or within specific localities; rather, the applicability of one or more model ordinance in any Virginia locality would be dependent on the respective individual county or city governments subsequently adopting such model ordinance or ordinances.

For additional information please contact Phil Smith, Policy Analyst, Regulatory Coordinator, Department of Game and Inland Fisheries, telephone (804) 367-1000, fax (804) 367-0488, or email regcomments@dgif.virginia.gov.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

14VAC5-420. Rules Governing Military Sales Practices (adding 14VAC5-420-10 through 14VAC5-420-60).

Public comments may be submitted to the State Corporation Commission until October 15, 2007.

In September 2006, Congress passed the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that were "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums...., making them entirely inappropriate for most military personnel." To address these concerns, Congress required that the states collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory sales practices while on a military installation. To that end, the National Association of Insurance Commissioners worked with the Department of Defense to develop the Military Sales Practices Model Regulation to address these Congressional mandates. The rules proposed by the Bureau of Insurance closely follow the Model Regulation.

For additional information please contact James Young, Senior Market Examiner, State Corporation Commission, telephone (804) 371-9532 or email james.young@scc.virginia.gov.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR THE AGING

22VAC5-30. The Virginia Public Guardian and Conservator Program (adding 22VAC5-30-10 through 22VAC5-30-60).

Public comments may be submitted to the Department for the Aging until 5 p.m. on November 16, 2007.

The proposed regulation sets forth requirements for the statewide Virginia Public Guardian and Conservator Program to ensure uniformity among programs in serving eligible persons, at public expense, who need a guardian or conservator or both, to assist them in meeting essential requirements for physical and emotional health and management of financial resources, as appropriate.

For additional comment please contact Janet James, Esq., State Legal Services Developer, Department for the Aging, telephone (804) 662-7049, fax (804) 662-9354, or email janet.james@vda.virginia.gov.

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