



## June 2015 Issue

### *Activities of Virginia Legislative Study Commissions and Joint Subcommittees During the Legislative Interim*



Virginia Division of Legislative Services

# Virginia Legislative Record

## Volume 25 Issue 1

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The *Virginia Legislative Record* is a report of the activities of Virginia legislative study commissions and joint subcommittees, reflecting the ongoing deliberations and recommendations of interim legislative studies. Meeting summaries were prepared by the staff of the Division of Legislative Services. More information concerning the individual commissions and committees is available on the DLS website (<http://dls.virginia.gov/>) or by calling 804-786-3591.

### 2015 Interim Meeting Summaries

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### Virginia Law Portal: A New Look for Virginia’s Laws

Visit the Virginia Law Portal ([law.lis.virginia.gov](http://law.lis.virginia.gov)) for publications that constitute “Virginia law,” including the Code of Virginia, the Virginia Administrative Code, the Constitution of Virginia, Compacts, Charters, Authorities, and Uncodified Acts of Assembly. For updates, follow Virginia Law on Twitter @VA\_Laws.

### Regulation Information

The *Virginia Register of Regulations* is Virginia’s official publication of proposed, final, and emergency regulations. All regulations must be filed with the Registrar of Regulations to become law. The *Virginia Register*, published every other Monday, provides a snapshot of all regulatory activity in Virginia. The current *Register* issue, as well as prior issues and additional information about the regulatory process in Virginia, is available at <http://register.dls.virginia.gov>. Contact the Division of Legislative Services at 804-786-3591 (ext. 258, 261, or 262) or follow the *Virginia Register* on Twitter @varegs for more information.

## Virginia Code Commission

*April 6, 2015*

The Virginia Code Commission (Commission) met on April 6, 2015, with Delegate Jim LeMunyon, vice chair, presiding.

### **Code of Virginia Contract - Option to Renew**

*Bob Tavenner, Director, Division of Legislative Services*

As noted previously at the Code Commission's November meeting, Mr. Tavenner stated that the contract for publication of the Code of Virginia, currently held by LexisNexis, is set to expire in 2016. The contract contains a two-year renewal option, which can be exercised a maximum of two times. The Commission approved Mr. Tavenner's recommendation that the Code Commission exercise the first two-year renewal option.

### **Recodification of Title 23, Educational Institutions**

*Ryan Brimmer and Tom Stevens, Attorneys, Division of Legislative Services*

Mr. Brimmer and Mr. Stevens reviewed the status of the Title 23 recodification. Mr. Brimmer advised that the Code Commission completed the review of 19 chapters last year, leaving Subtitles I through III and new Chapter 30 regarding the Eastern Virginia Medical School (a total of 13 chapters) to be reviewed this year. An organizational outline of proposed Title 23.1 and a proposed schedule are included in the meeting materials. Staff is on schedule to complete the recodification this year and plans to have a bill ready for introduction at the 2016 Session of the General Assembly. Mr. Brimmer advised that the issues regarding the reappointment or removal of a board member, which had been discussed at length previously by the Commission, were resolved by passage of legislation in the 2015 Session of the General Assembly.

### **Codification of Compacts: Status and Remaining Issues**

*Nicole Brenner, Attorney, Division of Legislative Services*

At its November 18, 2014, meeting, the Code Commission decided to set out all compacts in the Code of Virginia. Ms. Brenner reported on the status of the implementation of this decision. The update of the Virginia Law Portal (<http://law.lis.virginia.gov/>) is complete—compacts are included under the "Compacts" heading and all but three compacts have been set out in the Code of Virginia. The Woodrow Wilson Bridge Tunnel Compact was repealed in the 2015 Session of the General Assembly, as recommended by the Code Commission. Ms. Brenner indicated that the three remaining compacts are the Southeastern Interstate Forest Fire Protection Compact, the Middle Atlantic Interstate Forest Fire Protection Compact, and the Nonresident Violator Compact of 1977.

Ms. Brenner advised that the Commission's decision at its November 2014 meeting to set out the two forest fire protection compacts in the Code of Virginia section already assigned to the compact, i.e., §§ 10.1-1149 and 10.1-1150, could not be implemented because of the way the current text of the section is written to incorporate the relevant Act of Assembly. Further, the Commission's decision to assign a Code section number in Title 46.2 to the Nonresident Violator Compact of 1977 could not be implemented because staff discovered that the compact was not adopted by the General Assembly. The Department of Motor Vehicles (DMV) has advised that a federal review is being conducted of this compact, and DMV expects changes to the compact. Ms. Brenner anticipates having a bill ready for the 2016 Session on these compacts.

Ms. Brenner indicated the last matter is the evaluation of the Compacts Volume. If the Commission determines the volume is needed, staff recommends appointment of a subcommittee to conduct a review. Brian Kennedy of LexisNexis advised that LexisNexis has no objection to ceasing publication of the Compacts Volume. After a brief discussion, the Commission approved Judge Pamela Baskervill's motion to eliminate the Compacts Volume and ask the publisher to list the compacts in the index of the Code of Virginia, if they are not already listed.

### **Selection of Title for Next Recodification**

*Bob Tavenner, Director, Division of Legislative Services*

Mr. Tavenner advised that the Code Commission needed to select a title for the next recodification. Delegate LeMunyon reminded the members that the Commission had tentatively designated Title 8.01 for recodification after Title 23. The Commission discussed the pros and cons of recodifying Title 8.01, including the time and effort versus the need and value. In response to a question, Ms. Chaffin advised that in 2013, public comment was solicited on the titles being considered, including Title 8.01, by publishing notices on the Virginia Lawyers Weekly blog, on the Code Commission's website, and in the Virginia Register. No public comment was received.

Delegate LeMunyon stated that the Code Commission should consider recodifying Title 8.01 and asked staff to seek public comment and report back to the Code Commission. The report should include recommendations from Division of Legislative Services staff as to any title with substantive impact that could be handled quickly. Commission member Christopher Nolen emphasized the importance of a Commission member being included on the work group whenever Title 8.01 is recodified.

Delegate LeMunyon asked that this item be placed on the Commission's May meeting agenda.

### **Letter from Delegate Rust**

Delegate LeMunyon explained that Delegate Tom Rust, on behalf of a constituent, requested that the Code Commission consider referencing in Chapter 4 of Title 8.01 all statutes of limitations not presently included in that chapter. Delegate LeMunyon indicated that if Title 8.01 is selected for recodification, this issue could be reviewed and addressed as part of the recodification process. A response will be sent to Delegate Rust after the Commission decides on its next recodification.

### **Review of 2015 Code Commission Legislation**

*Jane Chaffin, Division of Legislative Services*

Ms. Chaffin reviewed the handout summarizing the status of the legislation recommended by the Code Commission for the 2015 Session of the General Assembly. Most of the bills passed; however, two bills failed and two bills were not introduced. The failed bills dealt with use of a commercial carrier for notice or service and were referred to the Boyd-Graves Conference of the Virginia Bar Association for study. The bill on obsolete provisions in the housing laws was not introduced as, during the editing process, staff identified concerns not previously considered. The bill regarding the forest fire protection compacts was not introduced for reasons discussed earlier at today's meeting.

Delegate Greg Habeeb expressed the concern that most members of the General Assembly believe that Code Commission bills are only nonsubstantive; however, he noted that Administrative Law Advisory Committee (ALAC) bills are substantive. Delegate Habeeb suggested that legislation recommended to the Code Commission by ALAC should be identified as ALAC recommendations versus Code Commission recommendations in the legislation summary.



Commission member E.M. Miller suggested that the Code Commission have a philosophical discussion of its role. He believes the Code Commission can recommend substantive changes but must always clearly identify the nature of the changes. For example, in a recodification report, the substantive changes are outlined at the beginning of the report. Delegate Habeeb noted that even though the recodification report for Title 33.1 clearly listed the substantive changes, most members of the Transportation Committee believed the changes made through the recodification were only technical.

Staff offered to prepare an information sheet regarding the authority of the Code Commission for discussion at a future meeting.

### **Other Business**

Delegate LeMunyon stated that the schedule for the entire year had been sent to all members. Delegate Habeeb questioned whether the June meeting would need to be rescheduled due to a caucus retreat that weekend.

### **Next Meeting**

The Commission met on Monday, May 4, 2015. The June 1, 2015, meeting is canceled. The Commission is scheduled to meet on Monday, July 20, 2015.

## **Virginia Code Commission**

**Senator John S. Edwards, Chair**

Jane Chaffin, DLS Staff

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## **Joint Commission on Technology and Science**

*April 15, 2015*

The Joint Commission on Technology and Science (JCOTS) held its first meeting of the 2015 interim on April 15, 2015, in Richmond, with Delegate Tom Rust, chairman, presiding.

### **2015 Technology Legislation**

Staff provided a brief overview of key technology legislation adopted by the 2015 Session of the General Assembly. Identical bills HB 1562 (Rust) and SB 814 (Watkins) were both signed into law on March 23, 2015. The bills establish an advisory council to develop electronic identity standards and provide that any identity trust framework operator or electronic identity provider that does not adhere to these standards will be liable for any damages resulting from the issuance of an electronic identity. The bills were the result of three years of study by JCOTS, helmed by Senator John Watkins. The bills are the first of their kind to be adopted in any state and have already generated national press coverage and interest.

While not a formal recommendation of JCOTS, HB 2350 (Austin) was introduced as a result of the issues raised by the extensive study by JCOTS in 2014 of the use of student data. The bill requires the Department of Education to develop a model data security plan for the protection of student data and to

designate a chief data security officer to provide assistance to local school divisions upon request. The Department will convene a working group to assist with the initial development of the plan and will report to the House Appropriations and Senate Finance Committees concerning the costs of developing the plan. The bill was signed into law on March 23, 2015.

Finally, SB 1238 (Reeves) requires the Department of Emergency Management to include preparedness for, and response to, disasters resulting from electromagnetic pulses and geomagnetic disturbances in its emergency preparedness plans. This bill was a result of preliminary work on electromagnetic pulses and geomagnetic disturbances by JCOTS as directed by SJ 61 (2014). JCOTS will continue to work on this issue in 2015. The bill was signed into law on March 10, 2015.

### **2015 Work Plan**

Staff presented the proposed 2015 JCOTS work plan developed by Delegate Rust. The plan would continue the nanosatellites advisory committee chaired by Delegate Ken Plum that began during the 2014 interim and establish a cybersecurity advisory committee to be chaired by Delegate Glenn to develop a plan for a public-private initiative to promote cybersecurity research and development in the Commonwealth. Under the plan, a number of bills referred to JCOTS by the 2015 Session will be addressed in full Commission meetings throughout the interim:

- HB 1743 (Hugo) relates to the existing research and development tax credit. Discussion of the bill will serve as an opportunity for a discussion of research and development funding in the Commonwealth, generally.
- HB 1920 (LeMunyon) would provide that a service provided by a public service corporation is subject to the Virginia Consumer Protection Act if such service is not otherwise regulated by the State Corporation Commission.
- HB 2037 (Bulova) would limit a motor carrier's use of personal information gathered from passengers.
- HB 2336 (Peace)/SB 1420 (Reeves) would require that the liability provisions contained in a solicitation for IT goods and services be reasonable, but in no case exceed two times the value of the contract.

Additionally, the work plan directs staff to convene staff working groups and conduct staff studies relating to the following bills referred to JCOTS by the 2015 Session:

- HB 2352 (Marshall, D.) would require that a person installing pipeline across multiple counties also install conduit capable of housing broadband cable or wiring.
- SB 1450 (Obenshain) directs JCOTS to study the implementation of the Privacy Expectation Afterlife and Choice Act, adopted by the 2015 Session, and make recommendations regarding application of the Act to guardians ad litem, conservators, and fiduciaries.

Staff will also continue to work on issues related to electromagnetic pulses and geomagnetic disturbances, as directed by SJ 61 (2014).

### **2015 Work Plan Adopted**

The work plan was unanimously adopted by JCOTS. A copy of the work plan is available on the JCOTS website, <http://dls.virginia.gov/commission/jcots.htm>.



## Joint Commission on Technology and Science

### Delegate Thomas Rust, Chair

Lisa Wallmeyer, Executive Director and DLS Senior Attorney

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## Joint Commission on Transportation Accountability

*January 13, 2015*

The Joint Commission on Transportation Accountability (the Commission) met on January 13, 2015, in Richmond. The meeting was called to order, roll was taken, and a quorum was present. Delegate Timothy Hugo was elected chairman and chaired the meeting. Senator Stephen Newman was elected vice-chairman.

### Review of Bills Referred During the 2014 Regular Session

Delegate James LeMunyon was the patron of HB 426 (2014) and HB 427 (2014) and spoke regarding both bills. The Commission took no action on HB 426. Delegate LeMunyon indicated that VDOT has taken the action requested in HB 427 and has made the periodic quantitative ratings of certain highways more user-friendly; therefore, the Commission took no action on HB 427.

There was no discussion of or action on SB 147 (2014), and the patron was not present.

The Commission reviewed the long history of HB 82 (2014), and it was noted that with identical legislation already introduced for consideration during the 2015 Session, a later review would be more appropriate.

### Discussion of Issues for Consideration During 2015 Interim

Delegate Vivian Watts noted the increasing frustration that was present at several presentations regarding HB 2 (2014) during the fall of 2014 and indicated that it would be 2025 before money again flowed to the 40-30-30 formula.

Delegate LeMunyon indicated that the Commission should review:

- The Quiet Pavement study
- Progress on the revenue from HB 2313 (2013) in tandem with HB 599 (2012)
- Discussion with Maryland on the Potomac River Bridge Crossing
- A project on Interstate 66 inside the beltway
- How the HOT lanes are working
- The Dulles Toll Road and Greenway, along with other toll roads

Senator Newman indicated that the Commission should review:

- The ongoing progress with the Department of Motor Vehicles (DMV) and efforts to make DMV a storefront for citizens of the Commonwealth, including efforts to make vital records available at DMV

- Concerns with the implementation of HB 2 (2014) and funding of local roads

Delegate Thomas Rust indicated that the Commission should review the Northern Virginia Transportation Commission's concerns with funds spent on the Metro system and the bidding process. Senator Frank Wagner indicated that the Transportation Subcommittee of the Senate Committee on Finance would be reviewing this issue during the 2015 Session.

Other issues that were presented for potential review were:

- Approaches to transportation funding need to contemplate that needs vary across the state
- State and regional cooperation is important, especially with regard to Washington, D.C., traffic from our neighboring states
- Past transportation issues such as Route 460 and the Charlottesville Bypass

The Commission discussed adding review of the Commonwealth Transportation Board's actions and requesting necessary transportation legislation to its list of powers and duties and voted to recommend such legislation.

*April 16, 2015*

The Joint Commission on Transportation Accountability (the Commission) met on April 16, 2015, in Richmond, with Delegate Timothy Hugo, chairman, presiding. In brief opening remarks, Chairman Hugo and Vice-Chairman Stephen Newman outlined the goals of the Commission during the 2015 interim.

### **Presentation: Implementation of HB 2 (2014) and HB 1887 (2015)**

*Nick Donohue, Deputy Secretary of Transportation*

Deputy Secretary Donohue explained that of the \$5.5 billion transportation budget this fiscal year, approximately \$400 million is allocated to projects using the HB 2 process.

The Commonwealth Transportation Board (CTB) held public hearings on HB 2 and made presentations to local metropolitan planning organizations and planning district commissions to better understand the biggest concerns across the Commonwealth.

The CTB has begun a draft weighting policy that assigns areas of the Commonwealth to one of four categories. In each category, one of the multiple factors considered in ranking transportation projects will be the highest priority and more heavily weighted than any other. In Category A, congestion mitigation is the most important factor; in the remaining three categories, accessibility, economic development, or safety is the highest priority. Deputy Secretary Donohue emphasized that this guide is a draft and that the CTB is working to fine-tune this framework, taking into account public comment.

Chairman Hugo asked for a scenario in which the CTB would choose to fund a lower scoring project over a higher scoring one. Deputy Secretary Donohue remarked that some projects might be funded over those that scored a point or two higher, but that that was to be expected given all the factors and weighting that go into scoring a project. He noted that projects are analyzed relative to cost, but the CTB is still considering whether the total cost of the project or the funds eligible through HB 2 will be the cost used in this analysis.



The CTB is developing an easy, online project submission process for applicants to avoid a complicated submission scheme that will dissuade or discourage localities from applying.

The CTB also will conduct pilot testing of the validity of the HB 2 process by ranking projects that have already been funded or constructed to see how they would have scored.

Delegate David Toscano asked about projects jumping in priority and what the members will be able to do about it for their constituents. Deputy Secretary Donohue responded that the process will be more accountable and will take time to work.

Senator Creigh Deeds spoke about using objective criteria instead of allocating money to specific projects through the budget and allowing time for the process to work, especially with the passage of HB 1887 (2015), which allows money to fund local projects with increased local input.

Chairman Hugo asked if the CTB would be submitting any projects for scoring. Deputy Secretary Donohue responded that there had been some debate about that at the last CTB meeting, but ultimately the CTB needs to be free to submit one or two projects each year in the event that a major project should be considered but was omitted in the application process.

Delegate LeMunyon stated that the process should be interactive and allow the CTB to submit projects as long as projects are scored objectively and all projects are scored quickly.

Deputy Secretary Donohue explained that under HB 1887 the percentages of funding that each region will get from each program are the same percentages in the six-year improvement plan presented during 2015. He also noted that the CTB will be soliciting public comment on the development of the priority ranking system used for the State of Good Repair Program.

Chairman Hugo expressed concern about incurring more debt.

Senator Ryan McDougle expressed concern that construction districts that are part rural and part urban have different highest priorities; accessibility is the top priority in one, congestion mitigation is the most heavily weighted factor in another. Deputy Secretary Donohue explained that weighting will be done according to planning district commission boundaries.

Senator Barbara Favola expressed concern that transit projects will be disadvantaged because the impact of those projects won't be realized for several more years in contrast to the more immediate relief provided by a road. Deputy Secretary Donohue responded that they intended for the HB 2 process to determine what transit projects should be funded and that every project looks approximately 10 years out. In addition, the pilot testing will include some transit projects to determine how they would have been scored.

Deputy Secretary Donohue explained that under the new formula in HB 1887 every federal and state dollar for construction is clearly allocated, with 45% to the State of Good Repair Program, 27.5% for high priority projects, and 27.5% to the Highway Construction District Grant Program. Funding for high priority projects will be evaluated using the HB 2 process at the statewide level, and funding to the Highway Construction District Grant Program will go through the same HB 2 process at a regional level.

Delegate LeMunyon indicated support for the administration's approach of scoring projects based on merit and asked whether the CTB was going to be scoring I-66 as it relates to tolling. Deputy Secretary Donohue described outreach plans for I-66 tolling and the plan to evaluate that project in the fall. He also noted that the previous administration had done an I-66 multimodal study that will be used as a basis for the upcoming evaluation.



Delegate Eileen Filler-Corn expressed concern about uncertainty surrounding federal funding and suggested that public-private partnerships should be utilized to help supplement funding for highway projects. Deputy Secretary Donohue agreed that the lack of movement in Congress was concerning given that the Commonwealth receives \$1.2 billion annually from the federal government, which affects roughly 50 percent of the highway projects program. He also expressed support from the administration for public-private partnerships.

Delegate Delores McQuinn stressed the need to engage all communities in outreach when making these decisions.

### **Presentation: Annual Report to the Commission on Behalf of the NVT**

*Marty Nohe, Chairman, Northern Virginia Transportation Authority (NVT)*

Mr. Nohe explained that the NVT has been working to identify regional projects that reduce congestion and is working to plan and fund those projects. Any project to be funded with money from the NVT has to be included in the regional transportation plan (TransAction 2040) and ranked in accordance with § 33.2-257.

Projects could be submitted and qualify for funding with NVT regional moneys and with statewide moneys, which could result in projects being ranked under two different systems (HB 599 and HB 2) yielding two different scores.

The members asked many questions about the project selection process and about equitable representation of the towns in Northern Virginia. Mr. Nohe explained that because of the difference in size between towns and counties, it is difficult to allow each town a representative as is done for counties.

Delegate LeMunyon expressed concern that congestion mitigation is only 35% of the quantitative score and maintained that that percentage should be larger.

### **Presentation: I-95 and I-495 HOT Lanes and the Use of These HOT Lanes as a Congestion Mitigation Tool**

*Jennifer Aument, General Group Manager for Transurban*

Ms. Aument reported that through the public-private partnerships that were utilized to open the I-95 and I-495 HOT lanes, \$3 billion in transportation improvements have been realized. Far greater returns on investment are being realized through these partnerships as risk is shifted onto Transurban, unlike the 460 project.

The HOT lanes provide a faster commute not only for HOT lane users but also for drivers who choose not to use HOT lanes, as fewer drivers are in the regular lanes. Ms. Aument reported that commute time in the regular lanes, which do not require a toll, has been reduced by as much as 20 minutes on I-95 and varies throughout the week.

Delegate Toscano asked Ms. Aument to explain fluctuation in toll pricing. Ms. Aument responded that with the use of dynamic tolling, tolls are adjusted on the basis of real-time traffic conditions. The average toll price on I-495 and I-95 is \$3, but can range from \$1 to as much as \$20 during peak congestion periods.

Chairman Hugo asked whether HOT lanes would be beneficial to other areas of the Commonwealth. Ms. Aument explained that, as major commuter routes, I-95 and I-495 are particularly well-suited to support the HOT lane model, which is less likely to be successful elsewhere.



## Discussion

Secretary of Transportation Aubrey Layne attended late in the meeting and spoke to the Commission at the end of the meeting. Secretary Layne expressed support for public-private partnerships as a large part of the procurement program, noted that the CTB has spent time reviewing these partnerships, and stated that the next public-private agreement will likely be for I-66 improvements. The CTB has not made a decision with regard to procurement on that project but anticipates a recommendation in the next month. Secretary Layne reiterated that if a public-private partnership makes the most financial sense for I-66, then it shouldn't be deterred simply because of the termination of the 460 project contract, as new protections have been put into place with HB 1886 (Jones, 2015).

Chairman Hugo thanked Secretary Layne for his impromptu appearance and thanked all the speakers for their presentations.

## Next Meeting

The next meeting is July 30, 2015, at 10 a.m.

### Joint Commission on Transportation Accountability

#### Delegate Timothy Hugo, Chairman

Nicole Brenner, DLS Attorney

Beth Jamerson, DLS Attorney

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### Joint Committee to Study Construction of Proposed Interstate 73

*May 11, 2015*

The Joint Committee of the Senate Committee on Local Government and the Senate Committee on Transportation to Study Construction of Proposed Interstate 73 met on Monday, May 11, 2015, in Roanoke, with Senator Bill Stanley, chairman, presiding.

## Introductions

Senator Stanley recognized representatives from the offices of Senator Tim Kaine and Representatives Robert Hurt, Bob Goodlatte, and Morgan Griffith.

### Presentation: PPTA Projects and Strategic Planning for the Construction of Interstate 73

*Michael Higgins, Vice President for Design-Build Services, Branch Highways, Inc.*

Mr. Higgins reviewed past Public-Private Transportation Act (PPTA) projects, of which there are few in Southwest Virginia. In 2003, Branch Highways made a PPTA agreement with VDOT to build Route 58, with each phase constructed as a design-build project that is completed only when funding becomes available. The Coalfields Expressway is another such project.

According to Mr. Higgins, the Office of Transportation Public-Private Partnerships looked at Interstate 73 as a potential PPTA project. But then came the announcement not to advance the project further, so if it is to go ahead as a PPTA project, the Office must look at it again. Mr. Higgins also stated that a tax

district probably would not work on Interstate 73, and that although the Route 58 style of funding is more costly in the end, Interstate 73 probably cannot be built all at once.

### **Presentation: Federal Funding and Financing Sources for State and Local Governments: TIGER Grants**

*Lorna Parkins, Vice President of Transportation Planning, Michael Baker International*

Ms. Parkins provided an overview of the Transportation Investment Generating Economic Recovery (TIGER) program. More than \$4.7 billion has been given to these projects so far.

Grants are awarded on the basis of competitive criteria. Coordination within a state is necessary, and there is more flexibility in rural areas. An application will be more competitive if it seeks 50 percent of the project's funding, that is, less than the Department of Transportation funding cap of 80 percent. The largest grants are for \$25 million. Ms. Parkins recommended communicating with USDOT staff in the off-season to learn the rules of thumb.

There are two kinds of grants: planning grants, which can be used for completing an environmental study or conducting other kinds of preconstruction activities, and construction grants, which are for shovel-ready projects. Demonstrating project readiness is essential for a construction project; for this reason, many applicants seek planning grants.

Ms. Parkins outlined the process: First, the amount of the federal pool and any new application requirements are announced. Then a series of webinars, a good tool for applicants, is released. The process lasts only seven or eight weeks, with the pre-application completed by week four. Applicants must be prepared to submit a 30-page project narrative and appendices.

One appendix is a benefit-cost analysis. The creation of construction jobs is not an economic benefit, because these dollars will be spent somewhere in the country no matter what. Safety and travel time improvements are benefits, as is access to jobs. Ms. Parkins stated that the enhancement of hurricane evacuation routes might be considered as a justification if the application can show a safety improvement.

### **Presentation: Federal Funding and Financing Sources for State and Local Governments: TIFIA**

*John T. Stirrup, Alcalde & Fay*

Mr. Stirrup presented information on the Transportation Infrastructure Finance and Innovation Act (TIFIA). The Federal Highway Administration, through TIFIA, provides money as a loan, as a line of credit, or as a loan guarantee. The goal is to leverage private investment.

The cost of a TIFIA project must be \$50 million or more, and a maximum of 33 percent of the total cost can be financed through TIFIA. Loan repayments must be supported by an income stream, such as use-tax revenues, tolls, real estate taxes, and state funding. The interest rate of the loan is locked, and the term varies from 20 to 30 years.

About \$10 billion is available in the program each year, distributed on a rolling basis. There are not many TIFIA applications each year, and the application process takes months. States, local governments, and multijurisdictional entities are all eligible to apply. The key criteria are the impact on the environment, the impact on the national transportation system, the economic benefit, the leveraging of private capital, and the promotion of innovative technology. Mr. Stirrup provided examples of recent TIFIA projects in the United States.



**Presentation: Financial Information from VDOT**

*Laura Farmer, Director of Financial Planning, Virginia Department of Transportation (VDOT)*

Ms. Farmer compared construction and maintenance allocations over the past 20 years in two regions of the state, Hampton Roads and Northern Virginia.

Much has changed in the type and distribution of funding. Construction spending has been about \$25 billion, with Hampton Roads receiving \$3.725 billion and Northern Virginia receiving \$5.773 billion. Large swings in spending from one year to another have been driven by spending on Interstate highways. Maintenance funds over the period total about \$22 billion, with funding based on needs and affected by disasters, snowfall, and so on.

Ms. Farmer also provided a brief overview of the results of HB 2313 (2013), which allowed the generation of revenues that would be dedicated to regional entities that meet specific transportation-related criteria. Last year was the first full year of regional revenue collections for the Northern Virginia Transportation Authority Fund and the Hampton Roads Transportation Accountability Commission.

In an overview of Route 58, Ms. Farmer noted that the General Assembly authorized funding for the corridor in 1989. The program involves \$600 million in revenue bonds. Recordation tax revenues are dedicated to the program. The plan is for additional debt to be issued in 2020. The completion of this highway project ultimately will take about 40 years.

**Presentation: Localities**

*Robert J. Catron, Alcalde & Fay*

Mr. Catron spoke about a coalition of the five Virginia localities between the North Carolina line and Roanoke that aims to support the Interstate project.

Mr. Catron asserted that the coalition should pursue two goals at the federal level: first, maintaining eligibility for TIFIA (and increasing the TIFIA cap), and second, increasing the funding goal of the TIGER program. One additional goal would be the adoption of the interstate compact language by Congress. Recent reauthorizations of the highway bill have been only for two years or less, and a future reauthorization might be a place to add a rider for Interstate 73.

According to Mr. Catron, the region needs to be completely unified, the Office of the Governor, through the next several administrations, needs to show leadership, the Commonwealth Transportation Board and the General Assembly need to be educated about the project, and supporters need to examine all revenue sources. Mr. Catron also stated that the coalition would welcome Virginia Tech as a member.

The Joint Committee opened the floor to local officials in the audience, and supportive statements were presented by representatives of localities, including Henry County, the City of Roanoke, Roanoke County, Franklin County, and the City of Martinsville.

**Presentation: Rural Economies**

*Mary Rae Carter, Special Advisor for Rural Partnerships, Office of the Secretary of Commerce and Trade*

Ms. Carter gave an overview of rural economies in Virginia in the context of one of Governor McAuliffe's pillars of economic development: enhancing infrastructure. This means not only sewer systems but also broadband and other infrastructure. Having an Interstate is not an end-all, but it will encourage companies to look at a locality that has the other elements in place.

The Governor is interested in diversifying the economy, including by promoting tourism, and the recommendation is that localities use a new Interstate to enhance tourism. Advanced manufacturing and entrepreneurship are other areas of focus. Ms. Carter reviewed local unemployment rates and job creation figures, noting that most new jobs result from expansions of existing businesses.

### **Agenda and Workplan Discussion for the Joint Committee through November 30, 2015**

Chairman Stanley stated that the Joint Committee would meet in August or September and would look into setting up meetings with federal leaders and coordinating with the congressional delegations of North Carolina, South Carolina, and West Virginia before the end of the year in the hope that state representatives will introduce the interstate compact in Congress.

### **Public Comment**

The Joint Committee opened the floor to receive public comment. Skip Russell asked the Joint Committee to encourage Henry County to survey and purchase rights-of-way. Joshua Baumgartner of the Roanoke Regional Chamber of Commerce stated the Chamber's continued support for Interstate 73.

## **Joint Committee to Study Construction of Proposed Interstate 73**

### **Senator William Stanley, Chair**

Nicole Brenner, DLS Attorney

Scott Meacham, DLS Attorney

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## **Manufacturing Development Commission**

*January 13, 2015*

The Manufacturing Development Commission (the Commission) met on January 13, 2015, in Richmond and completed its 2014 interim work by reviewing potential topics and draft legislation that might be debated during the 2015 Regular Session of the General Assembly. Staff discussed the following six bills and two budget amendments that fit this parameter.

### **Bills**

1. Virginia's recyclable materials tax credit (§ 58.1-439.7 of the Code of Virginia). The bill extends the sunset date of the credit from January 1, 2015, to January 1, 2020. The bill also (i) increases the credit allowed from 10 to 20 percent of the purchase price paid for qualifying machinery and equipment; (ii) caps the annual amount of credits that may be issued in each fiscal year at \$3 million, beginning with fiscal year 2016; (iii) prohibits denial of the credit based solely on another person's use of tangible personal property produced by the credit applicant from recyclable materials; (iv) clarifies that no credit will be allowed for machinery and equipment that does not manufacture, process, compound, or produce items of tangible personal property from recyclable materials; and (v) requires taxpayers to apply to the Department of Environmental Quality for tax credits. Delegate Daniel Marshall (HB 1554) and Senator Frank Wagner (SB 1205) introduced the legislation.



2. New Economy Industry Credential Training Grants. The bill establishes a grant program for individuals earning workforce training credentials in high-demand fields. The target audience is individuals enrolled in dual-enrollment programs or not enrolled in high school. Eligible individuals must complete a noncredit workforce training program and earn the industry credential in a high-demand field. The grant is up to \$1,000 for the cost of the training program, required textbooks, and examination fees. The noncredit workforce training program must be provided or sponsored by a Virginia community college, a participating private educational institution certified by the State Council of Higher Education for Virginia, or certain Virginia public regional education centers. Upon earning the industry credential, the eligible individual will apply directly to the educational institution for the grant, and the Comptroller will reimburse the educational institution. The bill requires the Board of Workforce Development to develop a list of high-demand fields and related credentials. Delegate Kathy Byron (HB 1677) and Senator Wagner (SB 1209) introduced the legislation.
3. Reporting of externally sponsored research by public institutions of higher education. The bill requires public institutions of higher education to annually report on (i) assignments of intellectual property to businesses with a physical presence in Virginia; (ii) the dollar value of externally sponsored research contributions received from businesses with a physical presence in Virginia; and (iii) the number and types of patents awarded to the institution developed from externally sponsored research provided from businesses with a physical presence in Virginia. The report would cover instances in which externally sponsored research contributions are received from businesses located outside Virginia, so long as such businesses also operate in Virginia. Delegate David Toscano (HB 1959) and Senator Wagner (SB 1206) introduced the legislation.
4. Department of Environmental Quality study of the projected health benefits of the proposed federal Clean Power Plan. The study resolution, among other things, directs the Department of Environmental Quality to study whether the projected health benefits under new Environmental Protection Agency (EPA) proposed rules for coal-fired plants would arise in the absence of the EPA proposal. Senator Wagner (SJ 273) introduced the legislation.
5. Joint Legislative Audit and Review Commission (JLARC) study of the costs borne by Virginia manufacturers to comply with state and federal environmental, economic, workplace, and tax regulations. The study resolution directs JLARC to update its 2006 report on the same topic to (i) estimate the current costs to Virginia manufacturers to comply with such regulations and provide an explanation of how current costs differ from costs evaluated in 2005; (ii) evaluate the degree to which Virginia expands upon federal regulations; (iii) review major actions taken by state agencies since 2005 that have either increased or decreased the costs of regulatory compliance for Virginia manufacturers; (iv) compare the costs of regulatory compliance by industry sectors in Virginia, including manufacturing; and (v) compare the costs of regulatory compliance borne by Virginia manufacturers with the costs of regulatory compliance borne by manufacturers in other Mid-Atlantic and Southern states. Senator Wagner (SJ 274) introduced the legislation.
6. Commission on Electric Utility Regulation to study regulating municipal power rates. The study resolution directs the Commission on Electric Utility Regulation to study whether State Corporation Commission regulation or review of the rates charged by municipal electric utilities is permitted under the Constitution of Virginia and, if so, whether the General Assembly should direct the State Corporation Commission to regulate such rates. Senator William Stanley (SJ 300) introduced the legislation.

## Budget Amendments

1. Two million dollars in additional general funds appropriated to the Virginia Community College System (VCCS). The proposed amendment to the general appropriation act, Chapter 3 of the Acts of Assembly of 2014, Special Session I, provides \$2 million in additional general funds to the VCCS to support high-need noncredit courses. Senator Wagner submitted the budget amendment for consideration by the General Assembly.
2. VCCS allowed to use its total allocation from the Higher Education Equipment Trust Fund (HEETF) for workforce development equipment. The proposed amendment to the general appropriation act allows VCCS to use its total \$2 million allocation from the HEETF for equipment needs relating to workforce development. Currently, \$500,000 of the total \$2 million HEETF allocation to VCCS for equipment needs of workforce development activities is reserved to pay grants to businesses making donations of machinery and equipment to community colleges (the Machinery and Equipment Donation Grant Program; Chapter 566 of the 2013 Acts of Assembly). Senator Wagner submitted the budget amendment for consideration by the General Assembly.

## Supporting Documents

Presentations and other supporting documents may be viewed or downloaded via the Commission's website: <http://dls.virginia.gov/commissions/mdc.htm?x=mtg>.

*May 14, 2015*

The Manufacturing Development Commission (the Commission) met on May 14, 2015, in Richmond. The Commission received presentations on the Patient Protection and Affordable Care Act, the Department of Environmental Quality (DEQ) process for certifying certain pollution control and recycling equipment as eligible for exemption from local property taxes, the potential impact of newly proposed Environmental Protection Agency (EPA) ground-level ozone standards, and the results of legislation endorsed by the Commission for consideration by the 2015 Session of the General Assembly.

### **Presentation: Patient Protection and Affordable Care Act**

*Michele Chesser, Senior Health Policy Analyst, Joint Commission on Health Care*

Ms. Chesser briefed the Commission members on the Patient Protection and Affordable Care Act (the Act) and the potential penalties imposed on employers under the Act. The Act is a combination of two distinct federal laws, the Patient Protection and Affordable Care Act enacted on March 23, 2010 (H.R. 3590; P.L. 111-148), and the Health Care and Education Reconciliation Act enacted on March 30, 2010 (H.R. 4872; P.L. 111-152). Ms. Chesser stated that the Act prohibits (i) rescission of health insurance coverage; (ii) annual and lifetime limits on essential health benefits coverage; (iii) imposition of higher premiums on the basis of gender, family history, or occupation; (iv) exclusions based on pre-existing conditions; (v) copayments, coinsurance, or deductibles for preventive care; and (vi) any preauthorization requirement for an emergency.

Ms. Chesser discussed other health insurance reforms under the Act. The Act limits how much health insurance premiums can vary on the basis of age and tobacco use. The Act allows children younger than 26 years old to be covered under their parents' health insurance policy, regardless if the child is married. The Act limits the waiting period for health insurance coverage under health insurance plans to a maximum of 90 days, except for grandfathered individual plans. Under the Act, out-of-pocket cost sharing is capped at the annual contribution limits applicable to federally recognized health savings



accounts. Individual and small group health insurance plans must provide essential health benefits coverage (e.g., ambulatory patient services, emergency services, pediatric services, hospitalization, mental health and substance abuse treatments, prescription drugs, maternity and newborn care, and laboratory services). Essential health benefits coverage is not mandated for large group and self-insured plans.

Ms. Chesser noted that Virginia is one of many states that have decided to utilize a federal exchange or marketplace for the purchase of health insurance by their citizens in lieu of creating a state exchange. An exchange or marketplace consists of individual and small group exchanges. Ms. Chesser indicated that health insurance plans offered on an exchange must include coverage for essential health benefits and cover at least 60 percent of the total allowed costs of benefits. Individual and small group health insurance plans may be purchased on the exchange at tiers designated bronze, silver, gold, platinum, and catastrophic. Ms. Chesser explained that plans at the bronze, silver, gold, and platinum tiers all provide essential health benefits coverage and cap out-of-pocket cost sharing at the annual contribution limits applicable to federally recognized health savings accounts. The primary difference among plans at these four tiers is the percentage of the total allowed costs of benefits, with bronze tier plans covering 60 percent of the total allowed costs of benefits, silver tier plans covering 70 percent, gold tier plans covering 80 percent, and platinum tier plans covering 90 percent. Only individuals who are under the age of 30 or exempt from mandated health insurance may purchase catastrophic health insurance coverage on the exchange.

Ms. Chesser covered incentives for individuals without health insurance to purchase the insurance on an exchange. Individuals purchasing health insurance on an exchange with household income between 100 and 400 percent of the federal poverty level are eligible for a tax credit if the individual's employer does not offer health insurance coverage, the premium costs of health insurance offered by the individual's employer are greater than 9.5 percent of the individual's household income, or the health insurance plan offered by the individual's employer covers less than 60 percent of the total allowed costs of benefits. The credit has the effect of reducing premium costs. She noted that the credit is awarded on a sliding scale based on household income and the premium costs of the plan in which the individual or family is enrolled. The credit is between two and 9.5 percent of the individual's household income. In addition to the credit, cost-sharing subsidies are available to individuals and families with household income between 100 and 250 percent of the federal poverty level. These subsidies reduce out-of-pocket cost sharing to (a) six percent of the total benefit costs for individuals or families with household income between 100 and 150 percent of the federal poverty level, (b) 13 percent of the total benefit costs for individuals or families with household income between 150 and 200 percent of the federal poverty level, and (c) 27 percent of the total benefit costs for individuals or families with household income between 200 and 250 percent of the federal poverty level.

The Small Business Health Options Program (SHOP) Marketplace is available to small businesses electing to purchase group health insurance coverage. Ms. Chesser pointed out that employers with 50 or fewer full-time employees, including nonprofits, may purchase group health insurance on SHOP. She stated that the employer (1) determines the insurance coverage offered, (2) decides how much it will pay toward employee premiums, (3) elects whether to offer coverage for dependents and dental services, and (4) chooses the length of the open enrollment period and the waiting period before new employees become eligible to enroll.

Small businesses purchasing group health insurance on an exchange and employing 25 or fewer full-time employees with average annual wages of \$50,000 or less may qualify for a small business health care tax credit. Ms. Chesser explained that the employer must contribute at least 50 percent of the



employee-only premium costs in order to qualify for the credit. The employer is not required to provide health insurance for dependents and part-time workers as a condition of credit eligibility. The credit is up to one-half of the employee-only premium costs paid by the small business employer.

Ms. Chesser also briefed the Commission on federal law that mandates that individuals maintain health insurance coverage. She explained that individuals must be enrolled in a health insurance plan that provides minimum essential health benefits or pay a penalty. The penalty assessed for (A) 2014 is the greater of \$95 or one percent of the individual's taxable income or, in the case of a family, \$285 or one percent of taxable household income; (B) 2015 is the greater of \$325 or two percent of the individual's taxable income or, in the case of a family, \$975 or two percent of taxable household income; (C) 2016 is the greater of \$695 or 2.5 percent of the individual's taxable income or, in the case of a family, \$2,085 or 2.5 percent of taxable household income; and (D) 2017 and thereafter is the same as the 2016 penalty except that the flat fee is adjusted annually for inflation. Low-income individuals and members of certain religious groups and Native American tribes may be exempt from the individual mandate.

Federal law also mandates that certain businesses maintain health insurance for employees. Ms. Chesser noted that in Plan Year 2015 employers with at least 100 full-time employees must provide health insurance coverage for at least 70 percent of full-time employees and their dependents up to age 26. In Plan Year 2016, employers with at least 50 full-time employees must cover at least 95 percent of full-time employees and their dependents up to age 26.

Ms. Chesser concluded her presentation with a discussion of noncompliance penalties under the Act. Employers that sponsor group health plans are required to self-report failures to comply with certain regulations and must remit an excise tax if the failures are due to willful neglect or not corrected in a timely manner. She highlighted infractions for which the excise tax may be imposed, including the failure to comply with COBRA, HIPAA, and Mental Health Parity and provisions under the Act relating to nondiscrimination rules, coverage of dependents to age 26, elimination of lifetime and annual dollar caps, the prohibition against rescission of coverage, pre-existing condition protections, the requirement for no-cost preventative care, waiting period restrictions, and protections involving emergency care and access to primary care providers. Such infractions must be reported annually to the Internal Revenue Service. In general, the excise tax is \$100 per day for each participant affected. However, no excise tax is imposed if the violation is corrected within 30 days after the employer knows or should have known of the violation and if the employer exercised reasonable diligence but did not discover the violation or the violation was due to reasonable cause.

### **Presentation: DEQ Process for Certifying Certain Pollution Control and Recycling Equipment As Eligible for Exemption from Local Property Taxes**

*Michael Dowd, Director, Air Division, Department of Environmental Quality (DEQ)*

Mr. Dowd presented the DEQ process for certifying certain pollution control and recycling equipment as eligible for exemption from local property taxes. He began by reviewing Article X, Section 6 (d) of the Constitution of Virginia, the source of the local tax exemption for such property, which states:

The General Assembly may define as a separate subject of taxation any property . . . used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth . . . and by general law may allow the governing body of any county, city, town, or regional government to exempt or partially exempt such property from taxation, or by general law may directly exempt or partially exempt such property from taxation.



Mr. Dowd noted that under Article X, Section 6 (f) all property tax exemptions must be strictly construed.

Certain pollution control equipment has been exempted from local property taxes by the General Assembly pursuant to § 58.1-3660 of the Code of Virginia. Under § 58.1-3661 of the Code of Virginia, the General Assembly has authorized local governing bodies to exempt certain recycling equipment from local property taxes. Thus, the local property tax exemption for qualifying pollution control equipment is mandatory while the property tax exemption for recycling equipment may be granted at the election of the locality.

Mr. Dowd stated that § 58.1-3660 provides that only pollution control equipment used primarily to abate or prevent pollution of the air or waters of the Commonwealth is eligible for an exemption from local property taxes. He indicated that qualifying pollution control equipment must be certified by a state authority or entity to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program for abatement or control of water or air pollution. However, § 58.1-3660 also lists or describes certain pollution control equipment statutorily determined by the General Assembly to be used primarily to abate or control water or air pollution that is exempt from local property taxes whether or not certified. Property made exempt from local taxation regardless of certification includes (i) equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse; (ii) landfill gas or synthetic or natural gas recovered from waste or other fuel; (iii) equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste; and (iv) solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy. For solar photovoltaic systems, the automatic property tax exemption is limited to projects equaling 20 megawatts or less as measured in alternating current generation capacity.

Mr. Dowd enumerated the state authorities or entities responsible for certifying pollution control equipment. The State Water Control Board is responsible for certifying equipment for water pollution. The State Air Pollution Control Board is responsible for certifying equipment for air pollution. The Department of Mines, Minerals and Energy is responsible for certifying equipment relating to coal, oil, and gas production. The Virginia Waste Management Board is responsible for certifying equipment for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities. DEQ assists the State Water Control Board, State Air Pollution Control Board, and Virginia Waste Management Board in fulfilling their certification responsibilities.

With regard to the property tax exemption for recycling equipment, Mr. Dowd stated that § 58.1-3661 requires that qualifying recycling equipment be certified by DEQ (a) as integral to the recycling process, (b) for use primarily to abate or prevent air or water pollution, and (c) as being used in manufacturing facilities or plant units that manufacture, process, compound, or produce for sale recyclable goods at fixed locations in the Commonwealth. Without such certification, a locality may not elect to exempt the recycling equipment from local taxation.

Mr. Dowd concluded his presentation with an explanation of the procedures in DEQ's certification process. DEQ only certifies tangible property. Labor and engineering and other intangibles are not taken into consideration. DEQ will only consider for certification property that has been installed and is operational. The property must be used primarily to abate or prevent pollution to be eligible for certification. An additional requirement for recycling equipment is that the equipment be integral to the recycling process. DEQ will not consider or certify property that is not required under a DEQ program. DEQ will automatically certify pollution control equipment that the General Assembly has statutorily

determined to be used primarily to abate or control water or air pollution. As required by Article X, Section 6 (f) of the Constitution of Virginia, DEQ employs a strict construction standard in evaluating requests for certification. DEQ processes all appeals of its decisions pursuant to the Administrative Process Act.

Mr. Dowd emphasized that DEQ works expeditiously to process applications for certification. He noted that DEQ will centralize the certification process in order that a core group of employees will be making consistent certification determinations. DEQ is also implementing other streamlining efforts.

### **Presentation: Newly Proposed EPA Standards for Ground-Level Ozone**

*David K. Paylor, Director, Department of Environmental Quality (DEQ)*

Mr. Paylor updated the Commission on newly proposed EPA standards for ground-level ozone. After a brief explanation of the formation of ground-level ozone via the reaction of sunlight with nitrogen oxides released by cars and the burning of fossil fuels, he reviewed the progress made since 1999 in reducing ground-level ozone. In 1999, monitors measured ground-level ozone at levels exceeding 75 parts per billion on approximately 59 days in rural Virginia, 51 days in Northern Virginia, 47 days in Richmond, and 32 days in Tidewater. In 2014, monitors measured ozone at levels exceeding 75 parts per billion on approximately three days in Northern Virginia, two days in Richmond, and one day each in rural Virginia and Tidewater.

Mr. Paylor indicated that the EPA evaluates the ground-level ozone standard every five years. The EPA's new proposal will reduce the ground-level ozone standard to between 65 and 70 parts per billion. EPA has also requested comment on reducing the standard to as low as 60 parts per billion. The EPA Clear Air Scientific Advisory Committee will determine the final standard by October 1, 2015. If the final new standard is 70 parts per billion, there will be no new nonattainment areas in Virginia. However, if the new ground-level ozone standard is set at 65 parts per billion, localities in Virginia's urban crescent (Central Virginia and Hampton Roads) could join localities in Northern Virginia currently in nonattainment.

Localities and regions that are unable to meet the new standard will be considered in nonattainment. Nonattainment areas will be designated by October 2017. Existing and new businesses in nonattainment localities will be subject to stricter rules for the awarding of permits and will also be subject to a state corrective implementation plan for the area. The due date of the state implementation plan is October 2018.

Mr. Paylor noted that several programs are already in place to further reduce ground-level ozone. They include the power sector releasing fewer pollutants in power generation, industry fuel conversions, stricter motor vehicle fuel efficiency standards, and voluntary "advance" programs in place in Richmond, Hampton Roads, and Fredericksburg. He concluded that these and other programs are expected to reduce nitrogen oxide (NOx) production from 321,181 tons in 2011 to 211,009 tons in 2018 and volatile organic compound production from 296,600 tons in 2011 to 249,636 tons in 2018.

### **Staff Review of 2015 Legislation and 2015 Interim Work Plan**

The meeting concluded with staff review of the results of legislation endorsed or recommended by the Commission for consideration by the 2015 Session. For bills and budget amendments discussed, see the January 13, 2015, meeting summary beginning on page 13 of this issue of the *Virginia Legislative Record*. The meeting ended with staff leading a short discussion regarding a work plan for the 2015 interim.



## Supporting Documents

Presentations and other supporting documents may be viewed or downloaded via the Commission's website: <http://dls.virginia.gov/commissions/mdc.htm?x=mtg>.

### Manufacturing Development Commission

**Senator Frank Wagner, Chair**

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## Virginia Sesquicentennial of the American Civil War Commission

*May 11, 2015*

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission met on May 11, 2015, in Richmond with Speaker of the House William Howell, chair, presiding. Speaker Howell noted lack of a quorum.

### Update on Economic Impact Study

*Cheryl Jackson, Executive Director*

Chmura and Associates is preparing an economic impact study of the Civil War sesquicentennial in Virginia. Staff has sent to Chmura data on more than 1,500 programs held throughout Virginia, including all Commission programs and data from 37 local partners. The economic impact report is due August 1.

### Sesquicentennial Tourism Marketing Program: Grant Award Recommendations

*Cheryl Jackson*

Five grant applications were received during Round 18 (April 2015). Two were recommended by the grant review team for approval and advanced preliminarily:

1. Shenandoah Valley Battlefields Foundation  
*Civil War Trails Markers: "Canyon to Chaos: Third Winchester and the Berryville Pike"*
  - Amount of award, \$5,000; amount of match from recipient, \$8,000
  - Grant funds will be used to create and install five markers that will interpret previously uninterpreted parts of the Third Battle of Winchester along or near the historic Berryville Turnpike, including military, civilian, and African American perspectives and featuring accounts of espionage, battle, caring for the wounded, and postwar conciliation.
2. Hanover Tavern Foundation  
*North Anna Battlefield brochure*
  - Amount of award, \$1,412.50; amount of match from recipient, \$1,412.50
  - Grant funds will be used to print 25,000 North Anna Battlefield brochures.

Three Round 18 grant applications were not recommended for approval on the basis of scoring and failure to meet all requirements, missing application components, or questions of eligibility and use of funds.

The sense of the Executive Committee members present was to move forward on the two recommended applications. Staff noted that approximately \$46,358 remains in the grant funds balance, which will be used by the Virginia Tourism Corporation (VTC) for marketing Civil War tourism in Virginia. The VTC will report back on the disposition of the funds by December 1, 2015.

### **Logo Requests**

*Cheryl Jackson*

The Commission has received five applications for logo usage since January 13, 2015. All have received provisional authorization:

1. Waynesboro at War (Logo will be used on materials and website promoting HistoryMobile presence at Waynesboro at War weekend)
2. Waynesboro at War (Logo will be used on materials and website promoting CivilWar dance social during Waynesboro at War weekend)
3. Montgomery County Sesquicentennial Committee (Logo will be used on materials and in social media promoting Flag Day celebration and final visit of HistoryMobile)
4. Montgomery County Sesquicentennial Committee (Logo will be used on materials and in social media promoting Jubilee Barn Dance to wrap up sesquicentennial events in the New River Valley on June 19, 2015)
5. Virginia Chamber Orchestra (Logo will be used on website and on a flier promoting concert by Virginia Chamber Orchestra, "Music in the Life of President Lincoln")

The sense of the Executive Committee members present was to move forward on the provisionally authorized logo requests.

### **Other Business**

Members discussed publication of a book based on images collected through the Legacy Project and agreed that the images should be interpreted and preserved in a permanent medium, which print publication provides over online access only. Dr. Robertson has agreed to select images and write the book. The Library of Virginia will provide the images and secure consent for publication from donors, and Commission staff will manage the project and publish the book. Ms. Jackson recommended a budget of \$25,000 for the project, which includes a \$5,000 grant to the Library of Virginia to hire a person to "clean" the images and prepare them for publication. The Library of Virginia will sell the book through its bookstore and requests that profits be retained by the Library. Members agreed to proceed with the publication of the book as outlined above.

Dr. Levensgood called attention to a recent newsletter from the National Endowment for the Humanities that listed public programs across the nation. He said it was gratifying to note how many of the programs were sponsored by the Virginia Sesquicentennial of the American Civil War Commission. Members were reminded that the Commission received a Chairman's Special Grant from the National Endowment for the Humanities in 2008 in the amount of \$950,000 to fund the "American Turning Point" exhibition and Civil War 150 HistoryMobile.



Dr. Levensgood also noted that Cheryl Jackson recently received the Governor's 2015 Tourism Impact Award from Richmond Region Tourism.

## **Sesquicentennial of the American Civil War Commission**

**Speaker William J. Howell, Chair**

Cheryl Jackson, Executive Director

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*virginiacivilwar.org*

## **Small Business Commission**

*May 26, 2015*

The Small Business Commission (the Commission) held its first meeting of the 2015 interim on May 26, 2015, in Richmond, with Senator Frank M. Ruff, Jr., chairman, presiding.

### **Programs Supporting Small Business Administered by Virginia Small Business Financing Authority (VSBFA)**

*Scott Parsons, Executive Director, and Anna Mackley, Regional Lending Manager, VSBFA*

Mr. Parsons provided historical background on the VSBFA, which was established in 1984 to serve as the state's primary mechanism for economic development financing programs. Its mission is to create new jobs and retain existing jobs by helping creditworthy businesses access financing they would not have otherwise been able to obtain. Currently, the Authority functions as a division of the Virginia Department of Small Business and Supplier Diversity (DSBSD). Entities eligible to receive VSBFA assistance are (i) for-profit businesses located in Virginia with less than 250 employees in Virginia at the time of application, (ii) nonprofit businesses of any size granted § 501(c)(3) status by the Internal Revenue Service, and (iii) industrial development or economic development authorities of any size located in Virginia. Mr. Parsons noted that other borrowers and projects have received assistance from VSBFA after satisfying requirements as the VSBFA's Board has determined from time to time.

Programs administered by the agency fall under four general categories: tax-exempt bonds, credit enhancement programs, direct loans, and grants. Mr. Parsons and Ms. Mackley proceeded to review several VSBFA success stories involving assistance provided to small businesses that have led to the creation of new jobs as well as the preservation of existing jobs. Mr. Parsons asserted that the efforts of the VSBFA over the years have resulted in the provision of more than \$1 billion in financing, issuance of more than \$1.5 billion of tax exempt bonds for manufacturers and nonprofits, creation or preservation of 29,000 jobs, and generation of a 100% rate of return within the first five months of the financing or financing assistance provided.

### **Existing Business Expansion Programs Administered by Virginia Economic Development Partnership Authority (VEDP)**

*Dan Gundersen, Chief Operating Officer, VEDP*

Mr. Gundersen briefly reviewed the mission and organizational structure of the VEDP. The VEDP is organized as three divisions—Business Attraction, Business Retention and Expansion, and International Trade—and has a total staff of just over 100 employees. Delegate Marshall asked how the staffing level

compared to that of other states. Mr. Gundersen stated that most states have much larger staff, some as many as 400 employees. Mr. Gundersen noted that while there is a great deal of state support for early stage companies, as a general rule there is a lack of support for sustained growth companies. While it is true that small businesses create most new jobs, the reality is that such businesses also lose the most jobs. According to research, only 1% of businesses net new capacity over a five-year period, while the remaining 99% either shrink or stagnate. The 1% of businesses that add the new capacity are considered *sustained growth firms* and are responsible for the majority of net new jobs in the regional economy. Mr. Gundersen noted that sustained growth firms are found in every region of the state and every industry sector.

Mr. Gundersen reviewed data relating to the migration of businesses and jobs. Over the past 10 years, Virginia lost 12,633 businesses to relocations to other states resulting in more than 120,000 jobs being lost. Of the businesses that left Virginia, an estimated 505 were sustained growth firms that generated 12,000 to 15,000 jobs after leaving the state. Mr. Gundersen asserted that it is important for Virginia to develop strategies to keep the most successful companies in the state in order to prevent the loss of jobs to competitor states.

Discussion then moved to the status of work on the study mandate of Senate Joint Resolution 242, passed during 2015 Session of the General Assembly. The resolution provides for VEDP and the Department of Housing and Community Development to jointly study the feasibility of incorporating programs to support existing high-growth companies into the state's current economic development programs and activities. Mr. Gundersen stated that a final report is expected by early fall 2015 and that it will contain findings and recommendations to enhance the business environment for sustained growth companies and to improve the state's economic development efforts.

### **Implementation of the Microbusiness Designation**

*Maurice Jones, Secretary of Commerce and Trade*

Secretary Jones explained that in order to qualify for designation as a microbusiness, a firm must (i) be a certified small business under the state's Small, Women-owned, and Minority-owned Business (SWAM) Program; (ii) have no more than 25 employees, including affiliates; and (iii) have no more than \$3 million in average annual revenue over the most recent three-year period. The designation became effective on October 1, 2014, pursuant to Governor McAuliffe's Executive Order 20, which provides that all state purchases under \$10,000 must be set aside for microbusinesses when the price quoted is fair and reasonable.

Secretary Jones asserted that the designation was established to deal with a problem stemming from the current definition of small business, which includes approximately 90% of Virginia's businesses. The objective of the designation is to focus more specifically on smaller businesses. While there is a set aside for microbusinesses for the contract-under-\$10,000 designation, the price or bid quoted must still be fair and reasonable. Secretary Jones further stated that recommendations of a work group established pursuant to legislation passed during the 2015 Session should make the microbusiness designation obsolete. House Bill 1901 and Senate Bill 885 direct the Secretary of Commerce and Trade to convene a work group of interested stakeholders to examine the definition of small business and report its findings and recommendations to the Governor and General Assembly by December 1, 2015. Delegate Alfonso Lopez added that the first meeting of the work group is scheduled for Thursday, May 28, 2015, at 3 p.m. in the Patrick Henry Building.



**Referred Legislation; House Bill 2347**

Delegate Scott W. Taylor, patron of HB 2347, indicated that there were two components to the legislation. The first component adds the definition of microbusiness from the Governor's Executive Order 20 to the Code of Virginia. The second component allows localities to waive the requirement for bid, pay, and performance bonds. Mr. Robert Matthias, Assistant to the City Manager, City of Virginia Beach, stated that the local enabling authority for waiving the bonds is extremely important. It was resolved that Delegate Taylor will present a version of the legislation, excluding the microbusiness definition component, at a later meeting of the Commission for review.

**Referred Legislation; Senate Bill 987**

Senate Bill 987 provides that whenever the lowest responsive and responsible bidder is a resident of another state that allows a percentage preference for resident contractors, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is within five percent of the lowest bid price. In addition, the bill requires the Department of General Services to include in its posting of states that allow preferences those states that allow resident contractors a price matching preference. After a brief discussion, it was agreed that a review of how preferences worked was necessary and that discussion on the legislation would continue at a later meeting.

**Public Comment**

*Melisa Ball, Owner, Ball Office Products*

Ms. Ball asserted that her business has been negatively impacted by the microbusiness designation, for which her small business does not qualify. Ms. Ball stated that she opened her business in 2000 with no revenue and over 15 years annual revenue had grown to over \$8 million. When the designation took effect, there was an immediate drop in business of between \$100,000 and \$150,000. The \$10,000 ceiling hurts her business because everything she sells is below \$10,000. She also stated that her employees are being told by agency procurement personnel that they cannot buy from her business because they need the microbusiness vendor in order to reach the 42% set aside goal.

*Angela Chiang, Director of Operations, Department of Small Business and Supplier Diversity*

Ms. Chiang stated that the 40% set aside was not for microbusinesses, but rather for small businesses. She further stated that even if a procurement is under \$10,000, all businesses may still bid on the contract, and if the microbusiness bids are not fair and reasonable then the contract may be awarded to the larger company. Delegate Cole asked what is fair and reasonable. Ms. Chiang said that that is determined by the procurement officer, who considers a combination of affordability, product quality, and price range.

There was no further public comment.

**Small Business Commission**

**Senator Frank M. Ruff, Jr., Chair**

Amigo Wade, DLS Senior Attorney

804-786-3591 ext. 216

[dls.virginia.gov/commissions/sbc.htm](http://dls.virginia.gov/commissions/sbc.htm)



## 2015 Acts of Assembly: Changes to State Entities in the Commonwealth

### New State Entities

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Eastern Virginia Groundwater Management Advisory Committee established to advise the Department of Environmental Quality

Governor's Advisory Board on Service and Volunteerism codified (sunset date July 1, 2018)

Identity Management Standards Advisory Council established as an advisory council to the Secretary of Technology

Intercollegiate Athletics Review Commission established as an advisory commission in the legislative branch of state government (**delayed effective date of July 1, 2016**)

State Emergency Medical Services Advisory Board

State Trails Advisory Committee established as an advisory committee of the Department of Conservation and Recreation (sunset date January 1, 2021)

Transportation Public-Private Partnership Advisory Committee

Virginia Sexual and Domestic Violence Program Professional Standards Committee and the Advisory Committee on Sexual and Domestic Violence

Virginia Solar Energy Development Authority (sunset date July 1, 2025)

### Name Changes of State Entities

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Advisory Committee on Juvenile Justice renamed **Advisory Committee on Juvenile Justice and Prevention**

Alcoholic Beverage Control Board eliminated; replaced with **Virginia Alcoholic Beverage Control Authority (delayed effective date of July 1, 2018)**

Capital Access Fund for Disadvantaged Businesses abolished; replaced with **Small, Women-owned, and Minority-owned Business Loan Fund**

Civil War Site Preservation Fund renamed **Virginia Battlefield Preservation Fund**

Tobacco Indemnification and Community Revitalization Commission renamed **Tobacco Region Revitalization Commission**

### State Entities Abolished

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Opportunity Educational Institution

### Sunset Dates Extended

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Sunset provision for the Commission on Electric Utility Regulation extended from July 1, 2015, to July 1, 2018

Sunset provision for the Community Integration Advisory Commission extended from July 1, 2016, to July 1, 2019

Sunset provision for the green job creation tax credit extended from July 1, 2015, to July 1, 2018



## New Funds

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Commonwealth's Attorneys Training Fund

Virginia Tobacco Region Revolving Fund

## Legislative Meeting Calendar for July and August 2015

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July 1	10 a.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century Crisis Intervention Workgroup	Augusta Health Community Care Building, Conf. Room 1, 64 Sports Medicine Drive, Fishersville
	10 a.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century Continuum of Care Workgroup	Augusta Health Community Care Building, Conf. Room 2
	10 a.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century Special Populations Workgroup	Augusta Health Community Care Building, Conf. Room 3
	1:30 p.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century	Valley Community Services Board, 85 Sangers Lane, Staunton
July 7	10 a.m.	World War II 75th Anniversary Commemoration Commission	House Room C, General Assembly Building (GAB)
July 8	1 p.m.	Joint Commission on Technology and Science (JCOTS) Cybersecurity Advisory Committee	3rd Floor East Conference Room, GAB
July 13	8 a.m.	Commission on Electric Utility Regulation	Senate Room B, GAB
	10 a.m.	Joint Legislative Audit and Review Commission (JLARC)	Senate Room A, GAB
July 15	10 a.m.	Health Insurance Reform Commission	House Room D, GAB
	10 a.m.	Virginia Housing Commission Neighborhood Transitions and Residential Land Use Work Group	Senate Room A, GAB
July 20	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
July 21	10 a.m.	Virginia Freedom of Information Advisory Council Proprietary Records Work Group	6th Floor Speaker's Conference Room, GAB
	1 p.m.	Virginia Freedom of Information Advisory Council Meetings Subcommittee	6th Floor Speaker's Conference Room, GAB

July 21	1 p.m.	Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding	House Room C, GAB
July 22	10 a.m.	State Water Commission	House Room D, GAB
	10 a.m.	Virginia Freedom of Information Advisory Council Records Subcommittee	6th Floor Speaker's Conference Room, GAB
	1:30 p.m.	Virginia Freedom of Information Advisory Council	House Room D, GAB
July 23	2 p.m.	House Education Committee Higher Education Advisory Group	House Room 1, The Capitol
July 29	11 a.m.	Administrative Law Advisory Committee Model State Administrative Procedure Act (MSAPA) Judicial Group	House Room 2, The Capitol
	noon	Administrative Law Advisory Committee	House Room 2, The Capitol
July 30	10 a.m.	Joint Commission on Transportation Accountability	House Room C, GAB
August 4	2 p.m.	Commission on Unemployment Compensation	Senate Room B, GAB
August 19	10 a.m.	JCOTS Nanosatellites Advisory Committee	House Room D, GAB
	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
	1 p.m.	JCOTS	House Room D, GAB
August 27	9:30 a.m.	Joint Meeting of the House Appropriations, House Finance, and Senate Finance Committees	House Room D, GAB

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

## 2015 New Legislative Studies Staffed by DLS and New Responsibilities for DLS

Bill No.	Description	Study Entity	DLS Staff
HB 2026	Legal, research, and policy analysis	Health Insurance Reform Commission	Frank Munyan
HB 2207	Staff support for legislative members of the Council	Broadband Advisory Council	Lisa Wallmeyer
SJ 235	Methods to Evaluate and Determine a Dedicated Revenue Source for the Virginia Housing Trust Fund	Virginia Housing Commission	Elizabeth Palen



## 2015 Continued Legislative Studies Staffed by DLS

Bill No.	Description	Study Entity	DLS Staff
HJ 16/SJ 3 (2014)	Joint Subcommittee Studying Recurrent Flooding (second year of two-year study)		Jeff Sharp Caroline Stalker
HJ 96 (2014)	FOIA Exemptions	Freedom of Information Advisory Council	Maria Everett Alan Gernhardt
SJ 47 (2014)	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century (second year of four-year study)		David Cotter Sarah Stanton Tom Stevens
SR 32 (2014)	Construction of Proposed Interstate 73	Senate Committees on Local Government and Transportation	Nicole Brenner Scott Meacham
SR 34 (2014)/ SR 62 (2015)	Staffing Levels and Employment Conditions at the Department of Corrections (continued for a second year)	Senate Committee on Rehabilitation and Social Services and Senate Committee on Rules	David May

## Other Legislative Commissions and Committees

The following legislative commissions and committees are not staffed by DLS. They also hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

**Virginia State Crime Commission**  
[vscc.virginia.gov/meetings.asp](http://vscc.virginia.gov/meetings.asp)

**Joint Commission on Health Care**  
[jchc.virginia.gov/meetings.asp](http://jchc.virginia.gov/meetings.asp)

**Joint Legislative Audit and Review  
Commission (JLARC)**  
[jlarc.virginia.gov/meetings.shtml](http://jlarc.virginia.gov/meetings.shtml)

**Virginia Commission on Youth**  
[vcoy.virginia.gov/meetings.asp](http://vcoy.virginia.gov/meetings.asp)

**House Appropriations Committee**  
[hac.virginia.gov/](http://hac.virginia.gov/)

**Senate Finance Committee**  
[sfc.virginia.gov/](http://sfc.virginia.gov/)

## Tourism Award

Cheryl Jackson, Executive Director of the Virginia Sesquicentennial of the American Civil War Commission and Information Services Manager for the DLS Legislative Reference Center, received the Governor's 2015 Tourism Impact Award from Richmond Region Tourism.

Complete information on meetings during the 2015 interim is available on the website of the Division of Legislative Services (<http://dls.virginia.gov/commissions.html>).

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