

# Virginia Legislative Record

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## State Water Commission

*July 16, 2013*

The State Water Commission (Commission) held its first meeting of the 2013 interim in Richmond and elected Delegate Thomas Wright as chair and Senator Emmett Hanger as vice chair.

The Commission's purpose in meeting was to assess the status of groundwater resources in Eastern Virginia, where there have been reports of excessive withdrawals of groundwater resulting in saltwater intrusion, collapsing aquifers, and land subsidence. The State Water Control Board adopted regulations on June 17, 2013, to expand the current groundwater management area north from the Middle Peninsula to certain localities in Northern Virginia in response to the situation.

### Nature and Scope of the Problem

David Paylor, Director, Department of Environmental Quality

Mr. Paylor outlined the nature and scope of groundwater issues in Virginia's Coastal Plain. He began by describing the geology of groundwater. Located east of I-95 along the fall line, the Coastal Plain aquifers are not a single aquifer but a series of aquifers separated by consolidated nonpermeable layers. Many of the layers are formed from fluvial and marine sediments. Over the last four years, the Department of Environmental Quality (DEQ), in conjunction with the U.S. Geological Survey (USGS), has examined how the different layers interact and impact on groundwater flow. The recent discovery of an impact crater in the Chesapeake Bay has caused the agencies to rethink the way the computer models are being developed for analysis of the groundwater system and how the system reacts to the installation of new wells. Mr. Paylor emphasized the

complexity of trying to determine the effect of withdrawals on the affected aquifers.

When an area is designated as a groundwater management area, a permit is required for withdrawals greater than 300,000 gallons per month or 10,000 gallons per day. Withdrawals of less than 300,000 gallons per month, which represent a significant percentage of total withdrawals, are not regulated. Currently, there are two management areas: one covers Southeast Virginia and the other covers the Eastern Shore. The State Water Control Board is recommending that the Southeast Virginia management area expand northward to include the Middle Peninsula and Northern Neck areas, northward to Northern Virginia, thus covering withdrawals throughout the Potomac Aquifer.

Mr. Paylor explained that concern for groundwater arose in the 1950s. Beginning in the 1960s, the withdrawals from the coastal aquifers increased significantly and have remained at those levels. The original legislation to regulate groundwater withdrawals in certain regions was enacted in 1973. Twenty years later, this law was updated with the passage of the Ground Water Management Act of 1992. Much of the revision in the 1992 Act was focused on ensuring that existing water withdrawal rights of current permit holders were protected by allowing the permittees to continue to withdraw up to their permitted capacity. However, at the end of the current 10-year permit, their permitted use would be based on their historic actual use.

Mr. Paylor noted several management issues that need to be addressed, including:

- Continued decline in primary aquifers.
- Land subsidence.
- Saltwater intrusion.
- Primary aquifer pumping in a manner that is not sustainable over the long term.

*Other southern coastal states have developed strategies to preserve their groundwater resources.*

Under a newly implemented groundwater withdrawal model that, according to Mr. Paylor, more accurately reflects reality, there will be less water available for withdrawal.

Virginia is not alone in experiencing groundwater problems. Other southern coastal states have developed strategies to preserve their groundwater resources.

Mr. Paylor emphasized that the regions' aquifers "are not on the precipice of collapse." There still is time to develop strategies to stabilize the situation, but various options that may be available to preserve the resource must be evaluated. He indicated that solutions will depend on not one but a combination of options. After examining Virginia's program, a peer review panel recommended several regulatory and programmatic options. The regulatory options include:

- Reducing pumping.
- Spreading out pumping and finding different locations for wells, thereby reducing pressure on the system without reducing the yield.
- Modifying management goals.
- Instituting zoning of withdrawals by insuring permits in regional or aquifer groupings.
- Implementing water conservation measures.

From a programmatic perspective, the panel recommended (i) the collection of more data on water levels, water quality, and land subsidence and (ii) an increase in program resources.

DEQ is also exploring several short-term and long-term actions for managing groundwater aquifers.

Mark Bennett, Director, Virginia/West Virginia Water Science Center, U.S. Geological Survey

Mr. Bennett discussed the USGS-DEQ Cooperative Program in the Coastal Plain. The two agencies conduct joint operations in such areas as water-level monitoring, borehole geophysical loggings, development of a hydrogeological framework in Eastern Virginia, participation in a salinity network, and groundwater monitoring. Over the last 100 years, much effort has been made to understand the complexity of the groundwater system. A significant step forward in that understanding was the discovery of the Chesapeake Bay Crater and the subsequent analysis of the system of aquifers. Mr. Bennett commented on several of the dynamics that are occurring in the aquifers. For instance, figures from 2008 show a significant reduction in aquifer storage and an

accompanying increase in the incidence of saltwater intrusions. He concluded by noting that aquifer compaction is a major factor in land subsidence and that subsidence in turn is a major contributor to sea-level rise in Virginia's Coastal Plain.

## Local Government Perspectives

Lewis Lawrence, Director, Middle Peninsula Planning District Commission

Mr. Lawrence noted that, until recently, little attention had been paid to groundwater quantity and quality issues in the Northern Neck, since the region had not been designated as a management area. About a decade ago, local officials throughout the region began to pay attention to water issues when DEQ documented local incidents of saltwater intrusion and the region experienced major droughts in 2002 and 2003. During the same time period, the state mandated water supply plans to DEQ for review and approval. Mr. Lawrence indicated that local governments are concerned that after two years there has been no response from DEQ to the submission of these water supply plans.

In 2010, localities began to realize that they were going to have to react to a convergence of state and federal water quality- and quantity-related requirements. The multiplicity of these programs resulted in confusion at the local level, according to Mr. Lawrence. That year the Chesapeake Bay Total Maximum Daily Load (TMDL) was developed by DEQ. This caused localities in the region to begin to compartmentalize the management of water resources into such categories as water quantity, water quality, and drinking water standards. Then in 2011, localities were asked to respond to the state Watershed Implementation Plan for cleaning up the Chesapeake Bay. A year later, in 2012-2013, the localities had to adjust to the changes in state law that placed oversight of such locally administered water programs as the erosion and sediment control, stormwater, and Chesapeake Bay Preservation Act under DEQ, transferring these responsibilities from the Department of Conservation and Recreation.

In light of all these mandated activities, Mr. Lawrence stated that localities want to be assured that DEQ will be provided with the funds necessary to administer the various water programs, including the hiring of adequate staff necessary to issue permits in a timely fashion. Localities want this assurance especially in light of the fact that the Middle Peninsula localities

will be in a groundwater management area, where withdrawers will have to obtain a permit. The final concern expressed by the localities in the region is that the groundwater in the Middle Peninsula will be used by existing permittees outside the region, leaving limited amounts of groundwater for future economic development activities within the region.

Peter Mansfield, Board of Supervisors,  
Middlesex County

Mr. Mansfield suggested that a proactive solution to the “overdraw of the Potomac Aquifer” is needed. According to Mr. Mansfield, the problem will not be corrected through additional monitoring and more stringent permitting, the latter of which would only result in slowing the rate of increased withdrawals at the expense of future growth in the region. He maintained that Virginia is in a critical situation, with a high percentage of wells experiencing saltwater intrusion due, in large measure, to lower groundwater levels resulting from significant groundwater withdrawals from paper mills in West Point and Franklin. Mr. Mansfield offered an alternative strategy for relieving pressure on the Potomac Aquifer. He requested the Commission’s assistance in providing financing for a \$250 million project to pipe treated water from Hampton Roads Sanitation District (HRSD) wastewater treatment facilities to the West Point and Franklin mills. There are several benefits of adopting such a strategy. First, approximately 23 million gallons of groundwater per day that is currently withdrawn for industrial use would be replaced with treated reused water from the HRSD treatment facilities, thereby stabilizing groundwater levels. Second, by reusing effluent from two wastewater treatment plants, a majority of 900,000 pounds per year of embedded nutrients would not enter the waters of the Chesapeake Bay. The savings generated, according to Mr. Mansfield, “should nearly” pay for the \$110 million first phase of the project.

Dr. Jim Pyne, Chief, Hampton Roads  
Sanitation District Small Communities  
Division

Dr. Pyne discussed the merits of Mr. Mansfield’s approach. According to Dr. Pyne, the real challenge Virginia faces is how to move water from one place to another. He characterized Mr. Mansfield’s approach as both an economic issue (as water in all its forms, including reusable water, has economic value) and a “transportation problem” (as there is a need to develop a transportation system to move

this valuable resource). Groundwater has been a preferred source of water supply because its accessibility makes it relatively inexpensive. As long as groundwater has been readily available, there has been little economic incentive to invest in alternative sources. What is happening now is that because groundwater may not be as readily available, the economics of the situation are changing. Dr. Pyne suggested bringing all stakeholders together to engage in a water resource planning effort to discuss “how to manage water holistically in all its varieties.” He concluded by reiterating that water reuse is a viable option, but “we will have to move the resource from where it is to where it has to be.”

Larry Dame, Director of Public Utilities,  
New Kent County

Mr. Dame manages 13 distinct water systems spread throughout New Kent County, all of which are supplied by groundwater. He also manages a two-million-gallon-per-day wastewater treatment plant and a reclaimed water system. The system includes 11 groundwater permits, ranging from 3.9 million gallons per year to 239 million gallons per year. He indicated that obtaining a new permit is “extremely difficult due to dwindling supplies.” Yet, to a small county with limited resources, groundwater is the only option. At the request of DEQ, the county consulted with its larger neighboring localities about obtaining finished surface water. However, this option is cost prohibitive for a small utility whose annual budget is less than \$5 million. The county has engaged in an ongoing search for alternative sources of waters. For example, later this year it will explore the possibility of using abandoned borrow pits for water. DEQ has suggested that the county assess the possibility of withdrawing water from the Pamunkey River, which is a tidal river, and build a reverse osmosis water treatment plant.

Mr. Dame concluded his remarks by urging that discussion and establishment of a groundwater management area and attendant regulations consider the use of reclaimed water. Many industrial and commercial users of groundwater have the ability to use reclaimed water, thereby saving the declining groundwater supplies for human consumption. His office has received, from DEQ, 13 groundwater permit applications for review and comment. Seven of these applications listed irrigation as the use. He noted that reclaimed water “could easily handle these requests.” He suggested that stress on the groundwater aquifers could be reduced if incentives could be put in place for those permit holders who offer reclaimed water services.

*As long as groundwater has been readily available, there has been little economic incentive to invest in alternative sources.*

*Public consumption and manufacturing account for 80 percent of water use.*

Reiterating Mr. Mansfield's statements, Mr. Dame acknowledged that the HRSC is the largest provider of wastewater treatment within the management area and has the capacity to supply the two largest withdrawers of groundwater: the paper mills at West Point (23 MGD) and Franklin (32 MGD). However, HRSD has no incentive to provide reclaimed water to either of these facilities, nor do these facilities seek reclaimed water because they have withdrawal permits. If the state would work with these larger users and HRSD to develop a strategy for using reclaimed water, according to Mr. Dame, "it could free up over 20 billion gallons of groundwater annually."

## Engaging the Business Sector

Rebecca Rubin, President and CEO, Marstel-Day

Ms. Rubin discussed opportunities to engage the business sector in the development of water-related policies. She indicated that business leaders nationwide are increasingly aware of water-related risks to their businesses and are increasingly interested in their companies' playing a role in developing or being part of the solution. Noting that public consumption and manufacturing are the "key users" of water, accounting for 80 percent of its consumption, she suggested that CEOs of the major manufacturers be invited to participate in a strategy session for developing a plan highlighting water reduction and water reuse opportunities. She believes it is important to work with public water providers and local governments to consider additional strategies for water use reductions and efficiencies.

Ms. Rubin emphasized that Virginia is "ripe for the right kind of business development; those that are low impact and water smart." Businesses will weigh such investments against the challenges they face in an increasingly water-stressed region. Thus it becomes essential to consider options such as the potential for use of gray/reused water and the use of ecosystem services, such as wetlands infiltration, which is a cheaper option for filtering water.

Ms. Rubin questioned whether Virginia's current policies support water-use innovation in a meaningful way. A key issue for groundwater sustainability is maintaining recharge areas to replenish groundwater. Aquifer Storage and Recovery (ASR) is a specific type of aquifer recharge practice that augments groundwater resources and recovers water for future uses. She discussed various examples of ASR projects

throughout the United States, including injection and recovery wells. She also briefly discussed a number of projects aimed at increasing water use efficiencies.

Ms. Rubin concluded her remarks with several recommendations.

- The focus of any groundwater or surface water policy should be on the largest uses: public consumption and manufacturing.
- It is important that the state work with businesses to establish incentives to sustain businesses in water-stressed areas using conservation and reuse strategies.
- The state could host a Virginia Water Forum and at that forum offer water conservation awards.
- The state should examine the kinds of financing that are available for maintaining groundwater resources, including possible federal grant programs and water conservation financing techniques.

## Next Meeting

A copy of all presentations can be found on the Commission's website. The Commission also met on September 11, 2013. The next meeting date will be posted on the Commission and General Assembly websites as soon as information is available.

### STATE WATER COMMISSION

DELEGATE THOMAS WRIGHT, CHAIR  
MARTIN FARBER, DLS STAFF

201 North 9th Street  
2nd Floor  
Richmond, VA 23219

Telephone (804) 786-3591

<http://dls.virginia.gov/commissions/swc.htm>

# Virginia Code Commission

August 7, 2013

The Virginia Code Commission (Commission) met in Richmond with Senator John Edwards, chair, presiding.

## Administrative Law Advisory Committee Appointments

Senator Edwards advised that Chris Nolen had resigned as a member of the Administrative Law Advisory Committee (ALAC) due to his appointment to the Commission. The chair thanked Mr. Nolen for his previous six years of service as chair of ALAC. The Commission unanimously agreed that Edward Mullen be appointed to the vacancy left by Mr. Nolen's resignation and that Thomas Lisk be appointed chair of ALAC.

## Code of Virginia Pricing and Replacement Volumes

Brian Kennedy, LexisNexis

Before this item was introduced, Mr. Nolen stated, "Pursuant to §§ 2.2-3112 A 3 and 2.2-3114 G I am declaring that, in consideration of options regarding the Code of Virginia and Virginia Administrative Code, LexisNexis is a client of my law firm, and that I do not personally represent or provide services to LexisNexis, and that I am able to participate in the transaction fairly, objectively, and in the public interest." Senator Edwards asked if any member of the Code Commission wished for Mr. Nolen to recuse himself. No one requested recusal so Mr. Nolen participated in the consideration of this item.

LexisNexis has identified six volumes for replacement: Volumes 1 (Titles 1-2.2), 4 (Title 18.2), 6A (Title 38.2), 7 (Title 46.2), and 9 (Titles 59.1-62.1) based on current sizes of the supplement and Volume 6 (Titles 33.1-37.2) because of the Title 33.1 recodification. A price increase of four percent based on the Producer Price Index is proposed for state agency and private purchases.

Without objection, the Commission approved the LexisNexis proposal to (i) replace the volumes recommended by Mr. Kennedy with the replacement of Volume 6 being contingent on the passage of the Title 33.1

recodification legislation at the 2014 General Assembly Session and (ii) increase the pricing by four percent.

## Code of Virginia Volume Update Project

Lilli Hausenfluck, Chief Editor, Division of Legislative Services

As requested by the Commission, Ms. Hausenfluck prepared and reviewed a list of the types of changes for review by the Code Commission members before starting the project, which will make housekeeping changes to the Code of Virginia on a volume-by-volume basis. After a brief discussion of how these changes will be indicated, it was suggested that a note to the reader, which explains the housekeeping changes, be included in the new volumes that contain these types of changes.

## Recodification of Title 33.1

Nicole Brenner and Alan Wambold, DLS Staff

The Commission unanimously approved the revised organization plan. Ms. Brenner then reviewed the proposed schedule for reviewing specific chapters. Ms. Brenner and Mr. Wambold presented the following chapters:

- Outdoor Advertising in Sight of Public Highways.
- Rail and Public Transportation.
- Public-Private Transportation Act of 1995.
- Northern Virginia Transportation Authority.

Items the Commission discussed or on which it took action can be viewed on the Commission website.

## Next Meeting

The Commission also met on September 18, 2013. The next meeting of the Commission will be on October 23, 2013, in Richmond.

### VIRGINIA CODE COMMISSION

SENATOR JOHN EDWARDS, CHAIR  
JANE CHAFFIN, DLS STAFF

201 North 9th Street  
2nd Floor  
Richmond, VA 23219

Telephone (804) 786-3591

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

*The Virginia Code Commission continued its work on the recodification of Title 33.1.*

# Commission on Unemployment Compensation

August 20, 2013

Total initial claims for unemployment benefits for the first seven months of 2013 were down 10 percent from 2012.

The Commission on Unemployment Compensation (CUC) met for the first time in the 2013 interim in Richmond.

## Virginia Employment Commission Report

John R. Broadway, Jr., Commissioner,  
Virginia Employment Commission

### UNEMPLOYMENT RATES

Mr. Broadway began by noting that Virginia's seasonally adjusted unemployment rate ticked up from 5.5 percent in June to 5.7 percent in July. For July 2012, the rate for the Commonwealth was 6.0 percent. The increase was attributed in part to the effects of the automatic sequestration provisions of the Budget Control Act of 2011. Virginia's July unemployment rate remained below the national rate of 7.4 percent and remained the lowest of the Southeastern states. Nationally, unemployment rates increased from June to July in 28 states and the District of Columbia. If the Commonwealth unemployment rate for July is not seasonally adjusted, the unemployment rate fell from 5.9 percent in June to 5.8 percent in July; in July 2012, the corresponding rate was 6.2 percent. Virginia's unemployment rates for 2013 have averaged about eight percent lower than rates from the preceding year.

### UNEMPLOYMENT TRUST FUND

Virginia's Unemployment Trust Fund, which is used to pay unemployment benefits to claimants, was reported to have a balance of \$335 million on June 30, 2013. One year earlier, the balance was \$135 million. Commissioner Broadway reported that in 2016 the Trust Fund's balance is scheduled to exceed \$1.22 billion. When the solvency level exceeds 50 percent, the fund builder tax (which is assessed at the rate of 0.2 percent of the first \$8,000 of each employee's wages) will be suspended. The solvency level for the Unemployment Trust Fund as of June 30 for the following years is listed below:

- 2012—Nine percent.
- 2013—21 percent.

- 2014—40 percent.
- 2015—62 percent.
- 2016—73 percent.

Low levels of solvency of the Trust Fund automatically increase the rate of the state unemployment tax (SUTA). The average annual state unemployment tax per employee assessed on employers in Virginia, exclusive of the federal unemployment tax assessment but including the pool tax and fund builder tax, rose from \$103 in 2009 to \$236 in 2012. From that peak, the average total state tax fell to \$221 in 2013 and is projected to continue declining to \$218 in 2014, \$208 in 2015, and \$163 in 2016. The average pool tax assessment per employee peaked in 2012 at \$42.40 and fell to \$30.40 this year. In 2014, it is expected to be \$20.

### BORROWINGS FOR TRUST FUND

As a result of the 2007-2009 "Great Recession" and the depletion of the Trust Fund, between October 2009 and May 2013 Virginia borrowed a total of \$986 million from the federal government and the State Treasury in order to pay regular unemployment benefits. Of this sum, \$938 million was borrowed from the federal government and \$48 million was borrowed from the State Treasury. Interest of \$13.9 million has been paid to the federal government and \$26,403 has been paid to the State Treasury. The State Treasury loan was repaid in February 2013. On May 14, 2013, a final loan payment of \$133,536,107 was made to the federal government. Because all remaining federal loans had been borrowed and repaid in the current calendar year, interest of \$753,254 that had been due to the federal government in September 2013 will be waived.

### CLAIMS DATA

Total initial claims for unemployment benefits for the first seven months of 2013 are 164,418, which is down over 10 percent from 2012. On the basis of this data, Commissioner Broadway noted that the annual total for 2013 is projected to be around 280,000. The decline was attributed to fewer layoffs in manufacturing, construction, and administrative and support services. For 2012, the number of initial claims was 301,211.

The federal budget sequestration is reducing the total number of weeks of benefits available to Virginia claimants. A claimant can currently receive up to 40 weeks of benefits in Virginia, consisting of 26 weeks of regular

unemployment benefits and 14 weeks of federally funded extended unemployment compensation (EUC) Tier I benefits. Effective May 12 through September 30, 2013, weekly benefits for EUC Tier I were reduced 14.2 percent as a result of the federal sequestration. Effective October 8, 2013, weekly benefits will be reduced by 0.62 percent. The last week to file an EUC Tier I claim will be December 22, 2013, though claimants who file on that date will receive only one week of benefits due to the fact that all federal EUC benefits will end as of December 28, 2013.

First payments of unemployment insurance benefits from January through July 2013 are lower by 7.8 percent from the corresponding period in 2012. The average duration for receipt of unemployment benefits was 16 weeks in July 2013, which is the same as for July 2012.

Final payments of benefits in the first seven months of 2013 are down 11.8 percent from the same period in 2012. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use up all of the weeks of regular unemployment benefits for which they are eligible, was 47.3 percent in July 2013. In July of the preceding year, the exhaustion rate was 53.5 percent.

Virginia's maximum weekly unemployment benefit is \$378, which is unchanged from 2012. The national average maximum weekly unemployment benefit in 2013 is \$416; last year, it was \$407. Virginia's maximum weekly benefit reflects a 2013 weekly benefit replacement rate of 40 percent of the state's average weekly wage, which is the same percentage as in 2012. The average state unemployment tax per employee in Virginia of \$249 for the year ending September 30, 2012, was the lowest of the states comprising the area within the Fourth Circuit Court of Appeals and about 55 percent of the national average of \$452.

In response to a question, Virginia Employment Commission (VEC) staff noted that employers are not required to report data regarding how many of their employees are working on a full-time or part-time basis. Consequently, the agency does not track the hours worked by individual employees. Survey data on hours worked may be available by industry categories, and VEC staff will review available data for trends. It was noted that for some federal programs, a 35-hour work week is considered full-time employment. The chair queried VEC staff regarding the definition of "full-time" employment and asked whether the Affordable Care Act's use of a 30-hour limit on an average work week in determining whether

an employee is deemed to be a full-time employee will have an effect on eligibility for unemployment benefits. VEC staff noted that eligibility for benefits is not dependent on full-time status, and observed that a claimant's eligibility is based on wages earned in the applicable period.

## 2013 Legislation

M. Coleman Walsh, Jr., Chief  
Administrative Law Judge, VEC

Mr. Walsh provided the Commission with information on three bills introduced in the 2013 Session for which the U.S. Department of Labor (DOL) identified conformity issues.

HB 1466 would have established an optional methodology for calculating an employer's benefit ratio when the employer has no taxable payroll for the 12-month period preceding a calendar year. As a result of the conformity issue, HB 1466 was left in the House Commerce and Labor Committee. Mr. Walsh announced to the CUC that the DOL has approved an alternative proposal that appears to address the situation.

SB 1357 would have disqualified a graduate student from receiving unemployment compensation benefits based on services performed as a student summer employee during a summer break period, if the individual was notified in writing at the time of his hiring that his employment is only for the summer break period. The DOL advised the VEC that the legislation created a conformity issue. The measure was passed by in the Senate Commerce and Labor Committee with the request that the CUC study the issues related to the bill. Mr. Walsh reported to the CUC that there does not appear to be an approach that would implement the objective of SB 1357 while retaining conformity with the federal framework. The chair asked staff to report to the patron on the bill that the conflicts with federal law would preclude its adoption.

SB 775 involved a federal Trade Adjustment Assistance Extension Act of 2011 requirement that an employer not be relieved from a claimant's benefit charges relating to an overpayment of unemployment benefits when the employer has established a pattern of failing to respond timely or adequately to requests for information regarding a claim. Notwithstanding that the VEC had submitted this proposed approach to the DOL on several occasions without notice that it posed any problems, the DOL advised the VEC after the bill had been reported by the House Commerce and Labor

*Virginia's maximum weekly benefit of \$378 reflects a replacement rate of 40 percent of the state's average weekly salary.*

The Commission on  
Unemployment  
Compensation heard  
information about  
various bills.

Committee that the bill had a conformity issue. To address the conformity issue, the Governor proposed amendments, which were adopted by both the House of Delegates and the Senate during the Reconvened Session, to remove the provisions that conditioned the finding of a failure to respond to a request for information with such failure's resulting in an erroneous payment of benefits.

## SB 1495 (2009)

SB 1495 as introduced provided that good cause for leaving employment exists if an employee voluntarily leaves a job to accompany the employee's spouse, who is on active duty in the military or naval services of the United States, to a new military-related assignment established pursuant to a permanent change of duty order from which the employee's place of employment is not reasonably accessible. The measure applies only if the state to which the spouse is transferred has a similar provision.

The bill was amended in committee, by the addition of a third enactment clause, to provide that its provisions shall become effective if the federal government appropriates adequate funds specifically for the purpose of paying benefits to employees who would be made eligible for unemployment benefits pursuant to this act. The

bill became law but the military trailing spouse provision has not been implemented because the federal government has not made such an appropriation.

The contingent effectiveness of this military trailing spouse provision has created substantial confusion and uncertainty. Several members concurred that something should be done to address the confusion caused by the third enactment clause of SB 1495. The chair suggested that the discussion be continued at the CUC's next meeting.

## Next Meeting

The chair advised that the next meeting of the CUC will be held in December.

### COMMISSION ON UNEMPLOYMENT COMPENSATION

SENATOR JOHN WATKINS, CHAIR  
FRANKLIN MUNYAN, DLS STAFF

201 North 9th Street  
2nd Floor  
Richmond, VA 23219

Telephone (804) 786-3591

<http://dls.virginia.gov/commissions/ucc.htm>

## Other Legislative Commissions and Committees

The following are other legislative commissions and committees that hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

### Joint Legislative Audit and Review Commission

<http://jlarc.virginia.gov/meetings.shtml>

### Virginia State Crime Commission

<http://vscc.virginia.gov/meetings.asp>

### Joint Commission on Health Care

<http://jchc.virginia.gov/meetings.asp>

### Virginia Commission on Youth

<http://vcoy.virginia.gov/meetings.asp>

### House Appropriations Committee

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

### Senate Finance Committee

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

### Medicaid Innovation and Reform Commission

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



# Commission on Electric Utility Regulation

September 9, 2013

The Commission on Electric Utility Regulation (Commission) held its first meeting of the 2013 interim in Richmond with Senator Thomas Norment, chair, presiding.

## Recent Legislation

The Commission heard a presentation on the changes to the Re-regulation Act resulting from the General Assembly's enactment of HB 2261 (2013). The legislation implements the most sweeping changes to the Re-regulation Act since its enactment in 2007. The legislation represents a compromise brokered by the Office of the Attorney General and the Commonwealth's major investor-owned electric utilities. Major elements of the legislation include:

- Establishing a staggered schedule for Dominion's and Appalachian Power's (AP) biennial review proceedings.
- Eliminating or reducing the enhanced rate of return that had been available for certain types of new generation facilities.
- Eliminating the Performance Incentive that had been granted to utilities that met the goals of the voluntary renewable portfolio standard program.
- Expanding, from 50 basis points to 70 basis points, the "collar" by which a utility's earnings could exceed or fall short of the rate of return on common equity set by the SCC without putting the utility in an overearning or underearning position.

## Dominion Presentation

Robert M. Blue, Senior Vice President for Law, Public Policy, and Environment

Mr. Blue noted that the Re-regulation Act has performed extremely well in meeting its objectives of maintaining stable and competitive rates, promoting needed infrastructure development, and strengthening Virginia's economy and energy security. Dominion's typical residential bill is 12 percent below the national average. The utility, with a total annual economic impact of \$8.4 billion, accounted for two percent of the gross state product in 2012.

In March 2013, Dominion filed its 2011-2012 biennial review with the State Corporation Commission (SCC). Dominion has reported

excellent customer service and operational results during the period under review. The utility has proposed that its base rates, which make up 60 percent of a typical residential bill, remain unchanged at least until November 2015. A hearing at the SCC on the utility's rate of return on equity is scheduled to commence on September 17, 2013. Mr. Blue stated that Dominion's plan of adding new generation capacity while re-powering some existing facilities and retiring some coal-fueled facilities will provide customers with long-term savings of \$3.1 billion.

Dominion's 2013 biennial Integrated Resource Plan (IRP), filed with the SCC on August 30, 2013, provides a 15-year forecast of its load obligations and a plan to meet those obligations. This year's IRP presents two paths for resource development: a Base Plan and a Fuel Diversity Plan.

Dominion was the successful bidder on leases for sites located 27 miles off Virginia's shore to be used for the potential development of offshore wind power. The federal Bureau of Ocean Energy Management has estimated that if the sites are fully developed, a wind farm could generate 2,000 megawatts. If state and federal approvals are obtained, the first turbine may be expected to be installed in about 10 years.

Mr. Blue closed with a report on Dominion's evaluation of a targeted program of burying strategically selected tap lines in its distribution system. While placing all distribution lines underground would be prohibitively expensive, undergrounding 20 percent of the worst performing overhead tap lines could reduce the number of tap line repair locations caused by major storms by 63 percent. Such a program could provide cost-effective improvements to system reliability.

## Appalachian Power Presentation

Ronald J. Jefferson, Manager for External Affairs

Mr. Jefferson updated the Commission on the utility's recent rate case activity and its IRP. As a result of the staggered schedule for biennial reviews established by HB 2261, AP did not file for a biennial review in 2013.

Mr. Jefferson noted that in 2013 AP's rates have been stable and remain below the 2013 national average of 12.78 cents per kWh. With the phasing out of certain environmental and reliability charges, the utility's average rate for residential customers will decline from 11.27

*Dominion and Appalachian Power made presentations to the Commission on Electric Utility Regulation.*

cents per kWh in January 2013 to 11 cents per kWh in January 2014.

AP filed its latest IRP on August 30, 2013. The utility expects flat load growth and an increased reliance on natural gas. The IRP reflects a declining reliance on coal, with plans to close or convert two coal-fueled plants to natural gas.

AP has several rate cases pending with the SCC. These include (i) rate adjustment clauses for environmental costs, for costs of a natural gas-fired generating plant at Dresden, and for renewable power costs, and (ii) a fuel factor proceeding. Mr. Jefferson predicted that despite increased expenses related to environmental regulation and generation costs, AP's rates will remain stable through 2013.

## Re-regulation Act

Arlen Bolstad and David Eichenlaub,  
SCC

Mr. Bolstad and Mr. Eichenlaub provided the Commission with an overview of the agency's status report on the implementation of the Re-regulation Act. The SCC has prepared such annual reports since 2008 pursuant to § 56-596 of the Re-regulation Act. The SCC staff highlighted major activities during the 12 months since September 2012, including (i) continued development of the Virginia Energy Sense program; (ii) consideration of requests to construct, transfer, or convert generation facilities; and (iii) approval of extensions of two demand-side management programs for Dominion. Other matters addressed in the report include Dominion's solar power programs, proposed rules for third-party power purchase agreements, and applications for base rate increases by two electric cooperatives. The report has information on rates of Virginia's regulated utilities and those of utilities of other states in the Southeast region. The report also includes the SCC's observation that Dominion and AP electricity rates appear to be competitive for their peer utilities, although pending rate requests could lessen the competitiveness of electricity rates in the future.

## SJ 338 (2013)

SJ 338 (2013) was referred to the Senate Committee on Rules, which passed it by indefinitely with a recommendation that a letter be sent to this Commission requesting further study of its subject matter. The resolution provides that the General Assembly recognizes the need for regulatory agencies in Virginia to

use administrative discretion to reduce the burden placed upon the coal and electricity-generation industries by the regulations recently adopted by the U.S. Environmental Protection Agency (EPA). Staff observed that the resolution raised several problematic issues. Commission members received a November 2012 report by a consultant retained by the American Coalition for Clean Coal Electricity (ACCCE), calculating the economic implications of seven recent and anticipated EPA regulations affecting the electricity sector. The Commission determined that no further study of the subject matter of SJ 338 (2013) would be appropriate. Staff was directed to provide the resolution's patron with a copy of the ACCCE's report.

## Other Business

Senator Thomas Norment closed the meeting by thanking two present Commission members, Delegates Jim Scott and Don Merricks, for their valuable service to the Commission. Both members, in addition to Delegate Bob Tata, have announced that they will not seek reelection.

## Next Meeting

The next meeting of the Commission on Electric Utility Regulation will be posted on the Commission and General Assembly websites as soon as information is available.

### COMMISSION ON ELECTRIC UTILITY REGULATION

SENATOR THOMAS NORMENT, CHAIR  
FRANKLIN MUNYAN, DLS STAFF

201 North 9th Street  
2nd Floor  
Richmond, VA 23219

Telephone (804) 786-3591

<http://dls.virginia.gov/commissions/eur.htm>

## Meeting Calendar for October 2013

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<p><b>Civil War Commission/Executive Committee</b> Cheryl Jackson</p>	<p>10:00 a.m., Tuesday, October 1, 2013—6th Floor Speaker’s Conference Room, GAB</p>
<p><b>JCOTS/Broadband and Education Advisory Committee</b> Lisa Wallmeyer</p>	<p>10:00 a.m., Monday, October 7, 2013—House Room C, GAB</p>
<p><b>Joint Subcommittee to Evaluate Tax Preferences</b> David Rosenberg/Lisa Wallmeyer</p>	<p>2:00 p.m., Tuesday, October 8, 2013—House Room D, GAB</p>
<p><b>Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act</b> Maria Everett/Amigo Wade</p>	<p>10:00 a.m., Wednesday, October 9, 2013—House Room D, GAB</p>
<p><b>Autism Advisory Council</b> Ryan Brimmer/Sarah Stanton</p>	<p>1:00 p.m., Wednesday, October 9, 2013—3rd Floor East Conference Room, GAB</p>
<p style="text-align: center;"><b>JLARC</b></p>	<p>10:00 a.m., Tuesday, October 15, 2013—Senate Room A, GAB</p>
<p><b>Medicaid Innovation and Reform Commission</b></p>	<p style="text-align: center;">Public Hearing 1:00 p.m., Tuesday, October 15, 2013—House Room D, GAB</p>
<p><b>Senate Finance Committee/General Government Subcommittee</b></p>	<p style="text-align: center;">Full Committee 9:30 a.m., Thursday, October 17, 2013—Senate Room B, GAB General Government Subcommittee 1:00 p.m., Thursday, October 17, 2013—10th Floor Conference Room, GAB</p>
<p><b>House Appropriations Committee</b></p>	<p>9:30 a.m., Monday, October 21, 2013—9th Floor Appropriations Room, GAB</p>
<p><b>JCOTS/Intellectual Property Advisory Committee</b> Lisa Wallmeyer</p>	<p>2:00 p.m., Monday, October 21, 2013—5th Floor West Conference Room, GAB</p>
<p><b>Medicaid Innovation and Reform Commission</b></p>	<p>1:00 p.m., Monday, October 21, 2013—House Room D, GAB</p>
<p><b>Joint Commission on Health Care/Healthy Living/Healthy Services Subcommittee</b></p>	<p style="text-align: center;">Full Commission 10:00 a.m., Tuesday, October 22, 2013—Senate Room A, GAB Healthy Living/Healthy Services Subcommittee 1:00 p.m., Tuesday, October 22, 2013—Senate Room A, GAB</p>
<p><b>Virginia Code Commission</b> Jane Chaffin</p>	<p>10:00 a.m., Wednesday, October 23, 2013—6th Floor Speaker’s Conference Room, GAB</p>
<p><b>Virginia Bicentennial of the American War of 1812/Legacy Symposium Work Groups</b> Brenda Edwards/Jeff Sharp</p>	<p style="text-align: center;">Legacy Symposium Work Groups 10:00 a.m., Wednesday, October 23, 2013—House Room C, GAB Full Commission 2:00 p.m., Wednesday, October 23, 2013—House Room C, GAB</p>

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

## Meeting Calendar for October 2013 (Cont'd)

Senate Finance Committee/Public Safety Subcommittee	9:30 a.m., Thursday, October 24, 2013—10th Floor Conference Room, GAB
Senate Finance Committee/Health and Human Resources Subcommittee	1:00 p.m., Thursday, October 24, 2013—10th Floor Conference Room, GAB

## Meeting Calendar for November 2013

JLARC	9:00 a.m., Tuesday, November 12, 2013—Senate Room A, GAB
Virginia State Crime Commission	11:00 a.m., Thursday, November 14, 2013—Senate Room A, GAB
Joint Commission on Health Care	10:00 a.m., Monday, November 18, 2013—Senate Room A, GAB
Joint Commission on Technology and Science/ Identity Management Advisory Committee Lisa Wallmeyer	1:00 p.m., Monday, November 18, 2013—3rd Floor East Conference Room, GAB
Virginia Commission on Youth	1:00 p.m., Monday, November 18, 2013—House Room C, GAB
House Appropriations Committee/Committee Retreat	1:00 p.m., Tuesday, November 19, 2013, and 9:00 a.m., Wednesday, November 20, 2013—Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke
Virginia Code Commission Jane Chaffin	10:00 a.m., Wednesday, November 20, 2013—6th Floor Speaker's Conference Room, GAB
Virginia Housing Commission/Governor's Housing Conference Elizabeth Palen	1:00 p.m., Wednesday, November 20, 2013—Waterside Marriott, 235 East Main Street, Norfolk
Senate Finance Committee/Annual Meeting	TBD, Thursday, November 21, 2013 and Friday, November 22, 2013—Williamsburg
JCOTS Lisa Wallmeyer	10:00 a.m., Tuesday, November 26, 2013—House Room D, GAB

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

**Members of the General Assembly requesting multiple copies of Division of Legislative Services publications should email [mtanner@dls.virginia.gov](mailto:mtanner@dls.virginia.gov).**

## 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 this section of the *Virginia Legislative Record* will assist members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact the Code Commission staff at (804) 786-3591 for further information.

#### TITLE 1. ADMINISTRATION STATE BOARD OF ELECTIONS

**REGISTRAR’S NOTICE:** The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

**1VAC20-10. Public Participation Guidelines (amending 1VAC20-10-10, 1VAC20-10-40, 1VAC20-10-50, 1VAC20-10-60, 1VAC20-10-80, 1VAC20-10-90, 1VAC20-10-100, 1VAC20-10-120).**

Written public comments may be submitted until October 7, 2013. A public hearing will be held on November 25, 2013, at 10 a.m. in House Room C, General Assembly Building, Richmond.

Summary:

*The amendments provide that the State Board of Elections website, as well as the Virginia Regulatory Town Hall website, can be used at the board’s discretion when seeking public comment on regulations. The amendments also address the method by which and reduce the time period within which public comment for exempt regulations is received.*

For more information, please contact Justin Riemer, Deputy Secretary, State Board of Elections, Richmond, VA 23219, telephone (804) 864-8904, or email [justin.riemer@sbe.virginia.gov](mailto:justin.riemer@sbe.virginia.gov).

#### DEPARTMENT OF GENERAL SERVICES

**1VAC30-46. Accreditation for Commercial Environmental Laboratories (amending 1VAC30-46-10, 1VAC30-46-30 through 1VAC30-46-150, 1VAC30-46-200, 1VAC30-46-210; adding 1VAC30-46-15, 1VAC30-46-95, 1VAC30-46-220).**

Written public comments may be submitted until October 25, 2013.

Summary:

*The proposed regulatory action (i) replaces the 2003 National Environmental Laboratory Accreditation Conference (NELAC) Standards used to accredit commercial environmental laboratories with the 2009 The NELAC Institute (TNI) Standards; (ii) restructures and increases fees; (iii) ties future fees to inflation; (iv) revises the process used to accredit laboratories, eliminating requirements relating to the initial accreditation period and streamlining the process to renew accreditation; (v) adds a provision on suspension of accreditation; and (vi) eliminates obsolete language and amends text for clarity.*

For more information, please contact Rhonda Bishton, Regulatory Coordinator, Department of General Services, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email [rhonda.bishton@dgs.virginia.gov](mailto:rhonda.bishton@dgs.virginia.gov).

## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS STATE CORPORATION COMMISSION

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

**10VAC5-200. Payday Lending (amending 10VAC5-200-10, 10VAC5-200-20, 10VAC5-200-35, 10VAC5-200-50, 10VAC5-200-60, 10VAC5-200-80, 10VAC5-200-110; adding 10VAC5-200-85, 10VAC5-200-113).**

A public hearing will be scheduled upon request. Written public comments may be submitted until October 25, 2013.

Summary:

*The State Corporation Commission is proposing numerous amendments to 10VAC5-200, which is the regulation governing payday lenders under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. The proposed amendments define the terms "prepaid card" and "short-maturity loan," as well as prohibit licensed payday lenders (licensees) from obtaining an agreement from a borrower that gives the licensee or a third party the authority to prepare a check that is drawn on the borrower's deposit account. The proposal also (i) requires licensees and former licensees to maintain their contact information with the Bureau of Financial Institutions until they have no outstanding payday loans, (ii) requires licensees to dispose of records containing consumers' personal financial information in a secure manner, (iii) specifies additional events that require licensees to file a written report with the bureau, (iv) updates the text of the payday lending pamphlet to reflect certain other proposed amendments to 10VAC5-200, (v) prescribes disclosure requirements for licensees' advertisements, (vi) identifies the circumstances under which the Commissioner of Financial Institutions shall deem a licensee or former licensee to have ceased business for purposes of authorizing the database provider to administratively close any outstanding loan in the database, (vii) eliminates several obsolete provisions relating to the payday lending database, and (viii) clarifies that certain payday lending data is not confidential and may be furnished by the database provider to the public. Various technical and other clarifying amendments are also set forth in the proposed regulations.*

For more information, please contact Susan Hancock, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, Richmond, VA 23218, telephone (804) 371-9701, FAX (804) 371-9416, or email [susan.hancock@scc.virginia.gov](mailto:susan.hancock@scc.virginia.gov).

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

**18VAC15-30. Virginia Lead-Based Paint Activities Regulations (amending 18VAC15-30-52, 18VAC15-30-164, 18VAC15-30-166, 18VAC15-30-790, 18VAC15-30-810).**

Written public comments may be submitted until October 25, 2013.

Summary:

*The proposed amendments (i) clarify training requirements upon entry and renewal of an individual or training provider license, (ii) remove the requirement that the lead license expiration date corresponds with the lead training expiration date, and (iii) change the time frame that accredited lead training providers must certify continued compliance to 24 months.*

For more information, please contact Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

**18VAC15-50. Lead-Based Paint Renovation, Repair, and Painting Regulations (adding 18VAC15-50-10 through 18VAC15-50-410).**

Written public comments may be submitted until October 25, 2013.

Summary:

*The proposed regulation establishes (i) a regulatory program for the licensure of renovators, dust sampling technicians, and renovation contractor firms; (ii) requirements for the approval of accredited renovator and dust sampling technician training programs; and (iii) standards of conduct and work practices that are consistent with the federal Environmental Protection Agency's Lead Renovation, Repair, and Painting Program final rule.*

For more information, please contact Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

## BOARD FOR CONTRACTORS

### 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-170).

Public hearings will be held as listed below. Written public comments may be submitted until October 25, 2013.

*October 3, 2013 - 5 p.m. - Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 2-3, Fairfax.*

*October 24, 2013 - 5 p.m. - City of Bristol, Council Chambers, 300 Lee Street, Bristol.*

#### Summary:

*The proposed amendments (i) remove the past adverse financial history reporting requirement for the qualified individual for all three classes of contractor license and (ii) extend the reinstatement period for a license from one year to two years after expiration.*

For more information, please contact Eric L. Olson, Executive Director, Board for Contractors, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

### 18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-220; repealing 18VAC50-30-73, 18VAC50-30-75).

Public hearings will be held as listed below. Written public comments may be submitted until October 25, 2013.

*October 3, 2013 - 5 p.m. - Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 2-3, Fairfax.*

*October 24, 2013 - 5 p.m. - City of Bristol, Council Chambers, 300 Lee Street, Bristol.*

#### Summary:

*The proposed amendments (i) eliminate continuing education as a prerequisite for renewal for tradesman licenses for most trades (trades that have statutory continuing education requirements still have those continuing education requirements), (ii) extend the license reinstatement period from one to two years following expiration date, and (iii) eliminate the inactive license classification.*

For more information, please contact Eric L. Olson, Executive Director, Board for Contractors, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

### 18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (adding 18VAC85-140-10 through 18VAC85-140-190).

A public hearing will be held on October 11, 2013, at 1 p.m. at the Department of Professional and Occupational Regulation in Richmond. Written public comments may be submitted until October 25, 2013.

#### Summary:

*As required by Chapter 838 of the 2010 Acts of Assembly, the Board of Medicine proposes regulations governing the licensure of individuals who, under the direction of a licensed physician, monitor, test, and treat those suffering from sleep disorders. The proposed regulations establish requirements for minimal competency for practice and continued competency for renewal of licensure, supervisory responsibilities, and standards of conduct for safe practice of polysomnographic technologists.*

For more information, please contact William L. Harp, M.D., Executive Director, Board of Medicine, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov)

## REAL ESTATE APPRAISER BOARD

### 18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-20, 18VAC130-20-30, 18VAC130-20-60, 18VAC130-20-160, 18VAC130-20-180, 18VAC130-20-190).

Written public comments may be submitted until October 25, 2013.

#### Summary:

*The proposed amendments make clarifying changes, ensure consistency with state and federal law, and ensure compliance with current industry standards by (i) clarifying the assessment value limitations for each category of certification or licensure, (ii) requiring real estate appraisal business entities to register with the board and designate a board contact person, (iii) requiring an applicant be at least 18 years of age, (iv) allowing a licensing hearing to be held before the board, (v) specifying that experience in real estate appraisal cited when applying for licensure must be accrued within five years of licensure application and include use of the income approach, (vi) adding a list of prohibited acts for certified real estate appraiser instructors, and (vii) updating citations.*

For more information, please contact Christine Martine, Executive Director, Real Estate Appraiser Board, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

# *Division of Legislative Services*

*201 North 9th Street, 2nd Floor  
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