

# Virginia Legislative Record

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## SB 545: Scholarships for Disabled Students

August 30, 2006

The special subcommittee held its first meeting on August 30, 2006. During the 2006 Regular Session, Senator H. Russell Potts, chairman of the Senate Committee on Education and Health, appointed a special subcommittee of Senators Lambert (chair), Blevins, and Ruff to study SB 545 and examine the issues relating to scholarships for disabled students. The meeting focused on the amendment in the nature of a substitute for SB 545, which was adopted by the special subcommittee during the meeting. The bill as introduced was amended to provide for a Tuition Assistance Grant Program for Students with Disabilities (Grant Program), rather than a scholarship for disabled students. Senator Stosch, citizens, speakers representing the Virginia Department of Education (VDOE), and other interested parties attended the meeting.

### SB 545 Overview

Senator Stosch, the bill's patron, discussed the amendment in the nature of a substitute for SB 545, which establishes the Grant Program for students with disabilities. The Grant Program provides \$10,000 a year in tuition assistance to students with disabilities to attend a private school of their choice and is designed to assist families who are dissatisfied with their child's progress in the public schools under an Individualized Education Program (IEP). There are four conditions a parent must meet in order to receive assistance for their child:

- The student must attend a public school in Virginia and receive special education services for at least one year.

- Prior to the beginning of the school year, the parent must obtain acceptance for admission of the student to an eligible private school.
- The parent must notify the division superintendent of his intent to apply for the Grant Program.
- The parent must execute a written statement asserting dissatisfaction with his child's progress, acknowledging that the public school has offered an IEP in accordance with the federal Individuals with Disabilities Education Act (IDEA), as amended.

The Board of Education is charged with promulgating regulations to implement the Grant Program in accordance with the IDEA. The Grant Program sets forth requirements for eligibility of private schools, including that they must be a nonsectarian Virginia private school that holds a current unrestricted license to operate as a school for students with disabilities under Virginia law. Senator Stosch invited several families to share their personal stories with the special subcommittee concerning how their children were unable to succeed in the public schools under an IEP, but flourished in private school.

### Speakers

**Patricia Abrams - Director, Office of Special Education Instructional Services, VDOE**

Dr. Abrams described the current requirements under federal law to ensure that students with disabilities receive the education required under IDEA. Federal law requires that:

- Schools provide a free and appropriate public education to every identified child with a disability, which is defined as a special education and related services that are provided at public expense, under public

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**For more information,**

**Visit study websites.**

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

Students may receive education services in a private school if an IEP team determines that private school placement is appropriate or if a parent requests reimbursement for private school services or enrolls the student at their own expense.

supervision and direction, and without charge from birth through the age of 21.

- Public schools meet federal and state requirements provided in conformity with an IEP.

Case law has determined that what is appropriate means that there must be access to specialized instruction and that the education must be individually designed to confer educational benefit to the child. Dr. Abrams identified the conditions under which students may receive education services in a private school:

- An IEP team, which includes the parent, determines that private school placement is appropriate.
- The parent places the child in a private school and requests reimbursement.
- The parent places a child in a private school at their own expense.

Under the third condition, if the public school provided a free and appropriate public education (FAPE), it would not be required to pay for the cost of educating the child at a private school.

#### **Mr. Ron Geiersbach - Specialist, Office of Dispute Resolution and Administrative Services, VDOE**

Mr. Geiersbach summarized the current procedural safeguards available to parents of children with disabilities under the IDEA, which include: records, meetings, independent evaluation, written prior notice, parental consent, mediation, state complaint resolution, a due process hearing, civil action to appeal due process, attorney's fees, placement during disputes, and tuition reimbursement. He also gave an overview of the special education mediation system, complaint resolution system, and the due process hearing system, which included the following points:

- Mediation may be requested any time there is a disagreement between the parents and the school system.
- The complaint resolution system is triggered by a request from the parent stating that there was a violation of the IDEA, its regulations, or special education regulations.
- A due process hearing may be requested for disagreements regarding identification of disability and eligibility for special education services, evaluation of the child, educational placement and services for the child, or provision of a free and appropriate education to a child with a disability.

- A resolution session is required before a due process hearing can be held, unless it is waived by both parties in writing.
- The hearing officer is required to be independent and a list of hearing officers must be made available to parents.
- Parents have the right to an attorney or an advocate.
- Both parties must have the opportunity to present witnesses and documents, compel the attendance of witnesses, and confront and cross-examine witnesses.

Statistics were provided regarding the numbers of requests for due process hearings, requests that involved private placements, and actual hearings held over the past few years.

#### **D. Patrick Lacy, Jr. - Special Counsel, Virginia School Boards' Association (VSBA)**

Mr. Lacy conveyed that the VSBA, made up of public educators, is opposed to the Grant Program and noted that the chief concern is the unfairness of appropriating money to allow students to attend private schools, when there is currently inadequate funding available for the public schools. He emphasized that Congress only funds 18% of the mandated services required by federal law. Since funding falls significantly short of the 40% promised, the state must pick up the difference for the federally mandated services. The VSBA contends that the proposed Grant Program undermines the available public school special education programs and current laws. The Grant Program may also expose school divisions to the liability of paying tuition in excess of the appropriated \$10,000 per student, per year.

## **Public Comment**

Citizens opposed to the Grant Program emphasized that the federal system is working and insisted that the legislature fix problems in the public school system before funneling state money to private schools. Speakers against the legislation noted that in the bill the term "dissatisfaction" is not qualified and that the definition of disability appears too broad.

Citizens in favor of the measure included parents who felt that \$10,000 would make a difference in a decision whether or not to send their children to private schools. They also shared their due process hearing experiences and difficulties.

## Work Plan

The second meeting of the special subcommittee was planned and held on September 20, 2006, in Richmond, and consisted of a work session only. Chairman Lambert encouraged the bills patron to continue to amend the legislation based on the concerns of the various parties. A summary of the meeting follows.

### September 20, 2006

## Work Session

The primary purpose of the second meeting of the special subcommittee was to consider suggested amendments offered by the interested parties. The VDOE and Pat Lacy of the VSBA proposed all of the amendments discussed during the work session. The VDOE proposed amendments to clarify that a school division, outside of the student's division of residence, is not required under any circumstances to accept the student for admission. If the school division does accept the student, however, it must not charge tuition. The accepting school division must also report the student in the fall enrollment and receive payment in accordance with the provisions of the appropriation act.

The VDOE also proposed additions to the section directing the Board of Education to promulgate regulations, which include:

- Establishment of a process for verifying the student's initial acceptance, continued enrollment, and attendance at a private school.
- A process for determining a student's eligibility and approval of grants, in order to ensure that each participating student meets statutory and regulatory requirements.

Three amendments were accepted by the special subcommittee from the VSBA. Two proposed amendments clarify that parents, not the school divisions, are required to provide the student's transportation to a private school under the program or to another public school in an adjacent division if that option is chosen. The third amendment clarifies that in the statement requesting a grant, parents must acknowledge that the public school has offered or implemented an IEP that is reasonably calculated to provide educational benefit to the student.

The subcommittee did not adopt the proposed amendments relating to teacher

credentials or Standards of Learning (SOL) tests. Under the bill, if the parent of a student placed in a private school under the Grant Program wishes that the student take the SOL tests, the school must accommodate the request. The proposal that private schools be required to employ teachers in compliance with the Licensure Regulations for School Personnel in order to be eligible to participate in the Grant Program was not adopted. The members requested additional information concerning the current licensure regulations for private day schools for students with disabilities when SB 545 is heard by the full committee of Senate Education and Health.

## Final Recommendation

The special subcommittee recommended to the full committee that SB 545 as amended be reported to the Senate for consideration.

SB 545

*Senate Education and Health*

*Special Subcommittee*

*to Study*

*Scholarships for Disabled Students*

Senator Benjamin J. Lambert III, Chair

Nikki Seeds and Brenda Edwards, DLS Staff

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*Adopted amendments make clear that a school division outside of the student's division of residence is not required to accept the student for admission; but if it does accept the student, no tuition may be charged and the parent must provide transportation.*

Study meetings may be added at anytime, so please check the General Assembly calendar online or the individual study websites sponsored by DLS for information.

# HJR 144: Telework Opportunities in the Commonwealth

September 14, 2006

*Loudoun County has focused on the opportunities that telework provides for continuity of operations in the event of an emergency or disaster and encourages telework participants to work from home at least one day a month.*

The Joint Subcommittee studying telework opportunities in the Commonwealth held its second meeting on September 14, 2006, at the Center for Innovative Technology in Herndon. Guest speakers from state agencies and local governments were invited to the meeting to speak on the implementation of successful telework programs.

## Implementation of Telework Programs

**Catherine Chianese - Assistant to the Fairfax County Executive**

Ms. Chianese discussed Fairfax County's 10 year-old telework program, which is now ingrained in county government and is no longer hindered with some of the cultural hurdles that newer telework programs face. This year, the county met the goal of having 20% of the eligible workforce telecommute, a goal set by the chairman of the board of supervisors in 2001. She noted that having this kind of goal and support from the highest level of government was very important in the success of the program. Fairfax County's success can be attributed to its reinvigoration of the telework program after the 2001 announcement by:

- Establishing a brand and a logo for its telework program.
- Developing training tracks tailored to management and workers.
- Allowing the telework program to operate in a decentralized manner, which permits each department to figure out how to adapt the program to meet their needs.

**Diane O'Grady - Telework Program Manager for Loudoun County**

Ms. O'Grady discussed Loudoun County's experiences with telework. The county had previously established a program in 1996, but it was put on hold. Because the county faced a lack of space for its increasing workforce and growing traffic problems, the board of supervisors decided to reinvigorate the

program in 2005. The county saw telework as a tool for work retention and wanted to build a model that private businesses could follow. The county's IT Department played an important role in the successful deployment of telework through:

- Incorporating new tools into the program.
- Revising work processes.
- Developing a standard telework tool kit for users.

Loudoun County has focused on the opportunities that telework provides for continuity of operations in the event of an emergency or disaster. The county encourages telework participants to work from home at least one day a month.

**Dave Jordan - Assistant Tax Commissioner, Compliance Division**

Mr. Jordan stated that the Department of Taxation (the Department) closed two of its nine district offices in 2000 and 49 workers from these offices began to telecommute full-time. In 2003, due to fiscal constraints, the other regional offices were also closed, bringing the total number of teleworkers to well over 200. He stated that in his experience, most teleworkers adjusted rapidly to the new policy, even in situations where there had been resistance. While it is more difficult to measure teleworking at home, productivity rises for most workers. Some employees do not work as well from home, and the Department did find the need to let go five of its employees. The Department has set a new goal transitioning 150 employees from its Richmond offices to begin teleworking. Currently, the Department is spread out among four different offices in Virginia, and it would like to be in one facility and eventually be capable of hiring an applicant from anywhere in the Commonwealth for any job opening it may have. Mr. Jordan shared the following important lessons he felt the Department had learned in the course of implementing its telework program:

- A solid technology infrastructure is important.
- Employers need to listen to what employees say they need to do their job from home, in terms of equipment and support.

- Employers need to be prepared to confront low-performing employees with real data and numbers and be prepared to let them go if necessary.
- An involuntary telework plan is not problematic.
- Supporting teleworkers should be part of a manager's performance plan and evaluation.
- Anyone should be allowed to telework, and the opportunity should not be reserved for only the highest performing employees.

## State Telework Initiatives

### Secretary of Technology Aneesh P. Chopra

Secretary Chopra announced that the Department of Taxation has offered to act as the lead agency for state telework pilot program. He also described Executive Order 35 that announced the formation of the Office of Telework Promotion and Broadband Assistance in the executive branch. The new office is a collaborative, cross-secretariat effort to link supply of broadband with the need for increased telework, telemedicine, and teleducation. The Governor announced a goal of having 20% of the eligible workforce at each state agency teleworking at least one day a week by 2010. The three underlying initiatives behind this effort are to reform government operations, alleviate traffic congestion, and to pursue economic development opportunities through telework.

### Secretary of Administration Viola O. Baskerville

Secretary Baskerville shared the results of a telework survey that had just been received by the Department of Human Resource Management. The survey solicited state agency input regarding the number of employees telecommuting at each agency, the inclusion of telework in the continuity of operations plans, and perceived benefits of and barriers to telework. Of the survey results received before the meeting, representing approximately half of the state agencies, there were 2,067 positions designated eligible to telecommute and 1,469 employees were involved in a telecommuting program. Secretary Baskerville also provided a copy of a leadership memorandum distributed to all agencies about current telework requirements, as well as an overview of telework best practices compiled by IBM for the Commonwealth, which may be obtained free of charge.

Members asked for more information to be provided at the next meeting regarding what types of positions in the state were being designated as ineligible, and why there were not more eligible positions. The top perceived benefits of telework include commuter costs savings, increased employee satisfaction, and flexibility. Barriers include the cost of IT equipment and support, a diminished access to work resources, and the loss of a traditional office culture.

## Work Plan

As soon as information is available regarding the next meeting of the joint subcommittee it will be posted on the internet on the General Assembly calendar on the study website sponsored by DLS.

### HJR 144

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

Delegate Timothy D. Hugo, Chair

Lisa Wallmeyer, Patrick Cushing, and

Amigo Wade, DLS Staff

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study website

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

*The benefits of teleworking are perceived to be commuter costs savings, increased employee satisfaction, and flexibility, while barriers include the cost of IT equipment and support, a diminished access to work resources, and the loss of a traditional office culture.*

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# SJR 60: Virginia's Future Transportation Needs

September 8, 2006

One of the major goals of the joint subcommittee is to determine what the 21st century Virginia VDOT should look like structurally; the study does not call for an analysis of current VDOT funding.

The joint subcommittee, co-chaired by Senator Martin E. Williams and Delegate Leo C. Wardrup, Jr., held its first meeting on September 8, 2006, at George Mason University. Other members of the joint subcommittee are Senators Charles R. Hawkins, Janet D. Howell, and J. Brandon Bell II and Delegates Joe T. May, John J. Welch III, William H. Fralin, Jr., Johnny S. Joannou, and David W. Marsden.

Chairman Williams opened the meeting by stating that one of the major goals of the joint subcommittee is to determine what the 21st century Virginia Department of Transportation (VDOT) should look like structurally and emphasized that members were not charged to analyze the current funding of VDOT. Chairman Wardrup concurred and added that members will look to the future and that discussions will include rail as a vital mode of transportation, which should play a significant role in the future of Virginia's transportation infrastructure.

## SJR 60

The joint subcommittee was formed in response to SJR 60 (2006) to study the role of the Commonwealth and its agencies in meeting Virginia's future transportation needs. The members will study:

- A redefined role of the Commonwealth, regional entities, and local governments in the devolution of a unified state road system.
- Revised and restructured functions of state agencies to concentrate on planning and contract management instead of direct facility construction, operation, and service delivery.
- Changes in the number of employees and the appropriations required for state administration.

## Guest Speakers

**David Snyder - Chairman, Northern Virginia Transportation Authority**

Mr. Snyder emphasized the importance of Northern Virginia to the state due to the great number of jobs and tax dollars generated in the region. He noted that each job within Northern Virginia results in roughly 50% more state tax

dollars than the average job elsewhere in the Commonwealth. He described briefly Northern Virginia's new long-range transportation plan, *TransAction 2030*, which calls for nearly \$700 million in additional transportation funding annually for Northern Virginia over the next 25 years. He urged the members to give localities more decision-making and implementation powers and emphasized that the transportation problems are critical and require a statewide solution. The major concern is that if transportation is not addressed, it may result in private sector businesses moving out of Northern Virginia. The joint subcommittee discussed the many transportation options that have been considered in alleviating Northern Virginia and statewide transportation woes, including:

- Tolls.
- Devolution of VDOT.
- Revenue-sharing programs.
- More authority to localities to solve transportation problems.
- Growth management tools.
- Land-use planning.
- Tax referendum for transportation.

Mr. Snyder stated that several options may be viable if the state would come forward with a significant statewide contribution and a sustainable funding source for transportation. He suggested that funding should be based on needs such as transit ridership, traffic delays, and other specific problems, and a restructuring of funding allocations may be in order. Mr. Snyder explained that Northern Virginia is taking steps to address growth management, but added his view that it would take up to 10 years to realize the benefits of efforts to alleviate congestion with land-use planning as the only tool.

**Larry Roberts - Office of the Governor**

Mr. Roberts stated that the Governor looks forward to feedback from the joint subcommittee. The Governor's Office supports a comprehensive solution to transportation problems and would like to maintain momentum in an environment receptive to reform. Mr. Roberts stated that the Governor supports efforts to

broaden the focus of transportation solutions, which includes land-use planning.

**John A. DePasquale, P.E. - Engineer, VDOT**

Mr. DePasquale gave a presentation on the process of building a highway from the initial stages of study to construction. Members were briefed on design, the environmental requirements that must be met both at the state and the federal levels, the acquisition of right-of-way, and the construction process. Mr. DePasquale informed the committee that VDOT is becoming more of a manager with localities electing to take on their own construction projects. He emphasized that even when the locality performs the work, VDOT remains accountable and is responsible for meeting all state and federal requirements. He noted that the majority of transportation projects are federally funded.

**Ms. Barbara Reese - Chief Financial Officer at the Virginia Department of Transportation**

Ms. Reese briefed the members on details of the VDOT organizational chart and added that efforts were currently underway to outsource some agency responsibilities. VDOT currently employs 9,800 people, two-thirds of which are in the state's nine construction districts. Ms. Reese's presentation included an overview of VDOT highway spending and funding and a summary of VDOT resources and obligations. A breakdown of the VDOT budget was discussed.

A total budget of \$2.9 billion in FY 2006 includes:

- Approximately \$1.368 billion for maintenance.
- \$713 million for construction.
- Balance for administration and operation, debt programs, and toll roads.

VDOT revenue sources include:

- State motor fuels tax.
- Motor vehicle sales and use tax.
- Motor vehicles license fee.
- State general sales and use tax.

Ms. Reese explained that it is VDOT's position that if no additional funding sources for transportation are identified and implemented, sufficient money will not be available to match federally funded construction projects by 2013. She reminded the members that moneys in the

Highway Maintenance and Operating Fund cannot be used to service debt and that some construction money is already being diverted to maintenance.

## Work Plan

The next meeting of the joint subcommittee will be held on October 13, 2006, at the Old Dominion University campus. For additional information on meeting discussion, as well as handouts, please see the study website sponsored by DLS.

### SJR 60

#### *Joint Subcommittee to Study the Role of the Commonwealth and its Agencies in Meeting Virginia's Future Transportation Needs*

Senator Martin E. Williams, Co-chair

Delegate Leo C. Wardrup, Jr., Co-chair

Alan Wambold and Stephanie Bishop, DLS Staff

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[study website](#)

[http://dls.state.va.us/interim\\_studies.htm](http://dls.state.va.us/interim_studies.htm)

VDOT is becoming more of a manager with localities electing to take on their own construction projects, but VDOT remains accountable and is responsible for meeting all state and federal requirements.

Most joint subcommittees shall complete their meetings for the first year by November 30, 2006, and for the second year by November 30, 2007, and submit to DLAS an executive summary of their findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year.

## September 12, 2006

SB 241 would place the burden of persuasion on the school division in any due process hearing, while the current practice, supported by the Supreme Court decision in *Schaffer v. Weast*, places that burden on the party challenging a disputed action.

During the 2006 Regular Session, Senator H. Russell Potts, chairman of the Senate Committee on Education and Health, appointed a special subcommittee to examine the issues raised in SB 241 relating to the allocation of the burden of persuasion in a due process hearing. Senators Ruff (chairman), Houck, and Edwards were appointed to serve as the special subcommittee, which met on September 12, 2006. Senator Ticer and other interested parties attended the meeting.

## Background

The major issues raised by SB 241, which was introduced during the 2006 Regular Session include:

- Whether the recent Supreme Court decision, *Schaffer v. Weast*, precludes legislation in direct conflict with that decision.
- Whether the costs to the localities, as a result of any such legislation and its potential for an increase in litigation, would be significant.

Staff presented an initial report explaining the term burden of persuasion and discussed the Supreme Court decision, *Schaffer v. Weast*, in relation to SB 241. Staff also reported on how other states have allocated the burden of persuasion, as well as how they have responded to the *Schaffer* decision.

## SB 241

Senator Ticer, the bill's patron, explained that SB 241 places the burden of persuasion on the school division in any due process hearing. This would be a change from the current practice, which is supported by the Supreme Court case *Schaffer v. Weast*, that the party challenging a disputed action bears that burden. The legislation aids in providing a level playing field between parents and the school division, and states that any complaint with respect to the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to such child is an

uphill or unfair battle. The patron emphasized that school divisions have a wealth of expertise available to them and that many low-income or middle-income parents do not have the same advantage in their challenges to school division decisions.

Several constituents accompanied Senator Ticer, spoke in favor of the bill, and shared personal stories with the subcommittee concerning their experiences with due process hearings. An attorney with the Just Children Program in Charlottesville, described her work with low-income parents. She explained that one in four children with disabilities comes from a low-income background, and it is very difficult for parents to navigate the hearing process. She felt that SB 241 would help her clients by remedying what they believe is an imbalance in the due process system.

## Public Comment

The special subcommittee conducted an extensive public comment period. Citizens in favor of SB 241 testified that the school divisions' expertise on matters relating to the special education of children, in comparison with that of the parents, necessitates the passing of SB 241 into law. Additionally, those in favor of the bill testified to the expensive nature of due process hearings and ensuing litigation. Many proponents stated that the bill would hold school divisions accountable for their actions in providing a free appropriate public education, because they would have to prove by a preponderance of the evidence that their actions were appropriate.

Opponents of SB 241 emphasized the cooperative nature of school divisions and that 80% of all due process hearing requests are resolved before the hearing. The subcommittee was informed about the mediation process and the newly required resolution sessions. Additionally, those speaking in opposition to the bill pointed out that parents can recover attorney's fees if they obtain a favorable decision in due process. A division superintendent speaking in opposition to the bill emphasized that there is already adequate accountability in educating students with disabilities, both ethically and imposed by federal and state law.



Acknowledging parents' frustration with the due process system, he noted that SB 241 would not change the overall process. An attorney who handles cases for Virginia Beach public schools pointed out that the difficulties associated with due process hearings would not change if SB 241 became law. She noted that SB 241 would do little to alleviate many of the issues identified by those in favor of the bill and added that due process hearings would continue to occur and be difficult for everyone involved.

## Special Subcommittee Action

The special subcommittee took no action on SB 241. If the full committee does not act on the bill by December 8, 2006, it will die in the Senate Committee on Education and Health.

SB 241

### *Senate Committee on Education & Health Special Subcommittee*

Senator Frank Ruff, Chair

Nikki Seeds and Brenda Edwards, DLS Staff

(804) 786-3591

*If the full committee does not act on the bill by December 8, 2006, it will die in the Senate Committee on Education and Health.*

## HJR 75: U.S. Route 460 Communication Committee

September 25, 2006

The joint subcommittee held its first meeting of 2006 on September 25, in Richmond. Delegate Wardrup was elected chair and Senator Quayle was elected vice-chair. Pierce Homer, Secretary of Transportation, introduced the guest speakers—Alan Tobias, Manager of Passenger Rail Programs, Virginia Department of Rail and Public Transportation and Richard Walton, Chief of Policy, Planning, and the Environment, Virginia Department of Transportation (VDOT). Mr. Tobias asked Kenneth Sislak to brief the members on a study of the feasibility of high-speed passenger rail service between the Richmond area and Hampton Roads.

### Speakers

**Kenneth Sislak - DMJM Harris Consultant**

Mr. Sislak briefed the members on the feasibility of high-speed passenger rail service between the Richmond area and Hampton Roads. He reminded the committee that in 1995 the route between Richmond and Hampton Roads was designated by the U.S. Secretary of Transportation as part of the Southeastern High Speed Rail Corridor. Mr. Sislak briefed the committee on the three alternative routes being studied, two on the peninsula and one in the Southside. He compared them in terms of speed, cost, ridership, and travel time. Alternative 2b on the Peninsula was the least expensive at \$192.9 million

with a speed of 90 mph. The most expensive option would be Alternative 2a at \$493.4 million with a speed of 110 mph. He gave the committee some benchmark examples of other high speed rail services throughout the United States by which to measure the effectiveness and efficiency of the possible Richmond/Hampton Roads high speed rail.

Mr. Sislak explained that the next step in the study process is to receive and publish Federal Railroad Administration approval of the Tier I Draft Environmental Impact Statement (EIS). A public hearing on the Draft EIS is scheduled to be held in the Fall/Winter of 2006, and the Commonwealth Transportation Board's approval will be sought in the Spring of 2007. Issues that remain include determining who the service provider will be, the level of federal funding available, capacity, and access fees to freight rail lines, which are currently owned by CSX and Norfolk Southern rail systems.

**Mr. Richard Walton - Chief of Policy, Planning, and the Environment, VDOT**

Mr. Walton gave a briefing on the status of the U.S. Route 460 project including location decision and PPTA solicitation. He reminded the committee that an improved U.S. Route 460 is needed to improve safety, accommodate increasing freight shipments, reduce travel delay, and provide adequate

*A public hearing on the U.S. Route 460 Draft Environmental Impact Statement is scheduled for Fall/Winter of 2006, and the Commonwealth Transportation Board's approval will be sought in the Spring of 2007.*

The next steps in the process include continuing to evaluate tolling as a funding source, determining whether private proposals are viable, and providing local governments an opportunity to comment on the proposals.

hurricane evacuation capability. Mr. Walton explained that there were three Candidate Build Alternatives with CBA 2 being the existing highway and CBA 1 to the south and CBA 3 to the north. CBA 2 is estimated to be the most expensive, because of right of way acquisition, while CBA 1 is estimated to be the least expensive of the three options. Mr. Walton informed the committee of the public involvement opportunities included in the study and local governments' positions on the project. According to public comment, the most favored of the other alternatives with the citizens of the affected region is CBA 1. The Corps of Engineers, US Fish and Wildlife Service, and Environmental Protection Agency preferred alternative is CBA 2. Mr. Walton announced that VDOT recommended route CBA 1, the southern alignment, because it meets purpose and need, is least expensive, requires fewer residential and business relocations, impacts fewer wetlands, and has the most public support. CBA 1 was approved by VDOT on November 15, 2005.

PPTA solicitation for proposals of the project were issued February 15, 2006, with three proposals being received on September

14, 2006. Proposals range in price from \$1,051 million to \$1,550 million, and the range of tolls is consistent with the Route 460 Toll Feasibility Study. The next steps in the process include continuing to evaluate tolling as a funding source, determining whether private proposals are viable, and providing local governments with an opportunity to comment on the proposals.

## Work Plan

The next meeting of the joint subcommittee will be held on November 1, 2006, in Suffolk.

HJR 75

### *Route 460 Communications Committee*

Delegate Leo C. Wardrup, Jr., Chair

Alan Wambold and Stephanie Bishop, DLS Staff

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study website

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

## Interim Legislative Studies

<i>Study or Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Open Space and Farmland Preservation	12:30 p.m., Tuesday, October 10, 2006 Barrier Islands Center, Machipongo, VA	Mark Vucci, David Rosenberg, Kevin Stokes
Math, Science & Technology Education HJ 25	10:00 a.m., Tuesday, October 10, 2006 General Assembly Bldg, House Room C 1:00 p.m., Wednesday, October 25, 2006 Thomas Jefferson High School, Alexandria	Nikki Seeds, Patrick Cushing
Issues Relating to Stem Cell Research HJ 48	10:00 a.m., Tuesday, October 17, 2006 General Assembly Bldg, House Room C	Jessica Eades, Nikki Seeds
House Education Special Subcommittee HB 1442	10:00 a.m., Monday, October 23, 2006 Patrick Henry Building, House Room 1	Nikki Seeds, Brenda Edwards
200th anniversary celebration of the birth of Robert E. Lee	10:00 a.m., Monday, October 23, 2006 General Assembly Bldg, House Room C	Lisa Wallmeyer
Prisoner Reentry to Society	10:00 a.m., Thursday, October 26, 2006 General Assembly Building, Senate Room B PUBLIC HEARING - 2 p.m., Senate Room B	Ellen Weston
Comprehensive Services for At-Risk Youth and Families	2:00 p.m., Tuesday, October 31, 2006 General Assembly Building, Senate Room A	Ellen Weston

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

## COMMISSIONS and COUNCILS

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

### *Virginia Sesquicentennial of the American Civil War Commission 9-12-2006*

The Virginia Sesquicentennial of the American Civil War Commission, created by House Bill 1440 (2006) and continuing until July 1, 2015, held its first meeting in Richmond on September 12, 2006. Speaker William J. Howell was elected chairman of the Commission, and Senator John H. Chichester was elected vice-chairman.

#### **Staff Overview of HB 1440**

The commission is charged with planning, developing, and carrying out programs and activities appropriate to commemorate the sesquicentennial of the Civil War in Virginia and specific duties include:

- Encourage interdisciplinary examination of the Civil War.
- Facilitate a balance of events throughout the state.
- Encourage civic, historical, educational, economic, and other organizations throughout Virginia to organize activities to expand understanding and appreciation of the significance of the Civil War.
- Provide technical assistance to localities and nonprofit organizations.
- Develop programs and facilities to ensure a positive legacy and long-term public benefit from the commemoration.
- Encourage programs designed to involve all citizens.

The Commission is funded by the Virginia Sesquicentennial of the American Civil War Commission Fund, a special, nonreverting fund consisting of gifts, grants, donations, bequests, or other funds. Staff also offered information regarding other commemorations, which included the 200th anniversary of the birth of Robert E. Lee and the 50th anniversary of *Brown v. Board of Education*. Staff noted that in the past, the Virginia Civil War Commission, created by the General Assembly in 1958 to observe the centennial anniversary during a commemoration period from 1961 to 1965, focused on national unity; however, the commission's work was criticized for not directly addressing the role of slavery or race relations before, during, and after the war.

#### **Other Sesquicentennial Initiatives**

Virginia is the first state to begin planning for the 150th anniversary of the Civil War. Several other states have introduced legislation creating sesquicentennial commissions, but none have passed to date. Civil War 150, a private, nonprofit organization that aspires to build a consortium of history institutions to coordinate sesquicentennial planning throughout the states, has been chartered in Atlanta.

On the federal level, although Congress in 1996 designated the U. S. Civil War Center at Louisiana State University as the flagship institution for planning the sesquicentennial commemoration, funding for the center never materialized. Commission members expressed an interest in working with Congress to ensure that Virginia has a lead role in the national sesquicentennial commemoration.

#### **Civil War in Virginia**

Dr. James Robertson, Jr., Alumni Distinguished Professor at Virginia Tech, presented an overview of the Civil War in Virginia and the pivotal role that Virginia played in the Civil War. Most of the South's iron, coal, salt and lead were mined in Virginia and the state produced almost a third of the South's manufactured goods. Transportation also made Virginia prominent, with the state having 20% of the South's railroad mileage and its largest navy yard. Initially reluctant to leave the Union, it was President Lincoln's call for troops to coerce the Southern states back into an undesired union, more than the divisive issue of slavery that made Virginia secede.

As the confederate state that most closely bordered the Union, Virginia had to endure being the major battleground of the bloodiest war in America, and its capital was the primary target of Union forces. Sixty percent of the war's battles—three out of every five—took place in Virginia. No other area in the Western Hemisphere has ever been as devastated by war as was Virginia during the Civil War.

Dr. Robertson advised the Commission to help local committees in their planning efforts, since local history is the seed from which interest in the Civil War will bloom. He also cautioned that the 150th anniversary of the Civil War is a commemoration, not a celebration. There is no joy in remembering the days of the Civil War, but the

commemoration is done out of respect. It is only through learning from history that we can go forward. The commemoration, Dr. Robertson stated, must be done comprehensively, honestly, and fairly.

Dr. Charles Bryan, Jr., President and Chief Executive Officer of the Virginia Historic Society echoed Dr. Robertson's sentiments and emphasized that what was won in the Civil War was freedom for part of the population that was not free. Dr. Bryan asked the Commission to consider ways to make the commemoration relevant to all Virginians, including immigrants, some of whom came to the state to escape civil wars in their native countries.

### **Next Meeting**

The Commission agreed to meet again in late fall. Information pertaining to the next Commission meeting will be posted on the General Assembly's legislative meetings calendar and the study website.

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

**The Honorable William J. Howell, Chair**

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

General Assembly Building, 2nd Floor

910 Capitol Street

Richmond, Virginia 23219

Telephone (804) 786-3591

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

### ***Manufacturing Development Commission 9-7-2006***

The Manufacturing Development Commission was established by Senate Bill 261 held its first meeting at Virginia Tech's Advanced Research Institute in Arlington. Senator Wagner, chair of the commission, briefly described the genesis of the commission and staff briefly reviewed the 2006 legislation that came out of the Commission's predecessor, the Joint Subcommittee Studying Manufacturing Needs and the Future of Manufacturing in Virginia.

### **Machinery and Tools Tax**

In previous years, the former Joint Subcommittee Studying Manufacturing Needs and the Future of Manufacturing in Virginia recommended legislation to reform the machinery and tools tax. Issues surrounding the machinery and tools tax include the multiple ways in which the tax is calculated and the dependence of localities on the income generated by the tax.

Suzette Denslow with the Virginia Municipal League (VML) explained the history of the machinery and tools tax, which was originally considered an incentive to manufacturers in 1963. Since then, a complicated system has arisen in which each locality applies a different formula to calculate the cost. Most localities apply a sliding scale ration based on the original cost and the age of the equipment. Ms. Denslow also explained that the machinery and tools tax is the 8th most important local tax revenue source.

Mike Edwards with the Virginia Association of Counties (VACO) then went on to discuss the few localities that derive the majority of their income from the machinery and tools tax. He explained that in most cases, these are one mill localities, such as West Point (which derives over 52% of their revenue from the tax). He agreed that there are several problems with the tax, including the lack of uniform assessments and the use in some areas of the flat assessment ration, which may overstate the value of the equipment. Mr. Edwards firmly stated that both VACO and VML are eager to work with the Commission to improve the machinery and tools tax and to ensure the continuance of manufacturing in Virginia.

Secretary of Trade and Commerce, Patrick Gottschalk, reiterated that the manufacturing is an important part of Virginia's economy. He discussed the effort put forth to create a working group to study the taxing of idle equipment, as the Governor committed to do in his message vetoing Senate Bill 260 at the close of the 2006 Regular Session.

### **Cost of Regulatory Compliance**

Justin Brown with the Joint Legislative Audit and Review Commission (JLARC) discussed the methodology that was used in studying the cost of regulatory compliance in Virginia. JLARC, in accordance with SJR 350 from the 2005 Regular Session, studied the cost of compliance with environmental, economic, workplace and tax regulations imposed by the Commonwealth. Mr. Brown explained how the study was conducted, through case studies and surveys, as well as comparisons with other states. The final JLARC report will be released on October 10, 2006.

### **Virginia's Energy Plan**

The Chairman gave a brief review of Virginia's goal of becoming energy independent. He explained that this goal can be accomplished through monitoring the energy that we use, increasing efficiency and working to create an independent energy supply.

#### **Offshore Wind**

George Hagerman, with the Center for Energy and the Global Environment at Virginia Tech, discussed the

potential benefits of offshore wind farms. Mr. Hagerman explained that Virginia would be an ideal place to test wind produced energy because of the coastline. Blades longer than fifty feet cannot be used in the interior of the country because of the difficulties of shipping the blades over land. However, because Virginia has a coastline, offshore wind could be harnessed using blades up to seventy feet. The blades would have to be manufactured in a factory on the coast and shipped over water to the offshore windmill.

Mr. Hagerman also discussed potential benefits of renewable wind energy. Both the energy and the economic benefits created by wind would be renewable. Many sectors of industry would benefit from the economic development potential of the wind energy industry.

Concerns associated with offshore windmills include the possible visual nuisance. However, Mr. Hagerman explained that if the windmills were placed four miles offshore they would barely be visible from the shoreline. An additional concern is the effect that the windmills may have on migratory birds, and Mr. Hagerman conceded that this necessitated further study.

#### Offshore Petroleum

Jeff Krauss with the National Ocean Industries Association presented to the Commission a summary of offshore drilling. He explained that because of the current federally mandated moratorium on offshore drilling on the eastern shore, there is no way to be certain of the reserves that may be in the continental shelf. However, due to the hard work of state legislators, Virginia is the only coastal Atlantic state currently on the federal Minerals Management Services' five year plan. It is currently estimated that the continental shelf along the Atlantic coast of the United States contains 2.31 billion barrels of oil and 28.05 trillion cubic feet of natural gas. Of this amount, .81 billion barrels of oil and 9.72 cubic feet of natural gas are estimated to be located in the Mid-Atlantic region. This constitutes a very generous reserve that could help lead Virginia, and the United States, to becoming oil independent.

Mr. Krauss then explained the benefits of drilling, using the Gulf Coast as an example. In the Gulf of Mexico, oil and gas activities directly employs 85,000 people, and indirectly employs another 85,000. Additionally, more than three billion dollars has gone to Mississippi, Alabama, Texas and Louisiana since 1986 as a result of their offshore production of oil and gas. Mr. Krauss also explained that spills are highly unlikely and that the production of oil and gas in the Gulf of Mexico generates nine hundred million dollars for the Land and Water Conservation Fund annually. It is important to note that according to the National Academy of Science, less than one percent of petroleum in American waters is a result of drilling and

extraction. In fact, safety procedures have become so efficient that even during the damage caused by Hurricane Katrina, there was no significant spillage from offshore rigs.

#### Work Plan

Senator Wagner reiterated that this year Manufacturing Development Commission will focus primarily on the machinery and tools tax, the Virginia Energy Plan, and workforce issues.

#### *Manufacturing Development Commission*

**Senator Frank W. Wagner, Chair**

**Kathleen Shuey, DLS Staff**

**General Assembly Building, 2nd Floor**

**910 Capitol Street**

**Richmond, Virginia 23219**

**Telephone (804) 786-3591**

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

#### *Virginia Disability Commission 8-23-2006*

Members of the commission are Delegates Michele B. McQuigg (chair), Robert D. Orrock, Sr., Kathy J. Byron, and David J. Toscano; Senators Yvonne B. Miller and Linda T. Puller; citizen members Bev Fleming, Fred P. Orelove, Sandra A. Cook, C. W. Van Valkenburgh, and William F. Howell; and ex officio member Lieutenant Governor Bill Bolling. Chairman McQuigg welcomed the guest speakers and introduced Mary-Margaret Cash, Assistant Commissioner of the Department of Rehabilitative Services, who discussed the concept of Independent Living Services and Disability Services Boards (DSBs) in Virginia and announced the speakers who would provide more information on services and funding history.

#### **Statewide Plan for Independent Living (SPIL)**

**Lisa Grubb - Executive Director of the Statewide Independent Living Council (SILC)**

Ms. Grubb reviewed the statutory origin of the SILC and the State Plan for Independent Living (SPIL). The Rehabilitation Act of 1973, as amended, requires each state to establish a SILC in order to qualify for financial assistance under the Act. The mission of the SILC is to

promote effective policies, programs, and activities that maximize independence for Virginians with disabilities. The SILC must consist of a majority of people with disabilities who are not employed by the State or by a Center for Independent Living (CIL). The current SPIL, which contains seven goals, remains in effect from 2004 to 2007. Members requested information on SPIL goals, outcomes, as well as its annual budget.

**Kelly Hickok - Community Advocate, Resources for Independent Living in Richmond**

Ms. Hickok described the history of Centers for Independent Living (CILs) and the services they offer. Title VII of the Rehabilitation Act provided federal funding for state CILs, which are consumer-controlled, community-based, cross-disability, and nonresidential, private nonprofit agencies. By law, CILs must provide four core services: Independent Living Skills Training, information and referral, peer counseling, and advocacy. There are 16 CILs in Virginia, branch offices for consumers in outlying areas, and two satellite offices that plan to become free-standing CILs with additional funding. Currently, there are 5,989 people with disabilities in nursing homes in Virginia that have indicated to the Department of Medical Assistance Services that they want to leave—64 are age five or younger and 108 are minors between the ages of 6-20.

The Virginia Association of Centers for Independent Living (VACIL) is requesting \$ 2 million dollars to expand outreach and transition services to people in nursing homes located in the 16 CILs and to establish new CILs in Loudoun County, Middle Peninsula, the New River Valley, and Petersburg. Members asked for additional information regarding outcome measurements, the differences between satellite and branch offices, the places served, and the distribution of funds, as well as commented on funding to allow children to transition out of nursing homes.

**History of Funding for Centers of Independent Living**

**Theresa Preda - Director of Independent Living, Department of Rehabilitative Services**

Ms. Preda reported on the funding history of Centers for Independent Living (CILs). Her presentation included a map of Virginia that displayed CIL service coverage by planning district and she noted four areas that have not been served, but emphasized Virginia is one of only 15 states in the nation that provides more state than federal funding. State funding has steadily increased over the past two decades, although satellites receive far less funding than established CILs. Ms. Preda detailed the requirements mandated by law, including the four core services, an active Board of Directors and staff composed of a majority of disabled persons, standard legal and financial practices, and

the annual submission of data from all CILs to the Rehabilitation Services Administration. Members had questions regarding unserved areas, annual CIL objectives, and the number of disabled persons in each planning district.

**Disability Services Boards (DSBs)**

**Richard Kriner - DSB Program Manager for the Department of Rehabilitative Services**

Mr. Kriner discussed the history and funding of the 40 DSBs in Virginia and noted that reduced funding beginning in 2003 has hurt the provision of services, especially for sign language interpreters. Mr. Kriner described the Rehabilitative Services Incentive Fund (RSIF) and showed diagrams of counties that received grants, the levels of program investment, the numbers served in core areas, and the RSIF grant trends for fiscal years 2004-07. The DSBs rank transportation as the most common critical need, followed by housing, medical therapeutic services, and assistive technology. Options for transportation grants include purchased and subsidized rides, accessible vehicles, and a transportation brokerage system; housing grants have been applied to construct reusable home access, a nonprofit housing agency with low rent units, and funding for development of low income housing; and other grants for development of a pediatric feeding clinic, specialized brain injury management services, and an assistive technology and disability resources specialist. DSBs seek additional grants to fund an emergency management coordinator, a sign language interpreter training program at community college, and a loan closet to loan technology equipment. Members asked for more details on the budget and external review.

**Mike Hatfield - Disability Resources Coordinator, City of Alexandria DSB**

Mr. Hatfield described how in Alexandria an RSIF grant in 1998 enabled a successful three year employment initiative. As a result, nearly 70% of Alexandria's disabled residents are now members of the workforce providing a sharp contrast to national figures that show nearly 70% of disabled persons are unemployed. The Department of Labor's Office of Disability Employment Policy recognized The JobLink program in Alexandria as a national model and Best Practices site. The Alexandria DSB used its 2002 RSIF grant to test and provide audible pedestrian signals at traffic intersections, which successfully improved quality of life, safety, and mobility, so they are being installed throughout the city. Mr. Hatfield asked the commission to call for the full restoration of the RSIF, which will continue transportation improvement projects and meet needs for accessible medical services, insurance, and housing. There were 69 RSIF grants awarded in 2002, but by 2006, only 4 have been awarded.

### Joan Manley - Board Member of the Rockbridge DSB

Ms. Manley provided a more rural perspective on disability services and explained that DSBs must identify needs and promote awareness at the community level. Successful programs in Rockbridge include wheelchair ramps and the installation of a loop system for the hearing-impaired to hear speakers at public hearings. With additional funding, Rockbridge would like to pursue a DSB website, news reports, and community fairs to exchange new ideas.

### Public Comment

**John Congable - Senior Connections, The Capital Area Agency on Aging**

As the transportation coordinator for Smart Ride, Mr. Congable stated that there is a growing need for more and better transportation for the elderly, disabled, and low-income populations, and he briefed the commission on the planning of a community-based transportation system called *Ride Connection*, which is supported by the Regional Transportation Association. Mr. Congable explained that the Federal Transportation Administration (FTA) requires counties to hold open forums on special needs programs as a condition to receive transportation grants and appealed to the commission to target state legislation that would further local solutions to this transportation problem.

### Work Plan and Future Meetings

At the commission's next meeting, the members plan to examine state policies that promote employment of disabled persons, as well as the Medicaid Buy-in Program and the Virginia Work Task Force. At a fourth meeting, members plan to examine updates from the Housing Work Group on the visitability certification process, reports from the Joint Commission on Health Care and its Behavioral Health Care Subcommittee with endorsed legislation, a report from the Autism Council, a briefing on transportation initiatives, and review legislative proposals for the 2007 Session, including the repeal or extension of the 2007 sunset clause for the commission. Future meeting dates will be available on the General Assembly calendar and commission website as soon as they are available.

**Virginia Disability Commission  
Delegate Michèle B. McQuigg**

**Ellen Weston, DLS Staff**

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

## Legislative Commissions and Advisory Councils

<i>Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
Disability Commission	1:30 p.m., Wednesday, October 11, 2006 Patrick Henry Building, House Room 1	Ellen Weston
Freedom of Information Advisory Council	1:30 p.m., Wednesday, October 11, 2006 General Assembly Bldg, Senate Room A	Maria Everett, Alan Gernhardt
Small Business Commission	10:00 a.m., Friday, October 27, 2006 Roanoke Higher Education Center, Room 212	Frank Munyan
Virginia Unemployment Compensation Commission	2:00 p.m. Monday, October 30, 2006 General Assembly Bldg, Senate Room A	Frank Munyan

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

## REGULATORY ALERT

### A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as "proposed regulations" gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the Legislative Record will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth.

Access the *Virginia Register of Regulations* online at <http://legis.state.va.us/codecomm/register/regindex.htm> or contact [epalen@leg.state.va.us](mailto:epalen@leg.state.va.us) or the Code Commission staff at (804) 786-3591 for further information.

## **TITLE 4. CONSERVATION AND NATURAL RESOURCES**

### **DEPARTMENT OF MINES, MINERALS AND ENERGY**

4 VAC 25-130. Coal Surface Mining Reclamation Regulations. (amending 4 VAC 25-130-700.12, 4 VAC 25-130-773.21, 4 VAC 25-130-775.11, 4 VAC 25-130-775.13, 4 VAC 25-130-784.20, 4 VAC 25-130-800.51, 4 VAC 25-130-816.105, 4 VAC 25-130-817.11, 4 VAC 25-130-817.64, 4 VAC 25-130-817.121, 4 VAC 25-130-842.15, 4 VAC 25-130-843.12, 4 VAC 25-130-843.13, 4 VAC 25-130-843.15, 4 VAC 25-130-843.16, 4 VAC 25-130-845.13, 4 VAC 25-130-845.15, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, 4 VAC 25-130-846.14).

Written public comment may be submitted to the Department of Mines, Minerals and Energy until 5 p.m. on November 3, 2006.

*The proposed amendments (i) revise references to sections in the Virginia Administrative Process Act to reflect its current numbering, (ii) provide direction as to where requests for formal administrative review and notices of judicial appeal shall be filed, (iii) maintain consistency with corresponding federal amendments regarding survey requirements and the rebuttable presumption of subsidence determinations, (iv) maintain consistency with federal regulations regarding thick overburden, (v) maintain consistency between requirements for surface mines and underground mines, and (vi) increase the civil penalties for violations of the Virginia Coal Surface Mining Control and Reclamation Act that result in personal injury or fatality consistent with amendments to the Act.*

For additional information please contact Gavin Bledsoe, Department of Mines, Minerals and Energy, (276) 523-8157, FAX (275) 523-8163, or e-mail [gavin.bledsoe@dmme.virginia.gov](mailto:gavin.bledsoe@dmme.virginia.gov).

## **TITLE 12. HEALTH**

### **STATE BOARD OF HEALTH**

12 VAC 5-31. Virginia Emergency Medical Services Regulations (adding 12 VAC 5-31-2300 through 12 VAC 5-31-2970).

12 VAC 5-40. Regulations Governing Financial Assistance for Emergency Medical Services (repealing 12 VAC 5-40-10 through 12 VAC 5-40-190).

Written public comment may be submitted to the Department of Health until November 18, 2006.

*The proposed action repeals existing 12 VAC 5-40, Regulations Governing Financial Assistance for Emergency Medical Services, and concurrently adds those provisions to existing regulation 12 VAC 5-31. The proposed regulations (i) update the financial assistance requirements to reflect the practices that have been followed since the beginning of the 1990s and (ii) establish provisions to reflect the current practices followed regarding regional emergency medical services councils.*

For more information please contact Michael D. Berg, Regulation and Compliance, Department of Health, (804) 864-7600, FAX (804) 864-7580, or e-mail [michael.berg@vdh.virginia.gov](mailto:michael.berg@vdh.virginia.gov).



## STATE BOARD OF HEALTH

### **12 VAC 5-585. Biosolids Use Regulations (adding 12 VAC 5-585-760 through 12 VAC 5-585-830).**

A public hearing will be held October 4, 2006, at 7 p.m., Virginia Department of Health, Richmond, Virginia. Written public comment may be submitted to Virginia Department of Health until November 10, 2006.

*The amendment provides regulations and standards for training, testing, and certification of persons who land apply Class B sewage sludge (biosolids) in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause. The amended regulations are to include standards and criteria for the approval of instructional programs to be taught by governmental entities and by the private sector for the purpose of certifying biosolids land applicators.*

For more information please contact C.M. Sawyer, Virginia Department of Health, (804) 864-7463 or FAX (804) 864-7475.

## TITLE 13. HOUSING

### **VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

**REGISTRAR'S NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

### **13 VAC 10-50. Rules and Regulations for Home Rehabilitation Loans. (repealing 13 VAC 10-50-10 through 13 VAC 10-50-100).**

A public hearing will be held September 14, 2006, at 10 a.m., Virginia Housing Development Authority, Richmond, Virginia. Written public comment may be submitted to the Virginia Housing Development Authority until 5 p.m. on September 14, 2006.

*The authority's rules and regulations for the home rehabilitation loan program are being repealed because the program authorized by such rules and regulations has been terminated.*

For additional information please contact J. Judson McKellar, Jr., Virginia Housing Development Authority, (804) 343-5540, FAX (804) 783-6701, toll free 1-800-968-7837, or email judson.mckellar@vhda.com.

### **VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

### **13 VAC 10-120. Rules and Regulations for REACH Virginia (amending 13 VAC 10-120-10 through 13 VAC 10-120-80).**

A public hearing will be held September 14, 2006, at 10 a.m., Virginia Housing Development Authority, Richmond, Virginia. Written public comment may be submitted to the Virginia Housing Development Authority until 5 p.m. on September 14, 2006.

*The proposed amendments to the authority's rules and regulations for the Virginia Housing Fund will (i) include references to REACH Virginia that supersede the authority's Virginia Housing Fund and that provide increased funding for housing previously assisted by the authority through the Virginia Fund and (ii) make related technical changes.*

For additional information please contact J. Judson McKellar, Jr., Virginia Housing Development Authority, (804) 343-5540, FAX (804) 783-6701, toll free 1-800-968-7837, or email judson.mckellar@vhda.com.

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### **AUCTIONEERS BOARD**

### **18 VAC 25-21 Regulations of the Virginia Auctioneers Board (amending 18 VAC 25-21-80, 18 VAC 25-21-90, 18 VAC 25-21-180; adding 18 VAC 25-21-230 through 18 VAC 25-21-280).**

A public hearing will be held October 5, 2006, at 10 a.m., Department of Professional and Occupational Regulation, Richmond, Virginia. Written public comment may be submitted until November 3, 2006, Department of Professional and Occupational Regulation.

*The proposed amendments implement a mandatory continuing education program for the renewal and reinstatement of auctioneer licenses as required by Chapter 956 of the 2004 Acts of Assembly.*

For further information please contact Marian H. Brooks, Department of Professional and Occupational Regulation, (804) 367-8514, FAX (804) 367-0795, or e-mail auctioneers@dpor.virginia.gov.

### **CEMETERY BOARD**

### **18 VAC 47-20. Cemetery Board Rules and Regulations (amending 18 VAC 47-20-10; adding 18 VAC 47-20-35, 18 VAC 47-20-250, 18 VAC 47-20-260, 18 VAC 47-20-270; repealing 18 VAC 47-20-240).**

A public hearing will be held October 17, 2006, at 10:30 a.m., Department of Professional and Occupational Regulation, Richmond, Virginia. Written public comment may be submitted to the Department of Professional and Occupational Regulation until November 3, 2006.

To conform the regulations with Chapters 192 and 247 of the 2004 Acts of Assembly, the proposed amendments establish qualifications and standards of conduct for compliance agents employed by cemetery companies and add a section on protection of perpetual care and preneed trust funds.

For more information please contact Christine Martine, Department of Professional and Occupational Regulation, (804) 367-8552, FAX (804) 367-6946, or e-mail cemetery@dpor.virginia.gov.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

**18 VAC 120-40. Virginia Professional Boxing and Wrestling Events Regulations (amending 18 VAC 120-40-10, 18 VAC 120-40-20, 18 VAC 120-40-80 through 18 VAC 120-40-360, 18 VAC 120-40-390, 18 VAC 120-40-410, 18 VAC 120-40-420, 18 VAC 120-40-430; adding 18 VAC 120-40-15, 18 VAC 120-40-221, 18 VAC 120-40-222, 18 VAC 120-40-295, 18 VAC 120-40-342, 18 VAC 120-40-385, 18 VAC 120-40-411, 18 VAC 120-40-411.1 through 18 VAC 120-40-411.21, 18 VAC 120-40-415, 18 VAC 120-40-415.1, 18 VAC 120-40-415.2, 18 VAC 120-40-415.3; repealing 18 VAC 120-40-370, 18 VAC 120-40-380, 18 VAC 120-40-400).**

Written public comment may be submitted to the Department of Professional and Occupational Regulation until November 3, 2006.

*The proposed amendments include restructuring the regulations to better distinguish between boxing (including kick boxing, mixed martial arts, and other similar contests) and wrestling. The changes separate duties of event officials into two parts: (i) boxing, kick boxing and similar contests; and (ii) wrestling. The changes separate the event licensing and standards of conduct into three parts: (i) boxing; (ii) kick boxing and similar contests; and (iii) wrestling. The changes are made to comply with Chapter 287 of the 2005 Acts of Assembly that incorporate generally accepted industry standards and make the regulations easier to use.*

For additional information please contact Karen W. O'Neal, Department of Professional and Occupational Regulation, (804) 367-8537, FAX (804) 367-2475, or e-mail karen.oneal@dpor.virginia.gov.

## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

**22 VAC 40-20. Food Stamp Program - Income Conversion Method (repealing 22 VAC 40-20-10).**

**22 VAC 40-540. Allowance of Telephone Costs in the Food Stamp Program (repealing 22 VAC 40-540-10).**

**22 VAC 40-600. Food Stamp Program Administrative Disqualification Hearings (repealing 22 VAC 40-600-10 through 22 VAC 40-600-240).**

**22 VAC 40-601. Food Stamp Program (adding 22 VAC 40-601-10 through 22 VAC 40-601-40).**

Written public comment may be submitted to the Department of Social Services until November 3, 2006.

*This is a joint action to repeal three regulations, 22 VAC 40-20, 22 VAC 40-540, and 22 VAC 40-600, that affect different aspects of the Food Stamp Program and incorporate them into a single regulation to streamline the regulatory structure for the program. The new regulation, 22 VAC 40-601, will serve as a comprehensive regulation for the Food Stamp Program. The regulation addresses eligibility determination through the conversion of weekly or biweekly income to monthly amounts and use of a standard amount for the basic cost for telephone service. The regulation also includes an administrative hearing process to determine intentional program violations.*

For additional information please contact Celestine Jackson, Department of Social Services, (804) 726-7376, Fax (804) 726-7356, or e-mail celestine.jackson@dss.virginia.gov.

### STATE BOARD OF SOCIAL SERVICES

**22 VAC 40-25. Auxiliary Grants Program (amending 22 VAC 40-25-10 through 22 VAC 40-25-70; adding 22 VAC 40-25-45).**

Written public comment may be submitted to the Department of Social Services until November 3, 2006.

*This regulatory action updates terminology and establishes guidelines and expectations relative to (i) the requirements to participate in the Auxiliary Grants Program, (ii) minimum services to be provided, and (iii) establishment of reimbursable rates and reporting requirements. Changes provide that (a) only the recipient or representative is authorized to cash or deposit the auxiliary grant payment, (b) providers must submit an annual audit report instead of the current annual cost report, and (c) providers are prohibited from charging additional fees to recipients. The term "adult care residence" is replaced with "adult living facility."*

For more information please contact Sandra Coffey, Virginia Department of Social Services, (804) 662-9784, FAX (804) 662-7023, e-mail sandra.coffey@dss.virginia.

**22 VAC 40-41. Neighborhood Assistance Tax Credit Program (amending 22 VAC 40-41-10 through 22 VAC 40-41-50, 22 VAC 40-41-55 and 22 VAC 40-41-60).**

Written public comments may be submitted to the Virginia Department of Social Services until November 3, 2006.

*The Board of Social Services (board) proposes to amend the Neighborhood Assistance Tax Credit Program (program) by capping the tax credits available to any one eligible organization in a given year at*

\$500,000. The proposed regulation also promulgates an inclusion of an eligibility requirement that at least 60% of a program's clients must be impoverished and requires organizations that apply for inclusion into the program expend at least 75% of revenues received in any given year for ongoing programs during that year and limits the tax credit that can be taken by businesses that donate goods for sale, auction or raffle to the lesser of either Internal Revenue Service (IRS) valuation or actual proceeds generated for the eligible organization.

For additional information please contact J. Mark Grigsby, Virginia Department of Social Services, (804) 726-7922, FAX (804) 726-7946, or e-mail celestine.jackson@dss.virginia.gov.

#### STATE BOARD OF SOCIAL SERVICES

22 VAC 40-880. Child Support Enforcement Program (amending 22 VAC 40-880-200, 22 VAC 40-880-250,

22 VAC 40-880-270, 22 VAC 40-880-350 and 22 VAC 40-880-620).

Written public comments may be submitted to the Department of Social Services until November 3, 2006.

*The proposed amendments update outdated code cites and references to the noncustodial and custodial parents; outline DCSE requirements for consideration of self-employment tax paid in the computation of a support obligation; conform state regulations to state law; allow the department to negotiate for payment in full from the noncustodial parent before seized property is returned to the noncustodial parent; and give authority to the department to not issue refund checks for less than \$1.*

For more information please contact Cynthia Holdren, Department of Social Services, (804) 726-7474, FAX (804) 726-7482, or e-mail cynthia.holdren@dss.virginia.gov.

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