

**REPORT OF THE
STATE WATER STUDY COMMISSION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 39

**COMMONWEALTH OF VIRGINIA
RICHMOND
1983**

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1982**

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Charles J. Colgan, Vice-Chairman
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J. Paul Councill, Jr.
James H. Dillard, II
Glenn B. McClanan
Wiley F. Mitchell, Jr.
James B. Murray
William T. Parker
Robert R. Peters, P.E.
J. Lewis Rawls, Jr.
Leonard Shabman
Mary Sue Terry
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Terry L. Brown, Secretary

**Report of the
State Water Study Commission
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1983**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

BACKGROUND

The State Water Study Commission was continued pursuant to House Joint Resolution No. 13 (1982). New to the Commission this past year were Delegates James B. Murray and Mary Sue Terry, and citizen member Leonard Shabman.

Delegate Lewis W. Parker, Jr., and Senator Charles J. Colgan were re-elected by the Commission as its chairman and vice chairman, respectively.

MATTERS STUDIED IN 1982

The Commission continued in 1982, as it has since its establishment, to study water supply and allocation problems facing the Commonwealth. Following its study during 1981, the Commission had recommended three legislative proposals to the 1982 Session of the General Assembly.

Amendments to the Groundwater Act

House Bill No. 157 sought to address deficiencies existing in the present Groundwater Act. The exemption of municipalities from the provisions of this law was judged to be its most serious defect. Other changes proposed to the Act would have lowered the amount of groundwater pumpage that would bring someone under the provisions of the Act, required well drillers to furnish information on new wells, changed the basis upon which withdrawals are grandfathered, and established a new fee system for permitted withdrawals.

When this bill was heard in committee during the Session, several aspects of it were opposed by various individuals. Its chief sponsor then withdrew the legislation, requesting that the Commission give it further study during 1983.

Regulation of Water Well Drillers

House Bill No. 241, a measure which had been introduced in a similar format several years ago but informally referred to the Commission for study, addressed the regulation and licensure of water well drillers. State agencies and representatives of the industry itself had testified before the Commission in favor of this measure, saying it was needed to help protect the public welfare from the improper drilling of wells. The bill called for the establishment of a five-member board charged with responsibility for the regulation of the well drilling profession and the licensure of its members.

This legislation also faced opposition when heard in committee during the last Session. The Administration questioned the need for the establishment of a new regulatory board and suggested that a current board, such as the State Reigstration Board for Contractors, might be well-qualified to take on this additional responsibility. The Administration requested, and the legislature agreed to, the deferral of action on this bill until after the Session so that the Administration could formulate a better method of regulating this profession. The Commission agreed to take the responsibility for further legislative study of this matter.

Interbasin Transfer

The Commission also recommended that the 1982 General Assembly approve House Bill No. 503, which would have put into place an administrative framework to allow and regulate the interbasin

transfer of water. The proposed statute would have authorized the State Water Control Board to issue permits for the transfer of water from one basin to another when it determined that the issuance of such a permit is in the public interest. Criteria for judging whether a transfer would be in the public interest was included in the legislation. The Act also would have established a system under which a permittee would make payments for withdrawals; these payments were to be divided among the Water Control Board, the locality from which the water was withdrawn, and localities adjoining this donor locality.

This legislation faced considerable opposition during the Session and was withdrawn by its patron. The Commission agreed to give it further study during 1982.

1982 ACTIVITIES

During 1982, the Commission held a number of meetings, addressing the three proposals which it had agreed to further consider. It held public hearings in the fall of 1982 in Clarksville, Virginia Beach, West Point, and Suffolk. The meetings were very well attended, and at each one, a number of speakers addressed the Commission. A synthesis of the public's comments on each of the legislative proposals addressed follows.

Amendments to the Groundwater Act (H.B. No. 157)

Most of the interest in this legislation came from individuals and localities in Southeastern Virginia. This is understandable, since this area and a portion of the Eastern Shore are the only parts of the State affected by the Act. The Commission heard testimony for and against this bill by individuals, interest groups, and professional organizations. The Virginia Manufacturer's Association, for example, supported amendments that would have expanded the regulatory authority of the Act, but asked that this expansion be furthered beyond what was in the bill. The Farm Bureau favored H.B. No. 157 as drafted, which continued exemptions for agricultural use of groundwater.

Likewise, local governments, which showed the greatest interest in this measure; were mixed in their reactions to it. Prince George County, for instance, opposed amendments to the Groundwater Act until acceptable water management agreements are adopted by Southeastern Virginia governments. Portsmouth asked that the provisions of any legislation ensure that existing municipal water systems are protected and allowed to be improved and expanded as necessary. A major criticism of current law by Suffolk was that the Groundwater Act fails to provide for maximum utilization of the resource it seeks to protect; H.B. No. 157 should be amended, the city believes, to remove this deficiency from the law.

The Commission heard testimony from farmers and others about the large use made of ground and surface water for irrigation purposes. Some of those testifying argued that any meaningful management program for groundwater resources must include irrigation uses in agriculture. They urged that large agricultural users be required to obtain withdrawal permits.

Regulation of Water Well Drillers (H.B. No. 241)

Support for the regulation and licensure of well drillers can be found in all areas of the Commonwealth. At its public hearings, the Commission heard testimony favoring H.B. No. 241 or similar legislation from representatives of the Virginia Society of Professional Engineers, the Water Well Association, and the Virginia Society of the American Water Works Association, as well as individuals and local governments. The Chairman of York County's Board of Supervisors expressed concern about improper well installation practices and the effect they may have on the county's groundwater resources.

The Commission did hear differing opinions on which entity should license well drillers. While H.B. No. 241 envisioned the establishment of a new board for this purpose, testimony by some individuals favored using a board or agency which already exists.

The Commission heard no one, at its public hearings and its other meetings, who opposed the licensure and regulation of well drillers.

Interbasin Transfer (H.B. No. 503)

Of the three legislative proposals under consideration by the Commission, that which elicited the most interest and the greatest number of comments was H.B. No. 503. At three of the four public hearings held by the Commission, nearly all the speakers devoted some portion of their comments to this measure. In general, opposition to the concept of interbasin transfer came from those less populated areas of the Commonwealth that have the potential to become donor areas should a water transfer take place. Proponents of the concept, on the other hand, came from populous water-short localities. In addition, the Commission found that professional societies concerned with the provision of water (e.g., Virginia Section of the American Water Works Association, Virginia Society of Professional Engineers) tend to favor the interbasin concept.

Those who spoke against H.B. No. 503 gave many and varied reasons for their opposition to it. Some, for instance, disliked the concept itself, while others did not want a state agency to administer an interbasin transfer program, and still others sought greater protection for water supplies of donor areas. Even those who favored the legislation generally felt that it needed revision; some proponents, for example, suggested that the payment format included in the bill should be reworked or discarded altogether.

Some of the Commission's most interesting testimony on interbasin transfer came from the City of Virginia Beach. While the City would support interbasin transfer legislation that would meet its needs, or a bill that states clearly what the City believes present law to be, its representatives said they no longer feel the need for new interbasin transfer legislation. Current law, they believe permits such transfer by:

- a) acquisition of riparian rights by the locality seeking the water, and
- b) use of condemnation powers, which are set out in § 15.1-875 and incorporated into the City's charter, to acquire land for pipelines, pumping stations, etc.

RECOMMENDATIONS

The State Water Study Commission makes the following recommendations.

1. Legislation should be enacted to provide for the licensure and regulation of well drillers.
2. The Commission should be continued through 1983. During the year, the Commission should continue to develop legislation to address Virginia's water supply problems. Special consideration should be given to interbasin transfer legislation and revisions to the Groundwater Act.

Legislation to implement these recommendations can be found in the Appendices to this Report.

Respectfully submitted,

Lewis W. Parker, Jr.
Charles J. Colgan
Howard P. Anderson
J. Paul Councill, Jr.
James H. Dillard, II
Glenn B. McClanan
Wiley F. Mitchell, Jr.
William T. Parker
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*James B. Murray was no longer a member of this Commission at the time this report was made.

APPENDIX A

HOUSE BILL NO. 367

Offered January 20, 1983

A BILL to amend and reenact §§ 54-113 and 54-115 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54-129.4 relating to the Board of Contractors and its responsibilities.

Patrons—Council, Parker, and Dillard

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-113 and 54-115 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54-129.4 as follows:

§ 54-113. Meaning of terms.—The following terms used in this chapter, unless the context otherwise requires, are for the purposes hereof defined as given below:

- (1) "Board" shall mean the State Board for Contractors.
- (2) "Contractor" shall mean any person, firm, association, or corporation that for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled or leased by another person or any other improvements to such real property.
- (3) "Person" shall mean any person, firm, corporation, association, partnership, joint venture or other legal entity.
- (4) The singular personal pronoun shall be taken to include any person, firm, association, corporation, partnership, joint venture or other legal entity.
- (5) [Repealed.]
- (6) The phrase, "any other improvements to such real property," shall not be construed to include horticulture, nursery or forest products.
- (7) "Department" shall mean the Department of Commerce.
- (8) "Director" shall mean the Director of the Department of Commerce.
- (9) "License" shall mean a method of regulation whereby the practice of the profession or occupation licensed is unlawful without the issuance of a license.
- (10) "Class A contractors" are those performing construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$40,000 or more or (ii) the

total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$300,000 or more.

(11) "Value" shall mean fair market value. When improvements are performed or supervised by a general contractor or subcontractor, the contract price shall be prima facie evidence of value.

(12) "Class B contractors" are those performing construction, removal, repair or improvements when (i) the total value referred to in a single contract or project is less than \$40,000, and (ii) ~~when~~ the work performed in such contract is \$1,500 or more.

(13) "Well driller" means any person who constructs, alters or repairs wells.

(14) "Well" means any artificial excavation constructed by any method which is capable of extracting water from, or injecting water into, the ground. It shall include, but not be limited to, water-table wells, artesian wells, core-boring holes, recharge wells, drainage wells, geothermal wells, and waste disposal wells.

(15) "Well construction" means the development of any well, including the construction, alteration, or repair thereof, but excluding the installation of pumps and pumping equipment.

§ 54-115. Qualifications and terms of members.—The Board shall consist of ~~nine~~ eleven members to be appointed for terms of five years, save for initial terms beginning July 1, 1980.

The larger part of the business of one member of the Board shall be the construction of highways; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single - family residences; the larger part of the business of one member shall be the construction of home improvements; and one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; *two members shall be in the business of well construction* and there shall be two citizen members.

§ 54-129.4. Application for well driller license; fees; examination and issuance.—*After July 1, 1983, any person desiring to be licensed as a well driller, as defined in § 54-113 of this Code, shall set forth information of the ability, character and financial position of the applicant, and shall submit an affidavit regarding the correctness of its contents. It shall be the responsibility of the Board to ascertain whether the past performance record of an applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purposes and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter.*

If the application is satisfactory to the Board, the applicant may be required to take an oral or written examination to determine his qualifications when required by the rules and regulations of the Board. If an applicant is deemed fit, a license to engage as a well driller in this Commonwealth shall be issued.

APPENDIX B

HOUSE JOINT RESOLUTION NO. 67

Offered January 24, 1983

Continuing the State Water Study Commission.

Patrons—Parker, Council, Dillard, Terry, and McClanan

Referred to the Committee on Rules

WHEREAS, the State Water Study Commission was created in 1977 pursuant to House Joint Resolution No. 236 to recommend to the General Assembly ways to address water supply and allocation problems, particularly in Northern and Southeastern Virginia; and

WHEREAS, the State Water Study Commission was continued by subsequent resolutions adopted since that time; and

WHEREAS, the State Water Study Commission has observed that many of the present laws, doctrines, policies and practices of the Commonwealth applicable to the use and allocation of the water resources of the Commonwealth may be inadequate to assure economically and environmentally effective management; and

WHEREAS, there exist critical present and potential areas of concern with regard to the water supply of the Commonwealth; and

WHEREAS, the Commission has sought to address these concerns through various legislative proposals; and

WHEREAS, further consideration of legislative proposals is needed to attempt to alleviate the Commonwealth's water supply and allocation problems; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Water Study Commission is continued. The Commission is requested to continue to study and make recommendations with regard to the water supply and allocation problems of the Commonwealth. The State Water Control Board and other agencies of the Commonwealth are directed to continue to assist the Commission upon request.

The membership of the Commission shall remain the same. If a vacancy occurs for any reason, it shall be filled in the same manner as the appointment of the original members.

All members of the Commission shall be entitled to such compensation as is set forth in § 14.1-18 for each day or part thereof devoted to their duties as members of the Commission. In addition to such compensation, all members shall be reimbursed for the actual and necessary expenses incurred in the performance of Commission duties.

For these and other purposes, the Commission is hereby allocated from the general appropriation to the General Assembly the unexpended balance of such sums as were allocated by Senate Joint Resolution No. 1 of 1978.

The Commission shall submit any recommendations it deems advisable to the Governor and the 1984 Sesion of the General Assembly.

