

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**Ways to Provide
Legislative Intent**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 66

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**

MEMBERS OF SUBCOMMITTEE

Delegate Bernard S. Cohen, Chairman
Senator Edward M. Holland, Vice Chairman
Senator Joseph B. Benedetti
Delegate C. Richard Cranwell
Delegate Clinton Miller
Senator Wiley F. Mitchell, Jr.
Delegate William Roscoe Reynolds

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Report of the Joint Subcommittee Studying
Ways to Provide Legislative Intent
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
March, 1989

To: The Honorable Gerald L. Baliles, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, House Joint Resolution No. 29, agreed to during the 1988 Session of the General Assembly, established a joint subcommittee to study ways to provide legislative intent.

HOUSE JOINT RESOLUTION NO. 29

Creating a subcommittee to study ways to provide legislative intent.

Agreed to by the House of Delegates, February 16, 1988
Agreed to by the Senate, March 2, 1988

WHEREAS, regardless of how clear or intelligible a provision of law may be, many times it is of great benefit to the judicial system to understand the reason or purpose to be accomplished by its enactment; and

WHEREAS, although Congress maintains verbatim records of the deliberations, virtually all state legislatures, including Virginia's legislature, do not; and

WHEREAS, because of the omission, legislative history as a source of legislative intent is almost nonexistent; and

WHEREAS, it seems reasonable that some efforts should be made within the legislative process to record the intent of legislative actions, at least substantially significant ones; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is created to study means of recording indications of intent for legislative actions. The subcommittee shall consist of four members of the House of Delegates appointed by the Speaker and three members of the Senate appointed by the Senate Privileges and Elections Committee.

The subcommittee shall complete its study prior to the 1989 Session of the General Assembly.

The indirect costs of the study are estimated to be \$10,650; the direct costs shall not exceed \$5,040.

The resolution provided that the Subcommittee would be composed of four members of the House of Delegates and three members of the Senate. The legislative members appointed to serve on the subcommittee were: Delegate Bernard S. Cohen, sponsor of the resolution; Senator Joseph B. Benedetti; Delegate C. Richard Cranwell; Senator Edward M. Holland; Delegate Clinton Miller; Senator Wiley F. Mitchell, Jr.; and Delegate William Roscoe Reynolds. The Subcommittee elected Delegate Cohen to serve as Chairman and Senator Holland to serve as Vice Chairman.

House Joint Resolution No. 29 directed the Joint Subcommittee to study means of recording indications of intent for legislative actions. The resolution stated that legislative history as a source of legislative intent was almost nonexistent and that some effort should be made within the legislative process to record the intent of legislative actions, at least the legislative actions of substantially significant bills. The resolution also noted that most state legislatures did not maintain verbatim records of the deliberations on legislation.

BACKGROUND

There have not been any previous legislative studies in Virginia focusing on recording indications of intent for legislative actions. However, there have been numerous studies on legislative management, a topic which was determined to be beyond the scope of this study.

Senate Document No. 5, 1970 Session. The Report of the Commission on the Legislative Process included recommendations pertaining to the constitutional provisions, physical facilities of the legislature, the processing of bills, the organization and staffing for the legislature, compensation for legislators and the continuation of the study.

House Document No. 28, 1972 Session. The Report of the Commission on the Legislative Process contained further recommendations regarding constitutional implementation, facilitation of the legislative process and other matters related to the legislative process.

House Document No. 13, 1973 Session. The Report of the Commission on the Legislative Process recommended changes in staffing, computer technology, procedures and facilities of the legislature.

House Document No. 35, 1974 Session. The Report of the Commission on the Legislative Process included recommendations pertaining to the renovation of the Capitol building, the preparation of the budget, computer technology and the continuation of the Commission.

House Document No. 32, 1975 Session. The Report of the Commission on the Legislative Process recommended the renovation of the Life of Virginia Insurance Building to provide legislative offices, centralized staffing, further development of the legislative computer operations and a careful review of study requests by the Rules Committees of the House of Delegates and the Senate.

House Document No. 26, 1976 Session. The Report of the Commission on the Legislative Process contained recommendations pertaining to study requests, study reports and payment of expenses for citizens appointed to serve on study committees.

House Document No. 25, 1984 Session. The Report of the Joint Subcommittee Studying Legislative Management issued recommendations in technology, public access, committee deliberations, legislative flow and the continuation of the study.

House Document No. 14, 1986 Session. The Report of the Joint Subcommittee Studying Legislative Management included findings of the Subcommittee pertaining to technology, public access, committee deliberations and legislative flow.

FINDINGS

Section 30-28.18 of the Code of Virginia was amended during the 1988 Session of the General Assembly by House Bill No. 314 (Chapter 214 - 1988 Acts of Assembly). The legislation was sponsored by Delegate Cohen. The statute previously provided that all requests for the drafting of bills or resolutions shall be submitted in writing and shall contain a general statement respecting the policies and purposes which the Governor, member or agency head making the request desires incorporated in and accomplished by the bill. It also provided that the contents or nature of the request or statements shall not be revealed by the Director or any employee of the Division of Legislative Services to any person outside of the Division without the consent of the requester.

The amendment to § 30-28.18 contained in Delegate Cohen's bill designated the first paragraph of the section as subsection A and added a subsection B. The bill provided that all legislative drafting requests and accompanying documents shall be maintained by the Division of Legislative Services as permanent records. Each of these separate files shall be considered the property of the requester until the July 1 immediately following the legislative session for which the legislation was drafted or the effective date of enacted legislation, whichever is earlier. During that time no one other than members of the Division staff shall have access to any legislative drafting file without the specific approval of the requester. After that time, the files shall become public property. This amendment to § 30-28.18 became effective July 1, 1988.

The Subcommittee determined that the provisions of § 30-28.18 requiring the submission of a written request containing a general statement respecting the policies and purposes which the draft legislation should incorporate and accomplish with every legislative drafting request were not currently complied with by a majority of the legislators. It was noted that legislators frequently requested legislation during telephone conversations, in the halls and corridors of the State Capitol Building or the General Assembly Building, or during a meeting, and not in writing as required by statute.

Unlike the federal government, which maintains transcripts of committee and floor proceedings, most state governments do not formally record legislative intent. A survey of neighboring states was conducted. A letter was sent to the director of the legislative staffing agency of the following neighboring states: Kentucky, Maryland, North Carolina, Tennessee and West Virginia. The directors were advised of this study and requested to respond with information on the recording of legislative intent in their respective states. Responses were received from Kentucky, Maryland, Tennessee and West Virginia. A copy of each state's response is included in Appendix I. The results of the survey follow:

SURVEY OF NEIGHBORING STATES

Kentucky

There is no formalized method of evidencing legislative intent in Kentucky, other than the actual wording of statutes. Persons interested in demonstrating the legislative intent of a statute will often utilize the minutes of interim legislative committee meetings during which the legislation was discussed or the texts of study or task force reports which propose new legislation. These resources are not available for many of the bills which pass the Kentucky General Assembly.

It appears that Kentucky's and Virginia's situations are similar regarding the recording of legislative intent.

Maryland

The majority of the legislation enacted by the Maryland General Assembly is not from special studies for which reports are written. However committee files on legislation referred to the committee are available to the public. The files are initially maintained in the committee's office and then placed in the Legislative Services Library. A pilot program establishing a committee report system provides for an analysis of each bill. It is anticipated that this pilot program will develop a record of legislative intent. This program does not apply to every committee. The committee or floor report (i) discusses amendments made to the bill, (ii) summarizes the purpose or intent

of the bill and provides insight into the problems the legislation is attempting to address, and (iii) summarizes the testimony or comments of each member of the legislature and members of the public on the legislation. The floor reports are initially only given to the chairman of the committee; afterwards they become public records.

Contractual attorneys often are hired to prepare the reports due to the time restraints on regular legislative staff personnel. In Maryland, there is more of a distinction between the drafting staff and the legislative staff than in Virginia. In addition there are only ten standing committees in Maryland's legislature - four in the Senate and six in the House of Delegates. Each committee is staffed by two attorneys. One of the committees involved in the pilot program has its committee or floor report prepared by staff counsel; the other committees involved in the program hire outside counsel.

Maryland does not record debate in committee or on the floor. Legislation is introduced annually to allow the recording of the proceedings, but the legislation is defeated each year. The pilot project in which the Department of Legislative Reference is involved compiles legislative history on a systematic basis as a permanent record. The documents have been used by the Court of Appeals in Maryland to ascertain legislative intent. Examples of these reports are contained in Appendix II.

Tennessee

The most prevalent form of recording the intent of the Tennessee General Assembly in passing legislation is the use of committee reports, similar to the system utilized in Virginia. Upon completion of studies or investigations into a particular issue, the standing committee or study subcommittee usually issues a report which contains draft legislation that embodies the committee's findings and recommendations. The report is the official statement of the committee and a public document. Usually the report explains and justifies the committee's position on the issue; however, draft legislation stands by itself in many committee reports.

As in Virginia, the great majority of legislation introduced during any given session of the Tennessee General Assembly does not result from a committee study. Therefore, there are no reports issued which would be of assistance in determining legislative intent.

Occasionally legislation will contain a preamble or separate section which expresses the General Assembly's intent. In Tennessee, legislative intent sections are often utilized when legislation is controversial, when there is some doubt as to its constitutionality or when the passage of the legislation would require a large expenditure of state revenues. However, the great majority of legislation introduced during any given session would not contain a section expressing legislative intent.

Audio tapes of committee and floor debate are maintained by the State Library and Archives. During debates, the sponsor of the legislation or another member will comment on legislative intent or the bill's merits. Statements relative to legislative intent are also contained in the Journal of the House or Senate.

Tennessee courts have generally been reluctant to admit as evidence committee or floor debate or expressions of legislative intent contained in the Journal unless the legislation is obviously ambiguous. It may also be argued that these personal expressions of legislative intent only reflect the position of one legislator.

West Virginia

West Virginia currently has no formal method of recording legislative intent beyond referring to the acts and journals of the legislature. Minutes of committee meetings are available, but the minutes only reveal motions and amendments. Court rulings and Attorney General opinions are really the only methods available for clarification and analysis of legislative acts.

During the deliberations of the Subcommittee, the members considered the following issues pertaining to the recording of legislative intent:

1. Should committee meetings be taped? During the legislative sessions of the early 1980's the House Clerk's Office provided for the taping of the committee meetings of selected committees. In the years that followed, persons inquiring as to whether a particular issue had been discussed before the committee prior to the floor vote on the legislation could be referred to the Clerk's Office, which would provide information regarding access to the tape. The taping of the selected committees was terminated after one or two years. Whether the taping of committee meetings should be reactivated could be explored by the joint subcommittee.

2. Should legislation include policy and intent statements? There is an established trend in legislative drafting to eliminate legislative intent or policy statements from new legislation. The Virginia Code Commission has endorsed this practice and staff involved in recent title recodifications are instructed to delete or repeal these statements from the legislation. Unless a patron insists, legislative intent and policy statements are also eliminated from drafts of legislation. However, it is often possible to include the intent in a preamble, which will not be codified, or in the powers and duties section of the relevant agency or board. The joint subcommittee may wish to consider whether policy and legislative intent statements should be included in legislation as a separate code section as is often found in older legislation.

3. Should a statement of legislative intent be provided for all legislation introduced or only for major or complex legislation? Although it appears to be a simple matter to ascertain whether legislation is complex, who would be responsible for determining whether legislation was major - the sponsor, the appropriate Rules Committee, a special committee or subcommittee, the Clerk's Office, the draftsman, etc.?

4. Would the statement of legislative intent be amended if major amendments completely revise the bill? Sometimes bills are subjected to numerous substitutes and amendments which completely alter the bill's original intention. At other times bills are redrafted to the point that the patron may request that the bill be stricken. Often a request to strike is honored, but occasionally members are told that once a bill is introduced and referred to a committee it belongs to that committee. In these instances, the request to strike is denied. In this situation the original patron would probably prefer not to have his name associated with the bill, much less a statement of intent on the revised bill bearing his name.

5. Who would be responsible for preparing the statement of legislative intent - the legislator sponsoring the bill, his legislative assistant, the draftsman of the legislation or the staff person of the committee to which the bill is assigned? Currently, § 30-28.18 of the Code of Virginia requires the requester to submit with his legislative request a general statement of the policies and purposes he desires to be incorporated in and accomplished by the bill. Although a majority of the requesters do not submit this statement, those that are submitted would be beneficial to the person responsible for preparing the statement of legislative intent. If the draftsman or committee staff prepares the statement, the time restraints of the staff during the session should be considered. Unlike Maryland, which has separate staffs for bill drafting and committee work, the same office in Virginia drafts the legislation and staffs the committees. Amendments and substitutes must be prepared, subcommittees must also be staffed and summaries prepared for either the entire committee or for the chairman of the committee. In addition, although most committees are staffed by two persons, several committees have only one staff person. If a person other than the legislator prepares the statement, should the statement be approved by the patron prior to becoming a public document? Should the patron be required to approve or amend the statement within a certain time frame? Some legislators may not have time to review the statements prior to the end of the legislative session.

6. What should be included in the statement of intent?

7. For what purposes would the statement of intent be utilized? Is it anticipated that the intent statement would be applied in court cases and decisions?

8. Are there objections to the retention of legislative intent which should be considered by the joint subcommittee?

9. Is legislation anticipated to implement this program? Would the program be operated on an experimental level at first to work out problems not anticipated by the joint subcommittee in its development of the program? Would the Rules of the House of Delegates and Senate need amending to encompass this program? Would legislation be required?

The Subcommittee members considered the issue of whether a legislative history system should be established in Virginia. The Subcommittee recognized that many inquiries for information about legislative intent concern a particular portion of the statute instead of the intent of the entire legislation, or pertain to reasons for the deletion or insertion of specific language in the statute. The Subcommittee decided that a new system for providing legislative history should not be created at this time, but that the material and other information which currently comprise Virginia's legislative history should be maintained in a more concise and systematic manner.

RECOMMENDATIONS

1. Members of the General Assembly are encouraged to comply with the provisions of § 30-28.18 and provide a written request for the drafting of legislation which includes a statement regarding the policies and purposes of the proposed legislation.

Drafting requests and compliance with § 30-28.18. The Subcommittee ascertained that a majority of the members of the General Assembly were not in compliance with the provisions of § 30-28.18 requiring a written request for the drafting of legislation. The written request should contain a statement regarding the policies and purposes of the proposed legislation as required by the statute. The Subcommittee agreed to request the appropriate Rules Committee to encourage members to comply with § 30-28.18, requiring a written request for the drafting of legislation, in addition to a statement regarding the policies and purposes of the proposed legislation. The Rules Committees may wish to remind members of the General Assembly in a memorandum of the requirements of the statute and inform them that in the future the section would be enforced.

2. All amendments presented to a standing committee which are reduced to writing should be retained in the bill jacket folder and designated as "accepted," "rejected," or "rejected by lack of a second."

"Bill jacket folder and the Journal of the House of Delegates and Senate of Virginia." During the deliberations of the Subcommittee a question was raised as to whether rejected amendments were detailed in the Journals. Mr. Holleman, Clerk of the House of Delegates, responded that amendments rejected on the floor are included in the Journal but that amendments which are rejected in committee are not retained in the bill jacket folder. Since there is no floor action on the amendments rejected by committee, the rejected amendments do not appear in the Journals. It was noted that the inclusion of these committee rejected amendments would greatly expand the size of the Journal.

Members of the Subcommittee observed that a retention of rejected amendments would assist in compiling the legislative history of a bill. Any person interested in whether a specific amendment or issue had been considered by a committee would be able to review the amendments contained in the bill jacket folder. After lengthy discussion of this matter, it was agreed that every amendment that has been presented to the committee in writing should be retained in the bill jacket folder and designated as "accepted," "rejected," or "rejected by lack of a second."

The Subcommittee recognized the fact that some committees vote on the merits or the concept of an amendment prior to the drafting of the amendment and that it may place a hardship on committee staff to prepare written amendments to legislation in these instances. In addition, some bills are the subject of numerous and similar amendments. It was agreed that all amendments presented to the committee which are reduced to writing should be maintained in the bill jacket folder; however, an amendment need not be in writing for the committee to consider it. This recommendation would not place additional responsibilities on staff to reduce every amendment considered by a standing committee to a bill or resolution to writing, but ensures that those amendments which are in writing, whether they are accepted or rejected, be identified as such and placed in the bill jacket folder as part of the permanent record.

3. All information pertaining to a specific bill or resolution shall be maintained in one central location with easy public access (the Virginia State Library and Archives). The information contained in the permanent files of the bill includes, but is not limited to (i) the written request for drafting and the intent statement submitted by the requestor pursuant to § 30-28.18, (ii) all committee amendments which have been reduced to writing, and (iii) documents and material currently placed in the bill jacket folder by the respective clerks.

Retention of the bill jacket folder and written requests for information pursuant to § 30-28.18 in a central location with easy public access. The Subcommittee members determined that the information submitted to the Division of Legislative Services in the drafting requests pursuant to § 30-28.18 should eventually be placed in the same file as the bill jacket folder. The Clerk of the House of Delegates indicated that currently the bill jacket folders are retained in the House Clerk's Office in the General Assembly Building for one year and then submitted to the State Library and Archives. The legislative request files of the Division of Legislative Services are retained in the General Assembly Building for five years and then microfilmed.

Until the passage of House Bill No. 314 in the 1988 Session of the General Assembly (Chapter 214 of the 1988 Acts of Assembly), the legislative request files were confidential and not accessible to the public. However, the amendment to § 30-28.18 provided in House Bill No. 314 stipulated that these files will become public records either on the July first immediately following the legislative session for which the legislation was drafted, or the effective date of the enacted legislation, whichever date is earlier. The bill jacket folders located in the Clerk's Office are currently public records.

The Subcommittee directed the Director of the Division of Legislative Services and the Clerk of the House of Delegates to meet with Clerk of the Senate to develop a proposal for the retention of these materials in one depository. The Director, the librarian of the Division's library and the two Clerks met with Dr. Louis H. Manarin, the State Archivist who administers the Archives and Records Division of the Virginia State Library and Archives. Several meetings were held to consider the logistics of consolidating the information contained in the bill jackets and in the pending legislation files maintained by the Division of Legislative Services.

It was noted during the Subcommittee's deliberations and in the meetings with the State Archivist that some of the material maintained by the Division of Legislative Services in the drafting request files may need to be retained in that Division for one or two years prior to being placed in the bill jacket folder. Persons wishing to access the written request for legislation and the supporting materials submitted with the request may have to go to two separate places during the first two years after the legislation is enacted.

The State Archivist will be responsible for implementing the system for maintaining and accessing this legislative information in accordance with the Virginia Public Records Act (§ 42.1-76 et seq.).

4. Any member of the general assembly may submit material to be included in the bill jacket folder.

Memo to be prepared on motion of any member. The Subcommittee recommends the preparation of a one-page memorandum regarding the bill on the motion of any member of the General Assembly. The memorandum shall be prepared by the member making the motion or by the person designated in the motion. The memorandum will be placed in the bill jacket folder. In addition, any material the patron or any other member of the General Assembly would like to submit on the bill will be maintained in the bill jacket folder. Material submitted for inclusion in the bill jacket folder should be submitted to the Clerk in possession of the bill jacket folder.

5. The taping of the committee meetings should not be resumed.

The taping of the committee meetings should not be resumed. The Subcommittee members determined that the taping of the committee meetings proved not to be cost-effective in the past. Mr. Jay Sears, who is currently responsible for the videotaping of the sessions in the chambers of the House of Delegates and the Senate, responded to questions before the Subcommittee and stated that the taping of the committee meetings generated numerous tapes and utilized a lot of his time. The Subcommittee agreed not to recommend that the taping of committee meetings be resumed at this time.

6. The Virginia Code Commission should consider the length of its reports pertaining to the recodification of specific titles of the Code of Virginia and determine the necessity of an additional method to inform members of the General Assembly of the policy decisions or substantive revisions contained in the legislation.

Code Commission bills. Code Commission bills sometimes contain policy decisions or substantive revisions which are not always communicated to members in the discussion of the bill in the committee or on the floor. Although this information is contained in the report of the Code Commission on the bill in the revisor's note to each section, indications of these policy decisions or substantive changes should be more prominent, perhaps in memo. Due to the length of the report and the time constraints, members often are not able to review the report prior to taking action on the bill. The Subcommittee agreed to recommend in its report consideration of this problem by the Code Commission.

7. The Code Commission should direct the Michie Company to include annotations to preambles of legislation in the Code of Virginia.

Code annotations. The national policy in legislative drafting of eliminating legislative intent and policy statements has been adopted in Virginia. The Virginia Code Commission adheres to this policy and discourages inclusion of these statements. However, legislative intent and findings may be contained in the legislation in a preamble which will not be codified. Annotations are placed in the Code by the Michie Company, which publishes the Code of Virginia. It is recommended that the Code Commission be requested to direct the Michie Company to include annotations to preambles in the Code of Virginia.

8. Amend § 30-28.18.

The Subcommittee decided to recommend the amendment of § 30-28.18 to remove the requirement that the records of the Division of Legislative Services pertaining to drafting requests shall be maintained by the Division as permanent records. One amendment to § 30-28.18 would simply provide that the drafting requests be maintained as permanent records without further specification. This amendment is necessary to conform the statute to Recommendation 3 of this report which recommends that files pertaining to legislation will be available from the State Library and Archives. The second amendment to § 30-28.18 clarifies that the drafting requests for bills introduced for consideration by the General Assembly, and their accompanying documents, shall be maintained as permanent records and shall be available as public records after the date currently specified in the statute.

CONCLUSION

The Subcommittee determined that the preservation of materials currently existing which constitute legislative history, coupled with the streamlining of the record keeping process by the Division of Legislative Services and the Offices of the Clerk of the House of Delegates and the Clerk of the Senate, would be a major step toward establishing legislative history in Virginia. The availability of these records from one central location, the State Library and Archives, will enhance the public's access to legislative records.

The Subcommittee urges the members of the General Assembly to fully and favorably consider the recommendations contained in this report.

Respectfully Submitted,

Bernard S. Cohen, Chairman
Edward M. Holland, Vice Chairman
Joseph B. Benedetti
C. Richard Cranwell
Clinton Miller
Wiley F. Mitchell, Jr.
William Roscoe Reynolds

APPENDICES

APPENDIX I



SENATE MEMBERS

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Minority Floor Leader

David K. Karem
Majority Caucus Chairman

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Majority Whip

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Majority Caucus Chairman

Ken Harper
Minority Caucus Chairman

Kenny Rapier
Majority Whip

Bill Lile
Minority Whip

May 24, 1988

Honorable Angela P. Bowser
Staff Attorney
Commonwealth of Virginia
Division of Legislative Services
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P.O. Box 3-AG
Richmond, VA 23208

Dear Ms. Bowser:

Please be advised that there is no formalized method of evidencing legislative intent in Kentucky, other than the actual wording of statutes.

Those persons interested in demonstrating the legislative intent behind a statute will often utilize the minutes of interim legislative committee meetings during which legislation was discussed or the texts of study or task force reports which propose new legislation. Resources such as these, however, are not available for many of the bills which pass our General Assembly. I suppose that Kentucky's and Virginia's situations are similar in this regard.

Very truly yours,


Robert S. Sherman
Assistant Director for
Committee and Staff Coordination

RSS:j
0706F

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LYNDA C. DAVIS
Library and
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June 15, 1988

Angela P. Bowser
Division of Legislative Services
General Assembly Building
910 Capitol Street
Richmond, VA 23208

Dear Ms. Bowser:

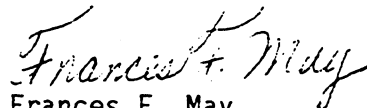
Michael I. Volk, Director of the Legislative Services Division of the Department of Legislative Reference has asked me to respond to your letter concerning policies on legislative intent in Maryland.

The Department of Legislative Reference has examined this issue and is now involved in a pilot project in which legislative history is compiled on a systematic basis as a permanent record. The documents that the Department drafts have been used by the Courts of Appeal in Maryland to ascertain legislative intent. I am enclosing copies of the 2-part document that we prepare.

After July 1, I shall be involved in the research and writing of a document concerning legislative history in Maryland. A major focus of the work will be legislative intent. I would be happy to send to you a copy of this effort on completion of the first phase, which should be about August 1.

Please do not hesitate to contact me sooner, if I can be of assistance.

Very truly yours,



Frances F. May
Legislative Counsel

FFM/eo
Enclosure

General Assembly of Tennessee
OFFICE OF LEGAL SERVICES

War Memorial Building
Nashville, Tennessee 37219

June 24, 1988

Ms. Angela P. Bowser, Staff Attorney
Commonwealth of Virginia
Division of Legislative Services
P. O. Box 3-A6
Richmond, Virginia 23208

Dear Ms. Bowser:

Your inquiry of this office relative to recording indications of intent for legislative actions has been forwarded to me for response.

The most prevalent form of recording the intent of the Tennessee General Assembly in passing legislation is the use of committee reports, quite similar to the system utilized in Virginia.

The committee system is governed in Tennessee by applicable House and Senate rules and in general by Tennessee Code Annotated, Title 3, Chapter 3, Part 1. Specifically, Tennessee Code Annotated, Section 3-3-123, provides that a committee shall report its findings and recommendations to the General Assembly upon the completion of its investigations.

Upon completion of their investigations into a particular issue, standing committees, subcommittees and study committees authorized by resolution usually issue a report which contains draft legislation that embodies the committee's findings and recommendations. Such report is filed with the House or Senate Clerk's office, whichever is appropriate, and becomes the official statement of the committee and a public document. The report also usually explains and justifies the committee's position on the issue, but this is by no means universal. Often, draft legislation stands by itself as the report of the committee. As in Virginia, the great majority of legislation introduced during any given session does not result from a committee study, and thus there are no reports issued which would be of assistance in determining legislative intent.

Page 2
Ms. Angela P. Bowser
June 24, 1988

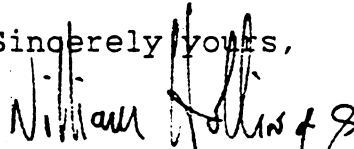
Because committee meetings and investigations are conducted in a public forum, materials presented to the committee, including legislation drafted at the request of the committee is public information; however, information or materials provided to the Office of Legal Services for a bill request by a member of the General Assembly is confidential in maintenance of the attorney-client relationship which is provided for in Tennessee Code Annotated, Section 3-12-106. Of course, the legislation itself becomes public information when it is filed with the appropriate Clerk's office, but the back-up material does not.

Occasionally, legislation will contain a preamble or separate section which expresses the General Assembly's intent. Legislative intent sections are often utilized when legislation is controversial, when there is some doubt as to its constitutionality or when the passage of such legislation would require a large expenditure of state revenues. Again, the great majority of legislation introduced during any given session would not contain a section expressing legislative intent.

When there is a question relative to the legislature's intent in passing a particular piece of legislation, our office often refers the interested party to the audio tapes of committee and floor debate, which tapes are maintained by the State Library and Archives in the Secretary of State's Office. Often the sponsor of the legislation or another member will comment on legislative intent during a debate of the bill's merits in committee or in the House or Senate chambers. Occasionally, members will also have their comments relative to legislative intent spread upon the appropriate Journal. It can, of course, be argued that these expressions of legislative intent only reflect the position of one legislator, albeit the sponsor of the legislation. Also, courts have generally been reluctant to admit as evidence committee or floor debate or expressions of legislative intent spread upon the Journal, unless there is ambiguity on the face of the legislation.

From previous discussion, it is obvious that Tennessee is no better equipped than Virginia to record indications of intent for legislation actions. If I may be of further assistance to you with regard to this matter, please do not hesitate to write or get in touch with me at (615) 741-3074.

Sincerely yours,



William D. Hollings, Jr.
Senior Legislative Attorney

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

EARL M. VICKERS, DIRECTOR
LEGISLATIVE SERVICES
ROOM 132-E
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AREA CODE 304

CHARLESTON, WEST VIRGINIA 25305

June 13, 1988

Ms. Angela P. Bowser
Division of Legislative Services
P.O. Box 3-AG
Richmond, Virginia 23208

Dear Ms. Bowser:

We received your letter of May 24, 1988, concerning methods of recording indications of intent in legislative actions. West Virginia currently has no formal method of recording legislative intent beyond referring to the acts and journals of the Legislature. Minutes of committee meetings can be looked at, but these reveal only motions and amendments. Court rulings and Attorney General opinions are really the only methods available for clarification and analysis of legislative acts.

I hope you find this information useful.

Very truly yours,

A handwritten signature in cursive script that reads "Joe Altizer".

Joe Altizer
Legislative Analyst

JA/kes



APPENDIX II
**SENATE ECONOMIC AND ENVIRONMENTAL AFFAIRS
COMMITTEE**

CLARENCE W. BLOUNT, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1988 General Assembly of Maryland

BILL ANALYSIS
SENATE BILL 12

STATE UNIVERSITIES AND COLLEGES - NAME CHANGE

SPONSOR:

Senators L. Riley, Malkus, and Miller

SUMMARY OF BILL:

This bill changes the name of Salisbury State College to Salisbury State University. In addition, the bill contains a clause making passage of the bill contingent on the recommendation of the State Board for Higher Education that the status of this institution be changed from a college to a university.

BACKGROUND:

To change the status of a public institution of postsecondary education, Section 12-112 of the Education Article requires the approval of the General Assembly as well as the recommendation of the State Board for Higher Education. On September 1, 1987, the State Board for Higher Education issued a recommendation that Salisbury State College be renamed Salisbury State University.

In the 1987 Session, the General Assembly enacted legislation to change the name of Frostburg State College to Frostburg State University. On July 7, 1987, the State Board for Higher Education voted to approve the renaming of Frostburg.

CLS/ah



**SENATE ECONOMIC AND ENVIRONMENTAL AFFAIRS
COMMITTEE**

CLARENCE W. BLOUNT, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1988 General Assembly of Maryland

FLOOR REPORT

SENATE BILL 12

STATE UNIVERSITIES AND COLLEGES - NAME CHANGE

SPONSORS:

Senators L. Riley, Malkus, and Miller

COMMITTEE RECOMMENDATION: Favorable

SUMMARY OF BILL:

This bill changes the name of Salisbury State College to Salisbury State University.

COMMITTEE AMENDMENTS: None.

FISCAL IMPACT: None.

BACKGROUND:

To change the status of a public institution of postsecondary education, the approval of the General Assembly is required as well as the recommendation of the State Board for Higher Education. On September 1, 1987, the State Board for Higher Education issued a recommendation that Salisbury State College be renamed Salisbury State University.

FW/ah



SENATE JUDICIAL PROCEEDINGS COMMITTEE
WALTER M. BAKER, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1988 General Assembly of Maryland

BILL ANALYSIS

SENATE BILL 3

HANDGUNS - SATURDAY NIGHT SPECIALS

SPONSOR:

Senator Brailey

SUMMARY OF BILL:

This bill makes it unlawful to sell or offer for sale a Saturday Night Special. The term "Saturday Night Special" is defined as a handgun that does not meet the factoring criteria for weapons as set forth in Form 4590 issued by the Bureau of Alcohol, Tobacco, and Firearms or is not recognized generally as particularly suitable for or readily adaptable to sporting purposes.

A violation under this bill is a misdemeanor, and the penalties are dependent upon the number of convictions for any of the following crimes:

- 1) Offering for sale or selling a Saturday Night Special;
- 2) Unlawfully wearing, carrying, or transporting a handgun;
- 3) Unlawfully using a handgun in the commission of a crime;
- 4) Unlawfully carrying a concealed weapon, or carrying a weapon openly with the intent to injure a person; or
- 5) Unlawfully carrying a deadly weapon on public school property.

A first conviction for any of these crimes carries a minimum fine of \$250 and a maximum fine of \$2,500, imprisonment for a term not less than 30 days and not more than 3 years, or both a fine and imprisonment. Further, if the offer for sale or sale of the Saturday Night Special took place on any public school property, the court must impose a minimum sentence of 90 days.

For a second conviction, the minimum term is one year, which is mandatory upon the court, and the maximum is 10 years. If the violation occurred on public school property, the minimum sentence is 3 years.

The penalty for any subsequent conviction ranges from a mandatory minimum sentence of 3 years to a maximum sentence of 10 years, except that a minimum sentence of 5 years must be imposed if the violation occurred on public school property.

BACKGROUND:

Existing law makes no distinction between those handguns classified as Saturday Night Specials and any other handgun. There is no prohibition against the sale of a Saturday Night Special and such sales are regulated no differently than the sale of any other handgun.

The penalties set forth in the summary currently exist in the law relating generally to

the wearing, carrying, or transporting of handguns and other deadly weapons.

Senate Bill 6 of the 1987 Session was a similar bill and received an unfavorable report from the Judicial Proceedings Committee.

RS/ah

FLOOR REPORT

SENATE BILL 3

HANDGUNS - SATURDAY NIGHT SPECIALS

SPONSOR:

Senator Brailey

COMMITTEE RECOMMENDATION: Favorable with one amendment

SUMMARY OF BILL:

This bill makes it a misdemeanor to sell or offer for sale a Saturday Night Special. The term "Saturday Night Special" is defined as a handgun that does not meet the factoring criteria for weapons set forth in Form 4590 issued by the Bureau of Alcohol, Tobacco, and Firearms or is not recognized generally as particularly suitable for or readily adaptable to sporting purposes.

The penalties are dependent upon the number of prior convictions for any of the following offenses:

- 1) Offering for sale or selling a Saturday Night Special;
- 2) Unlawfully wearing, carrying, or transporting a handgun;
- 3) Unlawfully using a handgun in the commission of a crime;
- 4) Unlawfully carrying a concealed weapon; or
- 5) Unlawfully carrying a deadly weapon on public school property.

A first conviction is subject to a minimum fine of \$250 and a maximum fine of \$2,500, imprisonment for a term not less than 30 days and not more than 3 years, or both a fine and imprisonment. Further, if the offer for sale or sale of the Saturday Night Special took place on any public school property, the court must impose a minimum sentence of 90 days.

For a second conviction, the minimum term is one year, which is mandatory upon the court, and the maximum is 10 years. If the violation occurred on public school property, the minimum sentence is 3 years.

The penalty for any subsequent conviction ranges from a mandatory minimum sentence of 3 years to a maximum sentence of 10 years, except that a minimum sentence of 5 years must be imposed if the violation occurred on public school property.

COMMITTEE AMENDMENTS: The Committee adopted one amendment to the bill.

AMENDMENT NO. 1:

This amendment adds Senator Wynn as a sponsor.

BACKGROUND:

Existing law makes no distinction between those handguns classified as Saturday Night Specials and any other handgun. There is no prohibition against the sale of a Saturday Night Special and such sales are regulated no differently than the sale of any other handgun.

The penalties set forth in the summary currently exist in the law relating generally to the wearing, carrying, or transporting of handguns and other deadly weapons.

Testimony indicated that cheap handguns are proliferating and this bill is intended to keep some of these guns off the street. The number of guns available has contributed to an increase in crime and many small business people are victims of holdups with these guns.

Four witnesses testified in favor of the bill and 8 witnesses testified against it.

LL/aon

1 APPENDIX III

2 § 30-28.18. Requests for drafting bills or resolutions;
3 confidentiality of requests; bills to conform to request; public
4 records.--A. All requests for the drafting of bills or resolutions by
5 the Division shall be submitted in writing, and shall contain a
6 general statement respecting the policies and purposes which the
7 requester desires incorporated in and accomplished by the bill. All
8 requests and required statements shall be signed by the person
9 submitting them. Neither the Director nor any employee of the
10 Division shall reveal to any person outside of the Division the
11 contents or nature of any ~~such~~ request or statements except with the
12 consent of the person signing such request; ~~provided that however,~~
13 (i) when the Director or an employee receives a request which is
14 substantially the same as one previously received, he may, unless
15 specifically directed not to do so by the person first submitting such
16 request, so inform the person submitting such similar request and (ii)
17 unless specifically directed otherwise, the Director or employee may
18 reveal the nature of a request when seeking information from anyone to
19 assist in drafting same. Bills drafted by the Division shall conform
20 to the statements submitted with the request or the supplementary
21 written instructions submitted by the person who originally made the
22 request.

23 B. All ~~legislative-drafting requests for bills that have been~~
24 ~~introduced~~ and accompanying documents shall be maintained ~~by the~~
25 ~~Division~~ as permanent records. Until the July first immediately
26 following the legislative session for which the legislation was
27 drafted, or the effective date of enacted legislation, whichever is
28 earlier, each of these separate files shall be considered the property

1 of the requester. During that time no one other than members of the
2 Division staff shall have access to any such file without the specific
3 approval of the requester. After that time, the files pertaining to
4 legislation considered by the General Assembly shall become public
5 property-records.

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