

**INTERIM REPORT (1996 - 1997) OF THE  
MOSS COMMISSION ON**

**THE FUTURE OF VIRGINIA'S  
ENVIRONMENT HJR (1996)**

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



**HOUSE DOCUMENT NO. 4**

**COMMONWEALTH OF VIRGINIA  
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1999**



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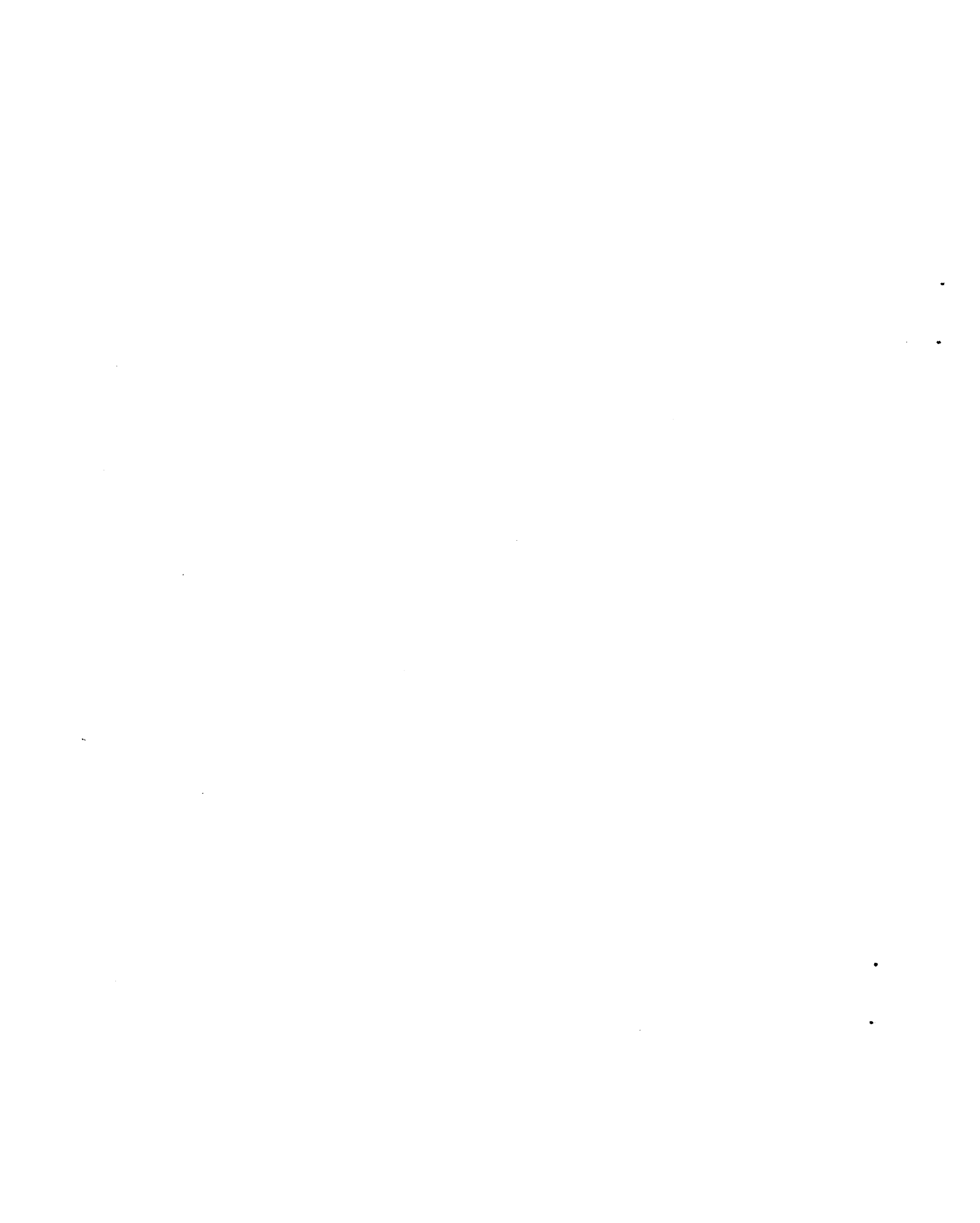
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**INTERIM REPORT OF THE  
MOSS COMMISSION ON  
THE FUTURE OF VIRGINIA'S ENVIRONMENT**

**(HJR 221, 1996)**

to

**The Honorable James S. Gilmore III, Governor,  
and  
the General Assembly of Virginia**

**June 1998**

**I. AUTHORIZATION FOR THE STUDY**

The 1996 Session of the General Assembly passed House Joint Resolution 221 (HJR 221) creating a two-year joint legislative study committee on "the future of Virginia's environment" (Appendix 1). The resolution directed the joint study committee to examine the history of environmental and natural resources programs and the budgetary trends for resources management in the Commonwealth. In addition, the study committee was directed to develop a long-term vision and plan for the future protection, enhancement, and utilization of Virginia's natural resources. It was also authorized to consider additional issues, as it deemed appropriate, such as innovative approaches used in other states, integrated environmental strategies, and effective environmental negotiation mechanisms.

The directives of HJR 221 are based on findings by the General Assembly that the citizens of the Commonwealth support the protection of clean air and water; the conservation of natural resources; the protection of open spaces, natural areas and parks; and economic development that does not degrade the environment. HJR 221 also points out that reorganizations and proposed reorganizations of natural resource management and protection responsibilities in the Commonwealth have created uncertainty and unpredictability in the Commonwealth's approach to resource management. The resolution adds that the citizens of the Commonwealth want a more certain and definitive course for protecting and investing in the state's natural resources, and therefore it is in the best interest of the

Commonwealth to articulate a vision and plan for the future of Virginia's environment.

## II. INTRODUCTION

The HJR 221 study committee, also known as the Moss Commission on the Future of Virginia's Environment after its chairman and the patron of its enabling legislation, accomplished much in its first two years of existence, including traveling the Commonwealth to hear citizens' concerns, formulating and adopting the ideas that became the Virginia Water Quality Improvement Act of 1997 and the passage of strong park planning legislation, and providing tens of millions of dollars in funding for environmental and open space protection. The Moss Commission also sought testimony from local, state, national and international environmental and natural resource experts to assist in development of a vision and plan for the future of Virginia's environment. To continue these successful efforts, the 1998 Session of the General Assembly passed HJR 136, continuing the Moss Commission for an additional year. This document reports on the study committee's first two years of activities.

## III. COMMITTEE ACTIVITIES: MEETINGS AND PUBLIC HEARINGS

During its first two years, the study committee held 12 work sessions and five public hearings in locations throughout Virginia. A subcommittee on parks held four work sessions and toured five parks during 1997. Public hearings were held in Annandale, Marion, Verona, Roanoke and Norfolk. Work sessions were held in Richmond, Annandale, Roanoke, Norfolk, and Charlottesville.<sup>1</sup>

*Richmond, August 1, 1996*

At its initial meeting in Richmond on August 1, 1996, the committee selected Speaker of the House of Delegates Thomas W. Moss, Jr., as chairman and Senator Madison E. Marye as vice-chairman. Staff made presentations on the history of environmental management in Virginia (Appendix 2) and on budgetary trends over the past decade. The committee

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<sup>1</sup> Copies of all written and oral testimony and other materials presented to or used by the study committee are on file at the Division of Legislative Service.

then received testimony from the Directors of the Departments of Environmental Quality (DEQ), Conservation and Recreation (DCR), and Game and Inland Fisheries, and the Chesapeake Bay Local Assistance Department, as well as from the Commissioner of the Virginia Marine Resources Commission. Each agency described its (i) mission, (ii) current priorities, and (iii) plans (or planning processes) that guide the protection, enhancement, and utilization of Virginia's natural resources into the future.

The committee scheduled public hearings to learn how citizens view the state of Virginia's environment and to seek advice on the development of a plan and vision for the protection, enhancement, and utilization of the Commonwealth's natural resources. To guide rather than to limit the public testimony and future actions of the committee, the committee identified seven areas of central importance:

1. The importance and needs of resource-based industries;
2. Preservation and improvement of water and air quality;
3. Monitoring, evaluation, and enforcement;
4. Land use and development;
5. Open space and recreational needs;
6. Waste management; and
7. Governance issues such as the structure for natural resources management and protection, and policy development and implementation.<sup>2</sup>

*Annandale, August 28, 1996*

The committee met at the Annandale campus of the Northern Virginia Community College and received briefings from the Directors of the Virginia Departments of Transportation; Mines, Minerals and Energy; and Forestry similar to those provided by other agencies at the August 1 meeting.

To learn more about emerging environmental management and protection measures taking place in other states and countries, the committee heard from two nongovernmental organizations.

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<sup>2</sup> A summary of citizen comments is found in Section VI of this report.

James M. McElfish, Jr., Senior Attorney with the Environmental Law Institute (ELI), described a number of states' attempts at establishing plans for the future of their natural resources and some of the innovative initiatives growing from those efforts. He also spoke to some of the issues he thought would be most important for the future of the environment.

John Nelson, East Coast Director for the Resource Renewal Institute, highlighted some of the emerging international efforts for development of new methods for environmental regulation and planning. Included in his presentation were descriptions of various systems being used in the Netherlands and in New Zealand.

A public hearing followed the scheduled presentations. Over 100 citizens attended the hearing and over 50 provided their thoughts and insights to the committee.

*Marion, October 10, 1996*

The committee's public hearing in Marion was held at the Marion Senior High School. The committee not only heard from citizens in this part of the state, but engaged those in the audience in a nearly two-hour long discussion of their views, concerns, and beliefs regarding the issues before the committee.

*Verona, October 16, 1996*

The Verona public hearing was attended by more than 40 citizens, over half of whom spoke to the committee, providing insights into the particular needs of the local environment and economy and those of the Commonwealth as a whole.

*Roanoke, November 7, 1996*

At its work session, the Commission received briefings regarding issues related to agriculture, agricultural pollution, and agricultural land and open space preservation.

The Commissioner of Virginia's Department of Agriculture and Consumer Services spoke on that agency's role in promoting and protecting the Commonwealth's agricultural resources.

George Beals, a past president of the Virginia Association of Soil and Water Conservation Districts, and Bobby Whitescarver, of the Natural Resources Conservation Service of the U. S. Department of Agriculture,

presented their organizations' concerns and efforts, particularly as they relate to assisting farmers with nutrient management plans, the installation of best management practices, and stream bank stabilization and protection.

Jill Schwartz, Program Coordinator for the American Farmland Trust, briefed the committee on methods and benefits of preserving farmland and open space.

Following the work session, a public hearing was attended by over 50 citizens from throughout the region. Twenty voiced their opinions and views regarding Virginia's environment and the direction in which they believe natural resource management should head.

*Norfolk, November 21, 1996*

An afternoon work session held at Granby High School included presentations on a variety of topics. The Commissioner of the Virginia Department of Health described that agency's efforts at protecting public health.

Marjorie Mayfield, Executive Director of the Elizabeth River Project, and others from the Project, spoke on that organization's plan and efforts for the river and the group's broad-based partnership efforts. The presentation included a multi-faceted action plan.

Don Wheeler, Water Quality Manager of the Hampton Roads Sanitation District, discussed biological nutrient removal and water quality issues, particularly as they are faced by water quality treatment facilities.

Dr. Leonard Shabman, Director of the Virginia Water Resources Research Center (VWRRC) at Virginia Polytechnic & State University (VPI), provided examples of how institutions of higher education can assist the Commonwealth with issues such as those being examined by the study committee. He also noted some of the more innovative resource management steps being taken by other jurisdictions.

Joe Maroon and Roy Hoagland, Virginia Director and Assistant Director and Staff Attorney, respectively, of the Chesapeake Bay Foundation, reviewed that organization's concerns regarding the quality and quantity of Virginia's water monitoring and assessment efforts. Included in the presentation was a review of their report "Virginia Waters Still at Risk: A Critique of the Commonwealth's Water Quality Assessment Reports."<sup>3</sup>

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<sup>3</sup> Senator Joseph V. Gartlan, Jr., acted on the CBF recommendations of the JLARC report on DEQ (House Document No. 44, 1996) and patroned, during the 1997 Session of the General

A public hearing was held in the evening and was attended by 70 citizens, of which 35 expressed their views.

*Richmond, December 19, 1996*

This work session focused on the Joint Legislative Audit and Review Commission (JLARC) review of DEQ and a discussion of the public hearing comments.

The committee received a briefing from William Murray and Hal Greer, staff to JLARC, on its review of the DEQ.<sup>4</sup>

Staff of Legislative Services presented the summary of citizen comments found in Section VI of this report. During discussion of the public testimony, members of the committee noted that the most prevalent concerns and issues raised dealt with water quality. Staff was directed to develop legislation for the committee's review that would address these issues.<sup>5</sup>

*Richmond, January 7, 1997*

The committee heard from Margaret Maizel, Executive Director of the National Center for Resource Innovations, on information technology and resources and how they can be used for environmental planning and policy decision-making.

Staff of Legislative Services presented to the committee a draft, prepared at the committee's direction on December 19, 1996, of the Virginia Water Quality Improvement Act of 1997 (Appendix 3 and discussed in Section VII of this report). The committee endorsed the concepts found in the legislation.

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Assembly, the Water Quality Monitoring, Information and Restoration Act (§ 62.1-44.19:4 et seq.).

<sup>4</sup> The JLARC reports on DEQ may be found in House Document No. 44 (1996) and House Document No. 67 (1997).

<sup>5</sup> The legislation, the Virginia Water Quality Improvement Act of 1997, is discussed in Section VII of this report.



*Richmond, June 17, 1997*

At its first meeting of its second year, the committee heard from a number of speakers.

William McDonough, Dean of the University of Virginia School of Architecture, spoke on "The Next Industrial Revolution," emphasizing planning, design, and pollution prevention as ways to protect the environment.

Gerald P. McCarthy, Executive Director of the Virginia Environmental Endowment, reviewed the results of an opinion poll indicating strong public support for environmental protection.

Bill Weeks, Vice President of The Nature Conservancy, and Richard Collins, Director of the UVA Institute for Environmental Negotiations, discussed ways to foster sustainable community development, providing examples from Virginia and other states.

Alan Pollack, Department of Environmental Quality Manager of Chesapeake Bay Programs, provided a briefing on draft guidelines for implementation of the Virginia Water Quality Improvement Act.

*Richmond, July 17, 1997*

The committee received a number of presentations regarding Virginia's parks and natural areas. It also received two briefings regarding a reorganization of the Department of Environmental Quality.

Ronald L. Hedland, DCR Director of Policy, Planning and Recreational Resources, provided a presentation of the 1996 Virginia Outdoors Plan. He also reviewed the expenditures of funds from general obligation bonds authorized in 1992 for park land and natural area acquisition and for a number of other purposes.

Joseph Elton, Division of Parks Director, presented an overview of the Commonwealth's parks and natural areas systems.

Hal Greer, Principal Legislative Analyst from JLARC, provided an analysis of the recent DEQ reorganization. The presentation compared and contrasted the reorganization with JLARC's recommendations, refuting claims that the reorganization followed those recommendations.

James McDaniel, DEQ Deputy Director, presented his agency's comments on the reorganization.

At the conclusion of the meeting, a subcommittee was appointed to review issues raised, both at this meeting and at public hearings, regarding the park system and the expenditures of bond funds.

*Charlottesville, September 3, 1997 (parks subcommittee)*

The parks subcommittee received a staff briefing on over three decades' worth of parks-related legislative studies (Appendix 4).<sup>6</sup> The subcommittee followed the presentation with a discussion, including representatives from DCR, regarding a number of issues related to the Commonwealth's parks and natural areas, including staff-related issues, privatization, self-sufficiency, utilization of bond funds for park acquisition and development, inholdings, adjacent properties, the length of time to bring a park on line, and public encroachment on park land.

*Richmond, September 9, 1997*

The committee received two presentation on "smart growth" and also learned more about the concept of "pollution trading."

Rupert Friday of the Maryland Office of Planning reviewed that state's recently enacted smart growth initiatives. Maryland's efforts focused on directing growth toward areas with existing infrastructure and targeting state funds to those areas. Promoting the redevelopment of vacant, potentially contaminated industrial sites known as "brownfields" is also part of the initiative.

Jim McElfish of ELI described smart growth from a national perspective, giving examples from other states. Mr. McElfish noted that the common themes of successful growth strategies include consistency, consultation, and concurrency.

Dr. Leonard Shabman of VWRRC discussed pollution trading and the need for additional study of the topic. The committee supported Dr. Shabman's efforts to study the issue, believing it was premature to initiate such a program for water pollutants without more study and a consensus-building effort.

The committee also received a status report on the activities of the parks subcommittee.

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<sup>6</sup> The staff report is summarized in Section VIII of this report.

*Sky Meadows and Andy Guest State Parks, September 29, 1997 (parks subcommittee)*

The parks subcommittee met at Sky Meadows (Clarke and Fauquier Counties) and Andy Guest/Shenandoah River (Warren County) State Parks for a combination of briefings and site visits. Briefings were provided by two district managers on their responsibilities and the parks in their district. DCR headquarters staff were also on hand to answer questions about the Andy Guest State Park master plan. The subcommittee also received a presentation from a representative of the "Friends of Sky Meadows," a voluntary citizen's group. It also met with an adjoining property owner to Andy Guest State Park who is interested in selling approximately 580 acres of his land and his access road to the park.

Each tour involved briefings on the history and natural character of the park and included the identification of significant attributes, including historic structures, natural amenities, camping facilities, bond projects, inholdings, and adjacent properties with the potential for acquisition.

*Pocahontas State Park, October 9, 1997 (parks subcommittee)*

The subcommittee met at this state park for a tour and work session. Pocahontas is the largest of the state parks, with over 6,000 acres, and is the location of a variety of bond-financed construction projects. Most of the meeting was dedicated to discussion of the issues facing the park system, including those related to funding, current and future bond expenditures, park and open space planning, agency structural changes, and park construction activities.

*Richmond, October 20, 1997*

The full committee received briefings on the economic importance of resource-based industries and on tax incentives for voluntary land conservation.

Don Wright, Dean and Director of the Virginia Institute of Marine Science (VIMS), and Jim Kirkley, Associate Professor of Marine Science at VIMS, spoke on two reports the institute has produced on the large positive economic impact of commercial and recreational fisheries in Virginia's marine waters.

Tim Lindstrom, an HJR 221 committee member, briefed the committee on recent changes to the federal tax laws that will provide

additional incentives for voluntary land conservation in Virginia. Mr. Lindstrom also discussed draft legislation to clarify how the value of property under a conservation easement is to be calculated for taxation purposes in Virginia.

The parks subcommittee presented a report on its September 29 and October 9 meetings that included a list of 14 recommendations it had under consideration.<sup>7</sup>

*Westmoreland and Belle Isle State Parks, November 24, 1997 (parks subcommittee)*

The subcommittee met to refine the 14 recommendations presented to the full committee on October 20, 1997, into a set of policy and legislative recommendations. The subcommittee also toured and received briefings on Westmoreland and Belle Isle State Parks.

*Richmond, December 4, 1997*

The committee received a briefing from Mr. Thomas E. Harris, Northhampton County Administrator, on the nationally recognized efforts and accomplishments that the county has made in fostering sustainable community development. Mr. Thomas also had numerous recommendations for how the state could help foster such activities in other areas of the commonwealth.

The parks subcommittee presented its findings and recommendations for consideration by the full committee with the understanding that final action would be taken by the full committee at a future meeting.

*Richmond, January 12, 1998*

The purpose of this meeting was to act on the parks subcommittee report and the legislation proposed by Tim Lindstrom at the October meeting.<sup>8</sup> The majority of the parks subcommittee's recommendations were adopted, as was the Lindstrom recommendation. The committee also endorsed a resolution for continuation of the effort for an additional year (Appendix 6).

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<sup>7</sup> The parks subcommittee report and its recommendation, with full committee action, can be found in Sections VIII and IX of this report.

<sup>8</sup> The parks subcommittee report and its recommendation, with full committee action, can be found in Section VIII and IX of this report. The Lindstrom legislation as passed is attached as Appendix No. 5.

#### IV. HISTORY OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT IN VIRGINIA

At the August 1, 1996, meeting, staff presented a report detailing the history of natural resource and environmental management programs falling within the Secretariat of Natural Resources.<sup>9</sup> The staff report presents the history in two ways: first, by reviewing the evolution of natural resource agencies and their responsibilities; and second, by reviewing a number of earlier governmental structure, natural resource and environmental protection studies. The report also describes several current environment-related studies and, because the HJR 221 resolution refers to reorganization proposals before the 1996 Session of the General Assembly, summarizes those proposals.

Because the report deals primarily with the history of natural resource and environmental management programs falling within the Secretariat of Natural Resources, it does not deal extensively with the activities of agencies falling outside the secretariat that may have a relation to the environment. These include the Virginia Departments of Agriculture and Consumer Services; Mines, Minerals and Energy; Health; and Forestry.

Staff noted an evolution in the nature and complexity of environmental protection and resources management in the Commonwealth. Over the years, more authority has been given to agencies. In some cases, such as hunting bag limits, this authority had been exercised by the General Assembly. More recently, the authority has been granted for increasingly complex, newly created programs.

A historical comparison of laws shows the increasing complexity of environmental protection. As early as 1875, the General Assembly enacted legislation prohibiting the placement of "poisonous substances or dead bodies into rivers and streams above tidewater." Since that time, concern for water quality and the complexity of programs to protect it have grown considerably. Today a full title of the Virginia Code with over 25 chapters, including hundreds of statutes, is dedicated to water protection programs.

Staff noted that this evolution in the complexity and the importance placed on the environment and protection of natural resources has occurred in response to a number of situations including:

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<sup>9</sup> Attached as Appendix No. 2.

1. Conflicting needs between users of the same resource. For example, protection of open spaces and parks versus development of those areas contributed to passage of the Open-Space Land Act (§ 10.1-1700 et seq.) and the Virginia Conservation Easement Act (§ 10.1-1009 et seq.).
2. Conflicting needs between the resource and those who use it. For example, the state manages fish populations under stress, such as the striped bass, rather than allowing commercial and recreational over-fishing.
3. Increased scientific understanding of the impact on human health and the environment of growth, pollution, and resource utilization. For example, an in-depth study of the Chesapeake Bay in the early 1970s, led to a multi-state cooperative Bay restoration effort which has in turn spawned a number of programs in Virginia such as the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).
4. Enactment of federal environmental laws and associated requirements. For example, implementation by Virginia of the federal Clean Water Act has significantly directed the character of the state's programs.
5. Availability of federal moneys. For example, the availability of grants and loans for upgrades of sewage treatment plants influenced the construction of the plants and the level of water treatment.
6. Environmental "disasters." For example, the Kepone incident in the James River led to stricter regulation.
7. Desires of citizens/public opinion. Over the years, changes in governmental attention to the environment at all levels have been influenced by public opinion.

Staff concluded by reviewing the results of previous studies.

## V. FUNDING FOR ENVIRONMENTAL AND NATURAL RESOURCES PROGRAMS IN VIRGINIA

House Appropriations Committee staff provided at the August 1, 1996, meeting, a review of budget trends for natural resource management and environmental protection in the Commonwealth. For purposes of the presentation, "environmental protection" includes those functions within the DEQ, the Chesapeake Bay Local Assistance Department, and the Division of Soil and Water Conservation of the DCR. Resource management functions in the analysis include those of the Department of Forestry, the DCR (less the Division of Soil and Water Conservation), the Department of Game and Inland Fisheries, and the Virginia Marine Resources Commission. Funding sources included the general fund, federal trust moneys, and other sources such as special funds and dedicated special revenues.

The analysis provided a number of observations, including:

1. General fund contributions to environmental protection and resource management, as a percentage of the state operating budget, declined from 1.19 percent to 0.80 percent over the past decade.
2. The total of all funds (general funds combined with funds from sources such as the federal government) for environmental protection and resource management in the Commonwealth, as a percentage of the state operating budget, has increased since 1988 from 0.97 percent to 1.00 percent.
3. General funds are a decreasing percentage of overall support for environmental and natural resource programs. More reliance is being placed on uncertain funding sources such as the federal government.
4. Prior to 1990, funding from all sources was weighted slightly in favor of resources management. This reversed in 1990, with environmental protection receiving the greater proportion of funding.

## VI. SUMMARY OF CITIZEN COMMENTS

### A. INTRODUCTION

The committee toured the state seeking the public's comments on Virginia's environment. The committee also received volumes of written comments. This section provides a summary of the comments the committee received on each of the seven areas identified by the committee at its August 1, 1996, meeting as of probable importance in fulfilling its mission. Other issues raised in public hearings not specifically identified by the committee are incorporated into one of the seven areas to which they most closely relate.

Citizens from all parts of the state came before the committee to express their concerns and beliefs, and to share their knowledge, insights, and expertise. They quoted from numerous sources including the Constitution of Virginia, philosophers, American Indian chiefs, scientific treatises, the bible, economic analyses, environmental studies, reports of previous studies similar to this one, opinion polls, and their own experiences.

The citizens of Virginia obviously have great pride in their state, its natural beauty, and its natural resources. They also have a great desire to protect and improve Virginia's environment. Many are actively involved in cleanup, protection, monitoring, and education. Many have issues of local or specific concern that they would like to see addressed, but all view such problems in a larger context of what is good for the Commonwealth as a whole. Not one of the nearly 200 people testifying stated that more cannot be done to protect the environment for the future. In fact, many voiced concerns about the declining quality of the Commonwealth's water and air, the uses to which its land resources are being put, and a lack of faith in government to correct or pay attention to these problems. While many were critical, they also had numerous suggestions. They also have hopes that this committee would carve a new path for Virginia's pursuit of the goals of the Article XI of the Constitution of Virginia.

Two quotations from citizens at the Marion and Verona public hearings capture much of what citizens throughout the Commonwealth expressed.



Marion:

*“We all need to protect it because we all rely on it.”*

Verona:

*“The wise conservation of our natural resources is a plus for economic growth and development. Particularly in a state such as Virginia, they can be—should be—complementary. With Virginia’s great natural beauty and rich heritage, this state attracts not only tourists but also others (including entrepreneurs) who can see Virginia is indeed an ideal place—not only to retire but to live, to work, to raise a family, and to prosper.”*

*“But without proper and imaginative planning, without conserving our open spaces, or farm lands, our waterways, our wildlife, our forests and without preserving the character of Virginia (so intertwined with its environment) we lose not only our past and quality of life . . . but we may well be destroying our future.”*

*“Protecting the environment is too often seen as something that can be deferred until next year—or the next year—or the year after that. But eventually a price will be paid. . . . And that price will be paid all too often, not by us but by those who follow us—our children . . . our grandchildren.”*

*“To protect the environment many things are needed: education, research, community involvement, labor, leadership and . . . money. Volunteers can do many things—but not everything. What I suggest is that finding a specific source or sources of funding for environmental programs be included as one of your goals.”*

## **B. SUMMARY OF COMMENTS**

### **Topic 1: The Importance and Needs of Resource-Based Industries**

*“Resource-based industries such as coal mining, timber harvesting and agriculture are important for the sustained economic vitality of the Commonwealth. However, newer ‘industries,’ particularly tourism, are also dependent on natural resources, not from the point of resource extraction but for other benefits. These benefits include clean water for recreation, clear viewsheds for scenic drives and healthy ecosystems for productive fisheries and wildlife populations.”*

### *Defining resource-based industries*

Citizens took a broad view of resource-based industries, including extractive and renewable industries, as well as industries that exist because of natural resources. Comments relating to extractive industries centered on coal. Among the renewable industries mentioned were forestry, agriculture, and fisheries (both commercial and recreational and natural and cultured). Closely related to this latter category are industries, particularly tourism and recreation, that depend on the existence of natural resources.

### *Management issues*

Citizens discussed management of the utilized resource itself (for example, oyster stocks), management of the extraction practice, and management of those things that impact the resource. The comments expressed a collective view that safeguards need to be applied not only to assure that the resources flourish, but to also assure that utilizing the resource does not harm the environment upon which the resource depends. In addition, safeguards must be in place to assure that water quality, air quality, development pressures and other factors outside of direct resource utilization do not impair the resource. On this last point, a number emphasized that resource-based industries, such as the capture and culture of fish and oysters, are dependent on a clean environment. A clean environment aids in assuring that the product is safe to consume and that the resource can survive, thrive, and be harvested at a beneficial rate.

Who does the managing was also of importance to speakers. In general, they believed that those who have scientific expertise and are knowledgeable about the resource should manage the resource. Government, it was urged, should provide these managers with necessary tools, leadership, support, and guidance.

Speakers also agreed that the state should take a broad view of the interactions between resource-based industries, other industries, and growth rather than relying on an industry-by-industry analysis. For example, mining is critically important to certain areas of the state and, while one person expressed the view that there is pressure to relax environmental regulation when jobs are at stake, others expressed the view that without adequate protection other industries that may sustain an area economically over the long term may be unable to survive.

In addition, many saw sustained and sustainable resource-based industries as vitally important to their area and the Commonwealth. In their view, these types of industries can replace declining industries, are relatively

clean, and are cost-effective economic development for their communities. In fact, many cited them as the preferred economic development tool for their areas.

An interesting perspective on resource-based industries was presented at the Annandale public hearing, where representatives of the Loudoun Piedmont Environmental Council spoke about “rural economies” as resource-based industries. Rather than supporting an industry-by-industry viewpoint, they see the rural economy as productive, sustainable, and preferred. Three segments of this “industry” were analyzed for their contribution to the Loudoun County economy. Each relies in some way on preservation of open space, natural and historic features, and agricultural lands, all of which, in that county, are under increasing strain. According to their study:

- ▶ The Loudoun horse industry generates \$89 million annually in purchases.
- ▶ Travel and tourist industries generate \$244 million annually (the exact percentage attributable to tourism drawn by the area’s natural beauty and environment is not provided).
- ▶ Agriculture generates \$46 million in sales each year.

The study also noted that the burden of these “rural industries” on county tax revenue was less than most other forms of development. For example, agriculture requires \$0.50 of public expenses for each \$1.00 of tax revenue it generates, compared to the \$1.55 in public expense required by the residential sector for each \$1.00 of tax revenue it generates.

The organization stressed preserving the open space and rural character of the western part of the county as the chief way to perpetuate a lasting and adaptive rural economy there. To achieve this, the group urged a number of additions and changes to existing tools for land use and community design, including (i) a new public capability to purchase development rights, (ii) a private trust to do the same, (iii) development and construction design criteria more respectful of natural resources, (iv) improved cluster development regulations, and (v) continuation and improvement of use value taxation.

## Topic 2: Air and Water

*“ . . . over a half million [Northern Virginia] residents are in danger from adverse health effects of short- and long-term exposure to ground level ozone, including 300,000 children, 73,000 asthmatics, and 71,000 others with other chronic respiratory diseases plus over 162,000 . . . over the age of 65.”*

*“More than 50 percent of the population in the southern Appalachian obtains its drinking water from a surface water body.”*

The preservation and improvement of air and water quality are of great importance to the human, environmental, and economic health of citizens throughout the state.

### *Air*

As noted in the opening quotation to this section, ground level ozone is significantly harming the health of Virginians. In the Northern Virginia area, with few industrial air pollution sources, the major problem comes from motor vehicles. Taking an aggressive stance at solving the problems of auto emissions was urged, as was the development of a workable strategy to reduce Northern Virginia's air pollution as part of Virginia's overall environmental plan.

Concerns about environmental impacts of poor air quality were also voiced. In the Shenandoah National Park, acid deposition related to increased sulfur dioxide emissions is reportedly having a particularly significant impact on the growth and viability of certain types of trees. Acid deposition was also associated with fish kills and reduced fish populations. Acid deposition was viewed as particularly problematic because the Shenandoah National Park is reported to have the highest level of sulfur air pollution of any national park and summertime airborne sulfates increased 37 percent between 1982 and 1992.

Economic impacts of air pollution were also of concern, particularly in areas that depend on tourism. As one citizen noted, “it is the view that brings people. . . . [I]f they cannot have that view they will not come any longer.” According to technical data produced by the National Park Service, summertime visibility in the Shenandoah National Park now averages less than 25 percent of the estimated natural visual range. Decreased visibility was of concern not only in the Shenandoah park area, but also in other areas that rely on tourism and natural vistas.

## *Water*

The greatest number of comments related to water quality and the impact of a multitude of factors upon it. These factors include sprawl development and associated nonpoint source pollution, other nonpoint sources such as agriculture and air deposition, increased impervious surfaces associated with development, point sources of pollution, and consumptive use. In addition, concern was expressed over the steps, or lack thereof, the state has taken to conduct long-term planning and adequate monitoring and assessment of water quality.

Citizens acknowledged that much progress has been made in cleaning some bodies of water and in addressing some sources of pollution. The Potomac River was given as an example, where in the 1940s the river was closed to contact for health reasons. But through "stringent federal, state and local initiatives, industry and agricultural cooperation, and citizen activities," the river has undergone a metamorphosis. Yet as that river has improved, waters such as the Chesapeake Bay have declined and are in "dire need of the application of new options." As one citizen stated, "It was once magnificent, but it isn't anymore."

Citizens are very active in monitoring and protecting water quality and want to do more. In addition, they want the state to do more to assist citizens making individual and group efforts. Citizen efforts include stream monitoring, watershed watchdog efforts, and shoreline cleanups. They recognize that they cannot do it alone and that the state must play a leadership role in assuring that monitoring, evaluation, and enforcement is carried out for the protection of the resource.

A number expressed dismay at a lack of sufficient tools and sufficient political will at the local government level to protect water quality from non-point source pollution resulting from development practices, a lack of easily accessible information resources, the state's restrictions on citizens' ability to challenge the content of permits issued to dischargers of pollution to water,<sup>10</sup> incomplete and insufficient water quality monitoring, and an unresponsiveness to apparent water pollution problems affecting their livelihoods.

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<sup>10</sup> Delegate W. Tayloe Murphy, Jr. patroned legislation in the 1996 Session increasing citizen standing to challenge permit content. See Chapter 1032 of the 1996 Acts of Assembly.

### *Tributary strategies*

The development of water quality improvement strategies along watershed and river basin boundaries was supported. Many commented that this made sense from a planning and ecological standpoint and that the concept of using natural boundaries rather than jurisdictional lines has application in other natural resource management arenas as well.

While encouraging, the development of tributary strategies funding was raised as an issue. Increased state funding for upgrades at sewage treatment plants and for the installation of best management practices to control nonpoint sources of pollution was advocated.

Another issue raised was that the current development of tributary strategies aimed at reducing nutrients provides an opportunity for incorporation of other state programs along watershed lines. Specifically, it was urged that the state calculate the total maximum daily loads of pollutants (not just nutrients) in accordance with the federal Clean Water Act and coordinate that program with tributary strategy development.

### **Topic 3: Monitoring, Evaluation, and Enforcement**

*"Citizen groups like the Friends of the North River can monitor streams, clean up and plant streams banks, put out newsletters and help schools educate our children. But we cannot police and enforce the standards needed to protect our common wealth . . . We need the [state and federal agencies] to be actively committed to improving our environment."*

*"We encourage the Commonwealth to examine carefully the staff resources required to fully carry out planning and enforcement of its existing environmental policies and programs. . . . [M]uch more attention must be given to the level of staff resources needed to accomplish its mission."*

Citizens viewed information on the conditions of resources as vitally important to resource protection and enhancement and environmental planning. They knew that some monitoring takes place, but believed that more should be done. Many viewed with skepticism statements that only five percent of Virginia's monitored waters fail to meet water quality standards. Some disputed the claim, stating that many water bodies go unmonitored and that the monitoring that does take place is inadequate, both qualitatively and quantitatively. Many called for more investment in monitoring so that true assessments of environmental quality may be made.<sup>11</sup>

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<sup>11</sup> See footnote number 3.

Closely related to comments on monitoring were comments about information resources. Many believed that it is getting harder, rather than easier, to access information on pollution discharges and environmental conditions, even with advancing computer technology. In addition, speakers emphasized that information is the key to adequate planning. Sharing information among citizens, all levels of government, and regulators was seen as important so that informed, coordinated decisions may be made.

#### **Topic 4: Land Use and Development**

*"We are rapidly damaging and losing the natural assets that not only provide habitat for wildlife, but that provide us, as citizens, with a sense of place . . . . We talk about 'loss of community' and the lack of a sense of place, yet we continue to grow and develop without planning, heedless of the built environment's impact on the natural environment."*

*"While localities must be engaged in development questions, regional cooperation is critical to success."*

Concerns over the impact of land use and development were heard at all five of the public hearings and were most pronounced in the Northern Virginia and Norfolk areas. These areas have experienced tremendous growth and, in some cases, growth that some believe occurred in an improper manner or improper place. For urban areas, citizens urged the promotion of strategies to increase infill development rather than the expansion of cities and suburbs into open spaces.

In all areas of the Commonwealth, citizens promoted coordinated development that would minimize the loss of open space and impacts on water quality. The preservation of open space was of particular importance in areas that rely on open spaces for tourist and recreational contributions to the local economy.

Transportation issues were also raised in the context of land use and development. Many equated roads with fostering sprawl development and urged planning of transportation systems so that development does not occur where it will have a negative impact on the environment and open spaces. They also urged that roads be developed in a manner sensitive to the area through which they pass. Mass transit was also promoted to reduce auto use and to foster growth around transit systems rather than along extensive highway systems.

Concern was expressed that local governments do not have sufficient tools at their disposal to control growth and that they do not always use the ones they do have to protect water quality. In addition, many local governments may not have the needed expertise or access to resources necessary to conduct long-term planning. Citizens urged that planning, land use, and development tools that are now lacking be provided to local governments.

In urging the committee to action in this area, one citizen quoted from the report Population and Growth and Development in the Chesapeake Bay Watershed in the Year 2020 as follows:

*“Decade after decade, committees, panels, commissions, and vocal individuals have catalogued problems and offered prescriptions for their resolution. The recommendations made here could easily be sidetracked ‘for more study.’ It is our sense, however, that this moment in the history of the region demands immediate action. We sense an important difference in the political climate from past decades. . . . Public officials, politicians, developers, and private citizens who worked on this panel, who attended and participated in the panel’s meetings, and who came to the public meetings that were held in each jurisdiction, are all strongly behind effective land use management that will restore the Bay. All are now awaiting the leadership that will produce effective, timely actions.”*

He then added that the 2020 report was issued in 1988 and that citizens are “still awaiting the leadership that will produce effective, timely actions” and expressed hope that this committee would take appropriate actions.

#### **Topic 5: Open Space and Recreational Needs**

*“The state’s mission is to preserve and conserve parklands and natural resources; I fear this has been forgotten.”*

*“I cannot think of a more important environmental issue facing us today than protecting our rapidly diminishing open lands and natural habitats. . . . We cannot enjoy outdoor activities such as hunting, fishing, boating, hiking and bird-watching if we fail today to continue setting aside park land and wildlife refuges.”*



Open space and recreational opportunities are very popular among Virginia's citizens. This popularity is based on aesthetic values, the increasing desire of individuals for outdoor recreational experiences, environmental benefits, and the economic value tourism and recreation bring to areas.

Citizens expressed concern that suburbanization is fragmenting Virginia's open space, reducing options for the acquisition of public recreation areas and destroying wildlife habitats and migratory corridors. They urged additional funding mechanisms to acquire open spaces now, rather than later, for current citizens and future generations.

Citizens believe the Commonwealth has a critical role to play in investing in new parks and preserving open spaces. Some expressed concern that the state is not now taking authorized steps to acquire park lands and open space and is not doing enough to protect and maintain those that it currently has. While the quality of staff at parks was praised, staffing levels were of concern because inadequate staffing has led to the misuse and disuse of parks and facilities.<sup>12</sup>

#### **Topic 6: Waste Management**

*"The Commonwealth has almost certainly just passed Ohio to become second in the nation for tons of imported garbage."*

*"There is vast potential for the development of industries in Virginia that transform recycled materials into new products."*

Comments in this topic fell into two areas: (i) concern over the amount of out-of-state waste entering Virginia for disposal and (ii) recycling benefits.

A number of citizens expressed concern that Virginia has become a national leader in accepting out-of-state waste behind only Pennsylvania. Waste disposal concerns focused mainly on whether or not landfills will ultimately leak and whether monitoring of the quality of the waste entering the landfills is adequate. While the technology of landfills has improved, many citizens are concerned that eventually the landfills will fail, leading to ground and surface water pollution. Some urged additional monitoring beyond the current 30-year post-closure requirement.

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<sup>12</sup> During its second year, the committee created a subcommittee to examine a number of parks issues. The findings and recommendations of that subcommittee may be found in Sections VIII and IX of this report.

Citizens urged the state to look at its policies regarding out-of-state waste. In particular, they warned that the Fresh Kills landfill in New York, which reportedly accepts four million tons of waste a year from that state, will be closing early in the next century. Pennsylvania, Ohio, and Virginia have been "targeted" as states to accept that waste. While Ohio and Pennsylvania have strenuously objected to this, Virginia has not. Included in this review should be the ability of the state to adequately assess the amount of waste coming into the state.<sup>13</sup>

The solid waste stream was also seen as having potential benefits. In addition to potential income generation for localities, the potential for the development of industries in Virginia that transform recycled materials into new products was noted as a benefit. One group called recycling a "credible" industry in Virginia, citing the 445 applications accepted in 1995 by the Virginia Recycling Machinery and Equipment Tax Credit Program, valued at \$332 million. Recycling successes were noted, such as the paper recycling industry, which has contributed \$537 million and 3,810 jobs from 127 firms to Virginia's economy.

In Virginia, as in other states, an excess supply of secondary materials and modest demand for recycled goods has slowed the recycling industry. It was noted, however, that the Virginia Buy Recycled Business Alliance is planning a statewide "Buy Recycled" program to promote the purchase of recycled materials in order to create more demand for secondary materials.

Recycling was advocated for more than just its economic value. A number of comments focused on a desire to promote recycling as a beneficial way of reducing the waste stream to landfills and waste to energy facilities and of preserving natural resources. Some encouraged the adoption of a bottle bill. In addition, the state was urged to promote markets for recycled material by being a purchaser of products made from recycled materials.

#### **Topic 7: Governance Issues Such as the Structure for Natural Resources Management and Protection, and Policy Development and Implementation**

Citizens throughout the Commonwealth were very vocal on this topic. Their comments speak for themselves:

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<sup>13</sup> In an action taken separately from the activities of this study, Delegate James H. Dillard II patroned legislation calling on the Department of Environmental Quality to conduct such an assessment and report by July 1, 1998. See Va. Code § 10.1-1413.1.

*“Proposals to consolidate and streamline agencies are always attractive but what remains critical is that the functions of those agencies are not diluted or lost during reinvention.”*

*“Though reducing burdens on local governments remains important in terms of fiscal constraints, there remains a need to ensure that local land use decision-making is consistent with state natural resource protection goals. Though a state planning function may be less popular now than it has been in years past, I strongly urge this study committee to further examine mechanisms that the Commonwealth can use to protect Virginia’s environment in a holistic, ecosystem-based fashion. Tributary strategies need to include more than goals and goodwill to be truly effective.”*

*“The Commonwealth should begin a strategic planning process to answer broad environmental concerns. At a minimum the planning process should be based on adequate knowledge of current air, land and water quality . . . .”*

*“Our concern is that the Commonwealth has not dedicated sufficient staff resources to [the storm water permitting] program to respond to local governments in a timely fashion. . . . Staff has been told that DEQ has one individual assigned to review permit application and draft storm water permits for the entire Commonwealth. The county has experienced similar problems with other programs, including DEQ’s Underground Storage Tank program, in which the number of staff assigned at the regional level was entirely inadequate to respond in a timely manner.”*

*“The problem with grossly underestimating the staff resources required to provide timely customer service is that it seriously harms the credibility of DEQ as an agency. It also results in duplication and wasted effort by local staff and substantial uncertainty with respect to the allocation of local staff and financial resources to respond to state permitting requirements.”*

*“Other states are beginning to take positive action to stem the loss of natural treasures, and to begin protecting them through strategies that could point conservation directions into the 21<sup>st</sup> century. The most forward-looking approaches consider large ecosystems . . . broad landscapes where industry, towns and developments are all integral parts of a planned system designed to protect both nature and economic development.”*

*“There is much that could and should be done to protect Virginia’s biodiversity. First, play closer attention to the scientific community.”*

*“How important is it that government deal with these matters? Should all be left to the whims of conscience of the private sector? Legislators will need to decide. However, the people of the Commonwealth are increasingly vocal in support of environmental protection backed with strong regulation when necessary. You owe it to your children and children’s children—for it may be seen as a most serious infringement of their rights as future property owners if you do not.”*

*“Without private property there can be no long-term and lasting protection of our communities and environment; . . . public purposes must be borne by the public, not the individual property owner; . . . property owners, because with their property and investment at risk they are the most likely to take action, are the best enforcers of the environment, but they need the institutions (such as access to court and small claims courts) to accomplish this. In sum, there is much for the state to do but the starting point must be with empowering the private landowner and the small real estate investor.”*

*“Our perception of the DEQ and the various agencies established to protect and conserve our resources is that they currently are more concerned with promoting economic growth and development at all costs — even at the cost of a healthy environmental stewardship. . . . [T]his is not an appropriate role for the state agencies whose mission is environmental protection.”*

*“We recognize that Virginia has specific conditions that call for specific regulations and that if those special conditions call for state regulations more stringent than federal regulation, so be it. We must protect our own house!”*

## **VII. THE VIRGINIA WATER QUALITY IMPROVEMENT ACT OF 1997**

During its first year, the committee sought, through public hearings, the guidance of the Commonwealth’s citizens on the needs for the future of Virginia’s environment. Concerns regarding water quality were at the forefront of the comments, making it clear to the committee that:

1. The improvement and maintenance of water quality should be made a priority.
2. Improving water quality is of concern throughout the Commonwealth and not just in the Chesapeake Bay watershed.
3. Both point and nonpoint sources of pollution need to be addressed.

4. All levels of government, citizens, agriculture, business and industry have responsibility for the restoration and protection of water quality.
5. Funding is inadequate for water quality needs.
6. Good water quality is important for a wide range of reasons, including safe human consumption, wildlife and fish habitat, aesthetics, recreation and economic development.
7. Local governments need additional tools to protect water quality, particularly when it comes to dealing with the impacts of growth and development.

Also during its first year, the committee learned that less than one percent of general fund dollars goes to all of the Commonwealth's environmental protection, conservation, and natural resource programs. This funding level was found to be inappropriately small considering the importance placed by citizens on the future of the environment and the positive economic and health benefits of a clean, healthy environment.

Acting on these issues and the call to action by Virginia's citizens, the committee developed and adopted the concepts that the 1997 Session of the General Assembly passed as the Virginia Water Quality Improvement Act of 1997 (WQIA).<sup>14</sup> The WQIA sets in place a mechanism to address the seven issues listed above by creating a statewide program to address point and nonpoint sources of water pollution through technical and financial assistance programs. The Act also takes a step in addressing concerns regarding low general fund appropriations for natural resources by providing grants for the area of water quality restoration and protection.

A central feature of the WQIA is the creation of a grant program funded through the newly created Water Quality Improvement Fund (the "Fund"), which is administered by the Directors of DCR (nonpoint source) and DEQ (point source). The Secretary of Natural Resources, in consultation with a number of agency heads and agency boards, is to (i) allocate Fund moneys between point and nonpoint source pollution and (ii) develop written guidelines for conditions and distribution of grants from the Fund, as well as for prioritizing funding requests. Eligibility for financial assistance is broad-based and includes such entities as local governments, soil and water conservation districts, and individuals. The Fund is to receive, unless otherwise provided for in the general appropriation act, 10 percent of any general fund annual surplus and 10 percent of any unreserved general fund

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<sup>14</sup> Va. Code § 10.1-2117 et seq.; copy attached as Appendix No. 3.

balance whose reappropriation is not required at the end of each fiscal year. Funds may also come from federal grants, interest and income of the Fund, other public or private sources, and penalties and damages related to breaches of agreements to which each grant is to be subjected.

The WQIA point source programs are aimed first at nutrient reductions necessary to achieve the goals of the Chesapeake Bay Agreement and then other water quality protection and enhancement projects inside and outside of the Chesapeake Bay watershed. The nonpoint source programs are designed to address water quality needs throughout the state, with some emphasis on nutrient reduction.

The nonpoint pollution source sections also call upon the DCR to conduct a nonpoint source water quality assessment to identify geographic areas where water quality is demonstrated to be impaired or degraded as the result of nonpoint source pollution. An evaluation of the basis or cause for the impairment is to be included. Localities are to receive a degree of priority in receiving WQIA nonpoint source grants if they are in a geographic area identified by DCR as having nonpoint source pollution problems and they desire or have developed programs to address the cause of the water quality impairment. Local governments are authorized by the WQIA to develop such programs and may do so with the assistance of DCR.

Also important in the act are the explicit statements of responsibility for the care of water quality. For example, the act states: “. . . the restoration, protection and improvement of the quality of state waters is a shared responsibility among state and local governments and individuals . . . ” (§ 10.1-2128). It also states that “[t]he state has the responsibility under Article XI of the Constitution of Virginia to protect the . . . waters of the Commonwealth from pollution and impairment. Commercial and residential development of land as well as agricultural and other land uses may cause the impairment of state waters through nonpoint source pollution. In the exercise of their authority to control land use and development, it is the responsibility of counties, cities and towns to consider the protection of all . . . state waters from nonpoint source pollution. The exercise of environmental stewardship by individuals is necessary to protect state waters from nonpoint source pollution” (§ 10.1-2124).

The act has proven to be successful in providing additional funding for water quality improvement programs. Fifteen million dollars was appropriated in 1997 and \$54 million was appropriated in 1998 for the Fund. This money has fostered additional public and private expenditures, meaning that well over a \$100 million has been generated by the act in a very short period of time to protect and improve the quality of Virginia's waters.

## VIII. PARKS SUBCOMMITTEE ACTIVITIES

### A. INTRODUCTION

On July 17, 1997, the full committee received three briefings concerning the Commonwealth's park system. They related to (i) the 1996 Virginia Outdoors Plan, (ii) the expenditure of funds from general obligation bonds authorized in 1992 for park acquisition and development, and (iii) an overview of Virginia's park and natural area systems. Following the briefings, and recognizing concerns raised by members of the committee and the importance of parks and open spaces to the citizens of the Commonwealth, the chairman appointed a subcommittee to examine more closely the issues facing Virginia's parks. The subcommittee was composed of Delegate R. Creigh Deeds, Senator Emmett W. Hanger, Jr., John Daniel II, Tim Lindstrom, and Susan Allen-Cable.

The parks subcommittee held four meetings, one at the University of Virginia and three at various state parks. The subcommittee's meetings and the results of the deliberations are described below. Section IX of this report contains the subcommittee's findings and recommendations and the actions taken by the full committee.

### B. CHARLOTTESVILLE MEETING

There were two items on the subcommittee's agenda at the September 3 meeting in Charlottesville. The first was a review of several decades worth of park-related studies. The second was a discussion, with representatives of DCR, regarding issues raised by the previous studies, questions posed at the last meeting of the full committee, and other subcommittee questions.

#### 1. Staff Report on Previous Parks Studies

A report, prepared by Legislative Services staff covering over 30 years of parks-related studies, was provided to the subcommittee. Staff provided an overview of the studies which included the following four themes:

1. The importance of recreation and the role of the public sector in providing outdoor recreational activities;

2. The need for stable funding for park acquisition, operation, and maintenance;
3. The need for better planning; and
4. Concerns with staff stability.

*Theme 1: The importance of recreation and the role of the public sector in providing outdoor recreational activities.*

Opportunities for and the availability of outdoor recreational opportunities have consistently been a high priority with Virginia's citizens. Citizens also believe that government has an important role to play in assuring the availability of outdoor experiences.

The importance of outdoor recreation to Virginia's citizens has been well documented. Numerous legislative and administration studies, including all of the Virginia Outdoors Plans, have documented the fact that as population increases (i) greater pressures are placed on Virginia's resources and (ii) demands for and participation in recreational activities increase. The 1996 Outdoors Plan also points out that healthy outdoors and recreational opportunities benefit a community's economic status through tourism-related spending and serve as an attraction to business.

A 1992 Virginia Outdoors Survey found that 77 percent of the Virginia population believed that the public sector has a responsibility to provide outdoor recreational opportunities for its citizens, and approximately 50 percent indicated that they were "somewhat or very willing" to give up certain property uses to protect open space. In addition, 76 percent believed it is very important to protect park, natural, and open space areas. However, only 19 percent felt these resources were being adequately protected.

*Theme 2: The need for stable funding for park acquisition, operation, and maintenance.*

Even though there has been a long-standing public mandate to protect open spaces, there is a continuing need to assure an adequate and stable funding source for acquisition, operation, and maintenance of parks. In 1989, a joint legislative study committee, pursuant to HJR 204 (1987), documented the state's apparent shortfall in recreational acreage. At that time, the nationally accepted standard for park systems was 10 acres per 1,000 population. Virginia's park system then included only 51,000 acres, and, based on that standard, Virginia was short about 6,000 acres. Based on



population projections and the national standard, the study found that Virginia's park system should include about 65,000 acres. The 1996 Outdoors Plan states that Virginia state parks cover 53,464 acres and natural areas cover 12,724 acres. Unless the almost 13,000 acres of natural areas are included, Virginia is still well short of the national standard. This is true even with the passage of the Commonwealth of Virginia Park and Recreational Facilities Bond Act of 1992,<sup>15</sup> which has resulted in the purchase of about 4,000 acres.

Respondents to the 1992 Outdoors Survey stated that their primary concerns with existing recreational areas were poor maintenance, overcrowding, security, and enforcement. A 1992 nationwide study of state park systems found that Virginia ranked 48<sup>th</sup> in per capita funding for parks and 49<sup>th</sup> in percentage of budget spent in state parks operations. The 1995 Annual Information Exchange of State Park Directors showed that Virginia still ranked low in moneys dedicated to operating the system – 40<sup>th</sup>.

Throughout the 1996 Outdoors Plan, as well as the HJR 204 study, emphasis is placed on the need for a stable source of funding to improve and manage Virginia's public outdoor recreation areas and natural resources. Also, as the Outdoors Plan notes, many of the older facilities need revitalization of their aging infrastructure, including roads, utility lines, sewers, and water facilities. Now Virginia faces the dilemma of having acquired new lands for state parks without a comparable commitment of funds to operate these sites, or for that matter, existing parks.

The need for a stable source of operation and maintenance funding is particularly crucial in light of the reduction in the federal Land and Water Conservation Fund. Since 1965, this fund has contributed \$22 million for acquisition and development of the state's park system. However, federal contributions have declined sharply. By 1995, the state's federal allocation had dropped to approximately \$500,000 and now stands at zero.

The HJR 204 legislative subcommittee tried to address the need for more operational funds by proposing dedication of a portion of the recordation tax to those needs. The legislation was carried over by the 1990 Session of the General Assembly and never acted upon.

Whether parks can generate enough income to be self-sufficient or whether Virginia should even strive for park self-sufficiency are questions which have been discussed over the years by both legislative panels and the executive branch. Other than general funds, the primary source of operations funding has been fees generated by the parks. In 1995, \$3.7

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<sup>15</sup> Chapter 789, 1992 Acts of Assembly.

million in revenue was generated from park fees.<sup>16</sup> Fifty percent of this total came from camping fees and cabin rentals. The HJR 204 legislative panel explicitly stated that it should not be the goal of the state park system to be a totally user-supported, profit-making endeavor, nor should it be a totally subsidized enterprise. According to the HJR 204 report, fees should:

1. Take into account local demographics;
2. Reflect the level of development of the park and the activities offered;
3. Serve as a control measure in heavy use areas and be an incentive for use during off periods and at under-utilized facilities; and
4. Avoid creating unfair competition with private facilities.

*Theme 3: The need for better planning.*

Another consistent finding of examinations of the park system is that adequate planning can help identify the needs and potential locations for recreational sites or open space areas. However, as noted in the 1996 Outdoors Plan, the development of a systemwide plan is lacking.<sup>17</sup>

Studies have found that local communities must be involved in the process of planning and developing park resources and facilities so as to ensure that the desired opportunities are provided. Studies also note that even if an overall plan for the park system and a master plan for each park are developed, the Department will still face an inefficient capital outlay process.

*Theme 4: Concerns with staff stability.*

There has been a continuing concern over the loss of park personnel to other park systems. Turnover rates have been very high, with the state investing a lot in training personnel only to have them leave for better opportunities with local governments, other states, or the federal park system.

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<sup>16</sup> See 2c of this section for additional information and more up-to-date figures on fee generation.

<sup>17</sup> The Moss Commission recommended and the 1998 General Assembly adopted a park planning statute to help address these problems. See Section IX and Appendix No. 7.

## 2. Subcommittee Discussions

Following the staff briefing, the subcommittee undertook a discussion of many of the issues raised by the staff report, issues raised by the questions presented by the full committee, and additional questions to lay a foundation for recommendations to the full committee.<sup>18</sup> The discussions included the involvement of the DCR Director and the heads of the Parks and Natural Heritage Divisions as well as other DCR staff.

### *a. Park Staff Issues*

(i) *Staff pay:* The subcommittee was presented with information from a nationwide study indicating that while Virginia's park managers rank in the middle as far as pay, starting salaries rank lower—around 40<sup>th</sup> nationally.

(ii) *Staff housing:* Some park staff are provided on-park housing for the cost of utilities (\$100 to \$150 per month) even though there is a Department of General Services guideline that state employees should pay market rent for provided housing. DCR does not follow this guideline at present. This is because there is an economic value to the Commonwealth of having staff on site 24 hours a day and thus on 24-hour call. The DCR indication that the agency would continue with its present housing arrangement, while they calculate the economic value to the Commonwealth of having park personnel on site, met support from the subcommittee.

(iii) *Staff workload:* In response to questions about whether park staff were "over-stretched," DCR staff noted that new staff will be needed in the future, particularly with the addition of the new parks purchased through the bond referendum. The DCR Director noted that on August 25, 1997, the equivalent of over 520 full-time employees, a record high, were working for the Parks Division. This figure includes the cumulative time provided by full- and part-time employees. The need for new staff will be reflected in the biennial budget, according to DCR.<sup>19</sup>

In response to questions on the responsibility of park staff for natural area preserves, DCR noted that park staff typically provide support to the natural area that is closest to their park. Virginia has 21 natural area preserves, 17 of which are owned and managed by DCR. At all 17, state parks' staff provide some assistance with site management. The parks and

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<sup>18</sup> Copies of questions presented to DCR and the responses and attached documents are on file at the Division of Legislative Services.

<sup>19</sup> See the parks subcommittee recommendation number A2 in Section IX of this report.

natural area divisions within DCR are working on what resources will be needed to appropriately manage the new preserves that are coming on line.

DCR also noted that the park staff's jobs have changed dramatically over the last six to ten years, particularly in law-enforcement requirements and "business type" of activities. Generally, the parks' staff come from a forestry or recreation background, but they are now required to be business managers, too. Some of the burden of getting bond projects built and functional will lessen, but those new and upgraded parks and facilities will present additional maintenance and operational requirements.

iv) *Staff turnover and vacancies:* DCR noted that all vacancies are advertised as they occur. Some vacancies exist because of the lag time in filling the position.

In addition, while the state invests a lot in staff training and development, localities then recruit staff away to work for local police, parks, and recreation departments. Hampton, for example, recently hired six people away from the state's park system. The cumulative result is that only 55 percent of the DCR's park staff have more than three years' experience. DCR pointed out that despite the rapid turnover, the parks' staff do a good job, citing a customer survey showing satisfaction.

#### *b. Privatization*

The subcommittee raised the issue of privatization of parks. DCR Director Kathleen Lawrence noted that DCR no longer uses the term because of misunderstanding of its meaning. According to Ms. Lawrence, when DCR did use the term, it did not mean turning a whole park over to the private sector to run, but many perceived it that way. She added that there are some things DCR does not do as well as the private sector. For example, park staff are trained in natural resource management, not food service. Ms. Lawrence noted that, in her opinion, it is better for a contractor run a boat service, a stable, or a food concession, while the Commonwealth runs the park.

The subcommittee inquired if DCR had considered turning campground administration over to the private sector. According to Ms. Lawrence, DCR has discussed that option for the new parks, but it is not clear that the Commonwealth would benefit from it. Members of the subcommittee expressed concerns as to whether private sector administrators would be as responsible and caring for natural resources as state parks' staff.

With the exception of the Grist Mill in Fairfax, there is a legislative prohibition on the full privatization of state parks.<sup>20</sup> The Grist Mill is currently a state park, but a private group is undertaking a restoration using colonial-era construction methods. The group has the option to take over the park. Presumably, it will analyze whether enough revenue can be generated before doing so.

Ms. Lawrence announced that there are no plans to privatize additional parks. She added that DCR has been approached regarding privatization of Kiptopeke State Park for education and ecotourism purposes by a nonprofit group, but there have not been extensive discussions.

*c. Park Self-sufficiency*

Noting that there are varying degrees of privatization, the subcommittee next turned to the issue of self-sufficiency.

DCR updated the subcommittee on park income, noting fiscal 1996 fee income of \$4.7 million and 1997 fee income of \$5.6 million, with projections for continued increases. The increases were attributed to rising visitation, higher fees, extended seasons beginning around 1994, and more and improved cabins and facilities coming on line through use of 1992 bond referendum funds. Some of the growth in visitation is due to marketing, but most appears to be due to word of mouth.

Fees for cabins have been adjusted, based on what the private sector has done, into a three-tier system. DCR claimed success due to a reduced volume of complaints regarding unfair competition from private campgrounds, few complaints from state park users, and a 90 to 100 percent occupancy rate during prime season.

Subcommittee members noted that fees can have an impact on those with fixed incomes, such as the elderly, so it is an issue that must be looked at closely. In some parts of the Commonwealth where state parks are the only outdoor recreational opportunity, fee exceptions or agreements are made with local parks and recreation departments for reduced or no-fee arrangements.

A number of questions were raised regarding the following passage from the 1996 Virginia Outdoors Plan:

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<sup>20</sup> See § 10.1-109, § 10.1-112, paragraph N of Item 510 of Chapter 853 of the 1995 Acts of Assembly and paragraph H of Item 435 of Chapter 464 of the 1998 Acts of Assembly. The Grist Mill privatization was authorized by Chapter 811 of the 1996 Acts of Assembly.

*"Funding for the operation and maintenance of park and recreational sites is critical. Often funding is provided only for acquisition and/or development. Neglected is the fact that a great deal of money is necessary to provide staff and equipment necessary to manage a facility. Operation and maintenance funding must be considered before a facility is developed or expanded. State parks should operate on a self-supporting basis, relying on user fees and revenue-generating facilities or programs to recoup expenses."*  
(Emphasis added)

Ms. Lawrence explained that state parks have two major state responsibilities: (i) conservation of natural resources and (ii) the provision of a system of parks and open lands to residents and nonresidents. She expressed the view that fees should support those things that not everyone uses, such as fishing or canoeing, where it costs the state out-of-pocket expenses to provide something other than the park itself. Ms. Lawrence sees the state parks responsibility as the provision of large areas for people to "get away from it all." Thus, the Commonwealth should subsidize the bigger outdoor experience, including management of such things as the water and land resources and buildings.

The subcommittee explored this issue further, asking: In budgeting, are the two functions of resource management and the provision of other services differentiated? How does DCR calculate the self-sufficiency of a facility? If a facility does not cover its costs, does DCR close it or calculate how that facility relates in an integrated manner with the whole park experience? Is greater general fund support needed since fees can only go so far? (Posed another way: What is it that Virginians can reasonably expect for their tax dollars when they go to a state park?) How do we assure that self-sufficiency does not go to an extreme where it becomes unaffordable for many to go to a park? What are the things that should be self-sufficient?

DCR responded that current state-level accounting systems do not separate resource conservation from facility operation costs. However, DCR can tell if a concession is making money and each park manager can tell fairly closely the breakdown between the two.

DCR also noted that general fund money for the parks has been flat for the about six to eight years, in the \$9 to \$10 million range. The federal government provides no money for operations. DCR also noted that there are legislative restrictions on how DCR's income may be spent (§ 10.1-202).

DCR added that the push toward self-sufficiency was being driven by a performance measure that calls on it to increase self-sufficiency by 10 percent a year. This is something it must report to the Department of Planning and

Budget (DPB) each year and is a measure that does not take into account the concept of stewardship. The measure has not been a problem yet, but if it interferes with stewardship, DCR indicated that it will request that it be changed.

To increase self-sufficiency, DCR has used fee increases, as well as other measures, including the use of volunteers, inmates, and the National Guard.

The subcommittee raised questions about a number of income-producing activities potentially injuring the integrity of the natural resources of the parks, including whether DCR had discussed selling land, leasing mineral rights, or leasing lands for agricultural, grazing, or timber activities. DCR responded that (i) there is no interest in selling mineral rights, (ii) DCR is not planning to sell any land, nor has it identified any land to sell, (iii) DCR does harvest timber in a few selective cuts and to control invasive species as part of resource management plans but not as part of a profit motive, (iv) DCR has no plans for clear cutting, and (v) as far as agricultural leases, DCR believes that it has leased all appropriate lands.

#### *d. Use of Bond Funds*

The 1992 Session of the General Assembly passed the Commonwealth of Virginia Park and Recreational Facilities Act of 1992 (the "bond act") authorizing the issuance of \$95,365,000 for park land acquisition, development, and refurbishment. The authorization was contingent upon a positive vote on the question on the November 3, 1992, election. The citizens of the Commonwealth overwhelmingly endorsed the issuance of the bonds.

Among the provisions of the bond act were those listing projects and amount of allowable bond issuance for the projects, including "Acquisition of land for parks—\$26,450,000" and "Acquisition of land for natural areas—\$11,475,000." During the July 17, 1997, committee meeting, it was learned that the "acquisition of land for parks" line item was being used not only for the purchase of land, but for the development of the land as well, including such things as roads, parking lots, and boat ramps. It was also learned that moneys had been moved from the "park land acquisition" line item to the "park development" line item, thereby draining the acquisition account and preventing the acquisition of additional land. This raised concerns among some members of the commission about how the funds were being spent and provided a major impetus for the formation of the subcommittee.

The central issue revolved around whether moneys designated for "acquisition of land for parks" may be used for some development of the

acquired property or whether the funds may be used for the acquisition of land only.

The subcommittee raised a number of questions regarding use of bond proceeds, including: What is "acquisition of land"? Has the DCR acted within the bounds of the authorizing act? Is it appropriate to move money from acquisition to development and, if so, how can it be done? What is the status of inholdings and the potential for the acquisition of property adjacent to existing parks?

(1) What is acquisition?

A number of memoranda regarding this question by bond counsel on the interpretation of "acquisition" were provided to the subcommittee. Bond counsel took a view that the term "acquisition" in the act was ambiguous so that legislative history could be brought in to interpret the term's meaning in the context of the bond act. The short answer found in one of bond counsel's memorandum is that "[while] documents prepared for the General Assembly in its consideration of the [bond] act do support the interpretation that acquisition of land includes certain development costs, they do not support an interpretation that acquisition includes a full 'Phase I' development."

This opinion raised the question of what constitutes "certain development costs." A 1993 memorandum from Karen Washabau of DPB to Paul Timmreck based on bond counsel memoranda was also provided to the subcommittee addressing, among other questions: "May bond proceeds for acquisition of land for parks and natural areas be used to fund full park (Phase I) development of such land?" The answer was:

*"No. Only certain development costs, i.e., basic infrastructure improvements (roads and utilities), water and sewer development, may be included in the cost of land acquisition. A full Phase I development, defined to include: roads, parking facilities, utilities, maintenance facilities, staff residences, interpretive exhibits, picnic areas, launch ramps, amphitheaters, trails and equipment, does not qualify for use of bond proceeds for land acquisition."*



(2) Did DCR comply with the law in its use of "acquisition" money for development activities?

Portions of page 4 of an Auditor of Public Accounts report released shortly before the subcommittee meeting are excerpted as follows:

*"The Department spent excess bond funds before obtaining approval . . .*

*"The Department spent 92 percent of the \$2 million Belle Isle State Park budget for park construction. A portion of this budget was used to construct a boat launch and a boat launch parking area. Also, the Department has budgeted an additional \$2 million to build and design a road and parking system at James River State Park. The major funding source for these projects is general obligation bond funds. The use of acquisition bond funds for parking facilities and launch ramps, prior to receiving the Governor's approval, are violations of the 1992 bond referendum . . ."*

*"In addition, the Department should meet with the Governor or his designee to determine if remedies exist to reallocate or otherwise comply with the provisions of the 1992 Bond Referendum."*

Mr. Hedland from DCR noted that if funds have been used from the wrong line item, it may be possible to go back and reallocate funds between line items so that the disbursement is made from the correct line item.

Because Ms. Lawrence indicated that she had not seen the Auditor's report and, therefore, had not had an opportunity to review or respond to its contents, the subcommittee asked that she review it and, when she does respond, provide the response to the subcommittee.

(3) How can money be moved from acquisition to development?

There is a four-part process that must be undertaken to transfer funds between projects. The first part of the process deals with completion of the original project. The bond act reads, in part, ". . . [to] the extent that the cost of any capital project is less than the amount allocated to such capital project, the Governor or his designee may increase the amount allocated to any other project included herein." This indicates that a project must be completed and that all of the moneys designated for it have not been needed.

The final three parts of the analysis relate to the project to which the funds are proposed to be transferred, requiring that the following three conditions be met: (i) the project cost has been reduced to the extent

reasonable, (ii) there has been no expansion or enhancement of the original project, and (iii) the original intent of the project is accomplished.

DCR obtained the approval of the DPB (as the Governor's designee) to transfer \$3,787,543 from the bond act's "park land acquisition" line item for use in infrastructure development on May 30, 1997.<sup>21</sup>

#### (4) Inholdings

The advisability of transferring funds from acquisition to development while inholdings in parks still exist was questioned by the subcommittee. DCR noted that there are two inholdings in James River Park, four at Andy Guest State Park, and two at Belle Isle. Ms. Lawrence indicated that if there had been a willing seller, DCR would have bought the property. Approximately \$340,000 has been retained in the acquisition fund for an in-the-works purchase of an inholding and an easement.

DCR agreed to provide the subcommittee with a list of inholdings with the size of the acreage and whether the holder was willing to sell.<sup>22</sup> Some time after the meeting, a list indicating 57 inholdings with combined tax assessed values of over \$12 million was provided to the subcommittee.

#### (5) Adjacent Property

The subcommittee also asked about the lost potential to acquire property adjacent to parks that could provide additional resource protection and additional access. It was noted that an owner of river-front property containing an access road to Andy Guest State Park approached DCR about selling his property. Ms. Lawrence responded that previously, when DCR was planning the park, the property owner had not wanted to sell. Design of the park is now complete, so DCR declined to purchase the property.

##### *e. Bringing Parks on Line*

The subcommittee noted reports that it takes eight-and-a-half years to get a piece of land up and running as a park. DCR agreed to provide the subcommittee with the flow chart of the process. The subcommittee also requested that the agency provide written suggestions for streamlining the process. DCR noted that some of the steps should not be abolished because

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<sup>21</sup> See recommendation number B3 in Section IX in which the full committee recommends that this money be reallocated to acquisition.

<sup>22</sup> The list, indicating 57 inholdings with tax assessed values of over \$12 million, is on file with the Division of Legislative Services.

they protect the resource and taxpayers' money; others are out of DCR's hands, as they are requirements of other agencies.

*f. Public Encroachment*

The subcommittee inquired about reports that a survey at Seashore State Park indicates that private landowners are encroaching on park property. DCR responded that it is working with neighbors on their encroachment.

Apparently, private encroachment is a growing problem for local parks and the penalties are so minimal an action may not be worth pursuing.

*g. Meeting Conclusion*

At the conclusion of the meeting, it was agreed that the subcommittee needed time to digest the information it had received and that it would hold another work session to review materials that DCR was to provide.

The subcommittee also requested that DCR develop a spread sheet for each park, indicating acreage, visitation, fees/income by categories, payroll costs, FTE's, and any other direct costs, as well as the number of cabins. DCR also agreed to provide figures on the costs of running each park, including a breakdown by park of client services' costs.

### **C. SITE VISITS AND ADDITIONAL MEETINGS**

The parks subcommittee held three additional meetings, all at state parks. The meetings, held on September 29, October 9, and November 24, involved discussions with park personnel and headquarters staff, tours of the parks, and extensive deliberations. Each tour involved briefings on the history and natural character of the park and included the identification of significant attributes such as historic structures, natural amenities, camping facilities, 1992 bond act projects, inholdings, and adjacent properties that have the potential for acquisition.

At each of the parks, the subcommittee received briefings from district managers on their responsibilities and the parks within their districts. The subcommittee heard from four of the six district managers in the state. Each is responsible for overseeing a number of parks, as well as acting as the park manager for their base park. They hold these positions in an acting capacity, as new classifications have not been created for the positions.

The five parks visited were Sky Meadows State Park in Clark and Fauquier Counties, Andy Guest/Shenandoah River State Park in Warren County, Pocahontas State Park in Chesterfield County, Westmoreland State Park in Westmoreland County, and Belle Isle State Park in Lancaster County. The parks were selected because they represent varying examples of the types of state parks in Virginia. All of the parks have active bond-financed projects under way.

*Sky Meadows State Park* contains a working agricultural operation, access to the Appalachian Trail, hiking and riding trails, and a historic structure. Sky Meadows also has an active grounds and agricultural program involving the Department of Corrections.

*Andy Guest/Shenandoah River State Park* is one of the four new parks acquired with the 1992 bond referendum moneys. Development is under way at this park, consisting of a \$2.6 million road that will allow access to the Shenandoah River and about 15 primitive camp sites.

*Pocahontas State Park* is the largest of the state parks, with over 6,000 acres. The park is undergoing extensive bond-related construction, including the refurbishing of a 1930s dining hall and cabins, the expansion of picnic areas and shelters, and the construction of a conference center and outdoor amphitheater. The park also contains extensive hiking and biking trails, a swimming pool, and canoe facilities.

*Westmoreland State Park* is located on the banks of the Potomac River. The park was created in the 1930s by the Civilian Conservation Corps, contains 1,299 acres, and has about a mile and a half of shoreline along the Potomac River. Other amenities at the park include a visitor center, self-guided interpretive trails, camping and fishing facilities, boat access to the river, and a swimming pool.

*Belle Isle State Park* was the first park to be purchased with the 1992 bond referendum moneys. In addition to its two parcels totaling 733 acres of land, it has seven miles of shoreline along the Rappahannock River. Facilities for launching boats, fishing, and picnicking are available. Hiking trails exist through a variety of tidal wetlands, agricultural fields, and upland forest. A conference center is also available for rental.

In addition to viewing the state parks, the parks subcommittee dedicated much of its time to discussions among subcommittee members. Based on these discussions, a number of preliminary findings and proposals were identified for further review. Those preliminary ideas were presented to the full committee at its October 20 meeting as an update.

At its November 24 meeting, at Westmoreland and Belle Isle State Parks, the subcommittee further discussed and refined its findings and recommendations. The final parks subcommittee recommendations were presented to the full committee on December 4 with the understanding that final action would be taken at a future meeting. The following section contains the parks subcommittee's findings and recommendations and the references to the full committee's actions at its January 12, 1998, meeting.

## **IX. PARKS SUBCOMMITTEE FINDINGS AND RECOMMENDATIONS AND FULL COMMITTEE ACTIONS**

### **A. FUNDING**

*1. The fact that parks are self-supporting should be more clearly recognized.* Pressure has been placed on the parks system to become "self-sufficient." The parks system is currently under a requirement to improve self-sufficiency by 10 percent a year, even though the 1996 Virginia Outdoors Plan recognizes that the estimated economic value of the state park's system to the Commonwealth is in excess of \$90 million annually. Parks are also recognized as economic and revenue generators for localities. The state's funding for parks has been flat, in the \$8 to \$10 million range, for the last decade. There is, therefore, almost a ten-to-one return on taxpayer investments in parks.

**Recommendation:** The Code should clearly state that parks are self-sufficient.<sup>23</sup> Proposed amendments to subsection A of § 10.1-200 accomplish this recommendation.<sup>24</sup>

**Full Committee Action:** Concur

*2. The state must make a higher priority of its financial commitment to state parks and should appropriate additional general fund dollars for park staffing, operations, and maintenance.* As noted above, parks funding has been flat for a decade, despite the substantial return on investments in parks. The park system is in need of

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<sup>23</sup> By "self-sufficient," the subcommittee is referring to the fact that parks provide significant net positive economic impacts, and therefore should not be required to produce income to offset all associated costs.

<sup>24</sup> See Appendix No. 7 for the version passed by 1998 Session and Appendix No. 8 for the version considered by the parks subcommittee and full committee before amended by the full committee.

facility repair and ongoing maintenance. Staffing levels in state parks are inadequate to meet the current and growing demands upon them. This is particularly true with the addition of new facilities through the use of bond funds.

The subcommittee has identified 53 positions that should be filled in the state parks. Equipment to support these personnel must be provided as well. The positions include: 13 Program Support Technicians (Grade 6), 26 Rangers (Grade 6), 6 Conservation Officers (Grade 6), and 8 Assistant Managers (Grade 9). Assuming all grades are at Step 5 and allowing for equipment, uniforms, and training, the estimated per-employee costs are: Program Support Technicians and Rangers \$32,000, Conservation Officers \$35,000, and Assistant Managers \$40,000 (total \$1,824,000). This does not include vehicles (Jeeps with the police package), which cost approximately \$30,000 each, for the conservation officers.

There are clearly additional and increasing operation and maintenance needs at the parks, particularly with new facilities coming on line through use of the bond funds. The subcommittee has not been able to obtain an estimate of those needs, but further action should be taken to assure that the needs are met in the future so that the park system will continue to attract visitors.

### **Recommendations:**

a. The upcoming budget should include additional funding for parks personnel to meet the shortfall identified by the subcommittee. If these funds are not in the Governor's budget, the committee should support a budget amendment to add the identified positions.

b. The General Assembly should call for a master planning process for state parks that identifies, reviews, and reports on staffing, operational, and maintenance needs so that sufficient funds may be appropriated for parks. Proposed amendments to § 10.1-200 and proposed master planning process in new § 10.1-200.1 will provide needed information.<sup>25</sup> Other sources for information on the parks' needs should be identified while the planning process in proposed § 10.1-200.1 is undertaken. This may include the JLARC report released in December 1997 in which JLARC reviews the "organization, operation, and performance of DCR . . . [including] a review of the maintenance and staffing of state parks" (per Item 14 of the appropriations act).

### **Full Committee Action: Concur**

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<sup>25</sup>Ibid.

**3. *There needs to be a long-term, stable, and adequate funding source for the park system and open space conservation programs.*** To assure that the Commonwealth's citizens continue to receive a return on their investment in parks, a stable funding source must be available to adequately staff, maintain, and expand the state park system and to undertake resource management. State parks are only one component of open space lands in the Commonwealth. A stable funding source for these other components, such as conservation easements on private lands, is needed as well.

**Recommendation:** General fund appropriations should be increased as described in A2. A special fund should be established out of a facilities user fee that will be dedicated to park land acquisition and development. Proposed amendments to § 10.1-202, the master planning process in proposed § 10.1-200.1, and the proposed addition of paragraph 8 to § 10.1-200 will aid in accomplishing this recommendation.<sup>26</sup>

**Full Committee Action:** It was agreed that additional general fund appropriations need to be made to aid in the operation and maintenance of the state parks. Agreement could not be reached on whether a "facilities user" fee should be implemented. Instead it was agreed that issues regarding establishment of a special fund would be studied during a continuation of the committee.

**4. *The economic benefits of parks and open spaces need to be better quantified and taken into consideration in long-term planning and funding decisions.*** Numerous benefits of parks and open spaces are not now fully quantified or adequately considered. Benefits often overlooked include those related to watershed protection, air quality, recreational opportunities for adjacent communities, and human health. The costs avoided for mitigation of water and air pollution and health care need to be recognized as well.

**Recommendation:** This should be a policy recommendation for consideration by the current and future administrations and the General Assembly when formulating budgets for state parks.

**Full Committee Action:** Concur

**5. *Entrance and parking fees should be eliminated.*** Central to this finding are questions related to citizens' expectations from their tax dollars. Should they have to pay to visit a state park that their tax dollars

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<sup>26</sup> Ibid.

paid for? Once in a park, what things should they pay for (for example, canoe rentals, cabins, swimming pool access) and how is that determination made?

A survey of nearby states found the following: Kentucky, Tennessee and West Virginia charge no admission or parking fees, while North Carolina charges fees at only two parks. Maryland has no fees at 33 parks, while it has the following fees at other parks: four have a \$3 weekend and \$2 weekday fee, 12 have a \$2 fee in peak season, one has a \$1 fee on weekends, two have a \$1 honor fee, and four have a \$2 honor fee.

**Recommendation:** Entrance and parking fees should be eliminated. This will result in a loss in revenue to the park's system of approximately \$900,000. This lost revenue should be made up through the General Appropriation Act.<sup>27</sup>

**Full Committee Action:** Agreement could not be reached in favor of this recommendation. It was agreed instead that the issue would be studied over the next year.

*6. A thorough evaluation of the benefits of any land that is offered to the state by gift or otherwise for the park system should always be undertaken.* During the site visit to Sky Meadows State Park, a representative of the volunteer organization "Friends of Sky Meadows" expressed concern that a possible donation of property to the park was being hindered by a request that the donation be accompanied by an endowment. The subcommittee is concerned that such a requirement would have a chilling effect on possible donations and on the acquisition, from willing donors, of valuable properties for the park system. Subcommittee members are also concerned that the lack of an endowment may be being used as grounds for automatic rejection of an offer to donate land.

**Recommendation:** The absence of an endowment provided by the donor for the land's upkeep should not be a reason for refusing to undertake such a review or give consideration to such acquisitions. This should be made a policy recommendation for consideration by the current and future administrations and the General Assembly.

**Full Committee Action:** Concur

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<sup>27</sup>Ibid.



## B. CURRENT AND FUTURE BOND EXPENDITURES

1. *There is a need for a clear distinction between what is meant by acquisition money and by development money in bond initiatives.* There are at least two reasons for this. The first is to prevent the recurrence of the types of concerns raised over current bond expenditures (that is, that funds are being used for infrastructure development rather than land acquisition) and to assure that expenditures are for those things intended. Secondly, if there are future bonds initiatives, the public should clearly know what the funds are to be spent on. This could provide a level of confidence to the public that bond moneys will be spent as it anticipates.

2. *Future bond initiatives should contain clearly defined mechanisms for determining when a project is complete.* In some cases, the completion of a project is easily determined, as in building a swimming pool. In such cases, excess funds are easily identifiable for transfer to another project. However, in the case of projects described as "park land acquisition," no determinate end to the project is identifiable without further definition.

**Recommendation:** A recommendation should be made that in future bond initiatives and other funding mechanisms for parks, clear definitions and directions should be included. For example, "land acquisition" could be defined to mean the purchase of land and existing infrastructure only.

**Full Committee Action:** Concur

3. *There are numerous properties within and adjacent to state parks that may be available for acquisition now or in the future that the current bond funds designated for "park land acquisition" should be retained and used for.* DCR provided the subcommittee with a list of 57 inholdings in state parks with a total tax assessed value of \$12,129,259. There are also a number of adjacent properties with willing sellers that may be appropriate for acquisition as additions to state parks. One example, visited by the subcommittee, is an adjacent parcel of approximately 580 acres with 2.5 miles of river front and an existing access road into Andy Guest/Shenandoah State Park. It is estimated that the property and road could have been acquired for much less than the \$2.6 million being spent on the access road now being constructed. At the request of the DCR, DPB declared that the land acquisition projects of the bond referendum have been completed and authorized the transfer of \$3,787,543 from park acquisition to park development.

**Recommendation:** A policy recommendation should be made to the current and the next administration that the transfer of funds originally designated for acquisition should not be completed, but should be retained for acquisition of land only (which may include existing structures but not basic development costs).

**Full Committee Action:** Concur

## C. PARK AND OPEN SPACE PLANNING

1. *The park system should not be looked at in isolation, but should be considered a part of a larger open space system.* That larger system includes such areas as federal, regional and local parks; natural heritage areas; wildlife management areas; scenic byways; private properties under conservation easements; and agricultural and forestal districts.

**Recommendation:** This finding should be made a policy recommendation for consideration by the current and future administrations and the General Assembly.

**Full Committee Action:** Concur

2. *Legislation should define the elements of a master plan, build in performance standards, and clarify the master plan development process to assure oversight.* Some elements may already be in use, such as (i) classifying all lands in a park on their suitability for different types of development, (ii) developing of specific purposes for the park and the goals and objectives to support those purposes, and (iii) using (i) and (ii) to direct the future condition of the parks. The master plan should also contain information on the future operational and maintenance needs, including funding needs, of the parks at various levels of phased development. The public must be involved in this process and there should be reporting at significant steps in the development of a master plan and in the carrying out of any master plan. This may include reporting requirements at important stages of development to the appropriate committees of the legislature. The master plan should not be a static document, but rather a document that can change to fit changing circumstances. Such changes should be made only following a public review process.

**Recommendation:** The master planning process found in proposed § 10.1-200.1 accomplishes the recommendation incorporated in this finding.<sup>28</sup>

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<sup>28</sup> Ibid.

**Full Committee Action:** Concur

#### D. AGENCY STRUCTURAL CHANGES

*1. Consideration should be given to the creation of a separate parks or open space agency.* Parks and open spaces are very important to the citizens of the Commonwealth. Creating a separate agency that encompasses parks and other open space programs of the Commonwealth could assist in raising the profile of these functions and lead to better management of these resources. This will be particularly important in coming years as additional focus is paid to nonpoint source pollution efforts for which, statutorily, DCR is the lead agency.

**Recommendation:** If the other subcommittee legislative and policy recommendations are implemented, the creation of a separate park agency may not be needed at this time.

**Full Committee Action:** Concur

*2. Consideration should be given to placing design and construction functions in the parks division.* Park personnel know more about the needs of their parks and more about what will fit best into their parks than anyone else. Design and construction functions at parks may currently be conducted by those who are not adequately linked to the parks.

**Recommendation:** This finding should be made a policy recommendation for consideration by the current and future administration and the General Assembly.

**Full Committee Action:** Concur

*3. Consideration should be given to redrafting the purpose statement for the park system.* The redraft could increase the attention given to natural resources management and the provision of outdoor natural recreational opportunities.

**Recommendations:** After further reviewing the Virginia Code sections related to DCR and the park system, there appears to be sufficient authority for DCR to accomplish the goals underlying this finding. A policy recommendation should be made that the DCR increase its emphasis on the protection of natural resources, resource management, and the provision of outdoor natural recreational opportunities.

**Full Committee Action:** Concur

## E. PARK CONSTRUCTION ACTIVITIES

1. *Improvements should be in keeping with the character of existing improvements and the heritage of the particular state park.* The Pocahontas State Park dining hall construction, which is in keeping with the character of the park and other historic structures, provides a good example of this.

**Recommendations:** This finding should be made a policy recommendation for the current and future administrations and the General Assembly. The recommendation is also addressed in the proposed park master planning statute.

**Full Committee Action:** Concur

2. *VDOT should be directed to develop a standard for road infrastructure in state parks that better reflects the purpose and recreational goals of a park.* The subcommittee views the access road to Andy Guest State Park as an example of how such a road should not be designed and constructed. Part of the problem with the size and construction of the road stems from VDOT's adhering to inappropriate standards and requiring that roads be built to such standards before VDOT will agree to maintain them.

**Recommendation:** VDOT should be directed to accept road designs developed by or on behalf of DCR. Such road designs should be of a character that blends with the natural environment of the park. VDOT should construct the roads for DCR and should maintain them as needed by DCR.

**Full Committee Action:** VDOT officials appeared before the full committee and informed that committee that the subcommittee had been misinformed regarding VDOT's role in development of the road at Andy Guest and other state parks. In fact, it was DCR that requested the size of the road against the original recommendations of VDOT. Therefore, the subcommittee proposed that these recommendations be withdrawn and the full committee agreed.

## F. LOCAL PARK ENFORCEMENT AUTHORITY

*The penalties for damaging and stealing local park property should be increased.* The subcommittee found that the penalty provisions related to the damaging of local park property and stealing of antiquities from local parks are not sufficient to serve as a useful deterrent at the local level.

**Recommendation:** Increase the penalty for the violations to a Class 1 misdemeanor. Proposed legislation is suggested by the subcommittee (Appendix 9).

**Full Committee Action:** Concur

# **APPENDICES**

ENROLLED

## HOUSE JOINT RESOLUTION NO. 221

*Establishing a joint subcommittee to study the future of Virginia's environment.*

Agreed to by the House of Delegates, March 9, 1996

Agreed to by the Senate, March 9, 1996

WHEREAS, the Commonwealth is blessed with an abundance of natural resources and a history of appreciation on the part of her citizens for those resources; and

WHEREAS, Virginians have expressed their clear and thoughtful view that the resources of the Commonwealth are important to the current generation and should be maintained and enhanced to ensure enjoyment and utilization by generations to come; and

WHEREAS, public opinion surveys of Virginians show overwhelming support for the protection of clean air and pure water, and the conservation of natural resources; and

WHEREAS, these same surveys show strong support for the protection of open spaces, natural areas, and state parks; and

WHEREAS, Virginians recently voted overwhelmingly for the bond issue to acquire and maintain areas for parks and natural areas; and

WHEREAS, Virginians express virtual unanimity in their support for economic development that does not degrade the environment; and

WHEREAS, it has been a decade since the Commonwealth's environmental protection and natural resource agencies were assembled into a single secretariat for purposes of coordinating the state's role in natural resource management; and

WHEREAS, during the past decade, there has been an ongoing reorganization and transfer of resource management programs, including proposals now before the current session of the General Assembly; and

WHEREAS, the result of those reorganizations has created uncertainty and unpredictability in the Commonwealth's approach to resource management; and

WHEREAS, an examination of the trends in financing environmental programs and of the state's commitment to its natural resource management programs indicates that there has been a significant decline in state general fund dollars appropriated for natural resource programs and a corresponding reliance on federal dollars, user fees, and permit fees; and

WHEREAS, the citizens of this Commonwealth desire a more certain and definitive course for protecting, enhancing, and investing in the natural resources of the Commonwealth; and

WHEREAS, it is in the best interest of the Commonwealth to articulate a vision and plan for the future with regard to the protection, enhancement, and utilization of our natural resources; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the future of Virginia's environment. The joint subcommittee shall examine the history of environmental and natural resources programs and the budgetary trends for resource management programs and shall develop a long-term vision and plan for the future management of Virginia's natural resources. The joint subcommittee may also consider such issues as innovative approaches used in other states, integrated environmental strategies, and effective environmental negotiation mechanisms.

The joint subcommittee shall be composed of 17 members as follows: 5 members of the House of Delegates to be appointed by the Speaker of the House; 4 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and 7 citizen members, 4 to be appointed by the Speaker of the House and 3 to be appointed by Senate Committee on Privileges and Elections. The Secretary of Natural Resources, or her designee, shall serve as a nonvoting ex officio member.

The direct costs of this study shall not exceed \$19,500.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative

documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.



**Appendix 2**

**Briefing Paper  
on the  
History of Natural Resource and  
Environmental Management Programs  
Within the Secretariat of Natural Resources**

**Presented by  
Shannon R. Varner, Staff Attorney  
Division of Legislative Services  
August 1, 1996  
to the  
Moss Commission on the Future of Virginia's Environment  
(HJR 221, 1996)**

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***House Joint Resolution 221  
The Future of Virginia's Environment  
Initial Briefing Paper  
August 1, 1996***

**AUTHORIZATION FOR STUDY**

House Joint Resolution 221 (HJR 221) creates a two year joint legislative study committee the future of Virginia's environment. The resolution directs the joint study committee to examine the history of environmental and natural resources programs and the budgetary trends for resources management in the Commonwealth. In addition, the study committee is directed to develop a long-term vision and plan for the future management of Virginia's natural resources. The joint subcommittee may also consider additional issues as it deems appropriate such as innovative approaches used in other states, integrated environmental strategies and effective environmental negotiation mechanisms.

The directives of HJR 221 are based on findings by the General Assembly that the citizens of the Commonwealth support the protection of clean air and water, the conservation of natural resources, the protection of open spaces, natural areas and parks, and economic development that does not degrade the environment. HJR 221 also points out that ongoing reorganizations and proposed reorganizations of natural resources management and protection responsibilities in the Commonwealth that created uncertainty and unpredictability in the Commonwealth's approach to resource management. The resolution adds that the citizens of the Commonwealth want a more certain and definitive course for protecting and investing in the state's natural resources and therefore it is in the best interest of the Commonwealth to articulate a vision and plan for the future regarding the protection, enhancement and utilization of the Commonwealth's natural resources.

**INTRODUCTION**

This initial staff report deals primarily with the history of natural resource and environmental management programs falling within the Secretariat of Natural Resources. Therefore it does not deal to a great extent with such activities falling under such agencies as the Virginia Department of Agriculture and Consumer Services, the Department of Mines, Minerals and Energy, the Virginia Department of Health or the Department of Forestry.

Natural resources agency management and pollution related state activities have been studied and altered numerous times over the last century and particularly

in the past 30 years. This briefing paper describes the evolution of agency responsibilities and then reviews a number of past broad studies of natural resources management conducted in the Commonwealth. It also provides brief descriptions of several current studies. In addition, because the HJR 221 resolution refers to reorganization proposals before the 1996 Session of the General Assembly, it provides brief summaries of those proposals.

## **I. EVOLUTION OF AGENCY RESPONSIBILITIES AND ENVIRONMENTAL AND NATURAL RESOURCES MANAGEMENT IN THE COMMONWEALTH**

### **A. Virginia Marine Resources Commission (VMRC)**

The VMRC has its origin in two agencies, the Virginia Oyster Navy and the Virginia Fish Commission. The Oyster Navy was a waterborne police force established in 1864 to minimize conflicts between those working on the water at that time. The Oyster Navy enforced order among watermen and respect for the boundaries of private and public oyster beds.

In contrast to the Oyster Navy, the Virginia Fish Commission was originally an advisory body. Established in 1875, the three-member Commission was responsible for assessing the condition of Virginia's fisheries and recommending legislation to the Governor and the General Assembly. However, the Commission's responsibilities quickly grew over the years. For instance, within several years of its creation, the Commission had assumed responsibility for surveying and mapping state waters and bottomlands.

In 1897, the Virginia Oyster Navy was transferred from the agency in which it had originated, the Board of the Chesapeake, to the Virginia Fish Commission. The merger of these two agencies created a single marine resources agency with policy, management, and law enforcement powers.

Although the Virginia Fish Commission had already assumed responsibility for mapping and surveying state waters and bottomlands, it was not until the 1920s that it actually became involved in directly leasing these lands to watermen. Prior to 1920, localities had been responsible for the administration of private oyster bed leasing and the collection of the oyster harvesting tax. In 1920, however, the Virginia Fish Commission assumed full responsibility for these tasks, establishing a system of nineteen oyster districts, each with its own full-time, state-paid, oyster inspector.

Under the supervision of the Virginia Fish Commission, the seafood harvesting industry steadily grew in size until 1960. Beginning in that year, oyster beds in the lower Chesapeake Bay and Hampton Roads became infected with a

disease known as MSX. In response to the damage caused by MSX, the Virginia Fish Commission began an effort to replenish the state's oyster population. Currently, VMRC continues to implement the oyster replenishment program.

The 1960s saw the Virginia Fish Commission become the permitting authority for those state and private development projects encroaching on or above the state's submerged bottomlands. This authority was transferred to the Commission from the Office of the Attorney General in 1962.

In 1968, the name of the Virginia Fish Commission was changed to the Virginia Marine Resources Commission to reflect the broadening mission assigned to the agency. Many new responsibilities have since been placed under the agency's umbrella including the construction of artificial fishing reefs beginning in 1970.

In addition to new programmatic initiatives, the agency's regulatory authority has also increased. Passed in 1972, the Virginia Wetlands Act<sup>1</sup> developed a program empowering VMRC to regulate and issue permits for projects impacting wetlands. This act also provides a model ordinance that must be adopted by localities desiring to assume wetlands responsibilities. In addition, both the Coastal Primary Sand Dunes Act (1980) and beaches legislation (1982)<sup>2</sup> prohibit development projects from encroaching upon the State's coastal primary sand dunes or beaches without a permit issued by VMRC or local wetlands board. In 1984 the power to establish fisheries regulations, something previously done primarily by the General Assembly, was granted to VMRC.

In addition to new programmatic and regulatory responsibilities, VMRC also underwent changes affecting marine law enforcement in Virginia. In 1989 the General Assembly provided marine patrol officers with the authority to enforce all of the Commonwealth's criminal laws. Prior to this grant of authority, marine patrol officers could only enforce the laws and regulations of VMRC.

## **B. The Department of Game and Inland Fisheries (DGIF)**

DGIF was created in 1916 under the authority of the Virginia Fish Commissioner. At that time, DGIF was charged with the protection, propagation, and preservation of the State's wildlife, birds, and freshwater fish- -duties for which the department remains responsible today. Furthermore, the act which created a game and inland fisheries function also created a system of game wardens to enforce game, hunting and fishing laws. All employees of the department, including the game wardens, and all expenses incurred by the department, were to be paid from the proceeds of the sale of hunting and fishing licenses. The funds

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<sup>1</sup> Va. Code § 28.2-1300 et seq.

<sup>2</sup> Both now found in the Coastal Primary Sand Dune and Beach chapter, Va. Code § 28.2-1400 et seq.

collected from the sale of these licenses were placed in a special fund of the treasury known as the Game Protection Fund for the sole use of DGIF.

In 1926, DGIF was placed under the authority of a five-member independent commission appointed by the governor. One member of this commission was to be appointed the Commissioner of Game and Inland Fisheries, a position which was formerly held ex-officio by the Commissioner of Fisheries.

Another important event in the history of DGIF was the passage of the Pittman-Robertson Act by Congress in 1937. This act, co-sponsored by Virginia Senator Robertson, was the first to provide federal funds for the management of wildlife. The funds, which are distributed to states based on the number of hunting licenses sold and the total acreage of land held by the state, are collected from an excise tax placed on guns and ammunition.

In 1938, Virginia became one of the first states to enter into a cooperative management contract with the U.S. Forest Service. This contract provided for the management of wildlife on federal lands by DGIF personnel, significantly increasing the total amount of Virginia land under the agency's control. Since the agreement was first signed, DGIF has concluded similar contracts on other federal lands as well as with other State agencies. Currently, DGIF manages more than 2.3 million acres of land.

Between 1950 and 1970, the wildlife management practices employed by DGIF underwent a dramatic change. Prior to this period, wildlife management in Virginia consisted mostly of stocking imported or farm-raised animals onto available habitat. However, after the introduction of new federal funding for the restoration of sport fish (the 1950 Dingell-Johnson Act), DGIF concentrated its activities on the production and maintenance of suitable wildlife habitat. During this period, DGIF restored species such as wild turkey and beaver and initiated its waterfowl management program.

Although DGIF has been responsible for fishing regulations since its creation, it was not until 1960 that the agency became responsible for the regulation of boating. In 1960, the General Assembly passed legislation designed to promote safe boating. This legislation was to be administered and enforced primarily by DGIF, although other agencies, such as VMRC, were also charged with the act's enforcement. Since the passage of safe boating legislation, boat registration, titling, and regulation enforcement have become an increasingly large share of DGIF's activities.

In 1972, the General Assembly passed the State's Threatened and Endangered Species Act.<sup>3</sup> This act gave responsibility to DGIF for the protection of

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<sup>3</sup> Va. Code § 29.1-563 et seq.

both federal-listed and state-listed threatened and endangered animal species. To assist in the protection of these species, DGIF created a computerized fish and wildlife database in 1981. Today, that database contains information on more than 1,300 species found in Virginia, including fish, reptiles, amphibians, birds, and mammals, as well as all federal-listed and state-listed threatened and endangered species.

A significant change in the authority of the agency's game wardens occurred in 1982. In 1982, the General Assembly passed an act which amended the powers of game wardens to include the authority to enforce all criminal laws. Prior to 1982, game wardens only had statewide authority to enforce the provisions of hunting, trapping, and inland fish laws.

## **C. The Department of Conservation and Recreation (DCR)**

### **1. Parks, recreation and land management**

Virginia was the first state to open an entire park system at one time. In 1936, with financial assistance from the Civilian Conservation Corps, Virginia developed six parks (Douthat, Seashore, Hungry Mother, Fairy Stone, Westmoreland and Staunton). Since the inception of the park system, state government has assumed a role in providing public recreation. By 1988 the Virginia state park system consisted of thirty-six sites including seven natural areas, six historic areas and twenty-three state parks. Currently, there are 28 state parks, six historic sites and 18 natural areas.

In 1965 the General Assembly, recognizing that the Commonwealth had no comprehensive policy or plan for meeting present and anticipated needs for outdoor recreation, established the Virginia Outdoor Recreation Study Commission (described in more detail in section II). The Commission was to "inventory and appraise the federal, state and local outdoor recreation facilities in Virginia in relation to its estimate of present and projected needs." Among the Commission's recommendations were:

1. The adoption of a state outdoor recreation and open space policy to guide the state and its political subdivisions;
2. The creation of a Commission of Outdoor Recreation to guide and coordinate statewide implementation of the Virginia Outdoor Plan;
3. An enlarged and improved state park system; and
4. Increased aid to localities in resource conservation and development by providing: (i) research, guidance and technical assistance; (ii) matching funds; and (iii) legal powers.

Following these recommendations the Commission on Outdoor Recreation was created and was given responsibility for preparing and maintaining the Commonwealth's official comprehensive outdoor recreation plan known as the Virginia Outdoors Plan. The Commission was also responsible for requesting, receiving and disbursing state and federal funds to implement the recommendations of the Virginia Outdoors Plan. It also provided local units of government with technical assistance to help them in carrying out their responsibilities for park and recreation planning, programming and operation.

Currently, the Department of Conservation and Recreation (previously the Department of Conservation and Historic Resources), with the assistance of the Board of Conservation and Recreation, is responsible for the planning, operation and maintenance of the state park system as well as providing technical assistance to localities, agencies and organizations in developing or improving recreational programs and facilities.

In 1964 the U.S. Congress created the Land and Water Conservation Fund to provide federal agencies, states and localities with financial assistance for the acquisition and development of outdoor recreation areas. These moneys were made available to states and localities on a matching basis. The state also provided general funds to be added to the grant program. The combined federal state funds became the Virginia Outdoors Fund. In its early years the Fund provided substantial moneys, however, by the mid-1980s, the uncertainty of federal funds and level funding for the operation budget of the state parks made it difficult to institute an orderly planning process and in some instances precluded construction of projects viewed as vital in meeting the demands of an increasing user population.

The Commonwealth of Virginia Park and Recreational Facilities Bond Act of 1992<sup>4</sup> provided \$95.3 million in general obligation bonds for park land acquisition and improvements and for natural area acquisition and improvements. Numerous projects were specified for receiving funds for acquisition and improvements throughout the Commonwealth.

In addition to state parks, DCR has responsibility for the state's Natural Heritage Program to preserve the natural diversity of biological resources of the Commonwealth including the dedication, acquisition and management of natural areas. This was accomplished through the passage of the Virginia Natural Area Preserves Act<sup>5</sup> in 1989. Among the purposes of the program are those to: (i) provide an inventory of the Commonwealth's natural heritage resources including their location and ecological status; (ii) maintain a data bank for ecologically significant sites; and (iii) develop a plan establishing priorities for the protection, acquisition and management of natural areas and natural area preserves.

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<sup>4</sup> Chapter 789 of the 1992 Acts of Assembly.

<sup>5</sup> Va. Code § 10.1-209 et seq.



## 2. Additional land preservation mechanisms

While on the topic of open space acquisition and protection it is useful to note several related statutory provisions that may not necessarily fall within the duties of DCR to administer. These provisions, creating the Virginia Conservation Easement Act, the Virginia Conservation and Recreation Foundation, the Virginia Recreation Facilities Authority Act and the Virginia Outdoors Foundation, are briefly summarized below.

The *Open Space Lands Act*<sup>6</sup>, enacted in 1966, empowers certain public bodies including local governments to (i) acquire title or other interests in real property that will provide a means for the preservation or provision of open-space land and (ii) designate any real property in which it has an interest of not less than five years' duration to be retained and used for the preservation and provision of open-space land. Open-space land is defined as "any land in an urban area which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, or (v) wetlands." Once property is acquired or designated as open-space land, restrictions are placed on conversion of that land to other purposes. The conversion may take place if it is (i) essential to the orderly development and growth of the urban area, (ii) it is in accordance with the local comprehensive plan, and (iii) other equivalent real property is substituted (unless the public body determines that the open-space land or its equivalent is no longer needed).

The *Virginia Outdoors Foundation*<sup>7</sup>, established in 1966, now is designed to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth. The Foundation is empowered to acquire funds and real property for these purposes.

The *Virginia Recreation Facilities Authority Act*<sup>8</sup> created the Virginia Recreational Authority in 1986. Its purpose is to: (i) provide a high quality recreational attraction in the western part of the Commonwealth; (ii) expand the historical knowledge of adults and children; (iii) promote tourism and economic development in the Commonwealth; (iv) set aside and conserve scenic and natural areas along the Roanoke River and preserve open-space lands; and (v) enhance and expand research and educational programs.

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<sup>6</sup> Va. Code § 10.1-1700 et seq.

<sup>7</sup> Va. Code § 10.1-1800 et seq.

<sup>8</sup> Va. Code § 10.1-1600 et seq.

The *Virginia Conservation Easement Act*<sup>9</sup>, passed in 1988, allows for the creation of "conservation easements." The easements are non-possessory interest in real property for purposes of assuring availability of natural or open-space values or uses, protecting natural resources, protecting air or water quality or preserving historical, architectural or archaeological aspects of real property.

The *Virginia Conservation and Recreation Foundation*,<sup>10</sup> created in 1992, is to administer a fund known as the Virginia Conservation and Recreation Fund. This fund was established solely for the purpose of purchasing rights and privileges to property for the protection or preservation of ecological, cultural or historic resources, lands for recreational purposes, state forest lands and lands for threatened or endangered species, fish and wildlife habitat, natural areas and open space. The fund may be capitalized through the General Fund, gifts, grants and other sources. Twenty percent of its unrestricted funds may be used to develop purchased properties for public use and for preliminary evaluations of property. The DCR director is responsible for the performance of the administrative duties of this Foundation.

### **3. Nonpoint source pollution, flood control and stormwater responsibilities of DCR**

In 1938 the General Assembly adopted the Soil and Water Conservation Law which eventually led to the creation of the Virginia Soil and Water Conservation Commission now known as the Soil and Water Conservation Board. In close association with DCR, this board assists and coordinates the work of the Soil and Water Conservation Districts. The Soil and Water Conservation Districts are presided over by locally elected boards. The districts' activities deal with the conservation of soil resources, the control and prevention of soil erosion, flood prevention and agricultural and nonagricultural phases of conservation, development, utilization and disposal of water resources. Many of the districts activities are aimed at preserving water quality. For example, DCR, through the districts, provides funding for agricultural best management practices. Districts also assist with the development of nutrient management plans and are involved in local erosion and sediment control programs.

The Soil and Water Conservation Board and DCR have also been designated to develop the state's erosion and sediment control program<sup>11</sup> first enacted in 1973 and heavily amended in 1993. The program is to control soil erosion, sediment deposition and nonagricultural runoff to prevent the unreasonable degradation of property, stream channels, waters and other natural resources. At the local level

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<sup>9</sup> Va. Code §10.1-1009 et seq.

<sup>10</sup> Va. Code § 10.1-1017 et seq.

<sup>11</sup> Va. Code § 10.1-560 et seq.

the program is to be implemented by the local government or the local soil and water conservation district. Also in the field of erosion, DCR has been given responsibility for coordination of shore erosion control programs<sup>12</sup> and the Public Beach Conservation and Development Act.<sup>13</sup>

DCR and the Soil and Water Conservation Board have been given responsibility for a number of flood control and dam safety provisions including: (i) the development of a flood prevention plan for the Commonwealth<sup>14</sup> and coordination of the state's flood protection programs<sup>15</sup>; (ii) administration of the Flood Prevention and Protection Assistance Fund<sup>16</sup> for the purpose of assisting local entities in the development and implementation of flood prevention or protection projects; (iii) administration of the Dam Safety Act<sup>17</sup> to ensure impounding structures are safely constructed, maintained and operated; (iv) administration of the Conservation, Small Watersheds Flood Control and Area Development Fund<sup>18</sup>, a revolving loan fund for the development and subsequent maintenance of facilities to store water in flood prevention and non-flood prevention sites and for machinery and other equipment needed for soil and water conservation purposes of soil and water conservation districts; and (v) administration of the Stream Restoration Assistance Program<sup>19</sup> to stabilize and protect natural non-tidal streams damaged by naturally occurring flooding.

Following a legislative study on the flood control policies of the Commonwealth in 1989, DCR and the Board of Conservation and Recreation were given the responsibility for setting minimum technical criteria and administrative procedures for stormwater management programs.<sup>20</sup> These programs may be adopted by localities as a local option. This is the only area regulatory authority has been given to this Board. The program is in essence a statement of the various methods employed by a locality to manage the runoff from land development projects and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation. DCR is to provide localities with technical assistance.

#### **D. The Chesapeake Bay Agreement and the Chesapeake Bay Commission**

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<sup>12</sup> Va. Code § 10.1-700 et seq.

<sup>13</sup> Va. Code § 10.1-705 et seq.

<sup>14</sup> Va. Code § 10.1-600 et seq.

<sup>15</sup> Va. Code § 10.1-658 et seq.

<sup>16</sup> Va. Code § 10.1-603.16 et seq.

<sup>17</sup> Va. Code § 10.1-604 et seq.

<sup>18</sup> Va. Code § 10.1-636 et seq.

<sup>19</sup> Va. Code § 10.1-650 et seq.

<sup>20</sup> Va. Code § 10.-603.1 et seq.

In 1983 Virginia, Maryland, Pennsylvania, the District of Columbia, the USEPA and the Chesapeake Bay Commission agreed to a coordinated, cooperative multi-jurisdictional approach to restoration of the Chesapeake Bay. In 1987 the Chesapeake Bay Agreement was signed by the governors of Maryland, Pennsylvania and Virginia, the Mayor of the District of Columbia, the administrator of the USEPA and the Chesapeake Bay Commission (the "Executive Council") setting a new commitment to manage the Chesapeake Bay as an integrated ecosystem and committing to specific goals and actions. The goals and priority commitment deal with (i) living resources; (ii) water quality; (iii) population growth and development; (iv) public information; (v) education and participation; (vi) public access and (vii) governance. In 1992, the 1987 agreement was amended by adding a goal of 40 percent reduction in nutrients in the mainstem of the Bay and the development of tributary strategies to reach those goals.

The Chesapeake Executive Council has issued a number of directives, goals and statements as commitments the states have made to efforts to restore the Chesapeake Bay. These commitments have had a significant impact on many of the natural resource management and protection efforts of the Commonwealth. A partial listing of these commitments includes: (i) Tributary Strategy development to reduce nutrient inputs; (ii) toxics reduction; (iii) submerged aquatic vegetation restoration goals; (iv) fish passage goals; (v) an agricultural nonpoint source initiative; (vi) habitat restoration; and (vii) increased local government involvement.

As part of the multi-state Chesapeake Bay Restoration effort, Virginia created a Virginia delegation to the Chesapeake Bay Commission<sup>21</sup>. The purposes of the Commission are to "assist the legislatures of Maryland, Virginia and Pennsylvania in evaluating and responding to problems of mutual concern relating to the Chesapeake Bay; to promote intergovernmental cooperation; to encourage cooperative coordinated resource planning and action by the signatories and their agencies; to provide, where appropriate, through recommendation to the respective legislature, uniformity of legislative application; to preserve and enhance the functions, powers and duties of existing offices and agencies of government; and to recommend improvements in the existing management system for the benefit of the present and future inhabitants of the Chesapeake Bay region."

#### **E. The Chesapeake Bay Local Assistance Department**

In 1988, following the commitments Virginia made to the multi-state Bay efforts and the recommendations and findings of the Chesapeake Bay Land Use Roundtable, the General Assembly enacted the Chesapeake Bay Preservation Act<sup>22</sup>.

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<sup>21</sup> Va. Code § 62.1-69.5. et seq.

<sup>22</sup> Va. Code § 10.1-2100 et seq.

The basic premise of this Act is that "healthy state and local economies and a healthy Chesapeake Bay are integrally related" and that certain land development practices may have a detrimental effect on the state's waters and the Chesapeake. Under the Act's requirements, localities in "Tidewater Virginia"<sup>23</sup> are required to incorporate water quality protection measures into their comprehensive plans, zoning ordinances and subdivision ordinances in order to mitigate or prevent potential water quality degradation. Localities outside of tidewater may, at their option, institute such a program.

The Bay Preservation Act established the Chesapeake Bay Local Assistance Board and the Chesapeake Bay Local Assistance Department to provide land use, development and water quality protection information and assistance to the Commonwealth's local, regional and state governments. This includes financial assistance to comply with the provisions of the Act. The Board was also required to develop criteria for local government use in (i) identifying land areas in need of added protection, and (ii) dealing with requirements for the use and development of land in these areas.

## **F. The Department of Environmental Quality**

The Department of Environmental Quality was created in 1993 (1992 Acts of Assembly Chapter 887, effective April 1, 1993) by combining the responsibilities, staff and resources of the Department of Air Pollution Control, the State Water Control Board, the Department of Waste Management and the Council on the Environment into one agency. While the citizen boards overseeing air, water and waste programs continued, the Council on the Environment was eliminated. The powers and duties previously conferred on the head administrative official for those agencies was transferred to the newly created DEQ director position.

The evolution of the air, water and waste responsibilities combined to form DEQ and those of the Council on the Environment are described below.

### **1. The State Water Control Board**

The state's involvement in water quality programs and activities began as early as 1875 when the General Assembly enacted legislation prohibiting the

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<sup>23</sup> "Tidewater Virginia" means the following jurisdictions: The Counties of Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York, and the Cities of Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.

placement of poisonous substances or dead bodies into rivers and streams above tidewater. Since that time, concern for water quality and the complexity of programs to protect it have grown considerably.

In 1946 the legislature enacted the State Water Control Law with the purposes of safeguarding the clean waters of the Commonwealth from pollution, preventing any increases in pollution and the reduction of existing pollution. In addition, the 1946 law established a permit requirement for the discharge to state waters of "inadequately treated sewage, industrial wastes, other wastes, or any noxious or deleterious substances...." These purposes still exist in the code and have been expanded upon. This can be seen from language currently appears in the Code:

*It is the policy of the Commonwealth of Virginia and the purpose of this law to: (1) protect existing high quality state waters and restore all other state waters to such condition of quality that any such waters will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them, (2) safeguard the clean waters of the Commonwealth from pollution, (3) prevent any increase in pollution, (4) reduce existing pollution, and (5) promote water resource conservation, management and distribution, and encourage water consumption reduction in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.<sup>24</sup>*

Clause 5 of the above statement was added in 1978 in response to a number of studies on the relative roles of the Virginia Department of Health (VDH) and the State Water Control Board (SWCB) in water supply issues. The SWCB was given expanded authority over water quantity and availability. The Board of Health retained general supervision and control over all water supplies and waterworks in the Commonwealth insofar as the bacteriological, chemical, radiological and physical quality of waters furnished for drinking or domestic use may effect the public health and welfare.

In the early 1980s the General Assembly directed the SWCB to "prepare plans and programs for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof."<sup>25</sup> These plans and programs were prepared for each major river basin of the Commonwealth, and appropriate subbasins.

While Virginia took some early steps to protect its water, its policies and laws have been influenced by federal legislation. The U.S. Congress enacted the Water Control Act in 1965 requiring states to prepare water quality standards for water

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<sup>24</sup> Va. Code § 62.1-44.2

<sup>25</sup> Va. Code § 62.1-44.38

bodies. In 1972 Congress made significant amendments to the Water Control Act through the Federal Water Pollution Control Act<sup>26</sup> (commonly referred to as the Clean Water Act). With the 1972 amendments the receiving waters quality standards were coupled with technology based effluent requirements in an effort to "...restore and maintain the chemical, physical and biological integrity of the Nation's waters." While the quality of the receiving waters still plays an important role, the amendments represented a significant shift in emphasis from basing allowable discharges on the quality of the receiving water to an emphasis on the quality and content of the effluent being discharged. In order for the state to administer the federal program this shift in emphasis and other requirements have been reflected in the efforts and duties of the State Water Control Board.

Another significant impact of the Clean Water Act was the availability of millions of dollars in grants for the upgrade and establishment of sewage treatment plants. Over the years the federal grant program evolved into a loan program. These events led to the establishment of the Virginia Water Facilities Revolving Fund<sup>27</sup> administered by the Virginia Resources Authority<sup>28</sup> and the SWCB to aid localities with the cost for development and construction of waste water collection, treatment and disposal facilities.

An example of the Clean Water Act's influence on state policy arises from section 401 which requires applicants for federal permits for an activity that may result in a discharge to navigable waters to obtain a certification from the state that the discharge will not result in a violation of state water quality standards. Examples of the types of activities requiring a certification include: dredging projects, filling of wetlands, licensing of hydroelectric plants, and the rechannelization of streams. In Virginia, the Virginia Water Protection Permit<sup>29</sup> (VWPP) program fills this need and gives Virginia more say in protecting water quality, instream flows and beneficial uses. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values are beneficial uses to be protected.

Virginia has also enacted laws outside of the requirements of the Clean Water Act to protect water. The Surface Water Management Area<sup>30</sup> legislation was enacted by the General Assembly in 1989 to protect instream values from excessive withdrawals for offstream uses. These areas can be established where declines in the level or supply of surface water could adversely affect the public welfare, safety and health. Once an area is designated as a surface water management area

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<sup>26</sup> 33 USC 1251 et seq.

<sup>27</sup> Va. Code § 62.1-224 et seq.

<sup>28</sup> Va. Code § 62.1-197 et seq.

<sup>29</sup> § 62.1-44.15:5.

<sup>30</sup> § 62.1-242 et seq.

permits including "flow requirement[s] appropriate for the protection of beneficial uses" are required for water withdrawals.

The Ground Water Management Act of 1992<sup>31</sup> was a complete re-write of the state's ground water management law in response to a finding that allowable withdrawals under the Groundwater Act of 1973 were far in excess of available supplies in some areas. The 1992 Act authorizes the issuance of permits as a mechanism to manage groundwater withdrawal in declared ground water management areas.

Numerous other programs and responsibilities have been given to the SWCB including the regulation of above and below ground storage tanks and oil spill prevention and response.

## **2. The Air Pollution Control Board**

Prior to 1966 Virginia did not have an air pollution control statute, though the state Department of Health rendered limited service in air pollution control at the request of local governments or local health departments. The Health Department had been designated by Governor Harrison as the state's official air pollution control agency for purposes of the federal Clean Air Act enacted in 1963.

The State Air Pollution Control Board was established by the General Assembly in 1966 in response to a study conducted by the Virginia Advisory Legislative Council (VALC). VALC found that air pollution varied from area to area in the state and that it was a growing problem statewide with adverse health and economic consequences. Following those recommendations the General Assembly adopted the state's first air pollution control law and the responsibility for air quality was handed over to a newly created air pollution control board.

Over the years the federal Clean Air Act<sup>32</sup> has been substantially amended and the state's air law has been amended to provide the air Board with necessary powers and duties to implement its provisions. Under the federal act EPA sets air quality standards and states are asked to develop programs to meet the standards. The General Assembly has given fairly broad grants of authority to the air board for the protection of air quality though it has limited or spelled out its authority fairly specifically in the area of permit programs and associated fees as well as automobile inspection programs.

In general terms the air Board, after studying air pollution in the Commonwealth, its causes, prevention, control and abatement, may promulgate

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<sup>31</sup> § 62.1-254 et seq.

<sup>32</sup> 42 USC 7401 et seq.



regulations, abating, controlling and prohibiting air pollution throughout, or in any part of, the Commonwealth.<sup>33</sup> This authority includes the establishment of permit programs<sup>34</sup> as spelled out in the Virginia Code and the federal Clean Air Act.

The Code directs the DEQ director to administer a motor vehicle emissions inspection program requiring biennial inspections at official emissions inspection stations.<sup>35</sup> The inspection program is not required throughout the state but only in those localities specified in the Code due to their failure to meet certain air standards established under the federal act.

In accordance with another provision of the federal Clean Air Act the General Assembly granted, in 1992, the authority for the creation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program<sup>36</sup> within DEQ. This program is to facilitate compliance by small business stationary air pollution sources with the provisions of the federal Clean Air Act.

In 1995, the General Assembly directed the Board to promulgate regulations to provide for market-based programs<sup>37</sup> to achieve and maintain the National Ambient Air Quality Standards, established by the EPA, under the federal Clean Air Act. The regulations must create a voluntary air emissions banking and trading program for the Commonwealth that will: (i) result in net air emission reductions; (ii) create an economic incentive for reducing air emissions; and (iii) allows for continued economic growth through a voluntary program of banking and trading credits.

### 3. The Department of Waste Management

Prior to 1971 the state did not play an active role in the regulation of waste disposal in the Commonwealth. At that time restrictions were placed on waste disposal through ordinances adopted by localities and health regulations implemented by local health departments. Solid waste managers, including local governments, were essentially free to use a wide variety of waste disposal methods and could operate so long as they did not pose an obvious threat to public health.

In 1971 the state adopted waste regulations and designated the Virginia Department of Health (VDH) to implement them. Open dumping was then expressly prohibited and the regulations were to be implemented through a VDH permitting system relating to covering of waste, access to facilities, control of paper

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<sup>33</sup> § 10.1-1308

<sup>34</sup> Va. Code §§ 10.1-1322, 10.1-1322.1 and 10.1-1322.2.

<sup>35</sup> Va. Code § 46.2-1177

<sup>36</sup> Va. Code § 10.1-1323 et seq.

<sup>37</sup> Va. Code § 10.1-1322.3

and dust, pest and animal control, fire prevention and the disposal of hazardous waste. While adding new requirements for waste disposal, the 1971 regulations allowed "open dumps" then in existence to continue to operate.

In 1979 all waste management facilities that had not yet received a permit were required to either close or obtain a permit. The previously exempt open dumps were required to either close or obtain a permit by 1983.

In 1986 the General Assembly passed the Virginia Waste Management Act<sup>38</sup> establishing a new Waste Management Board and a Department of Waste Management. Regulations were adopted in 1988 establishing criteria for siting, design and construction, operation and closure of solid waste management facilities. Since that time state legislation and accompanying regulations have been amended to comply with requirements of the federal Resources Conservation and Recovery Act<sup>39</sup> and EPA's regulations.

In 1993 the General Assembly established a Pollution Prevention Program<sup>40</sup> instituting among other things a pollution prevention policy and a pollution prevention assistance program, and authorizing the creation of pollution prevention advisory panels, as well as pilot and demonstration projects.

In 1995 the General Assembly enacted another significant waste related program called "voluntary remediation."<sup>41</sup> Through this program the Board is to develop regulations and standards for the voluntary cleanup of releases of hazardous substances and wastes, solid waste or petroleum in limited circumstances.

Other statutorily created programs within the Waste Board's and DEQ director's purview include litter control and recycling programs<sup>42</sup> and the treatment, storage, disposal<sup>43</sup> and transportation<sup>44</sup> of hazardous materials. Provision is also made for the siting of hazardous waste facilities<sup>45</sup> and regulation of radioactive wastes.<sup>46</sup>

#### 4. The Council on the Environment

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<sup>38</sup> Va. Code § 10.1-1400 et seq.

<sup>39</sup> 42 USC 6901 et seq.

<sup>40</sup> Va. Code § 10.1-1424.10 et seq.

<sup>41</sup> Va. Code §§ 10.1-10.1-1429.1 through 10.1-1429.3.

<sup>42</sup> Va. Code § 10.1-1414 et seq.

<sup>43</sup> Va. Code § 10.1-1426 et seq. (for treatment storage and disposal regulation)

<sup>44</sup> Va. Code § 10.1-1450 et seq.

<sup>45</sup> Va. Code § 10.1-1433 et seq.

<sup>46</sup> Va. Code § 10.1-1430 et seq.

In 1970 the quality of Virginia's environment was a major public concern. That concern was recognized by Governor Holton who made protection of the environment one of his administrations major priorities. To give visibility and emphasis to his efforts, he established a "Council on the Environment." The Governor chaired the Council that also had as members three at large citizens, the Attorney General, the Commissioner of Administration and the administrative heads of the following agencies: Commission on Outdoors Recreation, Virginia Marine Resources Commission, Department of Highways, Virginia Institute of Marine Science, Division of State Planning and Community Affairs, Air Pollution Control Board, Water Control Board, Commission on Game and Inland Fisheries, Department of Agriculture and Commerce, Department of Conservation and Economic Development and the Health Department. A representative from the State Corporation Commission and the State's institutes of higher education also served on the Council.

In 1972 the General Assembly statutorily formalized the Council on the Environment and reconstituted its membership to include three citizen members and the chairmen of the Air and Water Boards. Prior to this the principle objectives of the Council had been to (i) advance the greater good of the Commonwealth by a balance of economic and ecological needs; (ii) define long-range environmental goals; (iii) define short-range legislative goals; and (iv) take appropriate administrative actions to effect those goals. Through legislation, the "reconstituted" Council on the Environment was give responsibilities to:

1. Advise the Governor, General Assembly and other public bodies on environmental quality matters, and the effectiveness of state actions and programs with respect thereto;
2. Coordinate all state communications on environmental matters with federal agencies;
3. Coordinate environmental plans, programs and functions within the state;
4. Review and comment to the Governor on environmental impact reports for state construction activities costing over \$100,000 (excluding highways);
5. Prepare and annual environmental quality report;
6. Initiate and supervise programs to educate citizens on ecology, pollution control, technology, and environmental quality; and
7. Initiate and supervise research programs.

The Council's responsibility extended to all state agencies to assure that all existing and proposed policies were consistent with environmental policy. As noted earlier, the Council was abolished with the creation of DEQ.

## II. PREVIOUS STUDIES ON THE MANAGEMENT OF THE COMMONWEALTH'S NATURAL RESOURCES<sup>47</sup>

There have been literally hundreds of studies of various environmental and natural resources programs, policies, needs and management issues in the Commonwealth. Many deal with specific problems, others with the broad needs and desires of Virginia's citizens. It would be impossible to review all of those studies here. However, a review of a number of the broader studies provides some background in the development of natural resources programs and their management in Virginia.

### A. Virginia Outdoor Recreation Study Commission

The General Assembly created the Virginia Outdoor Recreation Study Commission in 1964 to inventory the federal, state and local outdoor recreation resources in Virginia and estimate the future needs of the Commonwealth. It was also to determine what the state, local governments and individuals could do to meet the needs for open space.

In the opening paragraphs of its report, the Commission notes:

*"The problem is that the average person- -and especially the city dweller- -is having a harder and harder time finding the outdoors. It is being marred or demolished. It is being walled off with 'no trespassing' signs. It is being consumed by unplanned urban sprawl. But such devastation is not an inevitable result of growth and progress. It is inefficiency. There is plenty of room in Virginia for both development and the outdoors. The key is effective land use. Thus we do not have to choose between material progress and an agreeable environment. We must have both. But we can have them only if we decide now what kind of environment we want...and shape our programs to bring it about. The need for action is urgent."*

The five major findings of the Commission were:

1. There is a strong and growing demand for more outdoor recreation opportunities.

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<sup>47</sup> Copies of these studies are available either at the Division of Legislative Services or the State Archives.

2. Existing facilities are inadequate for present demands.
3. The need for action is most urgent in metropolitan areas.
4. The term "outdoor recreation" must include the entire Virginia outdoor environment.
5. Each individual, and his government at all levels- -local, regional, state and federal- -has a job to do.

To act on these findings the "Virginia Outdoors Plan" was developed "as an investment in our inheritance." The recommendations found in the Plan fall into five general categories:

1. A state policy and a continuing comprehensive program to protect the quality of the Virginia outdoors and to make its resources available to its people.
2. A permanent Commission of Outdoors Recreation to analyze supply and demand and lead and coordinate state local and federal activities.
3. State action to plan and develop outdoor recreation resources and facilities to encourage, assist and guide local and regional governments.
4. Local and regional action to meet local and regional needs for planning, acquisition and development.
5. Encouragement for individuals and private enterprise to meet their vital part in the total program.

The 21 specific recommendations are as follows:

1. **Adopt a State outdoor recreation and open space policy.** In embarking on a program of conservation and development of outdoor recreation resources for the public benefit, the first and most basic step is a legislative statement of policy to guide the State and its political subdivisions, and to broaden and clarify the legal authority necessary to implement the program.
2. **Create a Commission of Outdoor Recreation.** An independent State agency is needed to guide and coordinate continuing statewide implementation of the Virginia Outdoors Plan. It should advise the Governor on resources and needs, coordinate the outdoor recreation activities of local, state and federal agencies, provide technical assistance to localities, and receive and allocate Federal Land and Water Conservation funds.
3. **Enlarge and improve the State Park System.** The present number, location, and condition of State Parks and Recreation Areas is inadequate. Within the years 1966-76 land should be acquired for 36 new parks, 20 of which should be developed within this period. Facilities in existing parks should be improved and increased. The Division of Parks should be given an expanded staff to administer the program of site planning and development.

**4. Aid localities in resource conservation and development.** Local governments have a vital role in the Virginia Outdoors Plan. They must take the initiative in the use of local resources for local benefit. Unfortunately, available local powers are not sufficiently used. Their use should be encouraged. The State should aid localities in three ways: (i) research, guidance, and technical assistance, (ii) matching funds, and (iii) provision of legal powers.

**5. Encourage greater use of Regional Planning Commissions and Regional Park Authorities.** Natural resources conservation and development problems and opportunities, more often than not, extend beyond the borders of political subdivisions. Where two or more localities share a common problem, regional action is an absolute necessity.

**6. Establish a System of Scenic Byways and provide for Recreation Access Roads.** All across Virginia are roads of incomparable charm and historic significance. These roads should be identified and their character protected for the general enjoyment of Virginians and as a prime attraction to visitors. Many major recreation attractions do not have adequate access roads.

**7. Make our highways more pleasant.** A substantial part of all leisure time is spent on the highways. Driving itself is regarded as a prime recreational activity. The design of roads and their amenities should recognize this fact.

**8. Accelerate the program of the Commission of Game and Inland Fisheries.** More fishing lakes, more boat launching ramps, and more public hunting lands are needed (especially in Eastern Virginia), than are being provided through revenues from Commission licenses and fees.

**9. Encourage the multiple use of public lands to allow maximum recreation opportunity consistent with the land's primary purpose.** This offers many practical and economical opportunities to achieve a broad range of outdoor recreation on land originally acquired for a single purpose. The State Forests should be incorporated into a system of forest preserves to conserve lands and waters for future public recreation use.

**10. Encourage advance planning and land acquisition in areas of major water impoundments.** These large man-made reservoirs offer great recreation potential which can only be realized fully when the State and localities involved consider in advance the problems of public access, recreation areas, pollution control, and zoning.

**11. Develop the recreation opportunities created by Soil and Water Conservation Districts.** Substantial lakes, created for soil and water conservation, offer important local or regional recreation opportunities. Localities

should acquire sufficient land around these lakes to allow recreation for the general public benefit.

**12. Recognize the vital role of the individual and the travel industry.** Virginia benefits greatly from the facilities and services provided by private enterprise, from the activities of non-profit conservation groups, from associations devoted to historic preservation, and from the travel industry. These should be encouraged and relied upon to the greatest extent practical.

**13. Undertake a study of the relation of land taxation to the preservation of open space.** Preferential assessment and tax deferral have been tried with various difficulties and questionable results in a number of states. Present land taxation practice is nevertheless a factor which requires further study in the interest of the preservation of open space.

**14. Provide for the acquisition of scenic and conservation easements.** It is often economical and practical for the State to acquire less than fee title to protect scenic and conservation values--in effect, acquiring development rights but leaving the land for the owner's use and enjoyment.

**15. Initiate water resource and river basin studies.** It is increasingly clear that present demands on Virginia's rivers--their waters and their shorelines--require comprehensive river basin research and planning to conserve our most vital resource and a prime recreation asset. There is no provision for this type of research and planning in Virginia and only an uncoordinated scattering of agencies concerned with various aspects of water--such as ground water, surface water, and pollution.

**16. Accelerate marine resources and beach erosion study.** There is far too little understanding of the natural forces which control our marine resources, our salt water marshes, and the shape of our beaches and islands. There is inadequate understanding of the extent to which man can intrude on these without destroying them. These values require intensified study.

**17. Provide guidelines for planned communities and cluster development.** State and local agencies should facilitate private entrepreneurial development of new communities and new types of housing subdivisions which meet acceptable standards and preserve the quality of the general outdoor environment.

**18. Create an Historic Landmarks Commission.** Virginia has no policy or program for the protection of its vast historical treasure. An agency is needed to catalog and evaluate historic and cultural buildings and sites, and to develop plans and programs for their protection. This is an economic resource which is being grossly exploited or destroyed.

**19. Establish the Virginia Outdoors Foundation.** The Foundation can be of substantial help in the encouragement of private gifts and bequests of lands and waters of recreation value. Virginia has benefited in the past from private generosity. The Foundation is intended to facilitate private philanthropy.

**20. Establish the Virginia Outdoors Fund to implement the Virginia Outdoors Plan.** State funds must be provided to meet the State's part of the total plan and to aid the localities in meeting theirs. The State General Fund appropriations will be matched by Federal Land and Water Conservation funds, constituting the Virginia Outdoors Fund.

**21. Create greater awareness of the value of natural resources and environmental geography.** The basic cause of inattention to the rapid consumption and destruction of our outdoor recreation resources is ignorance of their nature and value. The State must develop programs for the awakening of a conservation conscience in the public interest.

#### **B. 1970 Governor's Management Study**

The Governor's Management Study was conducted by Virginia's business and professional community at the request of Governor Linwood Holton in 1970. The object of the study was to find ways for Virginia to increase its economy and efficiency in government administration. On a broad basis, the report recommended the creation of a system of executive branch organization similar to the Secretarial system now in place in Virginia government. Within this system, the study recommended a Deputy Governor of Commerce and Resources to oversee, among other agencies, the state water and air pollution control boards.

On a programmatic level, the Governor's Management Study recommended a consolidation of the Division of Water Resources of the Department of Conservation and Economic Development into the State Water Control Board (SWCB). The planning function from the Division of Water Resources was expected to complement the protection and restoration of Virginia water quality as carried out by SWCB.

Also, to promote efficiency in operation and to avoid duplication of functions, the study recommended that the scope of activities by the three agencies heavily involved in maintaining clean water and air should be clarified. These agencies were the air and water control boards and the Virginia Department of Health (VDH). Specifically, the study recommended that VDH set standards for water, sewage effluent, and air quality, while engineering, fieldwork, regulatory, compliance, educational, and training activities be assumed by the water and air boards.



### **C. The Council On The Environment**

The Council on the Environment was described in Part I of this briefing paper. It is mentioned here again because one of its responsibilities was to produce an annual report on the state of the environment.

The report was to be produced after holding public hearings throughout the state, was to include a review of the activities of the Council and

*"1 (a) an assessment, updated annually, of the environmental choices and their trends and implications projected over a twenty-year period substantially affecting the Commonwealth that are made by any person; (b) recommendations to the Governor, updated annually, concerning the policies necessary to exert the influence of the Commonwealth to the fullest extent practicable to change the environmental choices identified in subsection 1 (a) so as to insure, over the next succeeding twenty-year period, the wise use and wise protection of the state's natural resources to the end that a balance is achieved and maintained between environmental protection and economic well-being of the Commonwealth, such recommendations being made by coordinating to the fullest extent practicable with interested state agencies; and (c) an assessment of the effects of state policy in ensuring that the objectives in subsection 1 (b) are being and will be met."*

### **D. 1973 Commission on State Governmental Management Series of Reports**

In 1973, the General Assembly established the Commission on State Governmental Management to examine ways to make state government more efficient, effective, responsive, and responsible. The Commission recommended that the State's Secretariat of Commerce and Resources be divided into a Secretary of Agriculture and Economic Resources and a Secretary of Natural Resources. As part of this recommendation, the Council on the Environment was to be eliminated, with its staff becoming staff of the Secretary of Natural Resources.

The Commission also recommended that SWCB strengthen its emphasis on planning in the water resource area to address the issue of water supply shortages. Further, the Commission recommended that VDH's Bureau of Sanitary Engineering relinquish responsibility for the regulation of sewerage systems and sewage treatment plants to SWCB. Finally, the Commission recommended that virtually all the functions of VDH's Bureau of Solid Waste be assigned to the proposed Secretary of Natural Resources as a Division of Solid Waste Management.

## **E. Governor's Commission On Virginia's Future**

Governor Robb created the Commission on Virginia's Future in November of 1982 to "advise the Governor on matters pertaining to the future of the Commonwealth" and gave it, among others, powers and responsibilities to:

1. Study the consequences of those current conditions which may have long-range influence on growth and development patterns in Virginia including ... environmental ... and resources -related factors;

2. Study the consequences of current state, local, federal and private policies and programs which may have long-range influence on growth and development patterns in Virginia, including an examination of those requirements of law which may influence, alter or impede growth in the Commonwealth;

3. Assess and project future conditions of the Commonwealth based upon the factors, trends and conditions described above; and

4. Formulate a report which may include:

a) Major goals for Virginia with respect to population patterns, economy, environment, natural resources, energy, land use, transportation, housing and urbanization;

b) Major issues to be faced by Virginia over the next twenty years, including disparities which may exist between goals and the ability to attain those goals; and

c) Policies the Commonwealth should pursue to meet its general growth and development objectives.

In his charge to the Commission on Virginia's Future, Governor Robb stated:

*"Careful thought about the shape of Virginia's future is critical to the welfare of our people....One of our major....difficulties is inadequate attention to long-range thinking....The price all of us will pay for this un-corrected, single-minded attention to the present is near certainty that the future will take us by surprise and perpetuate the ad hoc short-term manner in which we live our lives, manage our affairs and govern our society....We must first define a vision of what we want Virginia to be and then ask ourselves, 'What must we do to achieve it?'"*

The Commission itself created five task forces to aid in its task. The areas covered were: economic development, education, environment and natural resources, human resources, and government and planning. In all the Commission

made 50 recommendations, 16 of which were in the environmental and natural resources areas. These recommendations are distributed among the topics of (i) the state structure for dealing with natural resources; (ii) water quality, quantity and distribution; (iii) land use; (iv) waste management; and (v) the Chesapeake Bay.

The Governor's Commission found that the Virginia Constitution is unequivocal in declaring a determination to protect and enhance the natural resources of the Commonwealth. The constitutional provision referred to is Article XI Section 1 which reads as follows:

*To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.*

Despite this "unequivocal declaration" the Governor's Commission found lacking a serious state commitment to satisfy the commands of the Constitution which was backed up with well-designed programs and appropriate funding. The Governor's Commission also found that Virginia had been slow to respond to mounting evidence of serious environmental degradation.

To correct these deficiencies the Commission focused its recommendations on five areas: (i) the Governmental structure for natural resource management; (ii) water quality, quantity and distribution; (iii) land use; (iv) waste management; and (v) the Chesapeake Bay. The following are the findings regarding the needs for the future of Virginia's environment.

#### **1. The governmental structure for dealing with natural resources**

Virginia needs a newly defined Department of Natural Resources headed by a Secretary of Natural Resources. The state government structure for dealing with natural resources problems is too scattered. Many department, agencies, and commissions, within both the executive and legislative branches, have responsibilities touching on Virginia's environment. Jurisdictional conflict and confusion have been the result.

#### **2. Water: Quality, Quantity, and Distribution**

The Governor's Commission found that then existing water laws and the level of administrative and financial commitment reflected assumptions of

perpetual abundance and quality. In reality it was confronted with clear evidence of serious water quality and quantity problems and that, unless Virginia's assumptions and attitudes changed, the Commonwealth was faced with water contamination, bitter interregional disputes over water transfers, and a state government powerless to ensure adequate supplies of clean water in parts of the state. It then made the following five findings:

**a. State government should exert more positive and comprehensive leadership in the design and implementation of a state water resource management program.** The state has tended to leave water pollution control to the federal government, water distribution to local governments, and interjurisdictional transfers to the courts. This is not practical or satisfactory. The changes needed in water management are so comprehensive that they cannot be achieved immediately. The potential consequences of continued inaction are so severe that a beginning must be made now.

Prime responsibility for water resource management should be assigned to the State Water Control Board under the direction of a Secretary of Natural Resources. Current administrative arrangement in state government for water resource management are not focused sufficiently to assure efficient implementation of a comprehensive state water resource management program.

To correct these deficiencies, three specific responsibilities should be assigned the State Water Control Board:

- (i) Clarify state policies and propose improved policies;
- (ii) Collect and make available technical and economic data as a basis for water management decisions; and
- (iii) Take the initiative in resolving conflicts among water users.

**b. An administrative process for review and approval for interjurisdictional transfers of ground water and surface water for public use should be adopted.** Reliance on court-administered system for approving interjurisdictional transfers of water based upon common law riparian doctrine will not serve Virginia's long-term needs. An administrative procedure would provide for the analysis of the need for each proposed transfer in relation to alternative sources of supply; it would embrace a full evaluation of related economic, environmental, and social issues. Water transfers under this procedure would be approved subject to conditions necessary to protect the area of origin, including the payment of compensation.

**c. The Virginia Groundwater Act should be modified to extend the State Water Control Board's authority to manage ground water withdrawals.** Amendment of the Groundwater Act to cover all municipal wells would subject these wells to state evaluation as part of the permit process and would provide a basis for factual determination of water availability and potential

impacts of pumping. This information would help resolve related conflicts over interjurisdictional water transfers.

**d. New approaches to financing the water resource program should be initiated.** The \$4 billion cost of delivering, protecting, and treating Virginia's water for increasing needs cannot be met with present financing practices. One possible approach is debt financing repaid by user fees. These fees should be paid by those who use the Commonwealth's waters for waste disposal and those who will benefit from investments in water supply facilities.

### **3. Land Use**

The Governor's Commission found that Virginia had a rich and varied landscape upon which the pressures would grow as the state's population and industry grew. These intensified pressures underlined the Governor's Commission's stated need for "comprehensive, area-wide approaches to prevent deterioration of the land base upon which economic opportunity and the quality of life depends." The Governor's Commission recognized respect for private property and local decision making. It also recognized that it would be a mistake not to recognize that changing demographics and economic forces, being regional and statewide in scope, require regional and statewide authority for the benefit of the citizens of the Commonwealth. Five findings and recommendations were made on this topic.

**a. The state government should provide more active leadership to deal with the intensifying pressures on land.** The response of Virginia's state government to the growing problems of land use has been piecemeal and lacking in content and follow-through. During the coming decades, population pressure upon Virginia's land will intensify. The Commonwealth needs now to define those aspects of land use that are of regional or statewide concern; establish clear policies to carry out the constitutional mandate to protect and enhance Virginia's land resources; and create mechanisms that are effective in asserting regional and state interests on an ongoing basis.

**b. The General Assembly should create, within a Department of Natural Resources, an adequately-staffed and adequately-funded agency responsible for advising the Governor and the General Assembly on region and state land use policies.** Since the Division of State Planning and Community Affairs was abolished, no one in state government has had the authority and responsibility to express the Commonwealth's broad interest in the use of land within its boundaries, or to anticipate statewide or regional land use problems.

**c. The Planning District Commissions should be given a key role in developing and administering the Commonwealth's land use policy, and**

**they should be given the authority and resources necessary to play that role. In carrying out a land use policy, a strong instrumentality is needed at the regional level. Land use decisions that have impact across city and county boundaries need to be resolved with the participation of residents of all affected areas. In the absence of any authoritative regional planning process, no reliable means exists for organizing such participation.**

**The Planning District Commissions should serve as liaisons between the localities and the state land use agency. They should take the initiative to identify important environmental areas within their districts and should supply the state agency with information on land use developments and problems.**

**d. The General Assembly should review the statutory authority of local governments to zone. These laws, as enacted and as interpreted by the courts, may not provide adequate authority to local jurisdictions attempting to cope with the consequences of growth.**

**e. The General Assembly should review the findings and recommendations of the Virginia Outdoors Plan of 1966, revise it to take account of the developments since its adoption, and then affirm its support for the revised plan. The Commonwealth's commitment to acquire land for state parks, embodied in the Virginia Outdoors Plan of 1966, has not been fulfilled. No state funds have been approved for a major park acquisition since 1970. The program adopted in 1966 should be updated and reestablished. Funds should be provided for acquiring land for state parks and ecologically important natural areas. Financial aid to acquire land for parks and open spaces should be provided to localities.**

#### **4. Waste Management**

**The Governor's Commission found that safe and economical management of all kinds of solid waste was a growing problem for individuals, localities and industry. Increased responsibility was being placed upon state government, a responsibility that, while costly, was less so than inaction. Three findings and recommendations were then put forth.**

**a. Virginia should develop a long-term plan for dealing with the problem of waste management, with a reliable source of long-term funding. Assured funding for a comprehensive waste management program at the state level is critical. The problem will not respond to episodic infusions of money. Funds will be needed to support the central waste management facility's activities and to provide aid to localities and regions.**

b. An appropriate waste management authority should be constituted within a Department of Natural Resources and given the mandate to implement a comprehensive waste management strategy. Authority for waste management is divided among too many state agencies, with the result that the development and implementation of needed policy initiatives is frustrated. The Health Department, Water Control Board, and Air Pollution Board operate with inadequate coordination. The Solid Waste Commission's authority is limited. Current state programs are also hampered by lack of a clear legislative consensus on the nature and urgency of the problem.

The waste management authority must have staff and facilities to build and use a base of scientific information; develop standards and regulations and administer them; monitor progress and make appropriate adjustments in programs; and provide technical advice to regions and localities.

c. Virginia's approach to waste management should encourage the use of new technology, which, in the short-run, may be more expensive than land disposal. A solution to waste management problems will require use of advance technology and regulatory programs that rely on financial incentives to encourage compliance. Uses of new technology will grow if the cost of environmental damage is assessed against the waste handler. A variety of techniques should be explored, including bonding fees for waste facilities and a fee system for generators of hazardous waste. With such a system of fees, the highest fees would be charged for land disposal and no fees should be charged when waste is recovered or disposed of without environmental degradation.

## **5. The Chesapeake Bay**

The Governor's Commission noted that the accumulating abuses of the Chesapeake Bay system had impaired its productivity as indicated in part by the decline in rockfish, shad and oysters which depend on clean water for their survival. Two findings and recommendations were made.

a. The Commonwealth should continue to develop a strategy for restoring the Chesapeake Bay in concert with other states, but the Commonwealth needs its own Chesapeake Bay program. Virginia's representatives to bi-state and multi-state agencies must work to see that those agencies responsible for implementing state and regional strategies are pursuing the objectives of improved Bay water quality and environmental management. However, the need for multi-state cooperation does not diminish the need for lasting effort by Virginia to preserve and enhance the Chesapeake Bay.

b. The Commonwealth should accelerate the gathering and interpreting of scientific data needed for effective fisheries management.

Commercial and recreational fishing in the Chesapeake Bay is undergoing sharp change. Some species of fish and shellfish have declined dramatically. The knowledge to identify the causes of these changes is lacking.

#### **F. 1984 JLARC Series on The Organization of the Executive Branch of Virginia**

House Joint Resolution 33 of the 1982 General Assembly directed JLARC to "study the organization of the executive branch for the purpose of determining the most efficient and effective structure." In *An Assessment of Structural Targets in the Executive Branch of Virginia*, JLARC recommended that the State Water Control Board, Air Pollution Control Board, Division of Mined Land Reclamation of the Department of Conservation and Economic Development, Council on the Environment, and VDH's regulation of wastewater treatment facilities, Bureau of Toxic Substances Information, and Bureaus of Solid and Hazardous Waste be combined into one agency. JLARC also presented the option of the State housing all natural resource management and environmental regulation activities under one agency. This broad agency would have incorporated functions in forestry, game, fisheries, marine resources management, environmental regulation, and soil conservation.

#### **H. GOVERNOR ALLEN'S COMMISSION ON GOVERNMENT REFORM**

As his first act in office, Governor Allen signed Executive Order Number One creating the Governor's Commission on Government Reform, also known as the Blue Ribbon Strike Force. The Commission was charged with examining the executive branch of state government and with recommending ways to improve state service. Four challenges were posed. First, he directed the Commission to challenge and question the basic assumptions underlying all state agencies and service provided by the state and to identify those that are vital to the best interest of the people of the Commonwealth and those that no longer meet that goal. Second, he challenged the Commission to evaluate the effectiveness with which state agencies operate their programs and to identify and recommend ways to eliminate waste and duplication. Third, he directed the Commission to identify any agency program or service that can be eliminated or transferred to the private sector without injury to the public good and well-being. Finally, the Governor charged the Commission with recommending ways to eliminate, alter, or amend unnecessary, costly, or burdensome regulations.

The Commission split into ten committees including one to deal with natural resources issues. The natural resources committee found that:



*“Virginians want to protect, conserve and even enhance our natural and historic resources. They add immeasurable value to the quality of our lives, are a boon to economic development, and are an attraction for the Commonwealth’s many visitors. At the same time, these resources require attention and maintenance either through government intervention, private initiative, or public/private cooperation.”*

It also noted that:

*“[to] protect Virginia’s natural, historic, and cultural resources, federal and state governments have enacted assorted laws and promulgated a wealth of regulations. Concurrently, state regulatory activity has proliferated. In many instances, the growth has been haphazard and uncoordinated resulting in conflicting regulations and duplication of effort.”*

Sixty-six natural resources related recommendations in 27 topic areas were made to reconcile and rectify these concerns.

### **1. Enhancing Organizational Consideration**

a. The Secretary of Natural Resources should review the mission and purpose of every board, commission, and foundation to eliminate duplication.

b. The Secretary of Natural Resources should require the agencies within the secretariat to conduct an inventory and review of all interagency cooperative agreements to determine which (i) are still in effect; (ii) are consistent with the responsibilities of the agencies; (iii) serve a current state purpose; (iv) result in duplication of services; and (v) are not cost effective.

### **2. Protecting the Chesapeake Bay**

A Virginia Chesapeake Bay Council should be created administratively under the Secretary of Natural Resources to better coordinate Virginia’s efforts in the regional Bay Program, provide strategic planning for bay restoration and ensure implementation of Virginia’s commitments.

### **3. Acquiring and Using Land**

a. The Governor should require the preparation of a master inventory of undeveloped land owned by the natural resources agencies and the Department of Forestry, as well as easements, to determine: (i) the adequacy of the land to provide recreational opportunities envisioned in the 1994 Virginia Outdoors Plan or a more appropriate plan in the future; (ii) which are excess; and (iii) where there are present or future anticipated deficiencies relative to future recreational requirements. Additional land should not be acquired, even by gift, where a plan

for operations and maintenance funds has not been completed and where acquisition does not directly contribute to the achievement of the goals set forth in the annual plan.

b. An inter-secretariat advisory council on land management should be established to ensure that all state owned properties are used for their best and most complete use.

c. Explore the feasibility of a pilot program in private sector management of state lands and parks by identifying any private conservation associations and organizations, including state employees, interested in implementing new ideas for managing government lands more efficiently and effectively.

#### **4. Appointing the Chairman of the Board of Game and Inland Fisheries**

The Governor should be given the power, now vested with the Board of Game and Inland Fisheries, to name from among its members the Chairmen of the Board.

#### **5. Enhancing the Marine Resources Commission**

a. The Commissioner of the Marine Resources Commission and all members of the Commission should be citizen members.

b. The Marine Resources Commission should be funded by special and dedicated funds, to the maximum extent possible. A study is recommended to determine the feasibility of this recommendation and its effect on the ability of the Commission to fulfill its duties.

c. Consideration should be given to co-locating the Commission with the Virginia Institute of Marine Science.

#### **6. Clarifying the Role of the Virginia Institute of Marine Science**

a. The Virginia Institute of Marine Science should continue to be an agency within the Secretariat of Education.

b. The Director of VIMS should meet with the Secretary of Natural Resources on a regular basis to review current and emerging issues.

c. Secretariat of Natural Resources agencies should have the option to contract with any entity to research marine resource problems.

d. VIMS should conduct an annual briefing for appropriate personnel within client Secretariats to review VIMSs' programs and activities.

e. VIMS should continue to expand regular attendance at the monthly VMRC meetings so that information may be rendered directly to the Commission. This should be done as an advisor not as an advocate or constituent.

f. VIMS should implement memoranda of understanding with client agencies with a scope of effort defined annually and funded jointly.

g. VIMS should meet with client agencies to review their needs and determine whether particular budget initiatives are needed.

## **7. Protecting Endangered Species**

a. The program responsibilities of DCR, DGIF and VDACS involving threatened and endangered species should be consolidated in one agency with regulatory authority or, as an alternative, one agency should be specifically vested with the oversight of the programs, with the parameters of responsibilities of any contributing agencies clearly defined.

b. Establish clear, sound scientific standards for the species protection listing process for critical habitat designation, differentiating between management of threatened and endangered species and subjecting restrictions or regulations to cost/benefit analysis and the consideration of economic and budget factors.

c. Encourage public participation in implementation of species protection by requiring the species listing process to include public hearings and encouraging, rather than penalizing, the private sector to provide benefits such as endangered species habitat on private land.

d. Re-focus the species protection program to emphasize incentives and market solutions rather than regulation and punitive measures; encourage public participation in restoration efforts through creative propagation efforts; and encourage property management practices that benefit endangered or threatened species.

## **8. Titling and Registration of Boats**

a. Boat titling and registration functions of DGIF should not be consolidated with auto titling and registration functions of DMV.

b. Implementation of temporary operating certificates should be considered for new boat owners.

## **9. Managing Saltwater and Freshwater Fisheries Management**

The state should not consolidate the saltwater and freshwater fisheries management responsibilities of the VMRC and DGIF.

#### **10. Improving Notice of Intended Regulatory Actions (“NOIRAs”)**

a. The NOIRA procedure should be amended to require the agency proposing the regulations to provide more specific information regarding proposed regulations. A greater use of ad hoc technical advice to assist in the drafting process should also be encouraged.

b. Agencies should be required to respond to petitions to develop, amend, or repeal regulations within 60 days of receipt of the petition.

#### **11. Reducing Permit Processing Time**

a. The processing time for various permits should be analyzed to establish a reference or average processing time. A standard should then be set of 75 percent of the reference or average time.

b. Solicit ideas from state employees for improving the permitting process and allow them to implement changes that will achieve the standard. Also ensure that a tracking system is established for permit applications. If the standard processing time is not met, require a responsible employee to document the reason and to notify the applicant of the reason for delay.

#### **12. Accelerating Voluntary Cleanup Programs**

a. Virginia should immediately jettison the costly and inefficient Superfund process for all environmental restorations that do not have that mandatory federal designation. The Virginia Total Accelerated Cleanup Program should be established.

b. DEQ should focus the Voluntary Cleanup Program as an expedited and performance-based cleanup program by emphasizing risk-based cleanup results and standards efficiently.

c. The Voluntary Cleanup Program should be re-focused to: (i) develop agency guidance for supportive, cooperative plans with companies undertaking cleanup efforts and to stop the use of consent orders for initiating cleanup plans; (ii) accelerate cleanup and make it a performance based program; and (iii) redirect cleanups so that DEQ sets the cleanup standard and allows more flexibility in the methods of cleanup.

#### **13. Assessing Environmental Impact**

The Secretary of Natural Resources should conduct a review of the environmental impact assessment activities of all state agencies to ensure the assignment of a required activity to the proper agency, eliminate unnecessary or duplicative activities, and ensure the fair allocation of financial resources for required activities.

#### **14. Eliminating Financial Regulations**

The Virginia Waste Management Board should move to repeal regulations that require private non-hazardous solid waste landfills to maintain liability insurance for third party claims. Federal standards do not require this type of insurance.

#### **15. Expediting the Solid Waste Permit Program**

DEQ should establish an Expedited Solid Waste Permit Program to reduce the costs to the taxpayers, who pay both the costs of landfill service and the government regulatory and permit actions.

#### **16. Reviewing Private Property Rights**

The General Assembly should study the desirability and feasibility of reducing the burden of the impact of environmental statutes and regulations on the rights of property owners to use their property.

#### **17. Creating Market Based Nutrient Trading Programs.**

To establish a new direction in efforts to control point and nonpoint nutrient loading, a pilot program should be explored for a nutrient trading project.

#### **18. Promoting Risk Assessment Concepts**

a. Risk assessments, based on sound science and dependable environmental and health data, should be made a mandatory element of all natural resources policy, legislative and regulatory decisions and processes, to provide a dependable scientific and economic basis for addressing environmental problems effectively and efficiently.

b. The Secretary of Natural Resources should investigate the feasibility of establishing a *pro bono* Risk Management Advisory Council in the Secretary's office to assist the Secretary and the agencies in developing environmental, scientific and economic integrity in all policy, legislation, regulations and programs.

#### **19. Implement Full Cost Accounting**

All Virginia agencies providing grants or loans for environmental infrastructure should develop full cost accounting methods for use by local governments in assessing the true costs associated with the design, development, and operation of solid waste facilities, wastewater treatment facilities and water treatment facilities to citizens, local governments and the state.

## **20. Revitalizing Industrial Sites**

Virginia should create new incentives for revitalizing industrial sites.

## **21. Making the Department of Environmental Quality Work**

a. The Department of Environmental Quality should move from a command and control approach focused on inflexible mandated detailed solutions, to an empowerment approach, where employees and customers have flexibility in implementing solutions that fully meet state environmental standards.

b. To avoid inconsistency and uneven expenses for citizens and companies, DEQ should develop consistent, predictable, uniform written guidance on process and procedures for all regions.

c. In establishing new customer-sensitive procedures, DEQ should: (i) consider all possible methods for consolidating permit processes, including "one-stop-permit shops" to limit interagency confusion; (ii) reduce administrative staff; (iii) create uniform standards from agency to agency; (iv) improve coordination; and (v) produce faster turn around time.

d. DEQ should expand its efforts to achieve a more flexible waste program which, instead of penalizing new technology and forcing expensive pretreatment and disposal, allows a broader array of historically designated waste to be designated for a demonstrated new beneficial use, while meeting all appropriate environmental standards in the proposed new use.

e. Recommend that, to enhance its customer focus and reduce citizens cost of compliance, in the permit process, DEQ include the early identification of the requirements of ancillary agencies (such as the Health Department in water treatment and supply) and involve those agencies, where efficient, in a permitting team concept.

## **22. Improving Permit Policies and Processes.**

a. The Virginia Water Protection Permit Regulations should be withdrawn by the Department of Environmental Quality to the extent that they assert state jurisdiction over nontidal wetlands and incorporate the federal Clean

Water Act § 404 guidelines. Alternatively, if it is determined that the Commonwealth should implement a comprehensive Clean Water Act § 404 program, it should obtain full authority to run a delegated federal program. This could be accomplished by adopting appropriate state legislation and having the Department of Environmental Quality obtain federal program approval under the Clean Water Act.

b. The Commonwealth should phase out its Air Toxics Program and implement the federal Air Toxics Program as that program reaches maturity.

c. All reference to "endangered species" consideration should be eliminated from the Commonwealth's National Pollutant Discharge Elimination System permitting process.

d. Total Suspended Particulate regulations should be removed from of the Ambient Air Quality Standards.

e. The Department of Environmental Quality's existing permit fee structure should be reexamined to determine whether or not fees currently being charged are equivalent to the services being provided, or whether they are excessive. As part of this analysis, the Department of Environmental Quality should consider compliance incentives which would reduce fees for entities in compliance with permit conditions, and the appropriateness of ceilings or caps on the amount of fees collected.

f. The Virginia Wetlands Policy Statement leaves too much latitude through the regulations' interpretation. Modifications should be made to the policy statement to ensure that a classification policy is developed that will protect wetlands based upon environmental and social utility, rather than the premise that a wetland of any character deserves absolute protection.

g. The Virginia Air Pollution Control Board's Standards of Performance for Stationary Sources use of the best available control technology standard should be modified to be no more stringent than the federally mandated provisions unless there are compelling reasons associated with Virginia's compliance with its state implementation plan.

h. Merge regulations governing composting.

### **23. Enhancing the Department of Game and Inland Fisheries**

a. The Department of Game and Inland Fisheries should continue to be principally a user-funded agency, with each constituent group required to pay its fair share of the cost of services. Its statutory duties and responsibilities should be

limited to those consistent with its current mission statement. Where circumstances, dictated by law, require it to take action beyond its traditional duties and responsibilities, separate funding for such activities should be provided by the General Assembly.

b. The Department of Game and Inland Fisheries should continue to work with the Secretary of Natural Resources toward the implementation of the recommendations of the 1993 Management Study of the Department of Game and Inland Fisheries conducted by the Commonwealth's Auditor of Public Accounts.

c. The Department of Game and Inland Fisheries and the Department of Economic Development should develop a joint program to promote opportunities for enjoying wildlife-related recreation in Virginia.

#### **24. Strengthening the Department of Historic Resources**

a. The Department of Historic Resources should release or loan artifacts to appropriate Virginia museums for proper curation, protection, and exhibition. Solicitation of their help in cataloging, securing, and moving the artifacts to appropriate settings is also suggested. Private and other government funds should be solicited to implement all recommendations related to the Department of Historic Resources.

b. Transfer the Department of Historic Resources' historical record keeping role to the archives of the Library of Virginia.

c. Explore with the Virginia Heritage Foundation the possibility of transferring the historical consulting role of the Department of Historic Resources under state contract.

d. Begin working with the Science Museum of Virginia to develop a plan for moving the Department of Historic Resources' archaeology laboratory to an appropriate space at the Science Museum.

#### **25. Addressing Fish Hatchery Issues**

The Department of Game and Inland Fisheries Board should retain an independent consultant to advise it relative to plans for correcting recognized problems regarding the state's fish hatcheries. Among the alternatives which the consultant should consider are the privatization of one or more hatchery operations.

#### **26. Selling the Vessel Chesapeake**

Sell the vessel *Chesapeake*.



## 27. "Other issues"

a. The insurance functions (and possibly other large portions) of the state's petroleum storage tank program should be fully privatized as soon as the private sector will absorb this federally-mandated activity. In the short-term, the cost-effectiveness of contracting out portions of the program, such as the reimbursement of cleanup costs, should be examined.

b. Privatize underwater survey operations for private oyster grounds.

c. Eliminate state general funding for the Virginia Saltwater Fishing Tournament.

d. To redirect and more effectively use the substantial funds now in the Waste Tire Trust Fund, and to encourage economic development through technologies that will provide new uses and products for spent tires, the Waste Tire Fund could focus grants for pilot programs and demonstration projects in technological development areas.

### III. ONGOING STUDIES

#### A. Joint Legislative Audit and Review Commission Studies.

House Joint Resolution 531 (1995) directed the Joint Legislative Audit and Review Commission to conduct a two year study of the effectiveness of the organization, operation and performance of the Department of Environmental Quality. JLARC's interim report focused on issues related to DEQ's reorganization, a process that had not been completed at the time of the issuance of its interim report.<sup>48</sup> It found that progress had been made on agency goals of downsizing staff and increasing the authority of regional offices. JLARC also identified a number of areas of concern regarding the reorganization. The DEQ director and the Secretary of Natural Resources disagreed with a great deal of JLARC's interim findings.

The last phase of JLARC's HJR 531 review will again consider and update the issues raised in its interim report, however, the primary focus of the next phase will be an assessment of the reorganized department's environmental programs.<sup>49</sup>

In addition to completion of the HJR 531 study, JLARC is undergoing additional studies related to the organization and efficiency and responsibilities of

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<sup>48</sup> Interim report is House Document No. 44 (1996)

<sup>49</sup> Final report is House Document No. 67 (1997)

natural resource agencies. First, the natural resources area is up for review pursuant to the Legislative Program Review and Evaluation Act.<sup>50</sup>

Second, JLARC is currently reviewing consolidation issues related to the services of the Department of Game and Inland Fisheries and the Marine Resources Commission.<sup>51</sup> The consolidation of these two agencies has been considered by at least two studies who reached opposite conclusions on the merger issue.

Third, JLARC was directed by HJR 173 of the 1996 General Assembly Session to study the organization of state agencies and their functions within the Commonwealth's Natural Resources Secretariat. This study is to include: "(i) a review of existing divisions of responsibility and authority among the natural resources agencies, so as to assess the efficiency and effectiveness of current agency structures within the [Natural Resources] Secretariat; and (ii) a consideration of various options or alternatives for changing existing divisions of responsibility and authority of these state agencies, including, but not limited to, consolidations of agencies or consolidations of certain functions of these agencies. To the extent that the review indicates that certain functions of these agencies might be privatized or eliminated, or might be redundant with functions performed by agencies outside the Natural Resources Secretariat, those circumstances or opportunities should also be identified."<sup>52</sup>

## **B. Governor Allen's Commission on Environmental Stewardship**

By Executive Order Sixty-four (64), Governor Allen on June 4, 1996, created the Commission on Environmental Stewardship. The Commission, chaired by Attorney General Gilmore, has responsibility to advise the Governor on "all matters related to the stewardship of Virginia's natural resources pursuant to Article XI, Section 1, of the Constitution of Virginia, including identification of goals and strategies for environmental education and improvements to the environment." Specific responsibilities listed in the Executive Order are:

1. To examine the laws and policies of the Commonwealth related to pollution prevention, compliance and enforcement, and to make appropriate findings and recommendations regarding strategies for improvement.
2. To evaluate and provide recommendations for enhancing the awareness, understanding, commitment, and active involvement of Virginia citizens in ensuring wise stewardship of the Commonwealth's natural resources, now and in

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<sup>50</sup> Va. Code § 30-65 et seq.

<sup>51</sup> Final Report is House Document No. 44 (1997)

<sup>52</sup> Interim Report is House Document No. 68 (1997), Final Report is House Document No. 74 (1998)

the future, through education, volunteerism, public/private partnerships and incentive programs.

3. To evaluate the laws, programs and policies of the Commonwealth relating to conservation, recreation, parks, natural areas, open spaces, private property protection, and wildlife management, and to make appropriate findings and recommendations for improvement.

4. To examine the development of advanced environmental technologies in Virginia, and to make recommendations for fostering growth of the environmental technologies industry in Virginia, including development of markets and promotion of the use of such advanced environmental technologies in Virginia and regionally, nationally and internationally.

5. To evaluate the laws, programs, and policies of the Commonwealth regarding waste management, litter control and recycling and to make appropriate findings and recommendations regarding strategies for improvement.

6. To examine the role of citizen boards in the development, implementation and oversight of policies affecting natural resource conservation, environmental quality, and economic development, and to make appropriate findings and recommendations for improvement.

The Commission, unless otherwise directed by the Governor, is to complete its work and issue a final report to the Governor no later than December 1996.

#### **IV. REORGANIZATION PROPOSALS CONSIDERED DURING THE 1996 SESSION OF THE GENERAL ASSEMBLY**

The organization of agency responsibilities and the placement of responsibilities in various agencies may have a substantial impact on the management of natural resources in the Commonwealth. During the 1996 General Assembly Session there were numerous bills introduced to transfer responsibilities among agencies and to provide some agencies with addition powers while eliminating others. The following provides brief summaries of some of those pieces of legislation, all of which either failed or were carried over.

##### **Natural Heritage and Cave Protection program transfer (HB 1095).**

Transfers responsibility for administering the Virginia Natural Area Preserves Act and the Cave Protection Act from the Department of Conservation and Recreation to the Board of Game and Inland Fisheries. The bill also authorizes the transfer of specific natural areas to the Game and Inland Fisheries Board.

**Powers of the Department of Conservation and Recreation (HB 1098).**

Gives the Department of Conservation and Recreation additional conservation-related responsibilities, such as developing a statewide long-range plan for conserving Virginia's natural resources and planning, and developing and operating all of the state's natural resources data bases and information systems.

**Soil and Water Conservation Board programs transfer (HB 1113).**

Transfers the Virginia Soil and Water Conservation Board and the programs administered by it from the Department of Conservation and Recreation to the Department of Agriculture and Consumer Services. The Board would retain its regulatory authority and all of its current responsibilities.

**Division of Energy from the Department of Mines, Minerals and Energy to the Department of General Services (HB 1183).**

Transfers the Division and renames the Department of Mines, Minerals and Energy the Department of Mines and Minerals. The sections governing the Division are relocated within the Code but are not substantively altered.

**Department of Environmental Quality; Citizens' Advisory Board (HB 1534).**

Creates the 11-member Citizens' Advisory Board to advise the Director of DEQ on DEQ policies and programs.

**Flood and dam safety responsibility transfer (SB 308).**

Transfers responsibilities for the Flood Damage Reduction Act (§ 10.1-600 et seq.), the Flood Prevention and Protection Assistance Fund (§ 10.1-603.16 et seq.), the Dam Safety Act (§ 10.1-604 et seq.) and the Comprehensive Flood Control Program (§ 10.1-658 et seq.) from the Department of Conservation and Recreation to the Department of Emergency Services.

**Consolidation of Bay Program responsibilities (SB 350).**

Transfers responsibility for Virginia's commitments to the regional Chesapeake Bay Program and responsibility for the Coastal Resources Management Program from the Department of Environmental Quality to the Chesapeake Bay Local Assistance Department.

**Erosion, sediment control and stormwater management transfer (SB 530).**

Transfers responsibility for administering the Erosion and Sediment Control Law from the Virginia Soil and Water Conservation Board to the Department of Environmental Quality, with the State Water Control Board given the authority to promulgate necessary regulations. Similarly, the stormwater management program is transferred from the Department of Conservation and Recreation to the Department of Environmental Quality (DEQ). With the transfer of this function to DEQ, the Board of Conservation and Recreation no longer has regulatory

responsibility over a state program and therefore is reclassified as an advisory board.

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## **Appendix 3**

### **The Virginia Water Quality Improvement Act of 1997**

## CHAPTER 21

*An Act to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 21.1, containing articles numbered 1 through 4, consisting of sections numbered 10.1-2117 through 10.1-2134, relating to the Virginia Water Quality Improvement Act of 1997.*

[H 2330]

Approved February 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 21.1, containing articles numbered 1 through 4, consisting of sections numbered 10.1-2117 through 10.1-2134, as follows:

*CHAPTER 21.1.  
VIRGINIA WATER QUALITY IMPROVEMENT ACT OF 1997.  
Article 1.  
General Provisions.*

*§10.1-2117. Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§10.1-2128 et seq.) of this chapter.*

*"Individual" means any corporation, foundation, association or partnership or one or more natural persons.*

*"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.*

*"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.*

*"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.*

*"State waters" means all waters on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdictions.*

*"Water Quality Improvement Grants" means grants available from the Fund for projects of local governments and individuals (i) to achieve nutrient reduction goals in tributary plans developed pursuant to Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1 or (ii) to achieve other water quality restoration, protection or enhancement benefits.*

*§10.1-2118. Cooperative program established.*

*It shall be the policy of the Commonwealth, and it is the purpose of this chapter, to restore and improve the quality of state waters and to protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth. The General Assembly further determines and finds that the quality of state waters is subject to potential pollution and degradation, including excess nutrients, from both point and nonpoint source pollution and that the purposes of the State Water Control Law (§62.1-44.2 et seq.) and all other laws related to the restoration, protection and improvement of the quality of state waters will be enhanced by the implementation of the provisions of this chapter. The General Assembly further determines and finds that the restoration, protection and improvement of the*

*quality of state waters is a shared responsibility among state and local governments and individuals and to that end this chapter establishes cooperative programs related to nutrient reduction and other point and nonpoint sources of pollution.*

*§10.1-2119. Effect of chapter on other governmental authority.*

*The authorities and powers granted by the provisions of this chapter are supplemental to other state and local governmental authority and do not limit in any way other water quality restoration, protection and enhancement authority of any agency or local government of the Commonwealth. All counties, cities and towns are authorized to exercise their police powers and zoning powers to protect the quality of state waters from nonpoint source pollution as provided in this Code.*

*Article 2.  
Cooperative Point Source Pollution Program.*

*§10.1-2120. Definitions.*

*As used in this article, unless the context requires a different meaning:*

*"Department" means the Department of Environmental Quality.*

*"Director" means the Director of the Department of Environmental Quality.*

*§10.1-2121. Cooperative point source pollution program.*

*In order to restore, protect and improve the quality of the bays, lakes, rivers, streams, creeks, and other state waters, and to achieve the pollution reduction goals, including those related to nutrient reduction, established in commitments made by the Commonwealth to water quality restoration, protection and improvement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments and individuals in the control of point source pollution, including nutrient reductions, through technical and financial assistance made available through grants provided from the Fund. In providing this technical and financial assistance the Department shall give initial priority to local government capital construction projects designed to achieve nutrient reduction goals, as provided in §10.1-2131, consistent with those established in the Chesapeake Bay Agreement, as amended, and thereafter to efforts consistent with other commitments made by the Commonwealth. In pursuing implementation of this cooperative program, it is the intent of the Commonwealth to annually seek and provide funding necessary to meet its commitments under any fully executed grant agreement pursuant to the provisions of §§10.1-2130 and 10.1-2131.*

*§10.1-2122. Additional powers and duties of the Director.*

*In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§10.1-2128 et seq.) of this chapter.*

*Article 3.  
Cooperative Nonpoint Source Pollution Program.*

*§10.1-2123. Definitions.*

*As used in this article, unless the context requires a different meaning:*

*"Board" means the Board of Conservation and Recreation.*

*"Department" means the Department of Conservation and Recreation.*

*"Director" means the Director of the Department of Conservation and Recreation.*



§10.1-2124. Cooperative nonpoint source pollution program.

A. The state has the responsibility under Article XI of the Constitution of Virginia to protect the bays, lakes, rivers, streams, creeks and other state waters of the Commonwealth from pollution and impairment. Commercial and residential development of land as well as agricultural and other land use may cause the impairment of state waters through nonpoint source pollution. In the exercise of its authority to control land use and development, it is the responsibility of counties, cities and towns to consider the protection of all bays, lakes, rivers, streams, creeks, and other state waters from nonpoint source pollution. The exercise of environmental stewardship by individuals is necessary to protect state waters from nonpoint source pollution. To promote achievement of the directives of Article XI of the Constitution of Virginia and to implement the cooperative programs established by this chapter, the state shall assist local governments, soil and water conservation districts and individuals in restoring, protecting and improving water quality through grants provided from the Fund.

B. In order to restore, protect and improve the quality of all bays, lakes, rivers, streams, creeks and other state waters, and to achieve the pollution reduction goals, including nutrient reduction goals, established in commitments made by the Commonwealth to water quality restoration, protection and enhancement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments, soil and water conservation districts and individuals in the control of nonpoint source pollution, including nutrient reduction, through technical and financial assistance made available through grants provided from the Fund as provided in §10.1-2132.

§10.1-2125. Powers and duties of the Board.

The Board, in meeting its responsibilities under the cooperative program established by this article, after consultation with other appropriate agencies, is authorized and has the duty to:

1. Encourage and promote nonpoint source pollution control and prevention, including nutrient control and prevention, for the: (i) protection of public drinking water supplies; (ii) promotion of water resource conservation; (iii) protection of existing high quality state waters and restoration of all other waters to a condition or quality that will permit all reasonable beneficial uses and will support the propagation and growth of all aquatic life, including finfish and shellfish, which might reasonably be expected to inhabit them; (iv) protection of all state waters from nonpoint source pollution; (v) prevention of any increase in nonpoint source pollution; (vi) reduction of existing nonpoint source pollution; (vii) attainment and maintenance of water quality standards established under subdivisions (3a) and (3b) of § 62.1-44.15; and (viii) attainment of commitments made by the Commonwealth to water quality restoration, protection and enhancement including the goals of the Chesapeake Bay Agreement, as amended, all in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

2. Provide technical assistance and advice to local governments and individuals concerning aspects of water quality restoration, protection and improvement relevant to nonpoint source pollution.

3. Apply for, and accept, federal funds and funds from any other source, public or private, that may become available and to transmit such funds to the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§10.1-2128 et seq.) of this chapter.

4. Enter into contracts necessary and convenient to carry out the provisions of this article.

5. Seek the assistance of other state agencies and entities including but not limited to the Chesapeake Bay Local Assistance Department, the Department of Forestry and the Virginia Soil and Water Conservation Board as appropriate in carrying out its responsibilities under this chapter.

§10.1-2126. Additional powers and duties of Director.

In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the

*purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§10.1-2128 et seq.) of this chapter.*

*B. The Director shall be vested with the authority of the Board when the Board is not in session, subject to such limitations as may be prescribed by the Board. In no event shall the Director have the authority to promulgate any final regulation pursuant to the provisions of this chapter.*

§10.1-2127. Nonpoint source pollution water quality assessment.

*A. By July 1, 1998, and biennially thereafter, the Department, in conjunction with other state agencies, shall evaluate and report on the impacts of nonpoint source pollution on water quality and water quality improvement to the Governor and the General Assembly. The evaluation shall at a minimum include considerations of water quality standards, fishing bans, shellfish contamination, aquatic life monitoring, sediment sampling, fish tissue sampling and human health standards. The report shall, at a minimum, include an assessment of the geographic regions where water quality is demonstrated to be impaired or degraded as the result of nonpoint source pollution and an evaluation of the basis or cause for such impairment or degradation.*

*B. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to address identified nonpoint source pollution impairment or degradation, including excess nutrients. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the causes of nonpoint source pollution, including those related to excess nutrients. These initiatives may include the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.*

*C. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region not identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to prevent nonpoint source pollution impairment or degradation. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the nonpoint source pollution causes, including the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.*

*D. The Department shall, on or before January 1 of each year, report to the Governor and the General Assembly on whether cooperative nonpoint source pollution programs, including nutrient reduction programs, developed pursuant to this section are being effectively implemented to meet the objectives of this article.*

**Article 4.**

*Virginia Water Quality Improvement Fund.*

§10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

*A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which shall include, unless otherwise provided in the general appropriation act, ten percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act and ten percent of any unreserved general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act. The Fund shall also consist of such other sums as may be made available to it from any other source, public or private, and shall include any penalties or damages collected under this article, federal grants solicited and received for the*

specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality Improvement Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon the written request of the Director of the Department of Environmental Quality or the Director of the Department of Conservation and Recreation as provided in this chapter.

B. The purpose of the Fund is to provide Water Quality Improvement Grants to local governments, soil and water conservation districts and individuals for point and nonpoint source pollution prevention, reduction and control programs and efforts undertaken in accordance with the provisions of this chapter. The Fund shall not be used for agency operating expenses or for purposes of replacing or otherwise reducing any general, nongeneral, or special funds allocated or appropriated to any state agency.

§10.1-2129. Agency coordination; conditions of grants.

A. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the State Forester and the Directors of the Departments of Environmental Quality and Conservation and Recreation and of the Chesapeake Bay Local Assistance Department and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, the State Water Control Board, and the Chesapeake Bay Local Assistance Board, shall (i) allocate moneys in the Fund between point and nonpoint source pollution and (ii) develop written guidelines for the distribution and conditions of Water Quality Improvement Grants and criteria for prioritizing funding requests. In developing the guidelines the Secretary shall evaluate and consider, in addition to such other factors as may be appropriate: (i) specific practices and programs proposed in any tributary plan required by Article 2 (§2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types of nutrients released in different locations from different sources; and (iii) environmental benchmarks and indicators for achieving improved water quality. The guidelines shall include procedures for soliciting applications for funding and shall ensure that both point and nonpoint source pollution are equitably addressed and funded in each year.

B. In addition to those the Secretary deems advisable, the criteria for prioritizing funding requests shall include: (i) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (ii) documented water quality impairment; (iii) the achievement of greater water quality improvements than that required by state or federal law; and (iv) the availability of other funding mechanisms. In the event of a local government grant application request for greater than fifty percent funding for any single project the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of §10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

§10.1-2130. General provisions related to grants from the Fund.

All Water Quality Improvement Grants shall be governed by a legally binding and enforceable grant agreement between the recipient and the granting agency. In addition to provisions providing for payment of the total amount of the grant, the agreement shall at a minimum also contain provisions that govern design and installation and require proper long-term operation, monitoring and maintenance of funded projects, including design and performance criteria, as well as contractual or stipulated penalties in an amount sufficient to ensure compliance with the agreement, which may include repayment with interest, for any breach of the agreement, including failure to properly operate, monitor or maintain. Grant agreements shall be made available for public review and comment for a period of

no less than thirty days but no more than sixty days prior to execution. The granting agency shall cause notice of a proposed grant agreement to be given to all applicants for Water Quality Improvement Grants whose applications are then pending.

§10.1-2131. Point source pollution funding; conditions for approval.

A. The Department of Environmental Quality shall be the lead state agency for determining the appropriateness of any grant related to point source pollution to be made from the Fund to restore, protect or improve state water quality.

B. The Director of the Department of Environmental Quality shall, subject to available funds and in coordination with the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to §10.1-2129.

C. Notwithstanding the priority provisions of §10.1-2129, in no event shall the Director of the Department of Environmental Quality authorize the distribution of grants from the Fund for purposes other than financing at least fifty percent of the cost of design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works until such time as all tributary plans required by Article 2 (§2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1 are developed and implemented. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements. In addition to the provisions of §10.1-2130 all grant agreements related to nutrients shall include: (i) numerical concentrations on nutrient discharges to state waters designed to achieve the nutrient reduction goals of the applicable tributary plan; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedences of no more than ten percent and for exceedences caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing biological nutrient removal facilities or other nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking and revolving loan distribution criteria. At least fifty percent of the cost of the design and installation of biological nutrient removal facilities or other nutrient removal technology at publicly owned treatment works meeting the nutrient reduction goal in an applicable tributary plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of the tributary plans, the Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements including but not limited to cost effective technologies to reduce nutrient loads. Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants for technical assistance related to nutrient reduction.

§10.1-2132. Nonpoint source pollution funding; conditions for approval.

A. The Department of Conservation and Recreation shall be the lead state agency for determining the appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore, protect and improve the quality of state waters.

B. The Director of the Department of Conservation and Recreation shall, subject to available funds and in coordination with the Director of the Department of Environmental Quality, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to §10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements.

C. Grant funding may be made available to local governments, soil and water conservation districts and individuals who propose specific initiatives that are clearly demonstrated as likely to achieve reductions

*in nonpoint source pollution, including excess nutrients, to improve the quality of state waters. Such projects may include, but are in no way limited to, the acquisition of conservation easements related to the protection of water quality and stream buffers; conservation planning and design assistance to develop nutrient management plans for agricultural operations; implementation of cost-effective nutrient reduction practices; and reimbursement to local governments for tax credits and other kinds of authorized local tax relief that provides incentives for water quality improvement. The Director shall give initial priority consideration to the distribution of grants from the Fund for the purposes of implementing the tributary plans required by Article 2 (§ 2.1-51.12:1 et seq.) of Chapter 5.1 of Title 2.1. Until such time as the tributary plans are developed and implemented, the Director shall distribute fifty percent of the nonpoint grant funding to their implementation and fifty percent to areas of the Commonwealth not to be covered by the tributary plans, unless otherwise provided in the general appropriation act.*

**§10.1-2133. Annual report by State Comptroller.**

*The State Comptroller shall, by January 1 of each year, certify to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the total amount of annual general fund revenue collections in excess of the official estimate in the general appropriation act, the total amount of the unreserved general fund balance whose reappropriation is not required in the general appropriation act at the close of the previous fiscal year and the total amount of funds that are to be directed to the credit of the Virginia Water Quality Improvement Fund under this article unless otherwise provided in the general appropriation act.*

**§10.1-2134. Annual report by Directors of the Departments of Environmental Quality and Conservation and Recreation.**

*The Directors of the Departments of Environmental Quality and Conservation and Recreation shall, by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients of grants made from the Virginia Water Quality Improvement Fund and the specific and measurable pollution reduction achievements to state waters anticipated as a result of each grant award, together with the amounts of continued funding required for the coming fiscal year under all fully executed grant agreements.*

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**Appendix Number 4**

**DIVISION OF LEGISLATIVE SERVICES  
REVIEW OF PAST STUDIES OF STATE PARKS  
AND THE STATE PARK SYSTEM**

Martin G. Farber, Senior Research Associate  
Presented September 3, 1997,  
to the  
Parks Subcommittee  
of the  
Moss Commission on the Future of Virginia's Environment  
(HJR 221, 1996)

**DIVISION OF LEGISLATIVE SERVICES  
REVIEW OF PAST STUDIES OF STATE PARKS  
AND THE STATE PARK SYSTEM**

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**DIVISION OF LEGISLATIVE SERVICES  
REVIEW OF PAST STUDIES OF STATE PARKS  
AND THE STATE PARK SYSTEM**

**I. BACKGROUND**

Virginia was the first state to open an entire park system at one time. In 1936, with financial assistance from the Civilian Conservation Corps (CCC), Virginia developed six parks (Douthat, Seashore, Hungry Mother, Fairy Stone, Westmoreland, Staunton), all of which continue to operate. Since the inception of the park system state government has assumed a role in providing public recreation. As early as 1953, Governor John S. Battle, by executive order, recognized the important role recreation plays in the lives of Virginians, when he created the Interagency Committee on Recreation. The Committee produced the first significant report on the status of recreational opportunities in Virginia. The report, entitled "Recreation as a Function of Government in Virginia," identified the need for state assistance in what was then a relatively new public recreation service:

Recreation has become a social and civic necessity. It has become a public problem and requires public action as well as private and commercial. Recreation is now the need of the total population because increased leisure has increased the people's desire for opportunities to use this time in some worthy, self-satisfying way. This desire for recreation is one shared by all people, of all ages and races. And it is so extensive and varied that to satisfy it there is need for action by public as well as by private and commercial agencies. The worthy use of leisure time by the total population – especially in this time of tension, large population and restricted recreation opportunity and facilities, is so directly related to mental and physical health, to good citizenship and to the general welfare that a public interest is created which justifies public action.

The importance of stable, long-term funding for recreation was documented four years later in "Report on State Parks, Commonwealth of Virginia" prepared by the executive director of the National Wildlife Federation, in cooperation with the Virginia State Parks Commission. The report states:

During the CCC and WPA era of the thirties, both national and state park systems were vastly benefited by public money and the leadership of the National Park Service. However, the park concept including facilities and expansion have chronically suffered from the lack of funds to carry on. No continuity of program due to insecure source of funds has undoubtedly been the greatest evil. Sporadic legislative recognition is not sufficient. Parks as well as other types of business, public and private, must have long-range plans if they are to succeed. A generous handout for a year or two and then a drying up of



funds is not conducive to orderly development. The National Park Service and every state in the Union has found itself in this predicament at some time or other.

With respect to Virginia's parks system, the report concludes that state law provides broad authority to administer and expand the state park system, but it "does not provide continuity to financing, a function that must be carried on in part by concessions and in part by requests to the legislature."

## **II. SUMMARY OF STUDIES**

The following are summaries of studies either conducted by the General Assembly or undertaken at the direction of the General Assembly.

### **A. Study of the Establishment of a State Park in Northern Virginia (1953)**

The 1952 Session of the General Assembly passed Senate Joint Resolution No. 78 directing the Department of Conservation and Development to study the establishment of a park in Northern Virginia. At the time there was no state park in this region of the state. The federal government owned property in Fairfax County known as Fort Hunt. The General Assembly asked the Department of Conservation and Development to examine (i) the possibility of acquiring the property without cost to the state and (ii) what the cost would be to develop the park after it had been acquired. Fort Hunt is located along Mount Vernon Memorial Highway between Mount Vernon and Alexandria. The area contained approximately 394 acres. Recreational facilities available in the park included a large field known as the "parade ground," with a baseball diamond, horseshoe courts, tennis courts, a volleyball court, and a badminton court. The parade ground area was used by picnic groups of from 100 to 5,000. A clubhouse provided comfort station facilities and drinking water. There were also 12 picnic groves accommodating 10 to 150 persons, which were equipped with fireplaces, tables and benches. No meeting ever occurred between state and federal officials because the National Park Service informed the study subcommittee that it would not approve any transfer of ownership of the park to the State of Virginia.

### **B. Study of the Establishment of a Park in the Breaks of the Cumberland (1953)**

The 1952 Session of the General Assembly passed Senate Joint Resolution No. 50, directing the Department of Conservation and Development to study the establishment of a park in the Breaks of the Cumberland. The Department was to consider the costs of acquiring the necessary land and supplying utilities and to confer with Kentucky as to its plan of developing its portion of the area. No appropriation accompanied the directive and the Department indicated it had neither the staff necessary to conduct the engineering study nor money to employ engineers and consultants to undertake the study.

On May 27, 1953, Congressmen William C. Wampler, who had been asked by Congressman Carl D. Dickens of Kentucky to join in an effort to establish an interstate park at the Breaks, introduced House Joint Resolution No. 268 to establish such a park. It passed Congress and was signed by the President. This action was followed by the development of a bi-state compact between Virginia and Kentucky, which created Breaks Interstate Park and the Breaks Interstate Park Commission. Twenty-five thousand dollars in general funds was appropriated beginning July 1, 1954, and an additional \$25,000 was allocated the following year for the development and improvement of the park.

### **C. Virginia's Commonwealth: A Study of Virginia's Outdoor Recreation Resources and the Virginia Outdoor Plan for Conserving and Developing Them for the Lasting Public Benefit (1965)**

The 1964 General Assembly, recognizing that the Commonwealth had no comprehensive policy or plan for meeting present and anticipated needs for outdoor recreation, statutorily created the Virginia Outdoor Recreation Study Commission. The Commission was directed to:

- Inventory the federal, state and local outdoor recreation resources and facilities in Virginia and estimate future needs;
- Determine what the state could do to meet these needs;
- Determine what local governments could do and how the state could assist them; and
- Consider ways of encouraging individuals and private enterprise to join with local and state efforts for the preservation of open space.

The Commission documented a growing demand for more outdoor recreation opportunities and recognized that existing facilities were inadequate for present demands. It noted that "open space for outdoor recreation is being consumed, spoiled, or made unavailable at an alarming rate." The Commission found that the State had the basic responsibility to conserve its natural resources, to develop outdoor recreation opportunities and to maintain a habitable environment.

The recommendations of the Study Commission fell into five general categories:

- A state policy and a continuing comprehensive program to protect the quality of Virginia's outdoors and to make its resources available to the people. A legislative statement of policy is needed to guide the state and its political subdivision, and to broaden and clarify the legislative authority to implement a program of conservation and development of outdoor recreation resources for the public benefit. The statement should declare that the preservation of permanent open space is a public necessity and that the use of public funds and the exercise of various legal powers to acquire and preserve these land would be for a public purpose. The act would authorize state and local bodies to acquire, by purchase or otherwise,

such rights or title in property as a means of preserving open space (Open Space Land Act, enacted 1966).

- A permanent Commission of Outdoor Recreation to analyze supply and demand and to lead and coordinate state, local, and federal activities. There was no mechanism to coordinate the large number of programs concerned with different aspects of Virginia's outdoor recreation resources. The absence of this coordination caused costly gaps and overlaps, and made difficult the practical and economic treatment of resources and needs.
- State action to plan, acquire, and develop outdoor recreation resources and facilities and to encourage, assist and guide local and regional governments. The Commission estimated the costs of acquiring the land for 20 recommended new parks would be \$23 million with development costs being \$20.6 million for a total cost of \$43.9 million. It was pointed out that while the current parks were expertly operated and maintained, the Division of Parks was so seriously understaffed that it was unable to prepare the site plans necessary to develop trails, campgrounds and interpretation centers.
- Local and regional action to meet local and regional needs for planning, acquisition, and development.
- Encouragement for individuals and private enterprise to meet their vital part in the total program. The travel industry is a mainstay of the Virginia economy, and must play a vital part in the development of outdoor recreation opportunities.

#### **D. Report on Establishing a Heritage Trust (1978)**

House Joint Resolution No. 210, passed during the 1977 Session of the General Assembly, asked the Governor to study the organization of the Commonwealth's conservation, recreation and historic preservation activities, with particular attention being given to the proposed recommendation of the Commission on State Governmental Management (and the proposal to establish a Heritage Trust). An executive branch task force was formed to conduct the study. The areas reviewed by the task force were state parks, outdoor recreation, outdoors foundation, historic landmarks, soil and water conservation and the establishment of a Heritage Fund. In determining the most appropriate organization of the activities, the task force considered the recommendations of the Commission on State Governmental Management, and such factors as cost, efficiency of services, staff requirements, and duplication of effort.

The task force examined the following organizational alternatives:

- Combine the Commission of Outdoor Recreation (COR) with the Department of Conservation and Economic Development or create a new state agency to include COR and the Division of Parks. The task force believed that the then-current arrangement, whereby the Division of Parks received authorization from the Board of Conservation and Economic

Development to acquire lands and develop facilities before going to the COR to request funding for the projects, offers Virginians “an extra opportunity to ensure that the projects are consistent with the outdoor recreation plan.” This arrangement was seen as providing checks and balances.

- Combine the Division of Parks, the COR, and Historic Landmarks Commission as a single agency, and add the Soil and Water Conservation Commission to the Department of Conservation and Economic Development. The task force noted that eliminating these commissions through consolidation would reduce citizen influence in program areas that are dependent on local agencies and citizens for implementation.
- Combine the Historic Landmarks Commission and the COR. The task force opposed combining the two functions, suggesting that the skills required for the protection of these resources are quite different, so that policy which is sensitive to them would continue to be formulated by two different groups.

The Department was also directed to review the Heritage Trust Initiative which was considered by the 1977 Session of the General Assembly. Two bills (HB 1860 and HB 1861) had been introduced to create the Bicentennial Heritage Trust Bond Act of 1977. House Bill 1860 would have authorized issuance of bonds to acquire historical, environmental and recreational areas. The bonds were to provide funds to be allocated by the COR, as directed by the newly established Bicentennial Heritage Trust Advisory Commission, for paying the cost of the planning, acquisition, preservation, development, and improvement of historical, environmental and recreational areas and facilities in the Commonwealth. The policy language in the bill was similar to previous findings of other bodies noting that pressures of an increasing population, development of suburban areas and misuse of the Commonwealth’s historical, environmental and recreational areas were “impairing the availability of these vital elements of our quality of living.” The delay in the acquisition of such areas would “result in the permanent loss to the Commonwealth of sites of great historical, natural and cultural distinction.” The Bicentennial Heritage Trust Advisory Commission would have been given the responsibility of developing a program to (i) identify, acquire and protect Virginia’s significant and endangered areas and (ii) immediately acquire the most significant and most endangered of these historical, environmental and recreational areas. The Advisory Commission would also direct the COR in the acquisition of rights to property in these areas.

House Bill 1861, like HB 1860, created the 15-member Bicentennial Heritage Trust Advisory Commission. Both HB 1860 and 1861 were not enacted but were referred for further study under HJR 210.

The task force found that although many of the activities of the various agencies studied are compatible and complementary, there appeared to be no overlap of responsibility or duplication of effort. The agencies were viewed as operating efficiently and effectively with clear lines of responsibility. Therefore, based on these findings, the study recommended that:

- The existing organizational structure and alignment of responsibilities of the agencies responsible for state parks, outdoor recreation, the outdoors foundation, historic landmarks, and soil and water conservation programs not be altered; and
- The Heritage Trust Fund as proposed during the 1977 Session not be undertaken.

#### **E. Toward a New Dominion: Choices for Virginians, Report of the Governor's Commission on Virginia's Future (1984)**

Governor Robb established the Governor's Commission on Virginia's Future and charged it with defining a vision of "what we want Virginia to be, and then ask ourselves, What must we do to achieve it?" The Commission concentrated on the areas of economic development, education, environment and natural resources, human resources, and government and planning. The Commission engaged in a two-year effort to present a vision of Virginia in the year 2000 and to suggest strategies that would reflect this vision. In the area of environment and natural resources, the Commission called for a serious commitment to satisfy the mandates of the Constitution and the Code, supported by well-designed programs and appropriate funding.

Recommendation number 25 of the Governor's Commission was that the General Assembly review the findings and recommendations of the Virginia Outdoors Plan of 1966, and revise it to take into account the developments since its adoption. It was noted that the state's commitment to acquire land as embodied in the 1966 Plan had not been fulfilled. No state parks had been approved for a major park acquisition since 1970. The Commission recommended that funds should be provided for acquiring land for state parks and ecologically important natural areas and that financial aid to acquire land for parks and open spaces should be provided to localities.

The Commission's task forces on economic development, and environment and natural resources concluded independently that the combining of commerce and resources into a single secretariat was unwise.

Recommendation number 49 stated that Virginia should make greater use of bonds to finance important capital improvements. The Commission believed that Virginia's capital planning was inadequate based on two findings. First, while each state agency is required to determine the capital needs for the next 20 years, no combined inventory of agency needs is prepared. Second, capital expenditures are considered in conjunction with each agency's biennial operating 6-year capital budget requests rather than as a part of a long-term and comprehensive capital needs plan.

#### **F. Study of the Outdoor Recreation Needs of the Commonwealth (1988)**

House Joint Resolution 204 (1987) established a joint subcommittee to study the outdoor recreation needs of the Commonwealth. The subcommittee was directed to assess the long term needs of both state and local recreation acquisition, development and operational programs and

to recommend stable long term funding sources, including but not limited to park fees, bonding, use of private development of parks land and federal and state trust funds. The subcommittee was composed of eight members representing the House Committees on Conservation and Natural Resources, Appropriations, and Roads and Internal Navigation, the Senate Committees on Agriculture, Conservation and Natural Resources and Finance, and two citizen members of the Outdoor Recreation Advisory Board.

At the time of the study, the federal Land and Water Conservation Fund (L&WCF) provided the bulk of the moneys available for capital improvements of state and local parks. In 1980, Virginia received more than \$7 million from the L&WCF. By 1987, the year the legislative study took place, Virginia's portion of federal funds totaled only \$700,000. The subcommittee noted that the uncertainty of federal funds combined with the fact that the operational budget of the state parks had remained level over the previous several years (\$5 to \$6 million) had made it difficult to institute an orderly planning process and in some instances precluded the construction of projects viewed as vital in meeting the demand of the increasing user population.

The subcommittee reviewed the merits of funding approaches used to finance both the operation and capital needs of Virginia's state park system. The primary funding source for Virginia's state parks at the time was general fund moneys, which represented approximately eighty-eight percent of the operating budget and thirty-six percent of the capital budget. Using the general fund was found to have both advantages and disadvantages. While general funds are provided annually they are at the same time somewhat discretionary in nature being subject to the priorities established in a specific budget cycle, making planning for future development and acquisition difficult.

A second source of revenue are user fees generated by the parks. At the time of the study approximately \$1.7 million annually was realized through admission and parking fees, concessionaire operations, and cabin and camping space rentals. The advantages of these types of fees are that (i) people who actually use the parks contribute towards the cost of operation and (ii) the fees can be tailored to market conditions. Among the disadvantages of such fees is that there is an upper limit on how much revenue can be generated. A significant increase in such fees could present a burden to lower income groups.

The subcommittee suggested that an alternative approach for generating significant revenue for operation and capital development was the leasing of parkland for private development. At the time no state parks were leasing land, although one developer was interested in building a marina at Leesylvania State Park. The potential advantages of this approach are (i) no state funding would be needed for capital projects, (ii) the active recreation resulting from such development would draw a larger clientele to the parks, and (iii) additional operating revenue would be generated from both the lease and a portion of the developer's profit. There are two potential drawbacks of such an approach: (i) if the developer goes out of business and no one is found as a replacement, the state would have to take over the operation of the enterprise, thus requiring additional staff and (ii) it would encourage commercialization, which might change the character of recreation services.

General obligation bonds have been occasionally used for state parks capital projects, e.g., \$5 million bond issue was approved in 1977-78 for capital projects. The advantages of this type of funding are: (i) it provides a large amount of funds where there are extensive capital needs; (ii) since Virginia has a high bond rating, the amount of interest the state would have to pay would be below average; and (iii) the bond would be paid back over its life requiring less "up front money." The major disadvantages are (i) that a public referendum would be required before the bonds could be authorized for sale and (ii) Virginia has been reluctant to use this type of approach, preferring "to pay as you go."

A final alternative for generating revenue for capital projects is revenue bonds. These bonds are backed by the revenue generated by the capital project the bond is financing. The advantage of this approach is that no state funding would be required. The disadvantage is that state parks do not generate large enough projects that would interest investors in buying revenue bonds.

The subcommittee reviewed some of the innovations for financing state parks in other states. Oregon's parks have received funds from the state's highway trust fund between 1929 and 1980. Pennsylvania has used resources from oil and gas leases for recreation and conservation since the 1950s. Texas passed legislation in 1971 which earmarked a portion of its cigarette tax for state and local parks. The subcommittee received detailed explanation of three very different financing strategies from park officials in West Virginia, New Jersey, and Maryland. West Virginia, unlike Virginia, had a small tax base, which was further eroded with the repeal of the business and occupation tax. This resulted in a \$149 million state shortfall. In 1986, parks received \$10 million from the legislature. A year later, the figure had been reduced to \$7.5 million. Given these circumstances, park officials have been challenged to make the park system self sufficient by 1991. This has meant laying off some staff, closing some facilities, and increasing rental and other fees significantly.

With tourism being West Virginia's second leading industry and its only growth industry, the park administration embarked on a strategy which proposed to use the parks as magnets for tourism. This meant incorporating a wide range of private sector ventures into the parks, including golf courses, ski areas, etc. To accomplish this, the legislature passed a "privatization" bill, similar to Virginia's, which allows private contractors to obtain a 25-year lease to develop profit-making facilities within the state parks. The first contract was awarded for the construction and operation of a \$2 million aerial tramway. The state receives a percentage of the profits and after 25 years, the operation will revert to the state.

Because of the dramatic increase in land values and the lack of open space, New Jersey made the acquisition of land its priority in the area of parks and recreation. To accomplish this goal, the state created the Green Acres program in 1961. The program was funded initially by a \$60 million Green Acres bond issue. Four subsequent bond issues totaling \$615 million followed at approximately five-year intervals. During this time 187,719 acres of state park, forest, and fish and wildlife management lands, and 55,053 acres of county and municipal park lands were purchased. In 1983, with bond funds running out and a demonstrated need for an additional \$400 million in projects pending, questions were raised as to the continued use of bonds to service those natural resources programs which required a continuous source of funding for their

planning, management and development. The state looked at funding options which would stretch its available acquisition dollars. This led, in 1983, to the creation of the Green Trust, a revolving loan fund which provided 100 percent loans at two percent interest, with a pay-back over 20 years. To capitalize the trust, a \$135 million bond issue for open space preservation, including state and local park lands, was approved by the voters. Under this bond issue, \$83 million was allocated to the Green Trust and \$52 million was reserved for state acquisition and development over a five year period. The Governor of New Jersey approved an addition to the Trust of \$35 million from a proposed \$100 million bond issue and lent his support to a large open space bond issue in 1989 to deal with the remainder of the trust's needs and to provide for delayed state acquisition.

A similar concern by the Maryland legislature regarding the rising population and the decreasing availability of recreational open space due to increasing development caused the state to embark on a long term program of land acquisition. In 1970, Program Open Space (POS) was created to expedite the purchase of public open space lands before the inflation of land values rendered them unaffordable and development made them undesirable. The POS has been successful in providing a buffer to urban development. The program has been funded through a combination of general obligation bonds and a 0.5% transfer tax on land sales. The bonds issued in 1969 provided \$20 million. The transfer tax, which was initially used to retire the bonds, represented the sole funding source for POS. Through 1987, a total of \$383.6 million had been allocated to the program, with half going for state land acquisition and half for local (county and municipal) land acquisition and recreation development. In 1987, the program funding was capped at \$29 million annually. Of the 393,944 total acres authorized for acquisition by the POS, 320,000 had been acquired by 1987.

The subcommittee made 12 recommendations. The following is a summary of the most significant of the subcommittee's recommendations and its rationale for each recommendations:

\* The General Assembly should enact legislation establishing the Open Space Recreation and Conservation Fund to meet the capital outlay needs of state and local parks. The Fund should be financed by earmarking one-third of the revenue collected from the grantor and recordation taxes, not to exceed \$24 million annually.

Because of diminishing federal funds, reduced budgets, and increasing numbers of visitors, the subcommittee believed that a major new capital outlay program for Virginia state parks was essential. Such a program should have as its first priority the upgrading of existing facilities, many of which were constructed when the park system was created in 1936. Division officials estimated that these needs total approximately \$34.5 million, of which \$12.5 million were classified as "immediate needs" and the remainder "essential" needs.

The uncertainty of federal funds and the fact that capital outlay projects for recreational facilities have typically depended on annual general fund appropriations have made it difficult for states to develop long range plans for the acquisition and development of park land. Six states (Arkansas, Florida, Maryland, South Carolina, Washington, Tennessee) earmark a portion of their real estate transfer tax for the acquisition of park land. The dedication of this revenue



specifically for parks is based on the rationale that the person who purchases a home or other property for private use has hastened the decline in available open space land. Therefore, that same individual should be required to support the buying of land which will be used and enjoyed by the general public. Virginia's equivalents of a real estate transfer tax are the recordation and grantor taxes. In 1986, the general fund received \$74,280,152 from these taxes. The Department of Taxation estimated that they will generate \$92 million in FY 1987 and \$103 million in FY 1988.

The subcommittee proposed a similar earmarking of revenues for the acquisition and development of state and local parks. By earmarking one third of the proceeds from the recordation and grantor taxes, not to exceed \$24 million annually, for the Open Space Recreation and Conservation Fund the Commonwealth would have provided a stable source of funding. This will enable park officials to develop long range plans for the improvement of existing facilities and the acquisition of new park land, thereby assuring that the increasing demand for outdoor recreation will be met. (Legislation was introduced but carried over.)

\* The Division of Parks and Recreation as a part of its master plan should establish goals for the acquisition of parkland and the preservation of natural areas.

In planning for Virginia's future state park acquisition, two major factors should be considered. First, what amount of additional acreage will be needed in the future and second, what type or location of the acreage would best contribute to Virginia's state park system. According to the Division, an accepted planning standard for state parks is 10 acres per 1,000 population. Based on the current population of approximately 5.7 million, Virginia should have 57,000 acres of state parklands. The Virginia park system totals 51,000 acres, reflecting a current deficit of 6,000 acres. By the year 2000, Virginia's population is projected to be 6.5 million. If the 10 acres per 1,000 population standard is to be met, Virginia will need an additional 14,000 acres of state parkland by 2000.

The criteria for determining the type and location of land to be acquired are that lands must be selected to ensure the protection of important natural resources, while at the same time being suitable for recreational development and accessible to the public. The Division, in its 1984 Virginia Outdoors Plan, identified ten sites for potential state park acquisitions, each selected due to its proximity to water and to the eastern population corridor.

The subcommittee supported the acquisition of parkland along the eastern corridor, especially in light of the new Chesapeake Bay initiative which promotes increased opportunities for public access to the Bay and its tributaries. However, the subcommittee received extensive testimony that there needs to be recognition that a state park represents an opportunity to expand the economic base of a region. The availability of recreational opportunities attracts tourists and is a significant factor in the location of new industry. This is especially important to the economically troubled southwestern region of the state. The subcommittee therefore urged that in formulating the 1989 Virginia Outdoor Plan, the Division of Parks not only reflect existing criteria for the location of a state park but also recognize the economic benefits such a facility can bring to a community and region.

Although not part of the Division of Parks' budget, the Department of Conservation and Historic Resources proposed the additional acquisition of 147 natural areas ranging from 5 to 2,000 acres to be situated in 58 localities. This would involve the acquisition of approximately 14,780 acres at a cost of \$4 million over each of three bienniums.

\* That the salaries of the Commonwealth's park field employees be increased to make them competitive with those offered by other states' park systems and Virginia state agencies.

Testimony offered to the subcommittee indicates that the Department of Conservation and Historic Resources' investment in the training of its park field employees has grown dramatically over the years. Yet, due largely to their relatively low rates of pay, the Department was not able to retain these employees long enough for that investment to fully pay off. The Department testified that one-third of its state park field staff resigned during the period of 1984 through 1987. Of the then current ninety-three field employees, 42 percent had less than three years experience with the Division of Parks and Recreation.

The results of questions submitted to park field employees who resigned from their positions between January 1, 1982, and June 30, 1987, supported the Department's belief that these resignations were primarily due to the low level of pay. A Department survey found a disparity between salaries earned by Virginia's state park field employees and their counterparts in eight similar southeastern states (Maryland, West Virginia, Kentucky, North Carolina, South Carolina, Tennessee, Alabama and Florida). With very few exceptions, the salary figures indicate that the maximum salary offered to Virginia's superintendents, chief rangers and park rangers was lower than those offered for comparable positions in other states. However, entry level salaries offered to Virginia's employees were generally higher than those of the other states.

\* That the Division of Parks and Recreation expand the recreational opportunities available within Virginia through the promotion of public/private partnerships.

The subcommittee found that the Virginia state parks had successfully engaged in a partnership arrangement with private sources in the operation of concessionaire facilities. These concessionaire operations included the management of swimming facilities, boat-rental facilities, boat-launching facilities, restaurants, snack bars, catering services, horseback riding, etc. Other than problems with liability coverage, the arrangements benefited the Commonwealth and the local private businesses contracting for the services. Often, the advantages which private sources offer, i.e., purchasing freedoms and the lack of employment restrictions, resulted in improved efficiency and profitability for these operations.

Officials of the Division documented in excess of \$40 million in needed construction, repair and renovation of state park facilities. In light of the uncertainty regarding the state's ability to finance this vast array of needs, the Division should expand the private sector's role in the acquisition, development, and operation of state parks. New initiatives which (i) encourage private entrepreneurship in state parks, (ii) establish Friends of Parks programs, (iii) promote nontraditional uses of farm/agricultural land, and (iv) provide for joint land acquisition and

management of natural areas between the state and conservation organizations, represent approaches which will increase the recreational opportunities within Virginia.

\* That a study be conducted to determine how to improve the efficiency of the capital outlay construction process as it relates to the development of state parks.

The capital outlay process appeared to be unnecessary, cumbersome and complex, involving the following stages:

budget preparation phase	1.26 years
development phase	1.23 years
access road planning	1.64 years
access road construction	1.86 years
park facility planning	1.64 years
park facility construction	2.44 years

For an existing park, the time frame is significantly less since no roads would have to be constructed. According to park officials, some of these activities could occur concurrently, if there is "upfront planning money" and more technical staff. While the subcommittee supported the Division's budget request for additional technical staff, the significant problem appears to be a 75-step capital outlay construction process over which the Division had little control. The process includes more than 10 agencies in a development process which takes 8.5 years to bring new parks on line.

\* That the Commonwealth provide increased public access for water-related recreational activities.

The 1984 Virginia Outdoors Plan points out that "[a]lthough Virginia is rich in water resources and the demand is great, public access to our beaches, lakes and rivers is inadequate and constitutes a significant limiting factor to the use and enjoyment of our resources."

Much of the testimony heard by the subcommittee supported this concern. A representative of the Southeastern Virginia Planning District Commission testified that a recently conducted study showed that the lack of waterfront access was probably the most critical recreational deficiency in Southeastern Virginia, including a lack of beach access, surfing access, boat ramps and marina slips.

Beach use/sunbathing is the single most popular recreational activity in the Commonwealth, as nearly one-half of the state's residents participate each year. Yet, testimony showed that Virginia had only 23 miles of public beach along a shoreline of approximately 5,000 miles. Boating is also a popular activity in the state. Currently, there are 445 boat ramps in Virginia. It is projected that by 1990, an additional 105 boat ramps will be needed to accommodate the 81,000 watercraft vying for access to tidal Virginia waters.

The subcommittee believed that in order to meet the demand for water-related recreational activities, Virginia must not only improve the accessibility of its publicly owned areas, but it must also ensure that additional land is acquired to allow for further public access. Much of the impetus for such an effort could be provided by the proposed local public access grant program. This program would make available \$5 million per year to Tidewater localities for the acquisition and development of additional boat launching, fishing, swimming and sunbathing facilities. Without this dual initiative of improvement and purchase of land suitable for public access, many of the Commonwealth's residents will be denied the continued enjoyment of their favorite recreational activities.

\* That the fees and charges for state park facilities be adjusted to a level which reflects the quality of facilities and services provided at the individual parks.

It is the mission of the Division of Parks and Recreation to preserve and protect significant natural resources while providing access to these resources to Virginians of all income levels. The setting of fees and charges is one tool used in accomplishing that mission. It should not be the goal of the state park system to be a totally user supported profit-making endeavor, nor should it be a totally subsidized enterprise. A successful pricing structure should:

- Take into account local demographics;
- Reflect the level of development/activities in the park;
- Provide a measure of control in heavy use areas and an incentive for use during off periods and at underutilized facilities; and
- Help the system reach a specified level of self-sufficiency.

However, such a fee structure should not create unfair competition between the state park and surrounding private facilities.

#### **G. The Economic Feasibility of Expanding Recreational Opportunities (1989)**

In 1988, the General Assembly established a joint subcommittee to study the economic feasibility of expanding recreational activities in certain state parks (HJR 130). The subcommittee was requested to study the advisability of: (i) expanding the recreational opportunities at Douthat State Park, including the possible construction of a 150-room lodge and an 18-hole golf course; (ii) further developing the Lake Moomaw area to provide increased tourist opportunities; and (iii) further developing recreational facilities in the Alleghany Highlands.

The subcommittee devoted much of its time to (i) a review of VPISU study of the economic feasibility of expanding recreational opportunities at Douthat State Park and the Lake Moomaw area and (ii) investigating the desirability of developing a state park at the junction of Big Cedar Creek and the Clinch River in Southwest Virginia. The subcommittee received detailed testimony from Dr. Will Shephard, Director of the Landscape Architecture Program of VPISU.

In early 1988, the Greater Alleghany Economic Development Commission, seeking a new economic development initiative, contracted with Dr. Shepherd to determine the economic feasibility of expanding the recreational offerings of Douthat State Park. The Dr. Shepard - VPISU study team was to (i) review and evaluate the existing facilities and the prospects of expansion, (ii) develop an alternative land-use plan which included a 150-room lodge, 18-hole golf course, and conference center, and (iii) determine whether such development was compatible with the existing facilities and recreational experiences.

The VPISU study team began its analysis by evaluating the park's current condition, utilization patterns, and prospects for expanding its existing facilities. They found that the park (i) was seasonally under-utilized, in that most facilities are only open during late spring to early fall, and (ii) "appears to be developed at about 1/7th of its optimum carrying area of 4,500 acres." The facility occupied a total area of about 80-90 acres, not including the reservoir, dam and spillway, trails and buffer areas. Even in the face of this apparent utilization pattern, the park has been "under-maintained" over an extensive length of time. The study team suggested that there is sufficient usable land for expansion "with little physical or ecological constraint." Such an expansion would utilize an additional 240-400 acres of land dispersed throughout the Park.

To achieve compatibility between the old and new facilities, any plan for recreational expansion, such as resort hotel and golf course development, would have to provide for a separation of certain uses. The most appropriate method of separation would be isolating and buffering these areas. This approach would, according to the researchers, "insure that each facility will have its own character." It was pointed out that new facilities would affect the view and increase the traffic, noise and number of users. However, proper planning and design "should reduce these impacts to a manageable level."

To determine the economic feasibility of developing alternative land uses within Douthat, the study team surveyed five state parks located in the adjacent states of Tennessee, West Virginia, and Kentucky. These parks were selected because they are of comparable size, located in relatively remote regions, and have a similar natural resource base. The survey results indicated that when compared to the five parks, Douthat State Park: (i) is under-utilized and under-developed; (ii) does not generate a similar type and range of employment; (iii) offers a limited range of recreational activities; (iv) does not generate the magnitude of revenue within the park or in the surrounding communities; and (v) does not contain the range of recreational facilities found in modern family-oriented parks.

The study concluded that Douthat State Park could economically support a new land-use program which included the development of the following new facilities:

- Up to 30 cabins to be selectively located;
- A 105- to 200-room luxury resort hotel (lodge) with banquet, conference and retreat accommodations;
- An 18-hole golf course and clubhouse with related recreational facilities;

- A swimming-pool center, a tennis center, and other sport recreation facilities isolated or grouped with related facilities, as appropriate;
- Playground facilities for young children at a central location for use by campers, cabin guests and hotel guests;
- A fishing deck (pier); and
- A pedestrian bridge across the spillway to provide access to the proposed recreational facilities.

The 1987 operating budget for Douthat was approximately \$260,000 with revenues somewhat in excess of \$99,000. The study found that based on the experiences in these other states, an expanded Douthat State Park should generate \$2.5 to \$4 million annually and employ 80 to 120 permanent employees and 50 to 80 part-time seasonal staff. It was projected that attendance would increase from 186,000 annually to 600,000 to 700,000.

To change the nature of the park so that these benefits might be realized, the study team proposed a seven-year phase-in plan at an estimated cost of between \$13.5 and \$17.1 million. The initial phase would be the construction of additional cabins, followed later by the renovation of the facilities. The final phase would involve construction of the hotel facility and golf course. Because of the costs of constructing the hotel facility (\$6 to \$8 million), it should be internally phased and constructed in self-supporting units of 75 to 80 rooms, with retreat and conference facilities as separate phases to be completed later.

In order to implement the plan, the study suggested investigating several funding sources including state general funds, general obligation bonds, revenue bonds, user fees, dedicated revenues and other innovative sources (i.e., gift program and direct investment by the private sector). Although the VPISU study concluded that it was feasible to develop alternative land-use facilities in Douthat State Park, it stated that more studies were needed to include a more detailed market analysis, the development of funding strategies, the investigation of public and private ventures, preliminary planning and a detailed design.

The subcommittee agreed with the VPISU study that it was feasible to develop alternative land use facilities at the park and recommended that the General Assembly appropriate the necessary funds to the Department of Conservation and Historic Resources to plan a pilot program to expand the recreational opportunities offered at Douthat. The subcommittee suggested that the initial phase of such a program should be a study of the feasibility of construction of a lodge and tennis facilities.

The subcommittee also traveled to southwest Virginia to discuss with local officials the possibility of establishing a state park at the junction of Bed Cedar Creek and the Clinch River in Russell County and in Washington County at Laurel Bed Lake and Hidden Valley. The proposed site in Russell County covers 300 acres and includes a 94-acre tract which is owned by the County and operated as a county park. The site is characterized by scenic overlooks, high hanging rocks and white water. The park provides primarily a passive recreational opportunity, with day hiking, camping, and stocked trout stream. The area has limited commercial or

residential development value because of the landscape and severely restricted access. The appraised value of the land is estimated to be only \$200 to \$300 per acre because it is essentially mountainous land.

While the proposed site represented significant scenic and recreational values, the type of landscape and its limited accessibility raised questions as to the appropriate type of passive recreational activities which would be enhanced by the acquisition of such property.

The subcommittee suggested that a feasibility study be undertaken prior to a capital outlay commitment. Such a study would provide answers to such questions as:

1. What is the appropriate use for such land (i.e., state park vs. natural area)?
2. What financial resources are available to fund such an acquisition (i.e., local in-kind, gifts)?
3. What kind of facilities would be appropriate?
4. What are the short and long term obligations?
5. What is the environmental impact?
6. What is the public's interest in this site?

The results of the feasibility study could then be presented to the General Assembly money committees, which would make a judgment as to the relative merits of such an acquisition.

#### **H. A Feasibility Study For the Establishment of a Park System in Lee County, Virginia. (1992)**

House Joint Resolution No. 390 of the 1991 Session requested the Department of Conservation and the Virginia Department of Transportation, in coordination with the United States Department of Interior, to study the feasibility of creating a park adjoining Cumberland National Park and the Hensley Settlement in Lee County. The Department found "considerable potential" in the development of a park system at that location. The park system could be developed by linking new and underutilized resources with established federal and local public areas. The system would be anchored by a Virginia visitor information center which would be connected to Cumberland Gap National Historic Park by a linear hiking/biking/equestrian trail. The visitor center could be located on the Karlan property, comprising 180 acres along Route 58 that included a 19th century mansion fronting on Route 58. The trail would follow the path of the historic Wilderness Road, which coincides with the Route 58 corridor and the abandoned Louisville and Nashville Railroad right-of-way. Additional components could include the development of a scenic automobile driving tour, establishment of equestrian facilities and placement of outdoor interpretive displays. The Department found the following factors to be favorable for the siting of a new park system in the study area:

- Natural beauty of Lee County;
- Historic importance of Lee County, the Wilderness Road, and the Cumberland Gap;
- Possible availability of a sizable portion of the abandoned railroad right-of-way;

- Multi-million dollar improvements underway at Cumberland Gap National Historic Park which will focus increased interest on the area as a destination point for travelers;
- Potential for an increase in motorists because of Route 58 improvements;
- Availability for purchase of the Karlan House and 180 acres of land;
- Opportunity for needed economic development and new jobs with minimal impact on existing infrastructure; and
- Local support as evidenced by attendance at a public meeting.

The study recommended a park system be developed in Lee County in three phases, with Phase I being implemented in the 1992-1994 time frame. Phase I activities would include acquisition of an approximately 200-acre park site in Lee County at an estimated cost of \$750,000 to \$1,125,000; development of 10 miles of the railroad right-of-way into a trail (\$150,000); acquisition of two Virginia trailheads serving Hensley Settlement and Ridge Trail (\$50,000); securing O/M funds and establishment of caretaker positions (\$150,000 per year); preparation of park site master plan and renovation plan for a Virginia Visitor Information Center (\$100,000); and preparation of park staffing and O/M plans. Phase II (1994-1996) would include partial development of the park, acquisition of property connecting trailheads with the park site, and funding for park staffing and O/M plan. Phase III is the final implementation and completion of the park system plan.

#### **I. The Feasibility of Developing Douthat State Park Into a Regional, Multi-Purpose, Recreational Facility (1997)**

Eight years after the initial study that examined the feasibility of expanding recreational opportunities at Douthat State Park, the 1996 Session of the General Assembly passed Senate Joint Resolution No. 54, establishing a joint subcommittee to study the feasibility of developing Douthat State Park into a regional, multi-purpose, recreational facility. The joint subcommittee was charged with examining ways to (i) convert the park to a multi-purpose facility offering golf, horseback riding, enhanced and expanded food and lodging, and other alternative recreational programs and (ii) attract visitors, and meet the conference needs of existing and touring organizations. The subcommittee also was to analyze the possibility of offering such services through privatization and creative public-private partnerships.

Before examining the feasibility of transforming Douthat into a regional, multi-purpose recreational facility, the subcommittee sought to determine the current condition of the park's facilities and infrastructure (water, sewer, roads, etc.). Of the \$95 million in recreational projects approved by 1992 bond issue, approximately \$6 million was allocated for 15 projects at Douthat. Three of these (dam reconstruction, underground electrical lines, and water system) represent about two-thirds of the park's bond allocation. Of the \$6 million, approximately \$1.5 million had been expended as of June 1, 1996.

Apart from the bond projects, state park officials have instituted a capital improvement program for Virginia parks. A list of maintenance reserve projects has been developed, and \$1.4



million has been allocated for these projects statewide, with the expectation that during the year the figure may reach \$1.65 million. Maintenance reserve projects are typically large in scale, and are paid for with revenue generated from park operations (parking, concessions, etc.) which has totaled system-wide between \$4 million and \$5 million annually. Two such projects were planned for Douthat. One project is completing replacement of the park's water line for approximately \$519,000. This would be done in conjunction with the \$493,000 bond project for the development of a new water system. The second project involves the heating and cooling of the restaurant, the replacement of windows; installation of insulation, a heating system for the restaurant so the restaurant's operation can be extended for a longer season; heating and air conditioning for the kitchen; and enclosure of the restaurant's porch with windows.

The maintenance reserve critical list for the 97-98 fiscal year includes two projects for Douthat: (i) \$100,000 upgrade to the restaurant's septic system and (ii) \$40,000 upgrade of the dump station drainfield. Since the drainfield is the only system in the park for disposing sewage, any proposed future development of the park would require the replacement of the current onsite disposal system which is limited in its capacity to treat increased quantities of wastewater with a more expensive treatment system. In addition, the subcommittee found that any upgrade of the park's facilities and infrastructure should also include 1.5 miles of road improvements at an estimated cost of \$400,000 to \$450,000 per mile.

In 1996, \$61,000 was allocated for preventive maintenance projects including various painting projects, refurbishing of siding and cabins and an annual pest control contract. This figure is three times greater than had been budgeted for these activities over the previous five years. The strategy is to have a preventive maintenance program that addresses park needs on an ongoing basis, thereby reducing the number of projects that have to be placed on the maintenance reserve list. Other maintenance allocations include approximately \$40,000 for equipment replacement, including the replacement of one park motor-pool vehicle with a vehicle having a law-enforcement package (approximately \$27,000) and the purchase of additional snow removal equipment.

The subcommittee sought testimony from a wide range of community leaders as to what role the park should play in the community. There was consensus among local government officials from Bath County, Alleghany County, and the Cities of Covington and Clifton Forge, and representatives of the local YMCA, chambers of commerce and the economic development authority that, with the proper marketing and promotion as well as an upgrading of the park's facilities, Douthat could become a regional (i) center for meetings and events and (ii) recreational attraction generating significant revenue for the local economy. The various interests presented specific recommendations on how the park might attract more visitors and increase attendance. These fell into three broad categories: enhancement of the park's activities and programs, better marketing and promotion of the park, and upgrading of the park's infrastructure.

Because many of the local community leaders envision Douthat as an upscale resort park, the subcommittee invited Jim Goodman, Director of Kentucky's Division of Resort Parks to discuss his state's experience with resort parks. The Kentucky state park system consists of 49 parks, 15 of which are resort parks with a sixteenth under development. The new resort park will be the

first developed in 15 years. Mr. Goodman characterized his department as "a state agency that does hotel business." Because of this business perspective, the state park system is under the Secretary of Tourism and not under the Secretary of Natural Resources as is the case in Virginia.

The Kentucky park system was developed with the idea that the parks would be an economic catalyst for economic development and provide employment for local residents. Consequently, a lot of the parks were built in areas of high unemployment. The operational budget for the entire park system is \$65 million. The parks generate \$43 million in sales with the General Assembly subsidizing the remaining \$22 million annually. The state park system is about 65 percent self-supporting. There are 950 permanent full-time employees, 200 permanent part-time workers, and 1600 seasonal employees. Most of the lodges in the parks were built between 1960 and 1971, a period of time during which federal moneys were available to the states for the development of such facilities.

During the previous fiscal year, the 15 resort parks generated \$33.5 in net sales while expending \$41.4 million. These parks offer recreational opportunities ranging from the types found at Douthat to an 18-hole golf course, a 300-slip marina, a 250-site camping area, an entertainment and meeting facility which seats 1,000, and a 75-room lodge. Resort parks have not been as successful as originally hoped. In the 1960s, it was thought that by siting a resort park in a rural area, private developments would occur generating jobs and additional revenue. That has only happened with respect to the larger parks. He emphasized there was little financial incentive for private developments at the smaller parks. Mr. Goodman, in examining the Douthat situation, indicated that a number of issues should be addressed before considering whether to convert Douthat to a multi-purpose, resort-style park. First, there was a need to upgrade the park's infrastructure such as roads, sewer and water systems. Second, successful resort parks have one of the following three elements:

1. A substantial natural attraction - An example of this in Kentucky is Cumberland Falls Resort Park which has the largest waterfall east of the Mississippi, except for Niagara Falls. This park has no golf course or other man-made attraction;
2. A large body of water - in excess of 2,500 acres; or
3. A significant man-made amenity such as a championship golf course.

Kentucky's most successful parks have two of these elements. The unsuccessful resort parks in Kentucky have none of these elements. Mr. Goodman concluded his testimony by cautioning the subcommittee that the construction of a 45 to 50-room lodge at Douthat may not be economically prudent for a number of reasons: the need to expend in excess of \$2 million to upgrade infrastructure and the economies of scale involved in building a small lodge would not allow the agency to recover its investment; a private developer will not engage in any venture without the state's assistance with the costs of upgrading infrastructure, regardless of the scope of the project; and the park must be a destination park to which people will be willing to travel. Douthat, lacking a significant natural attraction, would have to feature a man-made attraction such as a golf course and then be marketed as a destination park. In Kentucky, this has been

difficult because it is not politically popular to spend the taxpayer's money on facilities such as golf courses.

The subcommittee concluded that since Douthat was in the midst of a major construction program to refurbish the park, it would be premature to develop a resort style park at this site. The immediate priority should be the upgrading of the current park site and developing programs to attract more park visitors. It recommended several measures to increase the public's awareness of the location of Douthat and to give it more visibility.

The lake at Douthat has been the centerpiece of much of the activity in the park. The allure of a lake stocked with trout has over decades attracted large numbers of fishermen to the park. However, recent storms have highlighted the potential impact of siltation on the lake, its water quality and fishery. The threat of siltation documented in 1988 by the VPISU study of Douthat expressed the concern that "the productivity and life of the reservoir at Douthat is limited by ongoing sedimentation processes." In order to continue to attract fisherman and others who enjoy water-related sports such as swimming and boating, the vitality of the lake must be preserved. The subcommittee recommended that a capital budget amendment to the appropriation act be approved in an amount not to exceed \$450,000 for the dredging of Douthat Lake and that the dredging occur at the time of the reconstruction of the lake's dam.

Although the subcommittee did not support the idea of transforming Douthat into a resort type park, it recognized that there are those in the community who had expressed an interest in converting Douthat to an upscale, multi-purpose recreational facility. The subcommittee suggested that it was important for those individuals to demonstrate their commitment to such an effort. Without such a demonstration, it will be difficult to convince government and the private sector of the relative merit of such a project. The subcommittee believed that one indication of the community's commitment could be the creation of a private, tax-exempt foundation that would seek funds from public and private sources to promote and assist in financing the expansion of Douthat State Park. The success of the foundation in raising funds, as well as obtaining commitments from private entrepreneurs to consider investment opportunities within the park, might provide the impetus for further financial involvement by the General Assembly. Community organizations were encouraged to support Douthat State Park by consolidating their efforts to create a foundation whose purpose would be to raise funds to improve the park's infrastructure and expand its recreational opportunities.

#

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

Appendix 5

CHAPTER 487

*An Act to amend and reenact §§ 10.1-1011 and 58.1-3205 of the Code of Virginia, relating to taxation of conservation easements; valuation of land subject to conservation easements.*

[H 727]

Approved April 14, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-1011 and 58.1-3205 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-1011. Taxation.

A. Where ~~the~~ *an* easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement.

B. *Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.*

C. *Notwithstanding the provisions of subsection B, land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.*

§ 58.1-3205. Assessment of real property where interest less than fee is held by public body; exemption of interest of public body from taxation.

Where an interest in real property less than the fee is held by a public body for the purposes of the Open-Space Land Act (§ 10.1-1700 et seq.), the Virginia Conservation Easement Act (§ 10.1-1009 et seq.), or Chapters 22 and 24 of Title 10.1, assessments for local taxation on the property shall ~~reflect any change in the market value of the property which may result from the interest held by the public body~~ conform to the requirements of § 10.1-1011. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

# GENERAL ASSEMBLY OF VIRGINIA -- 1998 SESSION

## Appendix 6

### HOUSE JOINT RESOLUTION NO. 136

*Continuing the Joint Subcommittee Studying the Future of Virginia's Environment.*

Agreed to by the House of Delegates, February 5, 1998

Agreed to by the Senate, March 10, 1998

WHEREAS, the 1996 Session of the General Assembly passed House Joint Resolution No. 221 creating a study to examine the history of environmental and natural resources programs and funding for such programs in the Commonwealth and to develop a vision and plan for the future protection, enhancement, and utilization of Virginia's natural resources; and

WHEREAS, the study committee and its subcommittee on parks has held eighteen meetings, including five public hearings in locations throughout the Commonwealth; and

WHEREAS, the history of natural resources and environmental protection and funding for such programs in the Commonwealth has been reviewed; and

WHEREAS, state agencies involved in environmental protection and resources management, together with local, state, and national experts, and hundreds of citizens, have provided testimony and volumes of written comments on the topics under consideration; and

WHEREAS, the study committee developed and supported the concepts that became the Virginia Water Quality Improvement Act of 1997, has developed numerous policy and legislative recommendations to improve the Commonwealth's park system, has supported a study of innovative means for regulating pollution discharges, and has recommended legislation relating to conservation easements as interim steps toward fulfilling its charge; and

WHEREAS, due to time constraints and the volume of issues and options under consideration, the committee has been unable to complete its tasks to the degree it would like and agrees that it should meet for an additional year; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee Studying the Future of Virginia's Environment be continued. The joint subcommittee shall be composed of those members appointed under HJR No. 221 (1996).

In conducting its study, the joint subcommittee shall continue the development of a vision and plan for the future of Virginia's environment as called for in HJR No. 221 (1996) and shall include in its deliberations the identification of stable funding sources for the state park system.

The direct costs of this study shall not exceed \$10,250.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

## **Appendix 7**

**Park Master Planning Statute  
as passed by the  
1998 Session of the General Assembly**

# VIRGINIA ACTS OF ASSEMBLY -- 1998 RECONVENED SESSION

REENROLLED

## CHAPTER 780

*An Act to amend and reenact §§ 10.1-107 and 10.1-200 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-200.1, relating to state park planning.*

[S 290]

Approved April 22, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-107 and 10.1-200 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-200.1 as follows:**

§ 10.1-107. General powers and duties of the Board.

A. The Board shall advise the Governor and the Director on activities of the Department. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations.

The Board shall formulate recommendations to the Director concerning:

1. Requests for grants or loans pertaining to outdoor recreation.
2. Designation of recreational and historical sites eligible for recreational access road funds.
3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.
4. Acquisition of real property by fee simple or other interests in property for the Department including, but not limited to, state parks, state recreational areas, state trails, greenways, natural areas and natural area preserves, and other lands of biological, environmental, historical, recreational or scientific interest.

5. Acquisition of bequests, devises and gifts of real and personal property, and the interest and income derived therefrom.

6. *Stage one and stage two plans, master plans, and substantial acquisition or improvement amendments to master plans as provided in § 10.1-200.1.*

B. The Board shall have the authority to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of this title.

§ 10.1-200. Duties related to parks and outdoor recreation; additional powers.

To facilitate and encourage the public use of parks and recreational areas, *to further take advantage of the positive economic impact of outdoor recreational facilities to localities and the Commonwealth, to foster the upkeep and maintenance of such resources, and to provide additional means by which the Governor and the General Assembly may determine necessary general fund appropriations and the need for other funding measures*, the Department shall establish and implement a long-range plan for acquisition, maintenance, improvement, protection and conservation for public use of those areas of the Commonwealth best adapted to the development of a comprehensive system of outdoor recreational facilities in all fields, including, but not limited to: parks, forests, camping grounds, fishing and hunting grounds, scenic areas, waters and highways, boat landings, beaches and other areas of public access to navigable waters. The Department shall have the power and duty to:

1. Administer all funds available to the Department for carrying out the purposes of this chapter, and to disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof or any park authority.

2. Study and appraise on a continuing basis the outdoor recreational needs of the Commonwealth; assemble and disseminate information on outdoor recreation; and prepare, maintain and keep up-to-date a comprehensive plan for the development of outdoor recreational facilities of the Commonwealth.

3. Establish and promote standards for outdoor recreational facilities; encourage and assist in the coordination of federal, state, and local recreational planning; aid and advise various state institutions in the use of existing state parks and similar recreational facilities; work with the appropriate state agencies to develop areas for multiple recreational use, including, but not limited to, traditional uses such as hunting, fishing, hiking, swimming, and boating.

4. Study and develop plans and, upon request, provide assistance regarding the establishment and

implementation of recreational programs for state institutions, agencies, commissions, boards, officers, political subdivisions, and park authorities.

5. Assist upon request any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof or any park authority in planning outdoor recreational facilities in conformity with its respective powers and duties and encourage and assist in the coordination of federal, state and local recreational planning.

6. Apply to any appropriate agency or officer of the United States for participation in or receipt of aid from any federal program respecting outdoor recreation, and in respect thereto, enter into contracts and agreements with the United States or any appropriate agency thereof; keep financial and other records relating to contracts and agreements with the United States or any appropriate agency thereof, and furnish appropriate officials and agencies of the United States reports and information necessary to enable the officials and agencies to perform their duties under federal programs respecting outdoor recreation.

7. Act either independently or jointly with any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof or any park authority to carry out the Department's powers and duties; and coordinate its activities with and represent the interests of the above entities having interests in the planning, maintenance, improvement, protection and conservation of outdoor recreation facilities.

8. *Develop a standard against which the public can determine the extent to which the Commonwealth is meeting park and recreational needs. The standard shall be based on park usage, population trends and densities, and outdoor recreational facility demands. The standard shall be expressed in terms of acres and facilities needed on a regional and a statewide level to serve existing and projected needs and conservation goals. The standard shall be developed by July 1, 1999. The Department shall annually report by November 1 of each year to the Governor and the General Assembly on (i) the development of the standard; (ii) where the Commonwealth's park system falls short of, meets or exceeds the standard; and (iii) the methodology used for determining clause (ii).*

*§ 10.1-200.1. State park master planning.*

*A. The Department shall undertake a master planning process (i) for all existing state parks, (ii) following the substantial acquisition of land for a new state park, and (iii) prior to undertaking substantial improvements to state parks. A master plan shall be considered a guide for the development, utilization and management of a park and its natural, cultural and historic resources and shall be adhered to closely. Each plan shall be developed in stages allowing for public input.*

*Stage one of the plan shall include the development of a characterization map indicating, at a minimum, boundaries, inholdings, adjacent property holdings, and other features such as slopes, water resources, soil conditions and types, natural resources, and cultural and historic resources. The stage one plan shall include a characterization of the potential types of uses for different portions of the parks and shall provide a narrative description of the natural, physical, cultural and historic attributes of the park. The stage one plan shall include the specific purposes for the park and goals and objectives to support those purposes.*

*Upon completion of a stage one plan, a stage two plan shall be developed by the Department which shall include the potential size, types and locations of facilities and the associated infrastructure including roads and utilities, as applicable. Proposed development of any type shall be in keeping with the character of existing improvements, if appropriate, and the natural, cultural and historic heritage and attributes of the park. The stage two plan shall include a proposed plan for phased development of the potential facilities and infrastructure. The Department shall project the development costs and the operational, maintenance, staffing and financial needs necessary for each of the various phases of park development. Projections shall also be made for the park's resource management needs and related costs. The projections shall be made part of the stage two plan.*

*Upon completion of the stage two plan, the stage one and stage two plans along with supporting documents shall be combined to form a master plan for the park. Development of a park shall not begin until the master plan has been reviewed by the Board and adopted by the Director.*

*B. All members of the General Assembly shall be given notice of public meetings and, prior to their adoption, the availability for review of stage one, stage two and master plans and proposed amendments for substantial improvements.*



C. The master planning process shall not be considered an impediment to the acquisition of inholdings or adjacent properties. Such properties, when acquired, shall be incorporated into the master plan and their uses shall be amended into the master plan.

D. Stage one and stage two plans shall be considered complete following review and adoption by the Director. Stage one and stage two plans may only be adopted by the Director following public notice and a public meeting. The Director may make nonsubstantial amendments to master plans following public notice. A master plan or a substantial amendment to a master plan may only be adopted by the Director after considering the recommendations of the Board following public notice and a public meeting.

E. The Department shall solicit and consider public comment in the development of the stage one and two plans as well as the master plan and any amendments thereto.

F. Master plans shall be reviewed and updated by the Department and the Board no less frequently than once every five years and shall be referenced in the Virginia Outdoors Plan.

G. Materials, documents and public testimony and input produced or taken for purposes of park planning prior to January 1, 1999, may be utilized in lieu of the process established in this section provided that it conforms with the requirements of this section and that a master plan shall be developed that conforms with this section which shall not be deemed complete until reviewed and approved in accordance with subsection D.

H. The planning process contained in this section satisfies the Department of General Services master planning requirements for lands owned or managed by the Department of Conservation and Recreation. The Department of Conservation and Recreation's Facility Development Plans shall continue to meet the Department of General Service's requirements.

I. For purposes of this section, unless the context requires a different meaning:

"Development of a park" means any substantial physical alterations within the park boundaries other than those necessary for the repair or maintenance of existing resources or necessary for the development of the master plan.

"Substantial acquisition" means the purchase of land valued at \$500,000 or more or the acquisition of the major portion of land for a new state park whichever is less.

"Substantial improvement" means physical improvements and structures valued at \$500,000 or more.

## **Appendix 8**

### **Park Master Planning Statute as Considered by the Parks Subcommittee and the Full Study Committee**

**(Note: The amendments to § 10.1-202 that appear in the following draft were not accepted by the full study committee and did not have the unanimous support of the parks subcommittee as did all the other subcommittee's recommendations. The issues in § 10.1-202 are to be examined further during 1998 pursuant to HJR 136.)**

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 10.1-107, 10.1-200 and 10.1-202 of the Code of Virginia and  
2 to amend the Code of Virginia by adding a section numbered 10.1-200.1, relating to  
3 state parks.

4 Be it enacted by the General Assembly of Virginia:

5 1. That §§ 10.1-107, 10.1-200 and 10.1-202 of the Code of Virginia are amended and  
6 reenacted, and that the Code of Virginia is amended by adding a section numbered  
7 10.1-200.1 as follows:

8 § 10.1-107. General powers and duties of the Board.

9 A. The Board shall advise the Governor and the Director on activities of the  
10 Department. Upon the request of the Governor, or the Director, the Board shall institute  
investigations and make recommendations.

12 The Board shall formulate recommendations to the Director concerning:

13 1. Requests for grants or loans pertaining to outdoor recreation.

14 2. Designation of recreational and historical sites eligible for recreational access road  
15 funds.

16 3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.

17 4. Acquisition of real property by fee simple or other interests in property for the  
18 Department including, but not limited to, state parks, state recreational areas, state trails,  
19 greenways, natural areas and natural area preserves, and other lands of biological,  
20 environmental, historical, recreational or scientific interest.

21 5. Acquisition of bequests, devises and gifts of real and personal property, and the  
22 interest and income derived therefrom.

1 B. The Board shall have the authority to promulgate regulations necessary for the  
2 execution of the Virginia Stormwater Management Act, Article 1.1, (§ 10.1-603.1 et seq.) of  
3 Chapter 6 of this title.

4 C. The Board shall have the authority to adopt and amend stage one and stage two  
5 plans, master plans and amendments thereto as provided in § 10.1-202.1.

6 § 10.1-200. Duties related to parks and outdoor recreation; additional powers.

7 To facilitate and encourage the public use of parks and recreational areas, to further  
8 take advantage of the positive economic impact of outdoor recreational facilities to localities  
9 and the Commonwealth, to foster the upkeep and maintenance of such resources, and to  
10 provide additional means by which the Governor and the General Assembly may determine  
11 necessary General Fund appropriations and the need for other funding measures, the

12 Department shall establish and implement a long-range plan for acquisition, maintenance,  
13 improvement, protection and conservation for public use of those areas of the Commonwealth  
14 best adapted to the development of a comprehensive system of outdoor recreational facilities  
15 in all fields, including, but not limited to: parks, forests, camping grounds, fishing and hunting  
16 grounds, scenic areas, waters and highways, boat landings, beaches and other areas of public  
17 access to navigable waters. The Department shall have the power and duty to:

18 1. Administer all funds available to the Department for carrying out the purposes of this  
19 chapter, and to disburse funds to any department, commission, board, agency, officer or  
20 institution of the Commonwealth, or any political subdivision thereof or any park authority.

21 2. Study and appraise on a continuing basis the outdoor recreational needs of the  
22 Commonwealth; assemble and disseminate information on outdoor recreation; and prepare,  
23 maintain and keep up-to-date a comprehensive plan for the development of outdoor  
24 recreational facilities of the Commonwealth.

25 3. Establish and promote standards for outdoor recreational facilities; encourage and  
26 assist in the coordination of federal, state, and local recreational planning; aid and advise  
27 various state institutions in the use of existing state parks and similar recreational facilities;

1 work with the appropriate state agencies to develop areas for multiple recreational use,  
including, but not limited to, traditional uses such as hunting, fishing, hiking, swimming, and  
3 boating.

4 4. Study and develop plans and, upon request, provide assistance regarding the  
5 establishment and implementation of recreational programs for state institutions, agencies,  
6 commissions, boards, officers, political subdivisions, and park authorities.

7 5. Assist upon request any department, commission, board, agency, officer or institution  
8 of the Commonwealth or any political subdivision thereof or any park authority in planning  
9 outdoor recreational facilities in conformity with its respective powers and duties and  
10 encourage and assist in the coordination of federal, state and local recreational planning.

11 6. Apply to any appropriate agency or officer of the United States for participation in or  
12 receipt of aid from any federal program respecting outdoor recreation, and in respect thereto,  
13 enter into contracts and agreements with the United States or any appropriate agency thereof;  
14 keep financial and other records relating to contracts and agreements with the United States  
or any appropriate agency thereof, and furnish appropriate officials and agencies of the United  
16 States reports and information necessary to enable the officials and agencies to perform their  
17 duties under federal programs respecting outdoor recreation.

18 7. Act either independently or jointly with any department, commission, board, agency,  
19 officer or institution of the Commonwealth or any political subdivision thereof or any park  
20 authority to carry out the Department's powers and duties; and coordinate its activities with  
21 and represent the interests of the above entities having interests in the planning, maintenance,  
22 improvement, protection and conservation of outdoor recreation facilities.

23 8. Develop a standard against which the public can determine the extent to which the  
24 Commonwealth is meeting park and recreational needs. The standard shall be based on park  
25 usage and population trends and densities in the service area of each park. The standard  
26 shall be expressed in terms of acres needed to serve those and projected populations. The  
7 standard shall be developed by July 1, 1999. The Department shall annually report by

1 November 1 of each year to the Governor and the General Assembly on: (i) the development  
2 of the standard; (ii) where the Commonwealth's park system falls short of, meets or exceed  
3 the standard; and (iii) the methodology used for determining (ii).

4 §10.1-200.1. State park master planning.

5 A. The Department and the Board shall undertake a master planning process: (i) for  
6 all existing state parks; (ii) following the substantial acquisition of land for a new state park;  
7 and (iii) and prior to undertaking substantial improvements to state parks. The master plan  
8 shall be considered a guide for the development, utilization and management of the park and  
9 its natural, cultural and historic resources and shall be closely adhered to. The plan shall be  
10 developed in stages allowing for public input.

11 Stage one of the plan shall include the development of a characterization map  
12 indicating, at a minimum, boundaries, inholdings, adjacent property holdings, and other  
13 features such as slopes, water resources, soil conditions and types, natural resources, and  
14 historical and cultural resources. The stage one plan shall include a characterization of the  
15 potential types of uses for different portions of the parks and shall provide a narrative  
16 description of the natural, physical, historical and cultural attributes of the park. The stage one  
17 plan shall include the specific purposes for the park and goals and objectives to support those  
18 purposes.

19 Upon completion of a stage one plan, a stage two plan shall be developed by the  
20 Department which shall include the potential size, types and locations of facilities and the  
21 associated infrastructure including roads and utilities, as applicable. Proposed development of  
22 any type shall be in keeping with the character of existing improvements and the natural,  
23 cultural and historic heritage and attributes of the park. The stage two plan shall include a  
24 proposed plan for phased development of the potential facilities and infrastructure. The  
25 Department shall project the development costs, and the operational, maintenance, staffing  
26 and financial needs necessary for each of the various phases of park development

Projections shall also be made for the park's resource management needs and related costs.

2 The projections shall be made part of the stage two plan.

3 Upon completion of the stage two plan the stage one and stage two plans along with  
4 supporting documents shall be combined to form a master plan for the park. Development of  
5 a park shall not begin until the master plan has been adopted by the Board of Conservation  
6 and Recreation.

7 B. The stage one, stage two and master plans and any proposed amendments thereto  
8 shall be forwarded to the chairs of the House committees on Conservation and Natural  
9 Resources and Appropriations and the Senate committees on Agriculture, Conservation and  
10 Natural Resources and Finance prior to their review and adoption by the Board of  
11 Conservation and Recreation as provided in subsection D. All members of the General  
12 Assembly shall be given written notice of public meetings and the availability of plans and  
13 proposed amendments for review.

14 C. The master planning process shall not be considered an impediment to the  
15 acquisition of inholdings or adjacent properties. Such properties, when acquired, shall be  
16 incorporated into the master plan and their uses shall be amended into the master plan.

17 D. Each stage plan and the master plan shall be considered complete following review  
18 and adoption by the Board of Conservation and Recreation. Stage one, stage two and master  
19 plans may only be adopted or amended by the Board following public notice and a public  
20 hearing before the Board.

21 E. The Department shall solicit and consider public comment in the development of the  
22 stage one and two plans as well as the master plan and any amendments thereto.

23 F. Master plans shall be reviewed and updated by the Department and the Board no  
24 less frequently than once every five years and shall be included as an addendum to the  
25 Virginia Outdoors Plan.

26 G. Materials, documents and public testimony and input produced or taken for purposes  
27 of park planning prior to July 1, 1998, may be utilized in lieu of the process established in this

1 section provided that it conforms with the requirements of this section and that a master plan  
2 shall be developed that conforms with this section which shall not be deemed complete until  
3 reviewed and approved in accordance with subsection D.

4 H. For purposes of this section, unless the context requires a different meaning:

5 "Development of a park" means any physical alterations within the park boundaries  
6 other than those necessary for the repair or maintenance of existing resources or necessary  
7 for the development of the master plan.

8 "Substantial acquisition" means the purchase of land valued at \$500,000 or more or the  
9 acquisition of the major portion of land for a new state park whichever is less.

10 "Substantial improvement" means physical improvements and structures valued at  
11 \$500,000 or more.

12 § 10.1-202. Gifts and funds for state parks to constitute Conservation Resources Fund.

13 A. Gifts of money, entrance fees, fees from contractor-operated concessions, and all  
14 funds accruing from, on account of, or to the use of state parks acquired or held by the  
15 Department, and the facilities user fees established in subsection B shall constitute the  
16 Conservation Resources Fund. The Fund shall be under the direction and control of the  
17 Director and may be expended for the conservation, development, maintenance, and  
18 operations of state parks acquired or held by the Department. However, expenditures from the  
19 Fund for operation of state parks shall not exceed, in any fiscal year, an amount equal to  
20 twenty-five percent of the revenues deposited into the Fund from fees and charges paid by  
21 visitors to state parks. The remainder of the revenues deposited into the Fund from fees and  
22 charges paid by visitors to state parks shall be expended for the conservation and  
23 development of state parks. Revenues generated from state park concessions operated by the  
24 Department shall be deposited into a separate special fund for use in operating such  
25 concessions. Revenues deposited to the Fund from facilities users fees shall be deposited into  
26 a separate special fund for use as described in subsection B. Unexpended portions of the  
27 Fund and of the separate special funds shall not revert to the state treasury at the close of any



1 fiscal year unless specified by an act of the General Assembly. The Fund shall not include any  
2 gifts of money to the Virginia Conservation and Recreation Foundation or other funds  
3 deposited in the Virginia Conservation and Recreation Fund.

4 The proceeds from the sales of surplus property shall be used exclusively for the  
5 acquisition and development of state parks.

6 B. The Department shall charge no fee for the entrance to state parks or for day use  
7 parking. However parking fees may be charged for special events held in state parks.

8 C. The Department shall charge a park facility user fee. Facility uses for which such a  
9 fee shall be charged include campsite rentals, cabin rentals, conference facilities rental,  
10 program and educational fees, swimming fees, rental of shelters and buildings, and  
11 recreational equipment rentals. For Virginia residents such fee shall be calculated at ten  
12 percent of the fee otherwise established by the Department for such facility usage. For  
13 nonresidents the fee shall be calculated at twenty percent of the fee otherwise for such facility  
14 usage. However, in no event shall the fee exceed per person per day five dollars for residents  
15 and ten dollars for nonresidents. The funds raised through this fee shall be used for the  
16 acquisition of land for parks to remedy shortfalls identified pursuant to paragraph number 8 of  
17 § 10.1-200.

18 D. For purposes of this section "acquisition" means the purchase of land and existing  
19 improvements on such land only.

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## Appendix 9

### CHAPTER 81

*An Act to amend and reenact § 18.2-140 of the Code of Virginia, relating to damaging trees and other plants on park authority property; penalty.*

[H 510]

Approved March 13, 1998

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-140 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-140. Destruction of trees, shrubs, etc.

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon the land of another, or upon any land reserved, set aside or maintained by the Commonwealth as a public park, or as a refuge or sanctuary for wild animals, birds or fish, *or upon any land reserved, set aside or maintained as a public park by a park authority created under the provisions of § 15.2-5702*, without having previously obtained the permission in writing of such owner or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless the same be done under the personal direction of such owner, his agent, tenant or lessee or superintendent or custodian of such park, refuge or sanctuary.

Any person violating this section shall be guilty of a Class 3 misdemeanor; provided, however, that the approval of the owner, his agent, tenant or lessee, or the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit.