

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

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



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

**(HJR 719, 1999)**

to

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

## **I. INTRODUCTION**

The 1996 Session of the General Assembly passed House Joint Resolution 221, creating a two-year joint legislative study committee on "the future of Virginia's environment." 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 study was continued in 1998 by House Joint Resolution 136 and in 1999 by House Joint Resolution 719. (Appendix A.) The study committee, also known as the Commission on the Future of Virginia's Environment (henceforth "the commission"), accomplished a great deal in its first three years of existence, the details of which are documented in House Document No. 4 (1999) and House Document No. 15 (2000). This document reports on the study's fourth year, conducted under HJR 719 (1999), which directed the commission to (i) continue the development of a vision and plan for the future of Virginia's environment as called for in HJR No. 221 (1996), (ii) work to identify stable funding source for the state park and open space system, and (iii) continue its deliberations on the issues assigned to it by SJR No. 177 (1998), which directed the commission to study smart growth initiatives for the Commonwealth. The Commission also continued its work on some of the other issues it had studied in prior years, and investigated emerging issues such as "Tulloch ditching" of wetlands.

As in the past, the commission relied heavily upon its subcommittees during its fourth year. The subcommittees that were the most active during this year were the parks and land conservation subcommittee, which met five times; the solid waste subcommittee, which met four times; and the vision and plan subcommittee, which met three times. In addition, four members of the vision and plan subcommittee were asked to serve with members of another study committee to conduct a visit to Maryland to learn more about that state's smart growth initiatives. Each of these subcommittees was assigned a specific set of tasks in a memorandum that was issued in May by the chairman of the commission. (Appendix B.) One new subcommittee was created in 1999, to make recommendations on wetlands issues, and that subcommittee held one meeting.

The subcommittees undertook the bulk of their work in the summer and fall, and the full commission met three times during the fall and winter. The commission spent a large portion of each of its meetings receiving updates from its subcommittees and considering the recommendations that the subcommittees had developed. Virtually all of the subcommittee recommendations were adopted. The commission also heard a presentation from the National Association of Homebuilders on smart growth and a presentation from the Secretary of Natural Resources on the uses of the Water Quality Improvement Fund that were proposed in the Governor's proposed budget.

## **II. COMMISSION ACTIVITIES**

### **A. PARKS AND LAND CONSERVATION SUBCOMMITTEE**

The parks and land conservation subcommittee's 1999 agenda focused on three topics: land conservation, state parks, and farmland protection; all of which had been considered by the subcommittee in previous years. The subcommittee encouraged the groups with which it had been working on these issues, primarily the Conservation Land Coalition, the Virginia Division of State Parks, and the American Farmland Trust, to continue building a case for increased state funding in these areas. This section of the report describes what the subcommittee learned about all three types of resource protection needs. As in the past, the subcommittee held its meetings in state parks throughout the Commonwealth.

#### **1. Land Conservation**

The 1999 General Assembly, pursuant to a recommendation of the commission that had been developed by the parks and land conservation subcommittee, enacted legislation overhauling the Virginia Land Conservation Foundation. The Foundation had been established in 1992 to purchase interests in land to protect ecological, cultural, historical, recreational, and open space

resources. Prior to the new legislation, however, the Foundation had been inactive for several years. Under the 1999 legislation, the Foundation's expenditures must be allocated equally among the following four uses: natural area protection, open spaces and parks, farmlands and forest preservation, and historic area preservation.<sup>1</sup> The commission also recommended that the Foundation be given a 1999 appropriation of \$40 million. The General Assembly appropriated \$1.75 million to the Foundation.

The subcommittee received updates on the work of the Foundation as it began functioning in accordance with the 1999 legislation. The new Foundation Board of Trustees held its first meeting on July 20, 1999 and immediately began working on grant criteria, which were issued in September of that year. One concern that was raised by some of the groups interested in the Foundation was that the grant criteria did not provide for grants to be used to fund local government purchase of development rights programs.<sup>2</sup> Subcommittee members agreed with the interest groups that the intention behind some of the amendments that had been made to the Foundation's basic law during the 1999 session was to allow such programs to receive grants. The Director of the Department of Conservation and Recreation, who serves as the executive secretary to the Foundation, told the subcommittee that the short time period in which the Board had to organize and allocate grant moneys, together with the relatively small amount of funding it had been given, made funding purchase of development rights programs unfeasible in 1999. Director Brickley believed, however, that the criteria would be amended to allow funding of such programs in the future if the Foundation were given more money.

The subcommittee was encouraged by the Foundation's success in responding to the commission's recommendations. Clearly, however, a funding level that was more in line with what the commission had recommended would have been preferable. The subcommittee was provided with summaries of the grant applications that had been received by the Foundation (Appendix C), and the amount of money requested far exceeded the amount that was available. The Conservation Land Coalition continued its efforts to demonstrate to the subcommittee that a dedicated funding source for land conservation should be established in Virginia. A dedicated funding source would allow Virginia to fully leverage contributions by the federal government, most of whose programs require states to provide matching moneys; localities, which are more likely to engage in their own land conservation efforts if they receive help from the state; and nonprofit entities, which annually spend significant funds to protect land in Virginia. Several of Virginia's neighboring states and other states around the country already have created dedicated funding sources. Many states with dedicated funding sources

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<sup>1</sup> Code of Virginia § 10.1-1020.

<sup>2</sup> See section A 3 (Farmland Protection) for a description of purchase of development rights programs.

utilize real estate tax revenues, recognizing that development of real estate is part of what creates the need for some land to be set aside and protected from development. Appendix D contains other arguments in favor of a dedicated funding source that the subcommittee found to be persuasive.

## **2. State Parks**

The subcommittee received several very detailed presentations from Division of State Parks staff on various aspects of the state park system. The subcommittee was particularly interested in Virginia's financial commitment to its parks. According to an annual information exchange compiled by the National Association of State Parks Directors, Virginia ranks 49<sup>th</sup> among the 50 states in the proportion of the state's operating budget spent on state parks, and 48<sup>th</sup> in per capita spending on state parks. Yet, a 1998 survey of more than 1,300 park visitors has shown that people using the state parks have a very high rate of satisfaction with their experiences in the parks. The percentage of respondents rating the park as good or excellent with respect to land and water resources was 92.6 percent; services, 89.0 percent; fees, 75.7 percent; facilities, 86.0 percent; facilities cleanliness, 82.2 percent; staff assistance, 89.9 percent; and security, 85.5 percent. These results show that our parks are well run and frugal. The subcommittee's interactions with the staff at each park visited and its observation of the parks' facilities and natural amenities support these findings.

Virginia's parks have seen significant improvements in recent years, due to the \$95 million general obligation bond issue that was authorized by the citizens in 1992. With these facility enhancements comes a cost, however. The Department of Conservation and Recreation estimates that operational and personnel costs associated with the general obligation bonds represent a \$2.4 million increase over current fiscal year 2000 funding. Further, preventive maintenance needs exceed current funding by \$1.1 million.

It is important also to consider the Commonwealth's total investment in its state parks. The intrinsic value of the parks in terms of their scenic beauty, wildlife habitat, and the educational and recreational opportunities and associated health benefits they provide is certainly priceless. The monetary values that can be assigned to the parks, however, also show that the state has made an enormous financial investment that is clearly worth protecting with adequate maintenance and operational funding. The state's Fixed Asset Accounting System Inventory reports that the lands, buildings, and improvements of the state park system and natural area preserve system together are worth more than \$175 million dollars. And because this number reflects the actual amount paid by the Commonwealth for these assets, which in many cases were gifts to the state or were purchased many years ago, this estimate is an extremely conservative one.



Another aspect of the park system about which the subcommittee had questions was professional staff compensation. About half of the state's park rangers are required to receive the same law-enforcement training as other types of law-enforcement officers, including police officers. These law-enforcement-trained park rangers are known as conservation officers. Despite their training, conservation officers are generally paid significantly less than other law-enforcement officers. This is so even though they have a very large range of duties in addition to law enforcement. Many park rangers have received training and certifications in additional areas, including first aid, water safety, occupational safety and health, and waterworks operations. The state parks have at times lost highly qualified conservation officers when they have chosen to leave the parks and take other, better-paying law-enforcement jobs. The subcommittee was extremely impressed by the dedication and professionalism exhibited by park managers and park rangers at all of the parks it visited. (Appendix E.)

### 3. Farmland Protection

The subcommittee began its examination of farmland protection issues in 1998 by receiving a briefing from the American Farmland Trust (AFT), an organization that works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. According to AFT, one million acres of the nation's farmland are being converted to non-agricultural uses per year, and Virginia has lost an average of 45,000 acres of prime farmland each year during the past decade. AFT encourages states to employ a strong mix of different programs to protect farmland. The group has identified a number of tools that state and local governments can use to help farmers keep their land in agriculture, including laws pertaining to agricultural districts, agricultural protection zoning, conservation easements, comprehensive growth management, declarations of state policies, purchases of development rights, transferable development rights, right-to-farm laws, and tax relief in the form of differential assessment of land and circuit breaker tax credits. The Virginia General Assembly has authorized the use of many of these mechanisms:

- *Agricultural and forestal districts.* The Virginia Agricultural and Forestal Districts Act (§ 15.2-4300 et seq.), enacted in 1977, provides a means by which any locality, upon landowner petition, can create agricultural and forestal districts. Within districts, land is eligible for land use taxation (see below), and the locality and state agencies have a responsibility to protect agricultural and forestal land uses. Among the factors that are considered during the district creation process are the agricultural and forestal significance of land within the district and in adjacent areas; the nature and extent of land uses other than active farming or forestry within and adjacent to the district; local developmental patterns and needs; and the environmental benefits of retaining the lands in the district for agricultural and forestal uses.

- Agricultural protection zoning. One of the purposes of zoning ordinances listed in § 15.2-2283 of the Code of Virginia is “to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment.”
- Conservation easements. The Virginia Conservation Easement Act (§ 10.1-1009 et seq.), enacted in 1988, allows localities, agencies, authorities, and certain charitable organizations to hold conservation easements. The Act defines a conservation easement as “a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.”
- Property tax relief. Virginia’s Constitution authorizes the General Assembly to allow localities to appraise real estate at its value for agricultural, horticultural, forest, or open space use and apply a jurisdiction-wide tax rate to the special use valuation. The General Assembly has enacted such a scheme (known as “land use taxation”) in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1. In a locality, which has adopted an ordinance pursuant to Article 4, landowners must submit an annual application to the locality in order to receive the special tax rate. Land lying within an agricultural and forestal district that is used in agricultural or forestal production, however, automatically qualifies for such special use valuation, regardless of whether a special use valuation ordinance has been adopted by the locality. When land is removed from a district or the district is terminated, the owner must pay roll-back taxes for the difference between the tax that would have been paid on the land’s fair market value and the special tax amount. The same rule applies to land that qualified for the special tax rate but was not part of a district if the land is subsequently developed to a more intensive use or rezoned to a more intensive classification at the request of the owner.
- Purchase of development rights. Localities and state agencies have authority under the Virginia Conservation Easement Act (§ 10.1-1009 et seq.) and Open-Space Land Act (§ 10.1-1700 et seq.) to hold conservation easements and other interests in land for the purpose of protecting open-space uses of the land. To do so, localities and the Commonwealth may appropriate funds, issue and sell general obligation bonds, and levy taxes and assessments. The City of Virginia Beach, for example, has established the Agricultural Reserve Program, under which the city purchases conservation easements through installment purchase

agreements. At the state level, the Virginia Outdoors Foundation (VOF) holds easements on more than 600 properties, covering more than 110,000 acres of land. VOF receives operating funds from the General Assembly and private donations. In 1997, the General Assembly created the Open-Space Lands Preservation Trust Fund, which is administered by VOF. Grants from the fund are made to persons conveying easements to VOF and a local co-holder. Grants may be used for legal and appraisal costs incurred in donating an easement or for all or part of the value of the easement.

- *Right to Farm.* Virginia's Right To Farm Act (§ 3.1-22.28 et seq.) protects agricultural operations from being considered public or private nuisances. Under the common law, a nuisance is the use of one's property in a way that interferes with another's use of his property (private nuisance) or in a way that endangers the public's health, safety, or welfare (public nuisance). In order to be eligible for nuisance protection under the Act, an operation must be conducted in accordance with existing best management practices and comply with existing laws. The Act also contains restrictions on local government power. It prohibits counties from requiring special exceptions or special use permits "for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification" and provides that, "No county, city or town shall enact zoning ordinances which would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety and general welfare of its citizens."
- *State policies.* Chapter 3.2 of Title 3.1 of the Code of Virginia, "Preservation of Important Farmlands," has existed since 1981. It states that counties, cities, and towns shall be responsible for designating the important farmlands within their jurisdictions, that certain state agencies shall have a plan for preservation of important farmlands, and that environmental impact reports required to be prepared for major state projects must include an analysis of the impact of the project on important farmlands. Under the environmental impact report law, these reports must be submitted to DEQ, which provides comments on the reports to the Governor before he grants final approval for the project.
- *Other forms of tax relief.* Three of the subcommittee's 1998 recommendations make changes in the law that allow landowners to take advantage of additional forms of tax relief:
  - SB 1218 (1999) provides an income tax credit for individuals and corporations donating land for preservation purposes. The tax credit is 50 percent of the fair market value of the land interest transferred, not to exceed \$100,000. In addition, the credit may only be used to offset taxes owed, but it may be carried forward for a period of five years.

- SB 1220 (1999) authorizes fiduciaries to donate conservation easements on land of their decedents and settlers in order to obtain benefit of an estate tax exclusion allowed under the Federal Internal Revenue Code.
- SB 1222 (1999) excludes from the income of individuals and corporations the gain on the sale of land or an easement that dedicates the land or easement to an open-space use.

There are some farmland protection tools that are not authorized in Virginia. For example, although the General Assembly has considered several bills on the subject during the past 10 years, legislation authorizing transfers of development rights has not been enacted. Such legislation would allow localities to provide for transfers of development rights from one parcel of land to another parcel of land, thereby increasing the density of development on one parcel while restricting development on the other parcel. Most recently, legislation was introduced in 1997. This bill was general in nature, authorizing the use of transferable development rights without prescribing how they must be used. Over the years, the General Assembly has also considered legislation that was more detailed in describing the kinds of programs localities could establish.

Some have urged that Virginia should establish a farmland preservation program that is administered separately from other land conservation programs. Several other east coast states have separate agricultural land preservation programs, including Maryland and Pennsylvania. Other ideas discussed briefly by the subcommittee include reimbursing localities for revenues deferred through land use taxation and establishing a circuit breaker tax credit. Some rural localities that have examined the possibility of enacting land use taxation have decided not to do so because of opposition to the idea of transferring a percentage of the total real property tax burden from agricultural owners to owners of other types of property.<sup>3</sup> It is difficult to determine how much reimbursing localities for land-use assessment would cost the Commonwealth, but a rough estimate indicates that the amount could be between \$14 - \$25 million. A circuit breaker credit is a type of income tax credit that would be available if a farmer's property tax bill exceeded a certain portion of his income. Four states currently have circuit breaker programs. The extent to which such a program would benefit farmers would depend on the farmer's income. For many farmers, income taxes are not as burdensome as are other costs.

## **B. SOLID WASTE SUBCOMMITTEE**

Solid waste management was one of the most conspicuous issues of the 1999 General Assembly session, and many of the ideas behind the solid waste legislation that was enacted that year had been generated by the solid waste subcommittee

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<sup>3</sup> SJR 502 (1999) called on the commission and the Keating Commission (SJR 543) to study this issue.

during the 1998 interim. Several of the 1999 solid waste bills contained the following language:

*The Department of Environmental Quality shall undertake a comprehensive study of solid waste management in Virginia, including an analysis of and recommendations regarding solid waste disposal practices, projections on future landfill capacity needs, mechanisms to enhance waste reduction and recycling, and needed state and federal legislation to protect human health and the environment. The Department shall report its interim findings to the Governor and the General Assembly by December 1, 1999, and shall submit its final report to the Governor and the General Assembly by July 1, 2000.<sup>4</sup>*

During the 1999 interim, the solid waste subcommittee looked at much of the information that Department of Environmental Quality (DEQ) was compiling for its December interim report, which was issued as Senate Document No. 32 (2000). The subcommittee was most interested in issues associated with "HB 1205 landfills," particularly the ability of localities to pay for closure and post-closure care of the landfills and the DEQ's regulatory process for detection and correction of leaks from these landfills.

"HB 1205 landfills" are landfills that do not meet the federal government liner requirements that became effective in October of 1993. HB 1205 was the Virginia legislation that allowed landfills that were built prior to the effective date of the federal requirements to continue receiving waste until their vertical design capacity had been reached. "Subtitle D landfills" are landfills that meet the federal requirements. Virginia also has a number of "combination landfills," which contain both areas that comply with the federal requirements and areas that do not.

Many of the HB 1205 landfills are publicly owned, and most of them are either scheduled to close within the next few years or are operating past the estimated closure date that they submitted to DEQ in 1993. Subcommittee members were concerned about the ability of localities to pay for closure of these landfills, particularly because most of them use a self-insurance mechanism to demonstrate their ability to pay for closure. DEQ Director Dennis Treacy told the subcommittee that the agency shares the subcommittee's concern about this situation and is planning to review its financial assurance regulations to determine whether they need to be strengthened. The subcommittee therefore did not recommend that any legislative changes be made with regard to financial assurance requirements. Another study committee, however, did recommend legislation to strengthen financial assurance requirements. For a description of that subcommittee's deliberations and recommendations, see the *Report of the Joint*

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<sup>4</sup> 1999 Acts of Assembly Chapters 584, 613, and 947.

*Subcommittee to Examine the Financial Assurance Requirements for Solid Waste Management Facilities (HJR 585, 1999).*

All landfills are required to have a groundwater monitoring system. If this monitoring reveals a statistically significant increase in pollutant levels in the groundwater, the landfill must increase its monitoring efforts and conduct what is known as "assessment monitoring." If assessment monitoring confirms that pollution is occurring and that corrective action (clean-up) is needed, the facility is required to establish and implement a corrective action plan. To date, none of Virginia's 18 Subtitle D landfills have been required to conduct assessment monitoring. Of Virginia's 27 HB 1205 landfills, 20 have been required to conduct assessment monitoring. Of the 22 combination landfills, 16 are in the assessment monitoring phase. No landfills are currently in the corrective action phase, even though quite a few have been in the assessment monitoring phase for several years. The subcommittee was concerned about this delay in moving from assessment monitoring to corrective action. Director Treacy told the subcommittee that DEQ had convened a technical advisory committee to make recommendations on eliminating the delay. He also expected that the process would be accelerated as a result of recent staffing increases that had been authorized by the 1999 General Assembly.

The subcommittee also received briefings on Virginia's definition of "regulated medical waste." Some members of the regulated community are concerned about difficulties distinguishing which types of waste require special treatment under Virginia Waste Management Board regulations. They also maintain that Virginia's regulations unnecessarily require more waste to be specially treated than those of neighboring states. The Board has initiated the process for amending these regulations.

The subcommittee also monitored congressional progress on the legislation that would authorize states to control importation of waste. The main obstacle to the enactment of such legislation seems to be disagreement among states that export solid waste and wish to continue to do so, such as New York, and those that import waste and may wish to stem the flow of waste into their borders, such as Virginia. The subcommittee agreed to send a letter to Congressman Bliley, asking that he take a more active role in encouraging importing and exporting states to negotiate a legislative solution.

Because most of the issues discussed by the subcommittee are currently being addressed by regulatory and study efforts at the Department of Environmental Quality, the subcommittee's only recommendation was that the commission be continued for an additional year. The subcommittee will continue to monitor DEQ's progress on all of these issues to determine whether any statutory changes are needed. The subcommittee may also devote more time to some of the other issues

on which it received briefings, such as recycling and waste management alternatives.

### C. VISION AND PLAN SUBCOMMITTEE

The vision and plan subcommittee was responsible for submitting a proposed vision and plan for the future of Virginia's environment to the full commission. The subcommittee began the year with a head start on both tasks, as a working draft of the vision document had been adopted by the subcommittee in 1998, and legislation had been proposed that the chairman of the commission suggested might serve as the "plan" portion of the commission's recommendations. The subcommittee concurred that this legislation, the Virginia Natural Resources Policy Act (VNRPA), which would establish a mechanism designed to assure that the Commonwealth's natural resources are protected, constituted a plan for the future of Virginia's environment. The VNRPA was introduced as House Bill 2273 during the 1999 session, but not acted upon. The subcommittee took public comment on both the draft vision and the VNRPA at meetings in Reston and Charlottesville and then held a final working session in Richmond.

Several of those who spoke during the public comment periods called for the subcommittee to add specific, measurable goals to the vision document. In response to these concerns, subcommittee member Guy Ross composed an alternative to the working draft, and staff was asked to combine the Ross draft with the working draft. After this combined draft was edited by the subcommittee, staff was asked to transform the document into a bill. The subcommittee did not propose any changes to VNRPA, but recommended that the bill in its original form be reintroduced during the 2000 session.

The "smart growth" issue was also assigned to the vision and plan subcommittee. A special panel composed of members of the subcommittee and members of the Joint Subcommittee to Study Land Development Patterns (HJR 543) traveled to Baltimore in July 1999 to learn about Maryland's "Smart Growth and Neighborhood Conservation Initiatives," a package of legislation that was proposed by Governor Glendening and enacted by the legislature in 1997. The package consists of five components: a rural open space protection program, a contaminated site clean-up and redevelopment ("brownfields") program, a job creation tax credit, a "live near your work" incentive program, and The Smart Growth Areas Act, which limits state infrastructure funding related to development to existing communities and places designated by state and local governments for growth. In Baltimore, the subcommittee received briefings from officials charged with implementing the program and from interested organizations such as the Maryland Homebuilders Association and the Maryland Municipal League. The subcommittee was given a demonstration of Maryland's geographic information

system and a tour of an urban redevelopment project for which some of the program's incentives were utilized.

#### **D. WETLANDS**

The full commission's first meeting of the 1999 interim was scheduled to be held in Kiptopeke State Park in September, but due to Hurricane Floyd, the meeting had to be postponed and held in Richmond in October. The primary purpose of the meeting was for the commission and to learn about "Tulloch ditching" of wetlands.

According to the Virginia Institute for Marine Science, "Tulloch ditching" refers to the practice of digging drainage ditches in wetlands and carefully removing excavated material from the wetland, so that the site drains and will no longer be considered a wetland. Among the ecological functions served by nontidal wetlands (the type of wetlands most likely to be ditched and drained) are pollutant removal, providing fish and wildlife habitat, and providing flood protection. The ability of the wetland to serve these functions is impaired when the wetland is drained.

Tulloch ditching was federally regulated until a court ruled in the summer of 1998 that the Clean Water Act does not provide federal agencies with adequate authority for such regulation. According to the U. S. Army Corps of Engineers, as of the commission's October meeting, 2,498 acres of wetlands have been drained in Virginia since the 1998 court ruling, and 6,514 acres were planned to be drained. The Chesapeake Bay Foundation told the Commission that allowing such wetland losses is contrary to Virginia's commitment under the Chesapeake Bay Agreement to prevent net losses of wetlands and Governor Gilmore's promise to reverse losses in wetland acreage. The Foundation called on the administration and the General Assembly to utilize existing authority and enact additional legislation to prevent Tulloch ditching and provide comprehensive protection to wetlands. The Virginia Association of Homebuilders stated that pollution control statutes should not be expanded in scope to address wetlands, and noted that draining and development are feasible for only a limited number of wetland sites. The Association is concerned that the private property rights of owners wetland sites be protected.

Tulloch ditching is being regulated under state laws in Maryland, North Carolina, and Pennsylvania. Maryland and Pennsylvania both have nontidal wetlands statutes, under which Tulloch ditching and other activities affecting wetlands require a permit; and the standards for permit issuance are fairly strict. In North Carolina, the government has recently determined that ditching of wetlands violates state water quality regulations. The Attorney General of Virginia, however, has reached the conclusion that existing Virginia law does not provide the State Water Control Board with authority to regulate Tulloch ditching. In an opinion issued in response to a request from the chairman of the commission



(Appendix F), Attorney General Earley determined that the Board may only regulate nontidal wetlands to the very limited extent that the federal Clean Water Act requires state approval of federal permits. (Appendix G.) A representative of the Office of the Attorney General told the commission that, in order for Tulloch ditching to be regulated by the Board, legislative action giving the Board specific authority is required.

In May, Governor Gilmore issued an executive order creating the Citizens Wetlands Advisory Committee. As of the commission's October meeting, the Advisory Committee's final report had not been submitted, but an unofficial copy of the draft report's executive summary was provided to the commission. The executive summary indicated that the report would recommend a policy of (1) achieving no-net loss of jurisdictional wetlands through state and federal regulatory program compensation and mitigation requirements for permitted wetland losses and (2) achieving a net gain in wetlands through voluntary efforts. The commission received copies of the final report at its January meeting. The executive summary is attached as Appendix H.

At the end of the October meeting, the chairman of the commission appointed a subcommittee to consider legislative proposals that arose from concerns about Tulloch ditching. The main issue before the subcommittee was whether legislation should address only Tulloch ditching or should instead establish a framework for comprehensive wetlands protection. The subcommittee met once just prior to the full commission's last meeting and received testimony from proponents of both approaches. Delegate Preston Bryant discussed his intent to introduce a broad wetlands protection measure. He told the subcommittee that his bill would be based on sound science and would maintain the status quo by exempting agricultural and silvicultural activities from permit requirements and utilizing an existing permit to impose requirements on activities in wetlands. Delegate Bryant urged that Virginia needed to protect its own wetland resources rather than allowing the federal government to continue to take the lead role, especially now that federal authority over wetlands is being repeatedly attacked in the courts. Representatives of the Home Builders Association of Virginia advocated a narrow approach, conceding that Tulloch ditching should be regulated but asserting that other activities in wetlands are more than adequately regulated by the federal government, and that duplication of federal requirements would place an unnecessary burden on the regulated community.

## **E. WATER QUALITY IMPROVEMENT FUND**

The commission requested that Virginia's Secretary of Natural Resources make a presentation at the Commission's January 2000 meeting to explain why the Governor's proposed budget contained a number of allocations to the Department of Environmental Quality and the Department of Conservation and Recreation that

began with the language, "Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund. . . ." (Appendix I.) The Secretary told the commission that each of the projects funded with such language furthered water quality in Virginia. Members of the commission expressed the concern that these items, which included funding for implementation of the poultry litter management program; development, coordination, and implementation of the total maximum daily load program; and implementation of the conservation reserve enhancement program, conflicted with the Water Quality Improvement Act. The Act provides that the purpose of the Water Quality Improvement Fund is to "provide Water Quality Improvement Grants to local governments, soil and water conservation districts, institutions of higher education and individuals for point and nonpoint source pollution prevention, reduction and control programs and efforts undertaken in accordance with the provisions of [the Act]." The Act also specifically states that 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."<sup>5</sup>

### **III. FINDINGS AND RECOMMENDATIONS**

#### **A. STATE PARKS**

After reviewing a great deal of information regarding Virginia's monetary support for its state parks and visiting many of the Commonwealth's parks, the parks subcommittee has concluded that a "re-benchmarking" is required. That is, state parks should be given a higher general fund priority, so that the parks receive adequate funding on a continual basis. The commission concurs in these findings and recommends that annual general fund appropriation to the Division of State Parks be increased by 8.5 million dollars for park operations and preventative maintenance. An additional \$900,000 should be appropriated annually for salary re-grades that would allow conservation officers to be paid at a level that is more competitive with salaries of other law-enforcement officers. This amount represents a two-grade increase for park ranger conservation officers and a one-grade increase for other (higher-level) conservation officers. The commission also recommends that the parks receive an annual general fund appropriation of \$8 million dollars per year for maintenance reserve projects. The \$8 million dollar figure is based on the amount of work the Division expects to be able to accomplish within one year.

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<sup>5</sup> Code of Virginia § 10.1-2128.

## **B. LAND CONSERVATION**

Due in large part to the work of the Conservation Land Coalition, the parks subcommittee has become convinced that Virginia's open-space needs are such that a stable funding source in a significant amount should be allocated to land conservation. The commission concurs in this finding and recommends that \$40 million per year of the money generated by the state recordation tax should be allocated to the Virginia Land Conservation Foundation. (Appendix J.) The Foundation was reinvigorated as a result of the commission's recommendations to the 1999 General Assembly, and stands ready to take on an even bigger role in meeting the Commonwealth's land conservation needs. The commission recognizes that different kinds of land conservation needs can sometimes be viewed as competing with one another. An advantage of allowing the Foundation to administer the dedicated funding source is that the Foundation is required by law to spend equal amounts of money on each of four types of open-space land: natural area protection, open spaces and parks, farmlands and forest preservation, and historic area preservation. This requirement, added pursuant to one of the commission's recommendations to the 1999 General Assembly, is intended to ensure that no single category of land is protected at the expense of another.

The recordation tax is an appropriate source of revenue because it is generated by changes in ownership in real property. Recordation tax revenues will be highest when large amounts of property are changing hands, which is most likely to result in increasing development of land. The need to conserve open-space land increases as more land is developed. It should be noted that the commission's recommendation does not jeopardize any currently existing allocations of recordation tax revenues. Information before the parks and land conservation subcommittee indicated that recordation tax revenues have been high enough in most recent years to provide a full \$40 million after these allocations are made. The commission is also recommending that the Foundation should receive a \$250,000 appropriation to cover the administrative costs associated with the increased responsibility of a larger budget.

## **C. VISION AND PLAN FOR THE FUTURE OF VIRGINIA'S ENVIRONMENT**

The commission's recommendation regarding a vision for the future of Virginia's environment is embodied in House Bill 713 (2000). (Appendix K.) This legislation expresses the goals of the General Assembly regarding the future management of Virginia's natural resources, including goals for resource-based industries; air and water quality; needs for monitoring, evaluation, and enforcement of environmental protection measures; land use, economic development and transportation; open space and recreational needs; waste management; the state's governing structure; and the Chesapeake Bay Agreements. The bill is a legislative

statement of the ideas expressed in the more detailed vision document that was drafted by the vision and plan subcommittee, which is attached as Appendix L.

The commission also recommends that the Virginia Natural Resources Policy Act (VNRPA) be established as a plan for the future of Virginia's environment. (Appendix M.) The VNRPA provides a framework for ensuring that taxpayer dollars are spent in a way that is consistent with the Commonwealth's natural resource protection policies. The legislation repeals the existing Environmental Impact Statement review process (which applies to state projects using \$100,000 in state funds) and replaces it with a natural resource impact review process, which applies to actions utilizing \$500,000 or more of state-provided funds for the acquisition of an interest in land; for the construction of any new facility; or for the improvement, expansion, support, or maintenance of an existing facility. The bill creates the Virginia Natural Resources Council to review the natural resource impact reports and provide comment to the Governor. State funds are not to be disbursed for actions reviewable by the Council without the Governor's approval, following his review of the Council's comments. Among the Council's other duties are to (i) foster the coordination and implementation of natural resource policies; (ii) biennially produce a report that includes a review of the state of the Commonwealth's natural resources; (iii) assist localities, when requested, in the evaluation of actions with potential natural resource impacts; and (iv) provide staff support to meetings that are to be held at least quarterly by the Secretaries and other members of the Governor's cabinet. The cabinet-level meetings are to review programs, policies, and major initiatives to (a) identify conflicts with natural resource preservation efforts and the purposes and policies set forth in the Act; (b) evaluate the natural resource benefits and burdens of each Secretariat's programs, policies, and initiatives, including the expenditure of state funds; and (c) develop planning, coordination, and policy decisions to achieve the purposes and policies of the Act, including measures to utilize state funding in a manner that preserves and protects the Commonwealth's natural resources.

#### **D. WETLANDS**

The wetlands subcommittee did not make a specific recommendation to the full commission. At the final commission meeting, some members expressed the view that the General Assembly should enact legislation to address Tulloch ditching only, but a majority of members agreed to support Delegate Bryant's proposal in concept, with the understanding that his legislation would be no more stringent than wetlands statutes in Pennsylvania and Maryland.

#### **E. FARMLAND PROTECTION**

The point has been made that farmland cannot be protected if farming is not profitable. In addition to environmental quality and aesthetic reasons for

protecting farmland, there are economic arguments for preserving agriculture. According to the Virginia Farm Bureau Federation, agriculture supports nearly one in 10 jobs in Virginia and generates nearly \$36 billion in annual sales. More than 11 percent of the gross state product stems from the agriculture industry. It is generally accepted that farmland generates more in property taxes than it costs in terms of public services. Farmland can also contribute to the economy by producing tourism and recreation dollars. The commission is making two recommendations that are intended to improve existing farmland protections efforts in Virginia: increasing funding for farm and forest land protection through the Virginia Land Conservation Foundation,<sup>6</sup> and improving state government review of actions that affect farmlands. Because there are other measures that Virginia should consider establishing and because the agricultural community should be involved in identifying new tools that can both preserve rural uses of land and improve the economic condition of farmers, the commission is also recommending that a comprehensive legislative study of farmland protection be undertaken. (Appendix N.)

In discussing possible reasons for accelerating rates of farm and forestland conversion in the Commonwealth, the parks and land conservation subcommittee felt it was important to consider whether state agency actions such as transportation projects might have the unintended consequence of leading to farmland conversion. While it is difficult to determine the extent to which changes in land use may be the direct or indirect result of state government actions, the subcommittee did discover that the existing statutory scheme designed to prevent destruction of farmland was likely not as effective as it could be. The existing Important Farmlands law requires state agencies to evaluate the impacts of their actions on particular kinds of "important" farm and forest lands. The commission's recommendation replaces the definition of "important farmlands" with a set of characteristics that are exhibited by farm and forest lands that are worthy of protection, and clarifies that the requirement of evaluating impacts on farm and forest lands applies to highway and road construction projects. The current law also requires certain state agencies to have farmland protection plans. The bill strengthens this requirement by calling for annual updates to the plans, review by the Secretaries of Natural Resources and Commerce and Trade, and that an annual report be submitted to the standing committees of jurisdiction in the General Assembly. (Appendix O.)

## **F. WATER QUALITY IMPROVEMENT FUND**

The Water Quality Improvement Act was originally proposed by the commission, and is viewed by many members of the commission as one of its most significant achievements. A majority of the commission members expressed their

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<sup>6</sup> See section A above. Under existing law, one-quarter of the Foundation's moneys must be spent on farm and forest land protection.

disapproval of using money in the Water Quality Improvement Fund (WQIF) in a way that violates the Act, and recommended that the items in the Governor's proposed budget that conflict with the Act be funded with general fund monies rather than WQIF moneys.

## **G. CONTINUATION OF THE STUDY**

The commission recommends that the study be continued for another year. (Appendix P.) This recommendation originated with the solid waste subcommittee, which felt that an additional year would be required for the subcommittee to continue to monitor congressional activity on interstate waste legislation and the Department of Environmental Quality's progress in completing its solid waste management study. The vision and plan subcommittee had recommended that a new study committee be established to study smart growth, but the full commission instead agreed to include language in its continuing resolution to require the commission to make smart growth recommendations to the 2001 General Assembly.

# APPENDICES

## 1999 SESSION

ENROLLED

## HOUSE JOINT RESOLUTION NO. 719

*Continuing the Joint Subcommittee Studying the Future of Virginia's Environment.*

Agreed to by the House of Delegates, February 25, 1999

Agreed to by the Senate, February 23, 1999

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 1998 Session of the General Assembly passed House Joint Resolution No. 136 continuing the Joint Subcommittee Studying the Future of Virginia's Environment and passed Senate Joint Resolution No. 177 calling on the study committee to also examine numerous issues related to growth and development; and

WHEREAS, the study committee has formed subcommittees on parks and open spaces, solid waste, the Water Quality Improvement Act and on drafting a vision and has held numerous meetings in locations throughout the Commonwealth; and

WHEREAS, the full study committee has also met throughout the year and has heard from experts on a myriad of environmental protection, resources management, and growth and development issues and has met jointly with another study committee examining the needs of localities to meet the infrastructure need associated with growth; and

WHEREAS, the study committee developed and supported the concepts that became the Virginia Water Quality Improvement Act of 1997, and has developed numerous policy and legislative recommendations to improve the Commonwealth's park system, to provide additional tools and incentives to promote voluntary land conservation and conservation easements, to provide localities with additional tools to aid in their efforts at land preservation and agricultural land protection and has made significant legislative and funding recommendations to protect open spaces well into the future, and has made numerous recommendations to more strictly regulate solid waste in Virginia and to cleanup and close old and abandoned landfills as interim steps toward fulfilling its charge; and

WHEREAS, due to time constraints and the volume of issues and options under consideration and the additional issues assigned to it by the 1998 Session of the General Assembly, the joint subcommittee has been unable to complete its tasks to the degree it would like and unanimously 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 pursuant to HJR No. 221 (1996) and HJR No. 136 (1998). Any vacancies shall be filled as provided in HJR No. 221 (1996) and HJR No. 136 (1998), except that appointments of members of the House of Delegates to fill vacancies shall also be in accordance with the principles of Rule 16 of the Rules of the House of Delegates.

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 also include in its deliberations the identification of stable funding sources for the state park and open space system and the issues assigned to it by SJR No. 177 (1998).

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 2000 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.





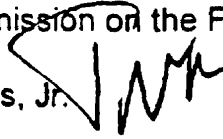
COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

THOMAS W. MOSS, JR.  
SPEAKER  
SPEAKER'S ROOM  
STATE CAPITOL  
RICHMOND, VIRGINIA 23219  
EIGHTY-EIGHTH DISTRICT

COMMITTEE ASSIGNMENTS  
RULES CHAIRMAN

**MEMORANDUM**

TO: Members, Commission on the Future of Virginia's Environment

FROM: Thomas W. Moss, Jr. 

DATE: May 12, 1999

RE: **Agenda for 1999 and Subcommittee Assignments**

The purpose of this memorandum is to outline how I propose that the Commission on the Future of Virginia's Environment proceed this year. The subcommittee system has worked very well, and I intend to use it again. Rather than calling the Commission together for an initial meeting to assign subcommittee responsibilities, I am outlining those responsibilities below. We have one new member of the Commission this year. Tim Lindstrom has relocated to Michigan. He has been replaced by Guy Ross who is a partner in Waterford Farm located in Middleburg, VA.

Three of the existing subcommittees will be continued and the "vision" subcommittee will be expanded to address the "plan" portion of the "vision and plan" called for in the resolution creating this Commission. This expanded subcommittee will also be responsible for the smart growth issues assigned to us by SJR 177 (1998). Each of the subcommittees should be prepared to report back to the full Commission at a meeting of the full Commission to be held at Kiptopeke State Park in September.

Over the last three years, we have received important testimony on a variety of issues relevant to our charge, and we have made a number of very important recommendations regarding solid waste, parks, open space and land conservation and water quality. This background, coupled with the expertise of the members of the Commission, positions us to focus our work this year on the vision and plan for the future of Virginia's environment and to consider specific issues remaining in other areas.

The following division of work among the subcommittees should allow us to accomplish this:

→ ***Parks and Land Conservation***

This subcommittee should continue identifying needed actions and funding sources for the protection of the Commonwealth's open spaces and historic resources. Specific attention should be given to agricultural land preservation. Protecting all of these related and vital resources is a key element of any strategy to assure that as the Commonwealth grows we preserve the vital functions these areas perform and continue to receive the benefits they provide.

The 1999 Session of the General Assembly passed SJR 503, sponsored by Senator Marye, calling on this Commission and the Keating subcommittee (HJR 543) to study ways to encourage land preservation through the use of land use taxation and agricultural and forestal districts. I am asking this subcommittee to take the lead on land use taxation issues and to coordinate its efforts with the Keating subcommittee. I have directed staff to prepare presentations for this subcommittee and the Keating subcommittee on the issues presented by Senator Marye's resolution. In addition, because the 1999 Session also passed HJR 578 creating a major study of Virginia's tax structure, it would be proper for any recommendations for changes in tax policy in this area to be referred to that commission for review in light of other tax policy and revenue issues being considered.

**1999 Subcommittee Members: Deeds, Co-Chair, Hanger, Co-Chair, Marye, Daniel, Cable, Pluta, Ross**

→ ***Solid Waste***

Two solid waste bills (HB 2486 and HB 1466) from the 1999 Session have been referred to this Commission for review. The issues raised by HB 1466 (Delegate McEachin's bill to close the "HB 1205 landfills") created significant discussion during the Session. Included in the discussion was the integrity and usage of these older "HB 1205" landfills, how best to divert solid waste from inadequately lined landfills to modern landfills and the impact these landfills may be having on our lands and waters. These issues should be thoroughly reviewed by this subcommittee.

In addition, I continue to be concerned about whether increased regulation alone can address the issue of out-of-state waste. As you know, the Governor vetoed the bills recommended by this Commission

that would have imposed fees on the amount of waste disposed in a landfill on any day and would have dedicated those fees to cleaning up leaking landfills. I ask that this subcommittee look again to see whether we have done all that we can to stem the flow of out-of-state waste into Virginia and to address other related concerns about solid waste management. Specifically, I am asking this subcommittee, at a minimum, to 1) monitor developments at the federal level and actively support legislation that would give Virginia greater authority to regulate out-of-state waste in accordance with HJR 598; 2) consider whether we should take steps to reverse the approval process for permitting new or enlarged solid waste facilities by first requiring action by DEQ to authorize siting of such facilities after appropriate public comment; 3) review whether imposing increased costs can make Virginia less attractive to out-of-state waste by making other states' facilities more economically competitive with our exceptionally low waste disposal costs without harming Virginia consumers; and 4) recommend how additional funds may be raised to alleviate the fiscal stress of localities faced with the high cost of building, improving or closing publicly owned solid waste management facilities.

**1999 Subcommittee: Bolling, Co-Chair, Deeds, Co-Chair, Marye, Hanger, Norment, Murphy, Behm, and Teig**

**→ *Water Quality Improvement Act***

This subcommittee was created to address 1998 Session carry-over legislation and therefore may not need to meet. However, because of the importance of the WQIA, I encourage members of this subcommittee to monitor its implementation and to meet if necessary to resolve new issues and issues that may not have been adequately addressed this past session.

**1999 Subcommittee: Murphy, Chair, Plum, Bolling, Daniel, Parker**

**→ *Vision and Plan***

This subcommittee just got underway at the end of our efforts last year. It should continue to review and refine the draft vision prepared by staff (working draft attached). In addition, I am expanding the subcommittee's purview to include the issue of smart growth and the responsibility of developing a plan for future action.

I believe that there are three ways to approach a plan for the future protection, enhancement and utilization of the Commonwealth's natural resources. One is to recommend specific actions that have long-term

effects, such as our efforts in creating incentives for land conservation and mechanisms for water quality improvement activities. A second is to set in place a mechanism designed to assure that the Commonwealth's natural resources are protected. Such a mechanism would need to look forward so that policy makers can make informed, coordinated and proactive decisions. The third would be a combination of the first two.

The proposed Virginia Natural Resources Policy Act (VNRPA) (HB 2273) (attached), presented to the Commission just prior to session and introduced by Delegate Murphy, should be the starting point for this subcommittee. VNRPA can be viewed as a framework for addressing the long term "plan" as well as addressing some of the smart growth issues assigned to us.

I am also assigning "smart growth" to this subcommittee because the topic implicates issues closely related to long-term planning for the future of our Commonwealth. Smart growth is a complex issue involving efforts to revitalize cities, protect open spaces and important natural resources, the assessment of how state policies and funding formulas impact the environment, effective utilization of resources and infrastructure, and effective local powers and authorities. A number of these issues can be addressed by this subcommittee and some are being addressed by others. For example, revitalizing our cities is the subject of the Commission on the Condition and Future of Virginia's Cities and residential development patterns is the subject of the Keating subcommittee. I would therefore encourage this subcommittee to coordinate with these other studies to avoid overlapping efforts.

I have sent the attached letter to Delegate Keating describing how I think the efforts of her subcommittee and this Commission should be coordinated. The Keating subcommittee has initiated the idea of going to Maryland to learn more about that state's smart growth initiative. Since smart growth has been specifically assigned to this Commission, we should take the lead role in any such visit.

I have designated the following members of this subcommittee to serve on a joint working group on this issue: Delegate Murphy, Senator Hanger, Ms. Carol Parker and Mr. Guy Ross. Delegate Murphy is on the Commission and on the Keating subcommittee, and I believe he would be an appropriate chair for the joint group. I would hope that members of the Keating subcommittee would focus on local powers, responsibilities, tools and actions whereas the members of the Commission would focus on the broader topic of the appropriate state role and responsibility in addressing issues related to growth and sprawl.

I have asked the staff to put together some background information on growth initiatives in other states that is attached to this memorandum for your information.

**1999 Subcommittee: Plum, Chair, Murphy, Hanger, Norment, Parker, Daniel, Ross**

In conclusion, I would like to commend the Commission for what it has accomplished over the past three years. A few of the many important achievements include: (i) meeting with citizens throughout the Commonwealth and documenting their concerns, desires and visions for the future of Virginia's environment; (ii) taking steps to address critical needs such as creating mechanisms to improve water quality throughout the state through the Water Quality Improvement Act and funding for parks and natural areas; (iii) taking a leadership role in providing tax credit and other incentives for private and local government activities and programs aimed at preserving open spaces; and (iv) important steps in dealing with solid waste issues. These are just a few of our many accomplishments, and I look forward to a very productive year.

CGG/jb

**Attachments:**

- 1) Keating letter
- 2) Vision working draft
- 3) HB 2273
- 4) Background information on growth initiatives

**1999 VLCF Grant Application Summaries**

**(\$'s Indicate Amount of Grant Funds Requested)**

**1. Hickory Hollow Nature Trail \$179,012**

Northern Neck Audubon Society seeks to acquire 225 acre site from Lancaster County threatened by Industrial development. They want to preserve the lands natural areas and to establish a permanent conservation easement.

**2. The Talley Farm \$100,000**

Request is for a grant to help the Central Battlefield Trust pay for the acquisition of a 25 acre land tract located on the Chancellorsville battlefield near Fredericksburg.

**3. Rippon Landing \$437,265**

A proposal to acquire Prince William County's oldest known residence. The site is located on Neabsco Creek within the Potomac River viewshed. Under this proposal, the County would buy the 40 acre site with historic buildings and restore the plantation.

**4. Ring Neck Conservation Area \$502,500**

Under this proposal, the value of an existing conservation easement on the historic Holly Hill Farm in King and Queen County would be used as a match to acquire 304 acres of land that is partially contiguous with Holly Hill Farm and the Mattaponi River.

**5. Fuller Heights Park Acquisition \$400,000**

To acquire a 42 acre parcel in a residential neighborhood for the development of a community sports field park. This project will enable the Prince William County Park Authority to satisfy a need for active recreational lands in the County's Dumfries Magisterial District.

**6. Powhatan Creek Acquisition Program \$250,000**

A proposal by James City County to acquire a prime parcel of land consisting of 48 acres along the Powhatan Creek corridor to protect the sensitive character of this natural area and to insure public access to water for recreational purposes.

**7. Indian River Park Acquisition \$297,132**

The City of Chesapeake is seeking a grant to acquire 108 acres of existing park property located in Chesapeake but owned by the City of Norfolk. Recent removal of park restrictions on the property has prompted Norfolk to seek sale of the property for non-park use. The park is currently operated by Chesapeake's Parks and Recreation Department.

**8. Palmyra Lock and Mill Site \$6,200**

A proposal by the Fluvanna County Historical Society to acquire 4.5 acres of land adjacent to the historic Lock & Mill Site on the Rivanna River. The property will provide crucial access to the existing site.

**9. Powers Tract Northwest River Watershed \$296,000**

A proposal from the Nature Conservancy to acquire 187 acres of wetlands, agricultural field, and mature forest. Plans are to restore the wetlands, to keep the forest intact, and to remove the threat of Tullock ditching. The proposal will add to the protection of the Northwest River Preserve and is considered a critical component of this conservation site by the Natural Heritage Division.

**10. Fort Christianna Preservation Project \$50,975**

Proposal by Brunswick County to acquire a 64 acre tract currently recognized by the National Register of Historic Places and the Virginia Landmarks Register. Proposal is to protect the historic and archeological integrity of the site and to prevent clear-cut operation that would obliterate the fort sites.

**11. The Big Survey \$1,400,000**

Proposal from the Western Virginia Land Trust to purchase 9,270 acres of undeveloped lands in Wythe County for the protection of the watershed, forestal lands, wildlife and recreational use.

**12. Julie Metz Mitigation Bank & Neabsco Subdivision \$70,000**

A proposal from Prince William County to Purchase a 227 acre Wetlands Bank and adjoining 6.6 acre land tract. The larger tract is already under conservation easement and owned by the Preservation L. C.

**13. McAfee Knob/ Carter Land Acquisition \$43,800**

This is an Appalachian Trail Conference project to acquire 72 acres adjacent to the AT. This property at McAfee's Knob is considered to be one of the most popular views of Catawba and the Roanoke Valley.

**14. Purchase of the Embrey Farm \$803,650**

Involves the acquisition by the Kenmore Association Inc. of 30 acre farm adjacent to George Washington 's Ferry Farm. Would protect Ferry Farm from undesirable development, expand tourism opportunities, and give riverfront protection on the Rappahannock.

**15. Accotink Creek Greenway \$40,020**

Proposal by the Northern Virginia Conservation Trust to acquire 17 conservation easements along Accotink Creek.

**16. Difficult Run Stream Valley Acquisition \$500,000**

Proposal by the Fairfax County Park Authority to acquire 70 acres (2 parcels) adjacent to Difficult Run for natural areas and parks and recreational use.

**17. Fairfax County Cross-Country Trail Easement \$30,000**

This proposal by the Fairfax County Park Authority would buy needed easements to fill gaps in 35 mile long trail that would connect three greenways: The Pohick Stream Valley, the Accotink Stream Valley, and the Difficult Stream Valley.

**18. Welbourne Farm Easement Acquisition \$308,250**

A proposal from the Va. Outdoors Foundation of Northern Va. to purchase a conservation easement on a working farm that may otherwise be developed as a subdivision. The proposal seeks to preserve farmland, protect water quality, and protect the viewshed from the historic Welbourne manor house and from Goose Creek.

**19. Talbot Farm Conservation Easement Acquisition \$77,100**

The Land Trust of Virginia wishes to purchase 25 acre easement on Ball's Run Creek involving 1700 linear feet of creek frontage. The easement would enhance and protect water quality in the Catocin watershed and facilitate efforts to restore the eroded land and creek.

**20. James River Kanawha Canal Park Expansion \$13,255**

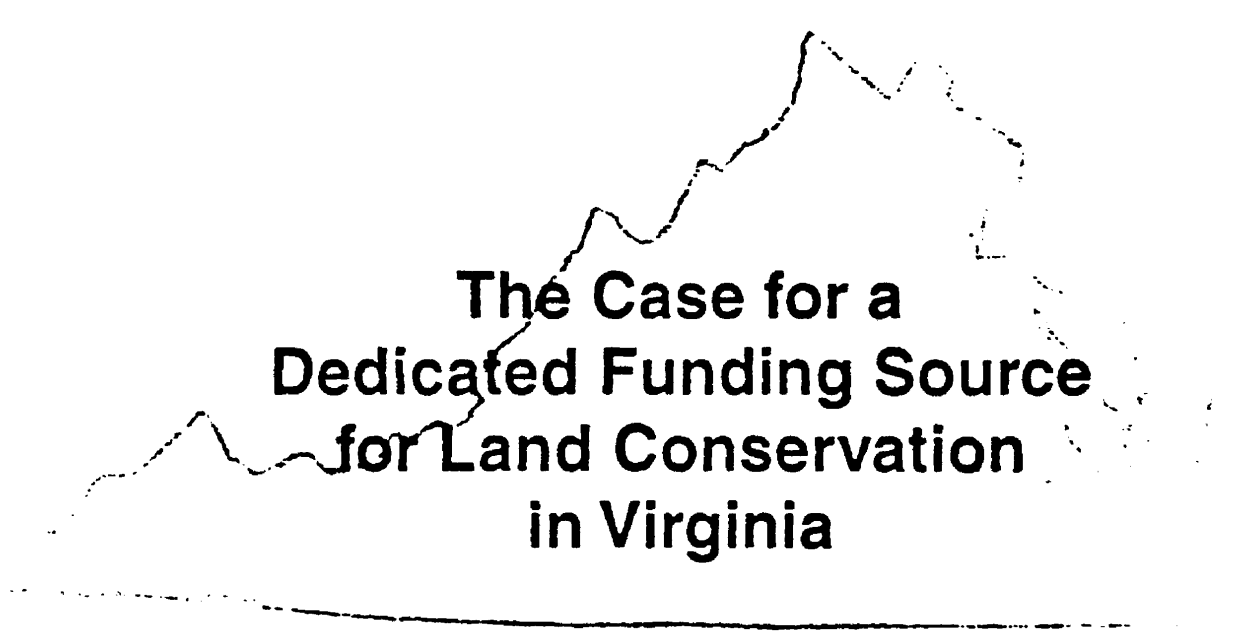
A small proposal from the Town of Buchanan to acquire 3 parcels of land in the downtown area for park expansion and access to the James River.

Virginia Land Conservation Fund Grant Applications 1999

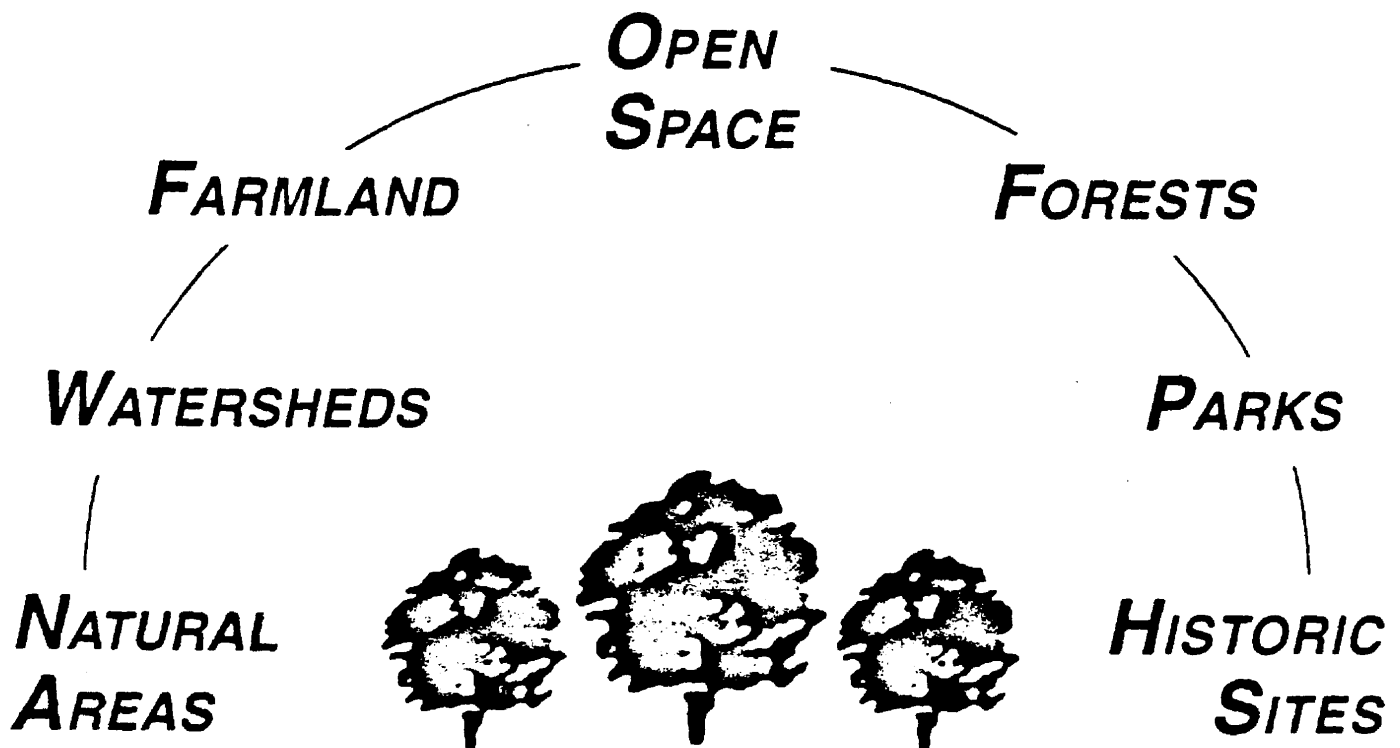
Project Name	Applicant	Address	Contact	Telephone #	Type of Agency	Primary Category	Additional Categories	Grant Request \$'s
1. Hickory Hollow Nature Trail	Northern Neck Audubon Society	P. O. Box 991 Kilmarnock Va. 22482	Tom Teeples	(804) 435-0336	Nonprofit Cons. Org.	#2 Natural Areas	#'s 1,3,4,6	\$ 129,012.00
2. The Talley Farm	Central Battlefields Trust	604 - A Wilham St. Suite 1, Fredericksburg, Va. 22401	F. Baldwin Harrington, Jr.	(540) 374-0900	Nonprofit Cons. Org.	Cultural & Historic Res.	old application none listed	100,000.00
3. Rippon Landing	Prince William County	1 County Complex Court, Prince William, VA. 22192	Robert Wilson	(703) 792-6829	Local Government	Cultural & Historic Res.	Rec. Parks, Open Space	437,265.00
4. Ring's Neck Conservation Area	King & Queen County	Post Office Box 116, Aylett, VA. 23009	Lynne M. Iverson	(804) 769-3604	Local Government	Cultural & Historic Res.	Rec. Parks, Op. Space & Agric.	502,500.00
5. Fuller Heights Park Acquisition	Prince William Co. Park Authority	14420 Bristow Road Manassas, VA. 20112	Patrick J. Mulhern	(703) 792-4251	Local Government	Rec. Parks & Open Space	N/A	400,000.00
6. Powhatan Creek Acq. Program	James City County	1549 C Old Town Road Williamsburg, VA. 23188	Carla Brittle	(757) 259-3200	Local Government	Rec. Parks & Open Space	Fish & Wildlife Habitat	250,000.00
7. Indian River Park Acquisition	City of Chesapeake	P. O. Box 15225 Chesapeake, VA. 23328	Claire Askew	(757) 382-6636	Local Government	Rec. Parks & Open Space	N/A	297,132.00
8. Paimyra Lock & Mill Site (acq.)	Fluvanna Historical Society	P. O. Box 8, Paimyra, VA. 22963	W. Michael Gillespie	(804) 589-1111	Nonprofit Historical Org.	Cultural & Historic Res.	old application none listed	6,200.00
9. Powers Tract, NW River Watch	The Nature Conservancy VA. Chp.	490 Westfield Road Charlottesville, VA. 22901	Linda Lundquist Crowe	(804) 295-6106	Nonprofit Cons. Org.	#2 Natural Areas	#'s 1,4,6 categories	296,000.00
10. Fort Christanna Preserv. Proj.	Brunswick County	Post Office Box 399 Lawrenceville, VA. 23068-0399	R. Bryan David	(804) 848-3107	Local Government	Cultural & Historic Res.	#'s 1, 2,4,6 categories	50,975.00
11. The Big Survey (acq.)	Western Virginia Land Trust	Post Office Box 18102 Roanoke, VA. 24014-0797	Michael G Van Ness	(540) 985-0000	Nonprofit Cons. Org.	Forestal Lands	#'s 1,2,3,4,5	1,400,000.00
12. Metz Millage Blk. & Neabasco Sub.	Prince William Co. Public Works	4379 Ridgewood Center Drive Prince William VA. 22192	Oscar Guzman	(703) 792-7070	Local Government	Listed two #'s 1 & 4	old application none listed	70,000.00
13. McAfee Knob (acq.) Carter Land	Appalachian Trail Conference	Post Office Box 807, Harpers Ferry, WV. 25425-0807	Amy Owen	(304) 535-6331	501 (J)	Rec. Parks & Open Space	old application none listed	43,800.00
14. Purchase of the Embrey Farm	Kenmore Association, Inc.	1201 Washington Ave., Fredericksburg, VA. 22401	Vernon Edenfield	(540) 373-3381 X24	501 (J)	Cultural & Historic Res.	N/A	803,650.00
15. Accotink Creek Greenway	Northern VA. Conservation Trust	4022 Hammer Road Annandale, VA. 22003	Paul Gilbert	(703) 354-5093	501 (J)	Rec. Parks & Open Space	Natural Areas & Fish & Wildlife	40,020.00
16. Difficult Run Stream Valley acq.	Fairfax County Park Authority	12055 Government Center Parkway, Fairfax, VA. 22035	Carole Willett Barton	(703) 324-8665	Local Government	old application listed #1	in order 4, 6, 1	500,000.00
17. Fairfax Co. Cross-Country Trail Ease.	Fairfax County Park Authority	12055 Government Center Parkway, Fairfax, VA. 22035	Carole Willett Barton	(703) 324-8665	Local Government	old application listed #1	in order 4, 1	30,000.00
18. Welbourne Farm Easement Acq.	Va. Outdoors Foundation	203 Governor St. Suite 317 Richmond, VA. 23219	Leslie Grayson	(703) 327-6118	State Government	Agricultural	#'s 1,3,4 categories	308,250.00
19. Talbot Farm Cons. Easement	Land Trust of Virginia	Post Office Box 354 Leesburg, VA. 20178	Allison Gillette	(540) 687-8441	Nonprofit Cons. Org.	Open Space	None Listed	77,100.00
20. Ja. Riv. Kanawha Canal Ph. Expans.	Town of Buchanan	Post Office Box 205 Buchanan, VA. 24066	Harry Gleason	(540) 254-1212	Local Government	Rec. Parks & Open Space	None Listed	13,255.00
								\$ 5,805,159.00



# *Saving Virginia's Special Lands*



The Case for a  
Dedicated Funding Source  
for Land Conservation  
in Virginia



# The Challenge

*Virginia is losing its open space, natural areas, forest and farmland, and historic sites at an alarming rate.*

- **Population growth:** Virginia, the 12th-most populous state in the U.S., continues to grow steadily. Population has increased by 50% since 1970 and is projected to grow by another 1.5 million people by the year 2025.
- **Farmland loss:** Virginia lost nearly 450,000 acres of prime farmland from 1987 to 1997—about 5% of the state's total farmland. Virginia's Northern Piedmont was ranked the second most threatened farmland region in the nation in a 1997 study by the American Farmland Trust.
- **Forest loss:** Ending nearly a century of steady reforestation, Virginia's total forest lands began declining in 1977, losing an average of 26,000 acres annually between 1977 and 1992 (the most recent survey year). Most of the losses in the coastal plain and the northern Piedmont.
- **Threatened natural areas:** Virginia ranks among the top 10 states in rare plants and animals. Of the 692 environmentally sensitive natural areas identified, 61% are unprotected and in danger of being lost forever. 42% of Virginia's wetlands have been lost since colonial times, and these precious resources continue to decline, with the Virginia portion of the Chesapeake Bay watershed losing 2,500 acres annually in the 1980s (the most recent available data).
- **Lack of urban greenspace:** The loss of open space in urban and suburban areas is a growing quality of life concern, as well as a conservation issue. Parks and playgrounds close to home are essential for the physical and social well-being of our youth. Trails and greenways provide everyone with daily relief from urban congestion.

*Preserving these lands is critical to Virginia's economy . . .*

- **Agriculture** directly employs 235,000 people in Virginia. Considering the effects of agriculture-related income in other sectors, in 1997 agriculture accounted for one of every ten jobs in Virginia and \$19.5 billion in economic activity, or 11.2% of the state's economy.
- The **forest products** industry adds \$9.8 billion annually to Virginia's economy and provides 228,000 jobs.
- **Tourism**—dependent on a scenic landscape, outdoor recreation, and protected historic sites—is the state's third-largest employer, with 193,000 jobs. Travelers spent \$11.7 billion in 1998, and one-third of these visitors (including nearly 75% of first-timers) visit historic sites. These tourists stay longer and spend more than twice as much as the average visitor.
  - **Outdoor recreation** such as hunting, fishing, hiking, camping, and wildlife watching contributes \$2 billion in direct spending annually to Virginia's economy.
  - The **seafood industry** depends upon abundant wetlands and clean streams and rivers that provide crucial nursery grounds for famed Chesapeake Bay fisheries such as blue crab, oyster, and rockfish. Virginia's watermen bring in the third-largest catch in the nation, contributing \$465 million annually to the state's economy.



*. . . and to sound fiscal health at the local and county level.*

- Farmland and open space generate a **tax revenue surplus** to localities, while residential development actually costs more for required services and infrastructure than it generates in tax revenues, according to numerous studies.
- Towns, cities and counties that fail to protect their **local watersheds** face spiraling costs for treatment and water supply from far-off sources.

*Losing these lands compromises the character of our landscape and our way of life.*

- From the first settlers at Jamestown, to the Revolutionary War, to the legacy of Jefferson and the Founding Fathers, to the hallowed grounds of the Civil War, **America happened here.** Virginia's countryside is rich in historic, scenic, environmental and recreational value.
- The loss of open space diminishes our **quality of life**, leading to increased congestion, loss of wildlife habitat, and loss of natural scenic beauty.
- Through unplanned, rapid development of open space, we risk losing **our sense of place and community**—the essence of why many people choose to live and work in Virginia.

# The Solution



**The Commonwealth should establish a dedicated, long-term funding source for land conservation to generate \$40 million annually.**

- The Conservation Recreation Foundation was established by the General Assembly in 1992 but remained unfunded. In 1999, the General Assembly reconstituted the foundation as the Virginia Land Conservation Foundation, funded with a \$1.75 million appropriation. Under the direction of the Secretary of Natural Resources, the Foundation has authority to expend funds for farmland, forests, historic sites, natural areas, parks and open space.
- To meet the urgent and growing need for land conservation in Virginia, the Conservation Land Coalition recommends that the Foundation be funded with at least \$40 million annually.



**Public opinion in Virginia and nationwide is strongly on the side of land conservation . . .**

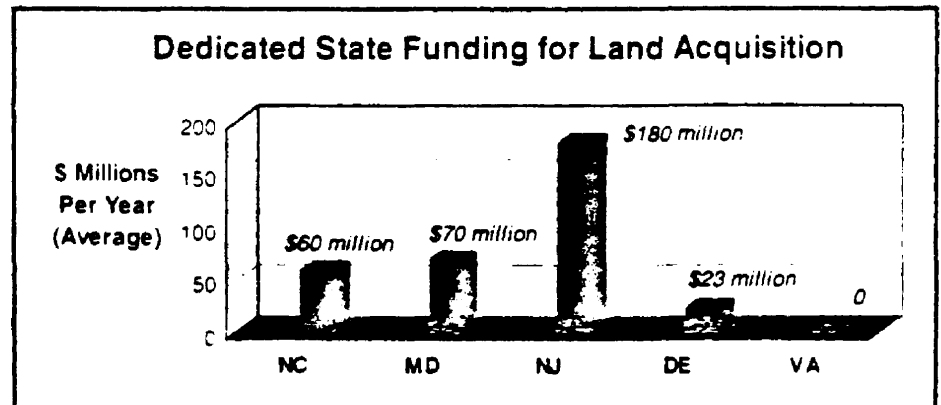
- 88% of Virginians agree that development and economic growth should be planned so it does not endanger the environment, according to a 1995 public opinion poll sponsored by the Virginia Environmental Endowment.
- The last significant initiative for state land acquisition, the 1992 Parks and Recreational Facilities bond, passed with 67% of the vote.
- The Virginia Beach Agricultural Reserve Program, Virginia's first Purchase of Development Rights program for farmland preservation, was enacted in 1995 by a 10-1 City Council vote.
- Voters in the November 1998 elections approved 124 out of 148 referendums for open space acquisition on state and county ballots across the United States—an 84% approval rate!



**. . . and neighboring states have already**

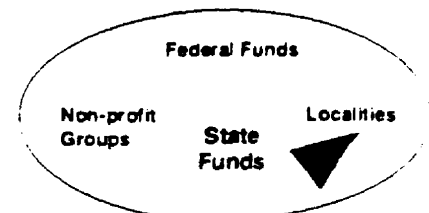
**established dedicated funding sources.**

- Methods of funding vary from state to state. Dedication of real estate taxes or other existing tax revenue sources is a common method.



**A dedicated funding source would leverage significant contributions by the federal government, localities, and nonprofit organizations.**

- The U.S. Congress is considering a substantial increase in the Land and Water Conservation Fund. Under this and other federal programs, Virginia could receive at least \$30 million annually for land acquisition and other recreation-based expenditures, a significant part of which must be matched by state funds.
- Virginia now has no stable and adequate source to match these federal funds. With a dedicated funding source, the new Virginia Land Conservation Foundation could supply the match.
- Private nonprofit organizations already spend several million dollars annually to protect land in Virginia, and are key partners with the Commonwealth in this effort. Support from the Commonwealth will enhance and leverage these private efforts.
- Cities and counties across Virginia are committed to providing parks and green space for their residents, but lack funds. Several are poised to follow Virginia Beach's lead and enact farmland preservation programs. Support from the Commonwealth will enhance these local initiatives.



# Existing Needs



**Organizations and agencies have identified land acquisition needs far in excess of the recommended \$40 million annual funding figure.**

- **Forests:** The acquisition of state forests spanning 92,000 acres in 26 counties is recommended by the Virginia Dept. of Forestry. Acquisition costs are \$87.2 million. *(All costs are the best available current estimates).*
- **Farmland:** The average value of farmland in Virginia is \$1,925 per acre. Purchasing development rights on just 2% of the state's farmland (about 170,000 acres) would cost about \$100 million (assuming a price of 30% of the land's fair market value). The city of Virginia Beach alone now spends \$3.5 million per year for its model Agricultural Reserve Program.
- **Natural Areas:** 425 globally significant conservation sites in Virginia are unprotected, according to the state Natural Heritage Program. The cost of purchasing 30 specific top sites is nearly \$20 million.
- **State Parks:** Simply to purchase the dozens of inholdings at existing state parks will cost about \$16 million. No money is set aside to address new state park acquisition needs for a growing population.
- **Historic Sites:** Virginia's threatened historic sites include battlefields, the lands surrounding Jamestown, and our 12 historic districts, home to such American landmarks as Monticello, Mount Vernon, and Ferry Farm. Protecting Revolutionary and Civil War battlefields alone will likely cost more than one billion dollars.
- **Local Parks:** In just one region of the state, fast-growing Northern Virginia, the Fairfax County Park Authority is seeking to acquire an additional 6,800 acres of park land to meet the active recreation needs of its citizens, at an estimated cost of \$68 million. Many localities are likewise looking to expand their systems of trails and greenways to meet the needs of their citizens.



## CONSERVATION LAND COALITION

### Steering Committee

*The Nature Conservancy  
Chesapeake Bay Foundation  
Piedmont Environmental Council  
Preservation Alliance of Virginia  
Trust for Public Land  
Valley Conservation Council*

### Supporters

*American Farmland Trust  
Americans for Our Heritage & Recreation  
Appalachian Trail Conference  
Blue Ridge Foothills Conservancy  
The Conservation Fund  
Environmental Law Institute*

*The 500-Year Forest Foundation  
James River Association  
Land Trust Alliance  
Land Trust of Virginia  
Middle Peninsula Land Trust  
The Potomac Conservancy  
Richmond Audubon Society  
Scenic Virginia  
Sierra Club  
Southern Environmental Law Center  
Virginia Conservation Network  
Virginia Recreation & Parks Society  
Virginia Society of Ornithology  
Western Virginia Land Trust  
Williamsburg Land Conservancy*



## CONSERVATION LAND COALITION

*For more information,  
please contact: Michael  
Lipford, Conservation Land  
Coalition Steering Com-  
tee, at 804-295-6106 or  
email at [milipford@inc.org](mailto:milipford@inc.org)*

December 17, 1999

Joint Subcommittee on the Future of Virginia's Environment

Mr. Speaker:

In the course of the Parks and Open Space Subcommittee's deliberations over the past three years, we have had the privilege and the very real pleasure of convening our meetings in State Parks. All told, we've visited at least 12 of the 36 parks.

And without exception, we have been so very impressed by the competence, dedication and commitment of the park staffs. Their creativeness, ingenuity and unbelievably hard work are truly awesome!

The citizens of the Commonwealth are fortunate indeed to be served by such outstanding stewards of Virginia's natural and cultural resources.

I believe that a public commendation of our park managers and their staff is long overdue; and with your permission, Mr. Speaker, I would like to request that this Commission do so at this time.

For the record, I would like to enter the names of the park managers

Bear Creek Lake State Park	J. Scott Shanklin
Belle Isle	Timothy G. Shrader, III
Caledon Natural Area	John R. Zowatsky
Chippokes Plantation	Dannette McAdoo
Claytor Lake	Richard C. Johnson
Douthat	Forrest F. Gladden, III
Fairy Stone	John Grooms
False Cape	Kyle Barbour
First Landing/Seashore	Fred Hazelwood, IV
Grayson Highlands	Harvey N. Thompson
Holliday Lake	Ann E. Zahn
Hungry Mother	James J. Kelly

James River	Mark A. Schupp
Kiptopeke	David Summers
Lake Anna	Douglas H. Graham
Leesylvania	James A. Klakowicz
Mason Neck	Jeff W. Foster
Natural Tunnel	Craig A. Seaver
New River Trail	Mark E. Hufeisen
Occonechee	Anthony J. Widmer
Pocohontas	Edward L. Swope
Andy Guest/Shenandoah River	Roger L. Pence
Sky Meadows	Jess A. Lowry
Smith Mt. Lake	Brian A. Heft
Southwest Virginia Museum	Janet H. Blevins
Staunton River	Timothy M. Vest
Staunton River Battlefield	James E. Zanarini
Twin Lakes	Herbert N. Doswell
Westmorland	Scott A. Flickinger
Wilderness Road	Don L. Harris
York River	Thomas Cervenak

And finally, Mr. Speaker, a special word of commendation to Joe Elton, the State Parks Director. His leadership, courage, vision and dedication to the protection and preservation of Virginia's parks set the highest standard for us all.

COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

THOMAS W. MOSS, JR.  
MEMBER  
HOUSE OF DELEGATES  
DISTRICT 11  
RICHMOND, VIRGINIA 23219  
PHONE 378-1111

COMMITTEE ASSIGNMENTS  
RUSSELL CHAIRMAN

August 24, 1999

The Honorable Mark L. Earley  
The Attorney General of Virginia  
900 East Main Street  
Richmond, Virginia 23219

Dear General Earley:

I am very much concerned about the increasing rate of wetland destruction in Virginia resulting from the recent federal court decision limiting federal authority to regulate the ditching and draining of nontidal wetlands. Estimates published by the Virginia Institute of Marine Science indicate that almost 8,000 acres of Virginia's nontidal wetlands have been or are likely to be impacted by ditching.

My understanding is that several neighboring states are utilizing existing state laws to prevent these wetland losses. For example, North Carolina has determined that wetlands ditching and draining falls under its authority to manage water quality within the state. At the same time, however, press reports indicate that your office has concluded that Virginia law may not confer sufficient authority on the State Water Control Board to allow it to regulate such draining. These press reports do not indicate whether you have advised that such action by the Water Board would be indefensible or whether a defense would be difficult but not frivolous. I note that your office has been willing to defend vigorously the legality of the new state statutes regulating out-of-state waste even in the face of harsh attacks on your action as "frivolous," and I commend you for carrying out your responsibility as Attorney General, in the waste case, to defend lawful state action where a viable defense exists.

The purpose of this letter is two-fold. First, I request an official advisory opinion pursuant to § 2.1-118 of the Code of Virginia on the following questions:

- 1) Does the State Water Control Board have the authority under state law to define "state waters" or "surface water" to include "wetlands"?
- 2) Are the Board's regulations defining wetlands as state waters, 9 VAC 25-31-10 and 9 VAC 25-210-10, lawfully adopted pursuant to this authority?
- 3) Do nontidal wetlands come within definition of wetlands lawfully adopted by the Board?

- 4) Does ditching and draining of nontidal wetlands constitute an alteration of the physical, biological or chemical properties of state waters which is prohibited under §62.1-44.5 except in "compliance with a certificate issued by the Board"?
- 5) Does the State Water Control Board have the authority under Va. Code Ann. § 62.1-44.15 (5) to require a permit for ditching and draining nontidal wetlands as "an alteration" of the "physical, chemical, biological properties of state waters"?
- 6) Does the State Water Control Board have the authority under Va. Code Ann. § 62.1-44.15 (3a) and 9 VAC 25-380-30(B) to establish standards and policies and to "take all appropriate steps" to prevent ditching and dredging of nontidal wetlands?
- 7) Does the State Water Control Board have the authority under Va. Code Ann. § 62.1-44.15(8a) and 9 VAC 25-31-910 to issue a cease and desist order to parties currently engaged in ditching and draining of nontidal wetlands or to seek injunctive relief against such actions?

I realize that there is a 1991 Attorney General's opinion addressing the Board's authority under § 62.1-44.15:5, 1991 Op. Atty. Gen. Va. 307, but that opinion does not address the specific questions I have asked none of which concern the interpretation of § 62.1-44.15:5. The prior opinion was specifically directed to the scope of the State Water Control Board's regulatory authority under this specific provision of state law that was adopted to implement section 401 of the federal Clean Water Act. The federal court's opinion on the Tulloch loophole removes the questions I have posed from the scope of the prior opinion because the court held that there is no jurisdiction under section 404 of the federal Clean Water Act to regulate Tulloch ditching. This means that the Commonwealth has no basis for requiring a permit under the state's 401 program codified at § 62.1-44.15.5, but it does not resolve the questions I have raised about the state's authority to act **under other state statutes and regulations** to address this important environmental concern.

The 1991 opinion defining the scope of federally imposed requirements does not answer the questions I have raised concerning the Commonwealth's right to act in the absence of federal mandate or prohibition. In this respect, the Virginia Code explicitly acknowledges that the State Water Control Board may from time to time enact standards or policies that are "more restrictive than federal requirements." In such cases, the only requirement is that such standards be forwarded to the appropriate standing committees of the General Assembly along with a reason why the more restrictive provisions are needed. Va. Code Ann. § 62.1-44.15 (3a).

Even if your opinion is that the 1991 opinion is applicable to one or more of the questions I have asked, I request that you review *de novo* each of the questions posed above and issue a formal advisory opinion explaining the applicability of the



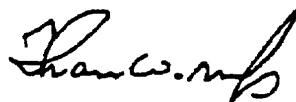
prior opinion to each question or stating why it should be overruled or distinguished. In this regard, I am asking you to do exactly what former Attorney General Gilmore did in 1995 when he revisited the question whether it is constitutional to use public school buses to transport private school students to sectarian and nonsectarian private schools. In an opinion to Delegate Robert F. McDonnell approving the use of public buses, 1995 Va. AG LEXIS 61 at n.13, General Gilmore acknowledged that three prior opinions of the Attorney General (in 1991, 1966-67 and 1962-63) had "reached opposite conclusions" but that did not preclude him from looking at the issue again and reaching a different result based on his view of changes in the law or a different analysis of prior case law.

I respectfully request that the official advisory opinion I have requested be published by September 17, 1999, the date of the next meeting of the Commission on the Future of Virginia's Environment. Because your office has already done the research on this issue and provided advice to the administration, this deadline should not present a problem. Moreover, there is no pending litigation that would prevent you from issuing an opinion in response to this request.

Second, I request that a representative from your office be present to testify before the Commission on the Future of Virginia's Environment at its meeting on September 17, which will be held at 10:00 a.m. at Kiptopeke State Park. I would like the Commission members to receive an oral explanation of the written opinion I've requested and to be able to interact with your office on this most important issue. Among other topics will be whether, in your Office's opinion, additional legislative authority is required and, if so, what authority is needed.

Thank you very much for your attention to this matter. I look forward to receiving the opinion and having the opportunity to discuss it at our September 17 meeting.

Very truly yours,



Thomas W. Moss, Jr.

CGG/jb

cc: Members, Commission on the Future of Virginia's Environment  
Nicole M. Rovner, Staff Attorney, Division of Legislative Services



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Richmond 23219

October 7, 1999

Mark L. Earley  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

The Honorable Thomas W. Moss, Jr.  
Speaker of the House of Delegates  
403 Boush Street, Suite 360  
Norfolk, Virginia 23510

My dear Speaker Moss:

You inquire regarding the authority of the State Water Control Board ("Board") to regulate nontidal wetlands. You express concern regarding nontidal wetland destruction in the Commonwealth resulting from a June 1998 decision of the United States Court of Appeals for the District of Columbia Circuit that limits federal authority to regulate the ditching and draining of nontidal wetlands. You relate that the Virginia Institute of Marine Science estimates that nearly 8,000 acres of nontidal wetlands may be impacted by ditching.

You note that a 1991 opinion of the Attorney General<sup>1</sup> addresses the regulatory authority granted the Board under § 62.1-44.15:5 of the *Code of Virginia*.<sup>2</sup> You state that § 62.1-44.15:5, a portion of the

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<sup>1</sup>1991 Op. Va. Att'y Gen. 307, 311, 312-13 (Board authority to regulate wetlands is limited to those federally permitted activities that require § 401 certification).

<sup>2</sup>Section 62.1-44.15:5 provides:

"A. After the effective date of regulations adopted by the Board pursuant to this section, issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

"B. The Board shall issue a Virginia Water Protection Permit for an activity requiring § 401 certification if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and will protect instream 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 is a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same catalog-

State Water Control Law,<sup>3</sup> was adopted to implement § 401 of the Clean Water Act of 1977.<sup>4</sup> You indicate that a recent federal court decision removes the basis for the Commonwealth to require a permit pursuant to § 62.1-44.15:5 for certain activities related to the ditching of nontidal wetlands.<sup>5</sup> You relate that the 1991 opinion of the Attorney General does not address the right of the Commonwealth to act absent a federal mandate or prohibition. You note that § 62.1-44.15(3a) explicitly acknowledges that the Board may enact standards of quality or policies "which are more restrictive than applicable federal requirements." Such standards must be forwarded to the appropriate standing committee of the General Assembly, "together with the reason why the more restrictive provisions are needed."<sup>6</sup>

The Congress of the United States has enacted laws, and federal agencies have promulgated regulations, protecting water quality in the United States.<sup>7</sup> The Secretary of the Army, acting through the

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ing unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date.

"C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

"D. No Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal.

"No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification."

<sup>3</sup>Tit. 62.1, ch. 4.2, §§ 62.1-44.2 to 62.1-44.34:28.

<sup>4</sup>33 U.S.C.A. § 1341 (West 1986).

<sup>5</sup>National Min. Ass'n v. U.S. Army Corps of Engineers, 145 F.3d 1399 (D.C. Cir. 1998) (holding that Corps of Engineers exceeded scope of its regulatory authority under Clean Water Act by regulating incidental "fallback," i.e., *de minimis* redeposit of dredged material, including excavated material, at its point of removal from water).

<sup>6</sup>Section 62.1-44.15(3a).

<sup>7</sup>33 U.S.C.A. ch. 26, §§ 1251 to 1387 (West 1986 & Supp. 1999).

Army Corps of Engineers, issues federal permits for the discharge of dredged or fill material into waters of the United States, including nontidal wetlands.<sup>8</sup> The Commonwealth does not issue permits for such discharge; however, in such instances, § 401 of the Clean Water Act requires that the applicant for the federal permit obtain from the state in which the discharge originates (1) a certification that the discharge will comply with applicable requirements; or (2) a waiver of such certification.<sup>9</sup>

The 1989 Session of the General Assembly created a separate mechanism for such certifications. Section 62.1-44.15:5(A) provides that, “[a]fter the effective date of regulations adopted by the Board pursuant to [§ 62.1-44.15:5], issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.” The applicable Board regulation became effective May 20, 1992.<sup>10</sup>

You first ask whether the Board has the authority under state law to define “state waters” or “surface water” to include “wetlands.” The 1991 opinion concludes that the “Board has the authority to define ‘surface water’ by regulation to include ‘wetlands.’”<sup>11</sup> The presumption in favor of an administrative agency’s regulatory interpretation of the statutes that agency implements remains applicable, and, therefore, I agree with the conclusion of the 1991 opinion.<sup>12</sup>

You next ask whether the Board’s regulations defining “wetlands” as “state waters”<sup>13</sup> were lawfully adopted pursuant to this authority. The regulations to which you refer are the Virginia Pollutant Discharge Elimination System Permit Regulation<sup>14</sup> and the Virginia Water Protection Permit Regulation.<sup>15</sup> It is my view that these regulations, which have been in effect for some time, appear to have been lawfully adopted.

You next ask whether nontidal wetlands are encompassed within the Board’s definition of “wetlands.” Both sets of regulations adopted by the Board<sup>16</sup> contain the same definition of “wetlands”:

“*Wetlands*” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.<sup>17</sup>

Although the term “nontidal wetlands” is not a precise term, it appears to fall within this definition.

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<sup>8</sup>33 U.S.C.A. § 1344(a), (d) (West 1986).

<sup>9</sup>33 U.S.C.A. § 1341(a)(1) (West 1986).

<sup>10</sup>See *Virginia Water Protection Permit Regulation*, 9 VAC 25-210-10 to 25-210-260 (Law. Coop. 1996).

<sup>11</sup>1991 Op. Va. Att’y Gen., *supra* note 1, at 312.

<sup>12</sup>See *Commonwealth v. Wellmore Coal*, 228 Va. 149, 154, 320 S.E.2d 509, 511 (1984) (construction of statute by official charged with its administration is entitled to great weight).

<sup>13</sup>See 9 VAC 25-31-10 (West Supp. 1999); 9 VAC 25-210-10.

<sup>14</sup>See 9 VAC 25-31-10 to 25-31-940 (West Supp. 1999) (eff. July 24, 1996).

<sup>15</sup>See *cite supra* note 10.

<sup>16</sup>See *supra* notes 10 & 14 and accompanying text.

<sup>17</sup>See *cite supra* note 13.

Your final questions focus on whether the Board has the authority, other than by § 62.1-44.15:5, to regulate wetlands.<sup>19</sup> The 1991 opinion concludes that the Board's authority over wetlands is limited to those activities requiring a § 401 certification<sup>19</sup>—a Virginia Water Protection Permit under § 62.1-44.15:5. In reaching this conclusion, the 1991 opinion relies on the refusal of the General Assembly to pass legislation that would have established a comprehensive regulatory program concerning nontidal wetlands. At the 1988 Session of the General Assembly, legislation was introduced which would have authorized the Director of the Department of Conservation and Historic Resources to promulgate regulations protecting nontidal wetlands and to grant permits for activities proposed in or anticipated to adversely affect nontidal wetlands.<sup>20</sup> The bill was carried over to the 1989 Session by the Senate Committee on Agriculture, Conservation and Natural Resources.<sup>21</sup> The Committee proposed substitute legislation in 1989 that would have created a Nontidal Wetlands Study Commission to evaluate existing programs and legislation related to nontidal wetlands.<sup>22</sup> The General Assembly did not pass the substitute bill. However, the Virginia Nontidal Wetlands Roundtable was created, and it reported to the Governor and General Assembly in 1990.<sup>23</sup> In the executive summary the report states, "Roundtable members concluded that while effective management of nontidal wetlands should be of immediate and continuing concern to the Commonwealth, creation of a new regulatory program for the resource may be premature at this time."<sup>24</sup> I, therefore, concur with the 1991 opinion which inferred from the legislative decisions declining to act that the General Assembly did not intend for the Board to have authority beyond the § 401 certification over nontidal wetlands.

Furthermore, the General Assembly has taken no action in eight years to alter the conclusions of the 1991 opinion. In *Deal v. Commonwealth*, the Supreme Court of Virginia has stated that "[t]he legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view."<sup>25</sup>

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<sup>18</sup>Specifically, you ask: (1) whether ditching and draining of nontidal wetlands constitute an alteration of "the physical, chemical or biological properties of ... state waters," which is prohibited under § 62.1-44.5, "[e]xcept in compliance with a certificate issued by the Board"; (2) whether the Board has the authority under § 62.1-44.15(5) to require a permit for the ditching and draining of nontidal wetlands as an "alteration ... of the physical, chemical or biological properties of state waters"; (3) whether the Board has the authority under § 62.1-44.15(3a) and 9 VAC 25-380-30(B) to establish standards and policies and to "take all appropriate steps" to prevent ditching and dredging of nontidal wetlands; and (4) whether the Board has the authority under § 62.1-44.15(8a) to issue a cease and desist order to parties currently engaged in ditching and draining of nontidal wetlands or to seek injunctive relief against such actions.

<sup>19</sup>1991 Op. Va. Att'y Gen., *supra* note 1, at 313.

<sup>20</sup>See H.B. 1037 (introduced Mar. 7, 1988) (§§ 10-262.3(2), 10-262.4).

<sup>21</sup>See *id.*

<sup>22</sup>See *id.* (proposed Jan. 16, 1989).

<sup>23</sup>3 H. & S. DOC., *Report of the Virginia Nontidal Wetlands Roundtable*, H. Doc. No. 54 (1990).

<sup>24</sup>*Id.* at 2.

<sup>25</sup>224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

The 1991 opinion focuses on the general authority of the Board concerning nontidal wetlands. Your inquiry specifically addresses the ditching and draining of wetlands in connection with development.<sup>26</sup> You further inquire whether the ditching and draining of wetlands may be regulated pursuant to other provisions of the State Water Control Law.<sup>27</sup> Where, as here, the General Assembly has enacted several statutes that appear to bear on the same issue, the task is to ascertain the legislative intent. In its enactment of the Virginia Water Protection Permit statute, § 62.1-44.15:5, the legislature directed a particular program to comply with the § 401 certifications. The Supreme Court repeatedly has affirmed that it is a presumption of statutory construction that, where both general and specific statutes appear to address a matter, the General Assembly intends the specific statute to control the subject.<sup>28</sup> Accordingly, I must conclude that the legislature intended the activity you describe to be regulated by the Board to the extent authorized by § 62.1-44.15:5.

There is yet another indication of legislative intent on this matter. The 1988 Session of the General Assembly created the Chesapeake Bay Preservation Act.<sup>29</sup> The Act establishes the Chesapeake Bay Local Assistance Board<sup>30</sup> to "promulgate regulations which establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas."<sup>31</sup> The Chesapeake Bay Preservation Act further directs that, "[i]n developing and amending the criteria, the [Chesapeake Bay Local Assistance] Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land."<sup>32</sup> Statutes should not be construed to frustrate their purpose.<sup>33</sup> In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.<sup>34</sup> Finally, when a

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<sup>26</sup>In particular, your inquiry arises from the decision in *National Mining Association v. U.S. Army Corps of Engineers*, which invalidated an effort by the U.S. Army Corps of Engineers to require a § 404 permit for any discharge, including the "incidental fallback" that accompanies dredging operations. One example of "incidental fallback" occurs "during dredging, 'when a bucket used to excavate material from the bottom of a river, stream, or wetland is raised and soils or sediments fall from the bucket back into the water.'" 145 F.3d at 1403 (quoting plaintiff's briefs). The court held that the excavation of material is not a discharge where only a small portion of the material happens to fall back. *Id.* at 1404. For the five years from the Corps' promulgation of a rule regulating incidental fallback until the decision in this case, the federal government required a § 404 permit; state certification under § 401 also was required. During that interim, the activity about which you inquire required a Virginia Water Protection Permit under § 62.1-44.15:5. I note that the *National Mining Association* decision addresses the situation where excavated material is hauled away; the filling of wetlands, e.g., the placement of excavated material into wetlands, without a permit remains prohibited.

<sup>27</sup>See, e.g., § 62.1-44.15(3a), (5), (8a).

<sup>28</sup>See *Dodson v. Potomac Mack Sales & Service*, 241 Va. 89, 400 S.E.2d 178 (1991); *Barr v. Town & Country Properties*, 240 Va. 292, 396 S.E.2d 672 (1990); *Va. National Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979).

<sup>29</sup>See 1988 Va. Acts ch. 608, at 784, 792-96 (enacting earlier provisions of tit. 10.1, ch. 21, §§ 10.1-2100 to 10.1-2116).

<sup>30</sup>Section 10.1-2102.

<sup>31</sup>Section 10.1-2107(A).

<sup>32</sup>Section 10.1-2107(B) (emphasis added).

<sup>33</sup>See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

<sup>34</sup>See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

The Honorable Thomas W. Moss, Jr.  
October 7, 1999  
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statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>35</sup> The express legislative intent is for local governments, with the assistance of the Chesapeake Bay Local Assistance Board, to protect water quality from the effects of land development, at least in the Chesapeake Bay Preservation Areas.

The Chesapeake Bay Preservation Act provides additional guidance concerning the authority granted local governments to protect water quality and that granted under the State Water Control Law:


No authority granted to a local government by [the Chesapeake Bay Preservation Act] shall affect in any way the authority of the State Water Control Board to regulate industrial or sewage discharges under Articles 3 (§ 62.1-44.16 et seq.) and 4 (§ 62.1-44.18 et seq.) of the State Water Control Law (§ 62.1-44.2 et seq.).<sup>36</sup>

Under generally accepted principles of statutory construction, the mention of one thing in a statute implies the exclusion of another.<sup>37</sup> The clear implication is that the grant of authority to localities does affect the Board's authority under other articles of the State Water Control Law. The statutes about which you inquire are found in those other articles. This further demonstrates the intent of the General Assembly that the Board's authority in this area be limited to that demanded by the § 401 certification process.

The 1991 opinion concludes that the Board does not have authority to regulate wetlands beyond that contemplated by the § 401 certification process.<sup>38</sup> In light of the indication of legislative intent on which the 1991 opinion relies and the eight-year acquiescence of the General Assembly in that opinion, accepted principles of statutory construction, and the express directive to the Chesapeake Bay Local Assistance Board, I concur in that opinion. Accordingly, the answers to your final four questions are identical: at the present time, the Board may regulate nontidal wetlands only to the extent necessary to carry out its responsibility under § 401 of the Clean Water Act.

With kindest regards, I am

Very truly yours,

  
Mark L. Earley  
Attorney General

5:73; 5:74/54-094

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<sup>35</sup>See 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1999); Op. Va. Att'y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

<sup>36</sup>Section 10.1-2113.

<sup>37</sup>See 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.

<sup>38</sup>1991 Op. Va. Att'y Gen., *supra* note 1, at 313.

# VIRGINIA'S WETLANDS MANAGEMENT STRATEGY

## CITIZENS WETLANDS ADVISORY COMMITTEE REPORT

### EXECUTIVE SUMMARY

The Citizens Wetlands Advisory Committee, created by Executive Order Number Forty-Two (99)<sup>1</sup>, has developed this document as a statewide comprehensive wetlands management strategy for the Commonwealth.

### OBJECTIVE

The objective of this effort is to establish a statewide comprehensive wetlands management program that will reverse Virginia's long-term loss of wetlands and will provide for both the preservation of wetlands and a net-gain in total wetland resources in the Commonwealth.

### GOAL

The Citizens Wetlands Advisory Committee (CWAC) recommends that the goal of the Commonwealth of Virginia should be to protect, preserve, enhance and create wetlands throughout the Commonwealth and to achieve an increase in the acreage and function of the wetlands. This shall include a policy of no-net loss of jurisdictional wetlands to be achieved through state and federal regulatory program compensation and mitigation requirements for permitted wetland losses. A net gain of wetlands shall be accomplished through voluntary efforts to preserve, restore and create wetland acreage.

### RECOMMENDATIONS

The CWAC has developed a number of recommendations that should be implemented to enable the Commonwealth to achieve a no net loss and a net-gain of its wetland resources (both acreage and function).

1. **(1.2. GOALS):** The Commonwealth should undertake a wetlands restoration effort that would include an initial commitment to restore 600 acres of wetlands (360 in the Bay Watershed and 240 in the rest of the State) in the first year.
2. **(2.1. INVENTORY OF WETLAND RESOURCES):** A statewide wetlands information and inventory process should be developed.

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<sup>1</sup> See Attachment A.



3. **(3.3. RECOMMENDED LEGISLATIVE/REGULATORY FIXES):** Several additions and modifications to existing state law should be made to help minimize and compensate for losses of nontidal wetlands throughout the Commonwealth.
4. **(4.1.2. THE ROLE OF EDUCATION):** The Commonwealth should commit to an aggressive program to educate the public, local officials and other "decision professionals" about the values of natural wetland systems.
5. **(4.1.3. PRESERVATION OPTIONS):** The Commonwealth should develop information on existing programs that provide or support the various tools available for wetland preservation. In addition the Commonwealth should examine its own land holdings to ensure that wetland resources are correctly identified, and long term management plans are developed and implemented.
6. **(4.1.4. PRESERVATION GOAL):** The Commonwealth should encourage localities to voluntarily integrate wetlands preservation into their local land use plans by the Year 2010.
7. **(4.2.1. ACHIEVING NO-NET LOSS):** The existing Virginia Water Protection Permit (VWPP) program operated by the Department of Environmental Quality (DEQ) should be utilized as the base for establishing the necessary regulatory oversight needed to achieve no net loss.
8. **(4.3.1. ACHIEVING A NET RESOURCE GAIN):** Virginia should commit to a goal of restoring 600 acres of wetlands in 2000, and subsequently increasing that amount by 25 percent each year until 2007, when Virginia would be restoring over 2,800 acres of wetlands per year. Sustained at this rate, the program would result in over 20,000 acres of restored wetlands in the Commonwealth.
9. **(4.6. WETLANDS MITIGATION BANKING POLICY):** A defined State policy should be developed in response to the growing use of nontidal wetland mitigation banks in Virginia.
10. **(5.1. MONITORING STATUS AND TRENDS):** Virginia should adopt the status and trends monitoring program based on a combination of satellite and aerial remote sensing being proposed for the Bay Program as a statewide inventory strategy.
11. **(6.1. ACCOUNTING AND REPORTING ACHIEVEMENTS):** Each relevant agency should have a commitment to tracking and reporting its wetlands activities on a regular basis.
12. **(7. PROGRAM/STAFFING NEEDS):** The Commonwealth should plan to review the progress, costs and prospects of its wetland management effort in the Year 2005 and at 5-Year intervals thereafter.

## Appendix I

### Department of Environmental Quality (440)

415.	Environmental Technical and Financial Assistance (51500)	60,728,468	40,529,440
	Litter Control and Recycling Activities (51501)	2,117,671	2,117,781
	Financial Assistance for Environmental Resources Management (51502)	1,402,479	1,402,479
	Construction Assistance Loans and Grants (51503)	53,562,126	33,562,126
	Financial Assistance for Water Quality (51504)	702,163	502,163
	Construction Assistance (51505)	938,666	939,345
	Wastewater Treatment Plant Operator and Management Assistance (51506)	177,454	177,539
	Financial Assistance for Coastal Resources Management (51507)	1,752,853	1,752,853
	Prevention of and Response to Chemical Emergencies (51508)	75,056	75,154
Fund Sources: General		25,882,623	5,682,764
	Special	15,300	15,300
	Dedicated Special Revenue	4,343,515	4,344,346
	Federal Trust	30,487,030	30,487,030

Authority: Title 10.1, Chapters 11, 14 15, and 21.1; Title 44, Chapter 3.5; Title 62.1, Chapters 3.1, 22, 24 and 25, Code of Virginia.

A. The June 30, 2000, June 30, 2001, and June 30, 2002 unexpended balances for Construction Assistance are hereby reappropriated.

B.1. Out of the amounts for Environmental Technical and Financial Assistance, \$20,000,000 the first year from the general fund shall be deposited to the Virginia Water Quality Improvement Fund established under the Virginia Water Quality Improvement Act of 1997, Title 10.1, Chapter 21.1, Code of Virginia. Of this amount, \$17,159,797 is estimated as the FY 2001 allocation, and \$2,840,203 is estimated as the allocation for FY 2002.

2. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality is authorized to expend \$667,285 from the FY 2001 allocation and \$703,174 from the FY 2002 allocation for implementation of a poultry litter management program as required by Chapter 1 of the Acts of Assembly of 1999. Included is authorization to fund the costs associated with 11 positions.

3. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality is authorized to expend \$2,619,974 from the FY 2001 allocation and \$804,505 from the FY 2002 allocation for development, coordination, and implementation of the total maximum daily load program. Included is authorization to fund the costs associated with 16 positions.

4. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality is authorized to expend \$310,800 from the FY 2001 allocation and \$310,800 from the FY 2002 allocation for additional fish tissue contaminant analysis and assessment.

5. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality is authorized to expend \$315,260 from the FY 2001 allocation and \$450,824 from the FY 2002 allocation for the Chesapeake Bay tributary strategies program. Included is authorization to fund the costs

associated with three positions.


5. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality shall transfer \$8,000,000 from the FY 2001 allocation to the Combined Sewer Overflow Matching Fund, as established in Title 62.1, § 241.12, Code of Virginia. From the Combined Sewer Overflow Matching Fund, the City of Richmond shall receive \$4,000,000 in the first year, and the City of Lynchburg shall receive \$4,000,000 in the first year.

7. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Environmental Quality shall transfer \$216,000 from the FY 2001 allocation and \$570,900 from the FY 2002 allocation to the Department of Game and Inland Fisheries' Game Protection Fund for the development, coordination, and implementation of a wetlands restoration program pursuant to a recommendation of the Citizens Wetlands Advisory Committee to restore 20,000 acres of wetlands by 2010. Included is authorization for the Department of Game and Inland Fisheries to fund the costs associated with one position.

8. The Director of the Department of Environmental Quality is authorized to make a grant from prior year deposits to the Fund, not to exceed \$3,350,000, for operational improvements at the Blue Plains Wastewater Treatment Facility, provided that the nutrient reductions thereby achieved are credited to the Commonwealth of Virginia by the Chesapeake Bay Program.

C. The amounts for Environmental Technical and Financial Assistance include \$200,000 in the first year from the general fund as the state share of a feasibility investigation by the United States Army Corps of Engineers on sediment remediation and wetlands restoration in the Elizabeth River.

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## Department of Conservation and Recreation (199)

409.	Land Management (50300)	32,308,559	18,170,156
	Urban Non-Point Source Pollution Control (50301)	1,085,594	1,085,594
	Land Stabilization and Conservation (50302)	1,119,184	1,119,184
	Soil Research and Mapping (50307)	260,000	260,000
	Shoreline Management (50311)	526,796	426,796
	Statewide Non-Point Source Pollution Control (50312)	21,173,729	7,135,326
	Dam Safety Inventory, Inspection, and Certification (50314)	362,621	362,621
	Natural Heritage Resource Preservation and Management (50317)	3,064,027	3,064,027
	Nutrient Management (50319)	223,650	223,650
	Assistance to Soil and Water Conservation Districts (50320)	3,850,440	3,850,440
	Flood Plain Management (50321)	642,518	642,518
	Fund Sources: General	23,859,454	9,719,355
	Special	1,096,791	1,097,458
	Federal Trust	7,352,314	7,353,343

Authority: Title 10.1, Chapters 1, 5, 6, 7, and 21.1, Code of Virginia.

A. The amount for Assistance to Soil and Water Conservation Districts includes \$280,000 the first year and \$280,000 the second year from the general fund for Soil and Water Conservation Districts to coordinate and assist in the implementation of local tributary strategies under the Chesapeake Bay Program.

B. The June 30, 2000, June 30, 2001, and June 30, 2002, unexpended general fund balances in Assistance to Soil and Water Conservation Districts are hereby reappropriated.

C.1. Out of the amount for Statewide Non-Point Source Pollution Control, \$14,039,170 the first year from the general fund shall be deposited to the Virginia Water Quality Improvement Fund established under the Virginia Water Quality Improvement Act of 1997, Title 10.1, Chapter 21.1, Code of Virginia. Of this amount, \$12,541,187 is estimated as the FY 2001 allocation, and \$1,497,983 is estimated as the allocation for FY 2002.

2. Out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$4,563,125 of the first year allocation as the Commonwealth's statewide match for the federal Conservation Reserve Enhancement Program. The Department of Conservation and Recreation is authorized to expend funds deposited into the Water Quality Improvement Fund for statewide projects funded through the Conservation Reserve Enhancement Program in the Potomac-Shenandoah, lower tributaries, and southern river areas.

3. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$1,042,827 from the FY 2001 allocation and \$483,549 from the FY 2002 allocation for development, coordination, and implementation of the Total Maximum Daily Load program. Included is authorization to fund the costs associated with eight positions.

4. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$526,620 from the FY 2001 allocation and \$526,620 from the FY 2002 allocation for the administrative and technical support costs of implementing the Water Quality Improvement Act

(Title 10.1, Chapter 21.1, Code of Virginia). Included is authorization to fund the costs associated with nine positions.

5. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$391,255 from the FY 2001 allocation and \$91,255 from the FY 2002 allocation for implementation of the Conservation Reserve Enhancement Program. Included is authorization to fund the costs associated with two positions.

6. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$396,559 from the FY 2001 allocation and \$396,559 from the FY 2002 allocation for implementation of a poultry litter management program as required by Chapter 1 of the 1999 Acts of Assembly. Included is authorization to fund the costs associated with six positions.

7. Notwithstanding the provisions of Title 10.1, Chapter 21.1, Code of Virginia, out of the amount deposited to the Water Quality Improvement Fund, the Department of Conservation and Recreation is authorized to expend \$200,000 from the FY 2001 allocation to contract for conservation engineering services.

D. Out of the amount for Assistance to Soil and Water Conservation Districts \$50,000 the first year and \$50,000 the second year from the general fund shall be transferred to the Soil and Water Conservation District Dam Maintenance and Small Repair Fund (§10.1-611.1, Code of Virginia).

E. Included in the amount for Shoreline Management is \$100,000 the first year from the general fund for the City of Norfolk to dredge a channel for boat access in Pretty Lake, a tidal inlet in the northern part of the city.



[Go to \(General Assembly Home\)](#)

2000 SESSION

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**HOUSE BILL NO. 553**  
Offered January 19, 2000

A *BILL to amend the Code of Virginia by adding in Chapter 8 of Title 58.1 a section numbered 58.1-816.2, relating to the state recordation tax.*

Patrons—Deeds, Moss and Plum; Senators: Hanger and Marye

Referred to Committee on Finance

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That the Code of Virginia is amended by adding in Chapter 8 of Title 58.1 a section**  
12 **numbered 58.1-816.2 as follows:**

13 *§ 58.1-816.2. Distribution to the Virginia Land Conservation Foundation. Effective on and after*  
14 *July 1, 2000, following the distribution of recordation taxes in accordance with §§ 58.1-815,*  
15 *58.1-815.1, 58.1-816, and 58.1-816.1, \$40 million of the remaining annual collections of the state*  
16 *recordation taxes imposed by this chapter, or the entire amount remaining if less than \$40 million,*  
17 *shall be distributed to the Virginia Land Conservation Foundation and used in accordance with*  
18 *§ 10.1-1020. This dedication shall not affect any local recordation taxes under §§ 58.1-802 B or*  
19 *58.1-814.*

003808716

HB553

Passed By		Official Use By Clerks		Passed By The Senate	
The House of Delegates					
without amendment	<input type="checkbox"/>			without amendment	<input type="checkbox"/>
with amendment	<input type="checkbox"/>			with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>			substitute	<input type="checkbox"/>
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Date: _____		Date: _____			
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Clerk of the House of Delegates		Clerk of the Senate			

5/23/00 13:20

# HB 553 State recordation tax to Land Conservation Foundation.

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Patron-R. Creigh Deeds

*Summary as introduced:*

**State recordation tax.** Requires that \$40 million per year of the money generated by the state recordation tax be allocated to the Virginia Land Conservation Foundation. The allocation will be available only after currently existing allocations of recordation tax revenues are made. This is a recommendation of the Commission on the Future of Virginia's Environment.

*Full text:*

01/19/00 House: Presented & ordered printed 003808716

*Status:*

01/19/00 House: Presented & ordered printed 003808716

01/20/00 House: Referred to Committee on Finance

01/24/00 House: Assigned to Finance sub-committee: 1

02/06/00 House: Reported from Finance (23-Y 0-N)

02/06/00 House: Referred to Committee on Appropriations

02/11/00 House: No action taken by Appropriations (29-Y 0-N)

02/11/00 House: Incorporated in other legislation (HB1167-Albo)

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Go to (General Assembly Home) or (Bills and Resolutions)

## 2000 SESSION

003816888

## HOUSE BILL NO. 713

Offered January 21, 2000

*A BILL to express the goals of the General Assembly regarding the future management of Virginia's natural resources.*

Patrons—Plum, Almand, Barlow, Darner, Deeds, Dillard, Moran, Moss, Scott, Van Landingham and Van Yahres; Senators: Bolling, Hanger, Marye and Norment

Referred to Committee on Conservation and Natural Resources

Whereas, the 1996 Session of the General Assembly passed House Joint Resolution 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 long-term vision and plan for the future management Virginia's natural resources; and

Whereas, the 1998 Session of the General Assembly passed House Joint Resolution 136, and the 1999 Session of the General Assembly passed House Joint Resolution 719 continuing the study on the Future of Virginia's Environment; and

Whereas, the Commission's work is documented in its interim reports, House Document 4 (1999) and House Document Number 15 (2000); and

Whereas, in 1999, pursuant to the joint resolutions that established the study, the Commission drafted a "Vision for the Future Management of Virginia's Natural Resources"; and

Whereas, during the study, citizens from all parts of the state came before the Commission to assert their concerns and beliefs, and to share their knowledge, insights, and expertise, and the vision document represents the Commission's effort to encapsulate the desires of these citizens; and

Whereas, the vision document observes that Virginia's citizens want a clean, productive environment and a government that preserves, promotes and improves it, and includes a list of goals that must be achieved in order for this vision to be accomplished; and

Whereas, the goals contained in the vision document and enacted in this Act should be observed by all those charged with the responsibility of managing our natural resources; now, therefore,

**Be it enacted by the General Assembly of Virginia:**

**1. § 1. Resources that support resource-based industries such as agriculture, forestry, fisheries, recreational industries, and tourism should be protected, managed and maintained so that all achieve the maximum benefit from them and so that the benefits are sustained for future generations. To achieve this goal for resource-based industries, the Commonwealth should:**

*1. Assign a high priority to promoting and protecting agriculture as a critical element of the state's economy;*

*2. Consider setting a goal of preventing any additional loss of prime farmland, including areas of highly productive soils and high-value agricultural production;*

*3. Implement land conservation policies such as funding purchases of development rights, promote sustainable agricultural management practices, and provide incentives to localities that implement strategies to protect prime farmland;*

*4. Promote sustainable forestry as an integral component of economic development policy, including recreational and tourism uses of forest resources;*

*5. Develop policies to prevent fragmentation of forest areas;*

*6. Consider setting a goal of restoring a significant percentage of Virginia's forest cover, taking into account watershed protection, forest ecosystem diversity and other natural resource goals;*

*7. Recognize that the success of resource-based industries depends in large part on the purity and availability of water, and adopt policies to prevent degradation and over-consumption of Virginia's ground and surface water resources; and*

*8. Recognize that the success of resource-based industries also depends on the quality of our air, and adopt policies to eliminate any costs to such industries that are the result of poor air quality.*

**§ 2. Air and water quality should be protected and improved so that our air is healthful for all, our natural vistas are clear, and our water provides a full range of consumptive and recreational opportunities and a healthy habitat for aquatic species. To achieve this goal for air and water**

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HB713

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1 quality, the Commonwealth should:

2 1. Consider setting numerical air and water quality goals and dates certain by which they will be  
3 attained;

4 2. Achieve existing air and water quality commitments, including implementing tributary strategies  
5 as provided in the 1987 Chesapeake Bay Agreement, as amended, and eliminating all impairments in  
6 stream segments listed as impaired under section 303 (d) of the Clean Water Act;

7 3. Recognize that poor air and water quality has a negative effect on Virginia's economic and  
8 fiscal health by contributing to lowered productivity of workers and increased health care expenses,  
9 and adopt policies to quantify and eliminate these costs;

10 4. Evaluate and address cross-media pollution, including air deposition of pollutants such as  
11 nutrients and toxins onto lands and waters; and

12 5. Promote air and water quality as part of Virginia's economic development policies.

13 § 3. State and local government decisions that affect Virginia's environment should be informed by  
14 continuous, comprehensive and coordinated evaluation and monitoring of our natural  
15 resources. Environmental protection measures should be enforced in a way that captures the true  
16 costs of environmental violations. To achieve this goal for monitoring, evaluation, and enforcement of  
17 environmental protection measures, the Commonwealth should:

18 1. Collect, manage and make available to the public hydrogeologic data, water quality monitoring  
19 data, land use data, data on the economic contribution of natural resource-based industries, data on  
20 the effects of changes in environmental quality on natural resource-based industries, and data on  
21 historical and cultural resources;

22 2. Continuously evaluate the availability and quality of land, prime soils, forests, water supplies,  
23 air, species diversity, historical and cultural resources, neighborhoods and cities;

24 3. Utilize and integrate natural resources data gathered by local and federal governments and  
25 universities;

4 4. Vigorously enforce existing mandates while striving to minimize the need for new regulations;  
and

28 5. Develop and utilize innovative methods to improve environmental quality, especially  
29 incentive-based programs.

30 § 4. State and local government decisions concerning land use, economic development and  
31 transportation should protect existing communities and further the goal of a clean and productive  
32 environment. To achieve this goal for land use, economic development and transportation, the  
33 Commonwealth should:

34 1. Promote policies that provide incentives for reuse and redevelopment of areas where the state  
35 has invested in transportation, education and other public services;

36 2. Recognize that water availability is a limiting factor affecting land development capacity;

37 3. Promote the development of a balanced transportation system that will yield improvements to  
38 air quality and efficiently utilize all transportation modes;

39 4. Ensure that all potential land use and environmental impacts of Virginia's transportation  
40 decisions are thoroughly evaluated before such decisions are made;

41 5. Strive to eliminate land use, economic development and transportation policies that directly or  
42 indirectly lead to loss of farm and forest lands;

43 6. Recognize, respect and protect both private and public property rights in all land use decisions;

44 7. Provide localities with legal authority and technical assistance to implement community  
45 decisions regarding land development patterns and strive to relieve localities from the burdens of  
46 unfunded mandates; and

47 8. Develop a comprehensive, coordinated geographic information system to better enable state  
48 agencies and localities to evaluate impacts of their decisions.

49 § 5. Preservation and support of open spaces for environmental, health, recreational and economic  
50 purposes should be one of Virginia's highest priorities. To achieve this goal for open space and  
51 recreational needs, the Commonwealth should:

52 1. Consider the state parks system as part of a larger open-space system that includes federal,  
regional and local parks, natural heritage areas, wildlife management areas, scenic byways, private  
property protected by conservation easements, agricultural and forestal districts, and other open

- 1 spaces;
- 2 2. Create a long-term, stable, and adequate funding source for land conservation and parks;
- 3 3. Protect the working landscape, including agricultural and forest lands, through land use
- 4 policies, incentives and funding for conservation easements on private lands; and
- 5 4. Quantify and consider the economic benefits of parks and open space, including watershed and
- 6 air quality protection, recreational opportunities, and human health benefits, when making long-term
- 7 planning and funding decisions.
- 8 § 6. Human health and the environment should be protected through strong regulatory and
- 9 voluntary programs that reduce waste streams, promote pollution prevention and recycling and at the
- 10 same time allow businesses to take advantage of economic opportunities of waste streams that do
- 11 exist. To achieve the goal for waste management, the Commonwealth should:
- 12 1. Continue to seek action by Congress to enable Virginia to enact and enforce solid waste
- 13 regulations that reduce the amount of waste disposed of in Virginia;
- 14 2. Ensure that waste sites are located based on economics, objective and accurate data and need,
- 15 rather than race, economic disadvantage or the low political clout of a potential site community;
- 16 3. Ensure that existing solid waste disposal facilities that are contaminating surrounding land and
- 17 water resources and posing significant risks to human health and the environment are discontinued
- 18 and the contamination is remedied; and
- 19 4. Continue to support recycling and waste minimization strategies and alternative waste
- 20 management technologies.
- 21 § 7. Virginia state government should include structures for natural resources management, policy
- 22 development and policy implementation that enhance the Commonwealth's ability to preserve, promote
- 23 and improve a clean, productive environment. To achieve the governing structure goal, the
- 24 Commonwealth should:
- 25 1. Undertake a comprehensive and ongoing review of the extent to which state agency policies and
- 26 programs (including budgets, expenditures and specific projects) contribute to or detract from the
- 27 goal of a clean and productive environment;
- 28 2. Communicate regularly with the citizens of the Commonwealth regarding the condition of the
- 29 Commonwealth's natural resources;
- 30 3. Integrate into all levels of governmental activity, decision making and expenditures of funds, a
- 31 recognition of the economic, cultural and health benefits of a clean environment and the impacts of
- 32 those activities, decisions and expenditures upon those benefits;
- 33 4. Create a lead state role in developing, acquiring, coordinating and making available funding,
- 34 studies, technical assistance and information resources to provide the means for innovative
- 35 approaches to resource management and protection; coordination, planning and policy assistance,
- 36 particularly to localities without sufficient financial and staff resources; and a mechanism for
- 37 identifying environmental issues before they become significant problems and identifying solutions;
- 38 and
- 39 5. Encourage decision makers and citizens to view resources in terms of natural boundaries and
- 40 resource interactions rather than political boundaries.
- 41 § 8. The strategies and goals of the Chesapeake Bay Agreements, as they are adopted and
- 42 amended from time to time, should be achieved in a timely manner, both from a budgetary and a
- 43 programmatic perspective. To achieve the Chesapeake Bay Agreements' goals, the Commonwealth
- 44 should:
- 45 1. Continue to recognize the interstate and intergovernmental cooperation that is necessary to the
- 46 Chesapeake Bay Program's success in restoring and protecting the Bay and its living resources; and
- 47 2. Ensure that pursuing the goals agreed to by the Bay Program partners is a top priority for all
- 48 agencies of state government.

Official Use By Clerks	
<b>Passed By The House of Delegates</b>	<b>Passed By The Senate</b>
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# HB 713 Management of Virginia's natural resources.

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Patron-Kenneth R. Plum

*Summary as passed House:*

**Management of Virginia's natural resources.** Expresses the goals of the General Assembly regarding the future management of Virginia's natural resources. Includes goals for resource-based industries; air and water quality; needs for monitoring, evaluation, and enforcement of environmental protection measures; land use, economic development and transportation; open space and recreational needs; waste management; the state's governing structure; and the Chesapeake Bay Agreements. This is a recommendation of the Commission on the Future of Virginia's Environment.

*Full text:*

01/21/00 House: Presented & ordered printed 003816888

02/11/00 House: Printed as engrossed 003816888-E

*Amendments:*

House amendments

*Status:*

01/21/00 House: Presented & ordered printed 003816888

01/21/00 House: Referred to Committee on Conservation & Natural Resources

01/26/00 House: Assigned to C. N. R. sub-committee: 1

02/09/00 House: Reported from Cons. & Nat. Res. w/amds (18-Y 4-N)

02/10/00 House: Read first time

02/11/00 House: Read second time

02/11/00 House: Committee amendments agreed to

02/11/00 House: Engrossed by House as amended

02/11/00 House: Printed as engrossed 003816888-E

02/12/00 House: Read third time and passed House (87-Y 11-N)

02/12/00 House: VOTE: PASSAGE (87-Y 11-N)

02/12/00 House: Communicated to Senate

02/14/00 Senate: Constitutional reading dispensed

02/14/00 Senate: Referred to Committee on Rules

03/06/00 Senate: Failed to report (defeated) in Rules (4-Y 6-N 3-A)

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 [Go to \(General Assembly Home\) or \(Bills and Resolutions\)](#)

**APPENDIX L**

*Vision for the Future Management of  
Virginia's Natural Resources*

## *Introduction*

It has been almost 400 years since Captain John Smith first sailed up the James River and declared that “heaven and earth never agreed to frame a better place for man’s habitation than Virginia . . . the mildnesse of the air, the fertilitie of the soile, and the situation of the rivers are so propitious to the nature and use of man as no place is more convenient for pleasure, profit, and man’s sustenance.”

Three hundred and sixty-four years later, in 1971, the citizens of the Commonwealth were granted the constitutional right to the qualities of life that so inspired John Smith:

*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.*

--Constitution of Virginia,  
Article XI, Section 1

Following a quarter century of continuous growth, during which the population of Virginia increased by 50 percent, the General Assembly turned once again to an examination of how well the Commonwealth has fulfilled this constitutional mandate. House Joint Resolution 221 (1996) established the Joint Legislative Study Commission on the Future of Virginia’s Environment and called for the creation of a vision and plan for the management of Virginia’s natural resources.

Citizens from all parts of the state came before the Commission to assert their concerns and beliefs, and to share their knowledge, insights, and expertise. In addition to gathering the views of the public, we have spent a great deal of time during the past three years seeking advice from experts.

At our first meeting in 1996, we received briefings on the history of environmental management and on the budgetary trends for related programs. The historical perspective showed the evolving complexity of and need for environmental management as well as the reasons for changes in policy. The financial analysis showed a meager and declining state commitment. Indeed, we found that, in many

regards, the natural resource issues and concerns addressed by the 1988 Governor's Commission on Virginia's Future remain essentially unchanged:

*The signs of danger are beginning to show themselves all across the Commonwealth. We learn of groundwater contamination due to careless waste disposal, our fresh water supplies appear abundant overall but we are beginning to experience regional shortages; the Bays' sport and commercial fishermen report sharply declining stocks of species we have long taken for granted; our large rivers suffer from increasing pollution; growing congestion aggravates the land use problems of our rapidly developing suburban counties in the Northern Virginia-Richmond-Hampton Roads crescent. It seems clear we are losing ground every day . . . (Toward A New Dominion: Choices for Virginians. Report of the Governor's Commission on Virginia's Future, December 1984.)*

To these findings of a decade ago can now be added further evidence of an insufficient commitment to sustaining Virginia's rich natural and cultural resources. Since 1987, Virginia has lost 450,000 acres of farmland and an average of 26,000 acres of forest land was lost annually between 1987 and 1992. The Virginia Natural Heritage Program has identified 400 unprotected globally significant natural areas and determined that Virginia trails all Mid-Atlantic states in the percentage of protected natural areas. Virginia ranks 48<sup>th</sup> in per capita spending on state parks.

Early in its work, the Commission decided upon seven general areas that would provide a framework for our mission. These and other actions are documented in our interim reports, House Document 4 (1999) and House Document Number 15 (2000). All that we have learned has strengthened our conviction that the accomplishment of the Vision for the Future of Virginia's Environment requires careful attention to the areas identified during our first year.

This document is intended to fulfill the "vision" portion of the Commission's mission. It consists of the vision statement set forth below and a set of goals that must be achieved in order for that vision to be realized. This Vision is our effort to encapsulate the desires of the hundreds of Virginia's citizens who came before us to express their views.

## **THE VISION:**

***A clean, productive environment - and a government that preserves, promotes and improves it.***

Virginia's citizens want a *clean* environment, which means air, water, and land conditions that are healthy for human beings, wildlife, aquatic life, and vegetation, and conditions that support sustainable use of resources. Virginia's citizens want a *productive* environment, which means abundant, natural, sustained populations of living resources available for human use and to ensure the continued biodiversity of the Commonwealth. By "*environment*," Virginia's citizens mean not only natural areas, wildlife habitat, agricultural and forestal lands, and our atmosphere and waters, but also the cities and neighborhoods in which they live, work and travel through, the character of those areas, and our historic heritage. By "*preserves, promotes and improves*," Virginia's citizens mean proactive and protective state and local governments that assure that their actions are well planned and coordinated to restore, protect, sustain and enhance a "clean, productive environment," not only for current citizens but for future citizens as well.

## **THE GOALS:**

**1. Resources that support resource-based industries such as agriculture, forestry, fisheries, recreational industries, and tourism must be protected, managed and maintained so that all achieve the maximum benefit from them and so that the benefits are sustained for future generations.**

To achieve the goal for resource-based industries, the Commonwealth must:

- Assign a high priority to promoting and protecting agriculture as a critical element of the state's economy.
- Consider setting a goal of preventing any additional loss of prime farmland, including areas of highly productive soils and high-value agricultural production.



- Implement land conservation policies such as funding purchases of development rights, promote sustainable agricultural management practices, and provide incentives to localities that implement strategies to protect prime farmland.
- Promote sustainable forestry as an integral component of economic development policy, including recreational and tourism uses of forest resources.
- Develop policies to prevent fragmentation of forest areas.
- Consider setting a goal of restoring a significant percentage of Virginia's forest cover, taking into account watershed protection, forest ecosystem diversity, and other natural resource goals.
- Recognize that the success of resource-based industries depends in large part on the purity and availability of water, and adopt policies to prevent degradation and over-consumption of Virginia's ground and surface water resources.
- Recognize that the success of resource-based industries also depends on the quality of our air, and adopt policies to eliminate any costs to such industries that are the result of poor air quality.

**2. Air and water quality must be protected and improved so that our air is healthful for all, our natural vistas are clear, and our water provides a full range of consumptive and recreational opportunities and a healthy habitat for aquatic species.**

To achieve the goal for air and water quality, the Commonwealth must:

- Consider setting numerical air and water quality goals and dates certain by which they will be attained.
- Achieve existing air and water quality commitments, including implementing tributary strategies as provided in the 1987 Chesapeake Bay Agreement, as amended, and eliminating all impairments in stream segments listed as impaired under section 303 (d) of the Clean Water Act.
- Recognize that poor air and water quality have a negative effect on Virginia's economic and fiscal health by contributing to lowered productivity of workers and increased health care expenses, and adopt policies to quantify and eliminate these costs.
- Evaluate and address cross-media pollution, including air deposition of pollutants such as nutrients and toxins onto lands and waters.

- Promote air and water quality as part of Virginia's economic development policies.

**3. State and local government decisions that affect Virginia's environment must be informed by continuous, comprehensive, and coordinated evaluation and monitoring of our natural resources. Environmental protection measures must be enforced in a way that captures the true costs of environmental violations.**

To achieve the goal for monitoring, evaluation, and enforcement of environmental protection measures, the Commonwealth must:

- Collect, manage, and make available to the public hydrogeologic data, water quality monitoring data, land use data, data on the economic contribution of natural resource-based industries, data on the effects of changes in environmental quality on natural resource-based industries, and data on historical and cultural resources.
- Continuously evaluate the availability and quality of land, prime soils, forests, water supplies, air, species diversity, historical and cultural resources, neighborhoods, and cities.
- Utilize and integrate natural resources data gathered by local and federal governments and universities.
- Vigorously enforce existing mandates while striving to minimize the need for new regulations.
- Develop and utilize innovative methods to improve environmental quality, especially incentive-based programs.

**4. State and local government decisions concerning land use, economic development, and transportation must protect existing communities and further the goal of a clean and productive environment.**

To achieve the goal for land use, economic development, and transportation, the Commonwealth must:

- Promote policies that provide incentives for reuse and redevelopment of areas where the state has invested in transportation, education, and other public services.
- Recognize that water availability is a limiting factor affecting land development capacity.

- Promote the development of a balanced transportation system that will yield improvements to air quality and efficiently utilize all transportation modes.
- Ensure that all potential land use and environmental impacts of Virginia's transportation decisions are thoroughly evaluated before such decisions are made.
- Strive to eliminate land use, economic development, and transportation policies that directly or indirectly lead to loss of farm and forest lands.
- Recognize, respect, and protect both private and public property rights in all land use decisions.
- Provide localities with legal authority and technical assistance to implement community decisions regarding land development patterns and strive to relieve localities from the burdens of unfunded mandates.
- Develop a comprehensive, coordinated geographic information system to better enable state agencies and localities to evaluate impacts of their decisions.

**5. Preservation and support of open spaces for environmental, health, recreational, and economic purposes must be one of Virginia's highest priorities.**

To achieve the goal for open space and recreational needs, the Commonwealth must:

- Consider the state parks system as part of a larger open-space system that includes federal, regional, and local parks, natural heritage areas, wildlife management areas, scenic byways, private property protected by conservation easements, and agricultural and forestal districts.
- Create a long-term, stable, and adequate funding source for land conservation and parks.
- Protect the working landscape, including agricultural and forest lands, through land use policies, incentives, and funding for conservation easements on private lands.
- Quantify and consider the economic benefits of parks and open space, including watershed and air quality protection, recreational opportunities, and human health benefits, when making long-term planning and funding decisions.

**6. Human health and the environment must be protected through strong regulatory and voluntary programs that reduce waste streams, promote pollution prevention and recycling, and at the same time allow businesses to take advantage of economic opportunities of waste streams that do exist.**

To achieve the goal for waste management, the Commonwealth must:

- Continue to seek action by Congress to enable Virginia to enact and enforce solid waste regulations that reduce the amount of waste disposed of in Virginia.
- Ensure that waste sites are located based on economics, objective and accurate data, and need, rather than race, economic disadvantage, or the low political clout of a potential site community.
- Ensure that existing solid waste disposal facilities that are contaminating surrounding land and water resources and posing significant risks to human health and the environment are discontinued and the contamination is remedied.
- Continue to support recycling and waste minimization strategies and alternative waste management technologies.

**7. Virginia state government must include structures for natural resources management, policy development, and policy implementation that enhance the Commonwealth's ability to preserve, promote, and improve a clean, productive environment.**

To achieve the governing structure goal, the Commonwealth must:

- Undertake a comprehensive and ongoing review of the extent to which state agency policies and programs (including budgets, expenditures, and specific projects) contribute to or detract from the goal of a clean and productive environment.
- Communicate regularly with the citizens of the Commonwealth regarding the condition of the Commonwealth's natural resources.
- Integrate into all levels of governmental activity, decision making, and expenditures of funds, a recognition of the economic, cultural, and health benefits of a clean environment and the impacts of those activities, decisions, and expenditures upon those benefits.

- Create a lead state role in developing, acquiring, coordinating, and making available funding, studies, technical assistance, and information resources to provide the means for innovative approaches to resource management and protection; coordination, planning and policy assistance, particularly to localities without sufficient financial and staff resources; and a mechanism for identifying environmental issues before they become significant problems and identifying solutions.
- Encourage decision makers and citizens to view resources in terms of natural boundaries and resource interactions rather than political boundaries.

**8. The strategies and goals of the Chesapeake Bay Agreement, as they are adopted and amended from time to time, must be achieved in a timely manner, both from a budgetary and a programmatic perspective.**

To achieve the Chesapeake Bay Agreements goal, the Commonwealth must:

- Continue to recognize the interstate and intergovernmental cooperation that is necessary to the Chesapeake Bay Program's success in restoring and protecting the Bay and its living resources.
- Ensure that pursuing the goals agreed to by the Bay Program partners is a top priority for all agencies of state government.

## *Conclusion*

In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital need of citizens of the Commonwealth to live in a healthful and pleasant environment, we declare that the policy of the Commonwealth should be to promote the wise use of its air, water, land, and other natural resources and to protect them from pollution, impairment, or destruction so as to improve the quality of its environment. It should be the continuing policy of the government of the Commonwealth--in cooperation with the federal government, other state governments, local governments, other public and private organizations, and individuals--to initiate, implement, improve, and coordinate environmental plans, programs, and functions of the Commonwealth in order to promote the general welfare of the people of the Commonwealth and fulfill the Commonwealth's responsibility as trustee of the environment for present and future generations.

As we pursue the goals contained in this Vision, we are mindful of what our citizens have repeatedly told us -- that "quality of life" is the core value that will drive the economic, social, and location decisions of our present and future citizens. "Quality of Life" is not a buzz word -- it is the ultimate family, business, and ecological value; and it is grounded in the quality of our air and water, our natural, cultural, and visual resources, our working landscapes and our built environments. It is the key determinant in attracting new businesses and sustaining economic growth in the Commonwealth. In an increasingly technological world where the preemptive relationships are becoming those between man and machine, we need the tonic of wildness to restore our minds, bodies, and spirits. The future of Virginia's environment will therefore depend on our ability to practice informed and responsible stewardship of the Commonwealth's land, air, and water resources; sustain the economic viability of resource-based industries in the Commonwealth; and create livable communities in both urban and rural areas of the Commonwealth.

The world will be watching a few years hence when Virginia celebrates the 400th anniversary of the beginning of western civilization in the New World. John Smith's vision has indeed come to fruition. But what of ours for the coming years? It is worth reiterating the charge laid out for Virginians by our predecessors:

*The Commonwealth is not powerless in meeting the challenges of environmental protection. It has a clear constitutional statement of policy. It has an organizational structure in place and various programs, some of which have proven to be reasonably effective in the past in averting difficulties. But Virginia has, we believe, reached the stage requiring a new level of commitment, new structures, and a clearer and firmer expression of our collective will... If we renew our*

*constitutional commitment and invest the necessary effort, we surely will have provided for the future welfare and happiness of Virginia citizens. If, for whatever reason, we fail in this responsibility, Virginia will be deprived of her most distinctive assets, and the lives of all her citizens in the next century will be diminished seriously. (Toward a New Dominion: Choices for Virginia. Report of the Governor's Commission on Virginia's Future, December 1984.)*

## 2000 SESSION

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54**HOUSE BILL NO. 712**

Offered January 21, 2000

*A BILL to amend and reenact §§ 2.1-1.7, 2.1-20.4, 2.1-51.9, 3.1-18.8 and 9-6.25:2, as it is currently effective and as it may become effective, of the Code of Virginia; to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 12.1, containing articles numbered 1, 2, and 3, consisting of sections numbered 10.1-1222 through 10.1-1238; and to repeal Article 2 (§§ 10.1-1188 through 10.1-1192) of Chapter 11.1 of Title 10.1, relating to creation of the Virginia Natural Resources Policy Act.*

Patrons—Plum, Almand, Darner, Deeds, Dillard, Moran, Moss, Van Landingham and Van Yahres;  
Senators: Marye and Norment

Referred to Committee on Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 2.1-1.7, 2.1-20.4, 2.1-51.9, 3.1-18.8 and 9-6.25:2, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 12.1, containing articles numbered 1, 2, and 3, consisting of sections numbered 10.1-1222 through 10.1-1238, as follows:

## § 2.1-1.7. State councils.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

- Adult Education and Literacy, Virginia Advisory Council for
- Aging, Commonwealth Council on
- Agricultural Council, Virginia
- Apprenticeship Council
- Blue Ridge Regional Education and Training Council
- Child Day-Care Council
- Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion
- Coastal Land Management Advisory Council, Virginia
- Commonwealth Competition Council
- Commonwealth's Attorneys' Services Council
- Developmental Disabilities Planning Council, Virginia
- Disability Services Council
- Equal Employment Opportunity Council, Virginia
- Housing for the Disabled, Interagency Coordinating Council on
- Human Rights, Council on
- Human Services Information and Referral Advisory Council
- Indians, Council on
- Interagency Coordinating Council, Virginia
- Job Training Coordinating Council, Governor's
- Land Evaluation Advisory Council
- Maternal and Child Health Council
- Military Advisory Council, Virginia
- Needs of Handicapped Persons, Overall Advisory Council on the
- Prevention, Virginia Council on Coordinating
- Public Records Advisory Council, State
- Rate-setting for Children's Facilities, Interdepartmental Council on
- Revenue Estimates, Advisory Council on
- Specialized Transportation Council
- State Health Benefits Advisory Council
- Status of Women, Council on the
- Substance Abuse Services Council

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1/22/00 10:23



1 Virginia Business-Education Partnership Program, Advisory Council on the  
 2 Virginia Recycling Markets Development Council  
 3 Workforce Council, Virginia.

4 B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall  
 5 be referred to as councils:

6 Higher Education, State Council of  
 7 Independent Living Council, Statewide  
 8 *Natural Resources Council, Virginia*  
 9 Rehabilitation Advisory Council, Statewide  
 10 Rehabilitation Advisory Council for the Blind, Statewide  
 11 Transplant Council, Virginia.

12 § 2.1-20.4. Bodies receiving compensation.

13 Notwithstanding any other provision of law, members of the commissions, boards, committees,  
 14 councils and other similar bodies listed below, and members of any other board, committee, council,  
 15 or similar body who are appointed at the state level, shall receive compensation from state funds  
 16 pursuant to § 2.1-20.3:

17 Accountancy, Board of  
 18 Agriculture and Consumer Services, Board of  
 19 Air Pollution Control Board, State  
 20 Airports Authority, Virginia  
 21 Apprenticeship Council  
 22 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape  
 23 Architects, Board for  
 24 Athletic Training, Advisory Board on  
 25 Auctioneers Board  
 26 Audiology and Speech-Language Pathology, Board of  
 27 Aviation Board, Virginia  
 28 Barbers, Board for  
 29 Branch Pilots, Board for  
 30 Building Code Technical Review Board, State  
 31 Charitable Gaming Commission  
 32 Chesapeake Bay Local Assistance Board  
 33 Chief Information Officer Advisory Board  
 34 Coal Mining Examiners, Board of  
 35 College Building Authority  
 36 Commonwealth Competition Council  
 37 Commonwealth Transportation Board  
 38 Conservation and Development of Public Beaches, Board on  
 39 Conservation and Recreation, Board of  
 40 Contractors, Board for  
 41 Correctional Education, Board of  
 42 Corrections, Board of  
 43 Cosmetology, Board for  
 44 Criminal Justice Services Board  
 45 Deaf and Hard-of-Hearing, Advisory Board for the  
 46 Dentistry, Board of  
 47 Education, State Board of  
 48 Elections, State Board of  
 49 Fire Services Board, Virginia  
 50 Funeral Directors and Embalmers, Board of  
 51 Game and Inland Fisheries, Board of  
 52 Geology, Board for  
 53 Health, State Board of  
 54 Health Professions, Board of

- 1 Hearing Aid Specialists, Board for
- 2 Higher Education, State Council of
- 3 Historic Resources, Board of
- 4 Housing and Community Development, Board of
- 5 Juvenile Justice, State Board of
- 6 Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse
- 7 Treatment Professionals, Board of
- 8 Marine Resources Commission
- 9 Medical Assistance Services, Board of
- 10 Medical Complaint Investigation Committee
- 11 Medicine, Board of
- 12 Mental Health, Mental Retardation and Substance Abuse Services Board, State
- 13 Milk Commission
- 14 Mineral Mining Examiners, Board of
- 15 Motor Vehicle Dealer Board
- 16 Nursing, Board of
- 17 Nursing Home Administrators, Board of
- 18 Occupational Therapy, Advisory Board of
- 19 Oil and Gas Conservation Board, Virginia
- 20 Opticians, Board for
- 21 Optometry, Board of
- 22 Pesticide Control Board
- 23 Pharmacy, Board of
- 24 Physical Therapy, Advisory Board on
- 25 Port Authority, Board of Commissioners of the Virginia
- 26 Professional and Occupational Regulation, Board for
- 27 Professional Soil Scientists, Board for
- 28 Psychology, Board of
- 29 Public Defender Commission
- 30 Public School Authority, Virginia
- 31 Purchases and Supply Appeals Board
- 32 Real Estate Appraiser Board
- 33 Real Estate Board
- 34 Rehabilitative Services, Board of
- 35 Respiratory Care, Advisory Board on
- 36 Safety and Health Codes Board
- 37 Seed Potato Board, State
- 38 Social Services, Board of
- 39 Social Work, Board of
- 40 State Health Department Sewage Handling and Disposal Appeal Review Board
- 41 Substance Abuse Certification Board
- 42 Surface Mining Review, Board of
- 43 Treasury Board
- 44 Veterans' Affairs, Board on
- 45 Veterinary Medicine, Board of
- 46 Virginia Advanced Shipbuilding and Carrier Integration Center Board
- 47 Virginia Board for Asbestos and Lead
- 48 Virginia Health Planning Board
- 49 Virginia Manufactured Housing Board
- 50 Virginia Natural Resources Council
- 51 Virginia Veterans Care Center Board of Trustees
- 52 Virginia Waste Management Board
- 53 Visually Handicapped, Virginia Board for the
- 54 Waste Management Facility Operators, Board for

- 1 Water Control Board, State  
 2 Waterworks and Wastewater Works Operators, Board for  
 3 Well Review Board, Virginia.  
 4 § 2.1-51.9. Agencies for which Secretary of Natural Resources responsible.  
 5 The Secretary shall be responsible to the Governor for the following agencies: Department of  
 6 Conservation and Recreation, Department of Historic Resources, Marine Resources Commission,  
 7 Department of Game and Inland Fisheries, Chippokes Plantation Farm Foundation, Chesapeake Bay  
 8 Local Assistance Department, Virginia Museum of Natural History, *Virginia Natural Resources*  
 9 *Council* and the Department of Environmental Quality.  
 10 The Governor may, by executive order, assign any state executive agency to the Secretary of  
 11 Natural Resources, or reassign any agency listed above to another secretary.  
 12 § 3.1-18.8. Review of capital projects.  
 13 In preparing its report on each major ~~state project action~~, as required in § ~~10.1-1188~~ et seq-  
 14 ~~10.1-1233~~, each state agency shall demonstrate that it has considered the impact that project would  
 15 have on important farmlands as required in § 3.1-18.4, and further has adequately considered  
 16 alternatives and mitigating measures. The ~~Council on the Environment~~ *Virginia Natural Resources*  
 17 *Council*, in conducting its review of each major ~~state project action~~, shall ensure that such  
 18 consideration has been demonstrated and shall incorporate its evaluation of the effects that project  
 19 would have on important farmlands in its comments to the Governor.  
 20 § 9-6.25:2. Policy boards, commissions and councils.  
 21 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the  
 22 following policy boards, commissions and councils:  
 23 Apprenticeship Council  
 24 Auctioneers Board  
 25 Blue Ridge Regional Education and Training Council  
 26 Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and  
 27 Landscape Architects  
 28 Board for Barbers  
 29 Board for Contractors  
 30 Board for Cosmetology  
 31 Board for Geology  
 32 Board for Hearing Aid Specialists  
 33 Board for Opticians  
 34 Board for Professional and Occupational Regulation  
 35 Board for Professional Soil Scientists  
 36 Board for Waterworks and Wastewater Works Operators  
 37 Board of Accountancy  
 38 Board of Agriculture and Consumer Services  
 39 Board of Audiology and Speech-Language Pathology  
 40 Board of Coal Mining Examiners  
 41 Board of Conservation and Recreation  
 42 Board of Correctional Education  
 43 Board of Dentistry  
 44 Board of Funeral Directors and Embalmers  
 45 Board of Health Professions  
 46 Board of ~~Historic Resources~~  
 47 Board of ~~Housing and Community Development~~  
 48 Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse  
 49 Treatment Professionals  
 50 Board of Medical Assistance Services  
 51 Board of Medicine  
 52 Board of Mineral Mining Examiners  
 53 Board of Nursing  
 54 Board of Nursing Home Administrators

- 1 Board of Optometry
- 2 Board of Pharmacy
- 3 Board of Psychology
- 4 Board of Social Services
- 5 Board of Social Work
- 6 Board of Surface Mining Review
- 7 Board of Veterinary Medicine
- 8 Board on Conservation and Development of Public Beaches
- 9 Cemetery Board
- 10 Chesapeake Bay Local Assistance Board
- 11 Child Day-Care Council
- 12 Commission on Local Government
- 13 Commonwealth Transportation Board
- 14 Council on Human Rights
- 15 Criminal Justice Services Board
- 16 Design-Build/Construction Management Review Board
- 17 Disability Services Council
- 18 Farmers Market Board, Virginia
- 19 Interdepartmental Council on Rate-setting for Children's Facilities
- 20 Library Board, The Library of Virginia
- 21 Marine Resources Commission
- 22 Milk Commission
- 23 Pesticide Control Board
- 24 Real Estate Appraiser Board
- 25 Real Estate Board
- 26 Reciprocity Board, Department of Motor Vehicles
- 27 Safety and Health Codes Board
- 28 Specialized Transportation Council
- 29 State Air Pollution Control Board
- 30 State Board of Corrections
- 31 State Board of Elections
- 32 State Board of Health
- 33 State Board of Juvenile Justice
- 34 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 35 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 36 State Seed Potato Board
- 37 State Water Control Board
- 38 Substance Abuse Certification Board
- 39 Treasury Board, The, Department of the Treasury
- 40 Virginia Aviation Board
- 41 Virginia Board for Asbestos and Lead
- 42 Virginia Fire Services Board
- 43 Virginia Gas and Oil Board
- 44 Virginia Health Planning Board
- 45 Virginia Manufactured Housing Board
- 46 *Virginia Natural Resources Council*
- 47 Virginia Parole Board
- 48 Virginia Public Broadcasting Board
- 49 Virginia Soil and Water Conservation Board
- 50 Virginia Voluntary Formulary Board
- 51 Virginia Waste Management Board
- 52 Virginia Workforce Council
- 53 Waste Management Facility Operators, Board for.
- 54 § 9-6.25:2. Policy boards, commissions and councils.

- 1 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the  
2 following policy boards, commissions and councils:  
3 Apprenticeship Council  
4 Auctioneers Board  
5 Blue Ridge Regional Education and Training Council  
6 Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and  
7 Landscape Architects  
8 Board for Barbers  
9 Board for Contractors  
10 Board for Cosmetology  
11 Board for Geology  
12 Board for Hearing Aid Specialists  
13 Board for Opticians  
14 Board for Professional and Occupational Regulation  
15 Board for Professional Soil Scientists  
16 Board for Waterworks and Wastewater Works Operators  
17 Board of Accountancy  
18 Board of Agriculture and Consumer Services  
19 Board of Audiology and Speech-Language Pathology  
20 Board of Coal Mining Examiners  
21 Board of Conservation and Recreation  
22 Board of Correctional Education  
23 Board of Dentistry  
24 Board of Funeral Directors and Embalmers  
25 Board of Health Professions  
26 Board of Historic Resources  
27 Board of Housing and Community Development  
28 Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse  
29 Treatment Professionals  
30 Board of Medical Assistance Services  
31 Board of Medicine  
32 Board of Mineral Mining Examiners  
33 Board of Nursing  
34 Board of Nursing Home Administrators  
35 Board of Optometry  
36 Board of Pharmacy  
37 Board of Psychology  
38 Board of Social Services  
39 Board of Social Work  
40 Board of Surface Mining Review  
41 Board of Veterinary Medicine  
42 Board on Conservation and Development of Public Beaches  
43 Cemetery Board  
44 Chesapeake Bay Local Assistance Board  
45 Child Day-Care Council  
46 Commission on Local Government  
47 Commonwealth Transportation Board  
48 Council on Human Rights  
49 Criminal Justice Services Board  
50 Design-Build/Construction Management Review Board  
51 Disability Services Council  
52 Farmers Market Board, Virginia  
53 Interdepartmental Council on Rate-setting for Children's Facilities  
54 Library Board, The Library of Virginia

- 1 Marine Resources Commission
- 2 Milk Commission
- 3 Pesticide Control Board
- 4 Real Estate Appraiser Board
- 5 Real Estate Board
- 6 Reciprocity Board, Department of Motor Vehicles
- 7 Safety and Health Codes Board
- 8 Specialized Transportation Council
- 9 State Air Pollution Control Board
- 10 State Board of Corrections
- 11 State Board of Elections
- 12 State Board of Health
- 13 State Board of Juvenile Justice
- 14 State Health Department, Sewage Handling and Disposal Appeal Review Board
- 15 State Mental Health, Mental Retardation and Substance Abuse Services Board
- 16 State Seed Potato Board
- 17 State Water Control Board
- 18 Substance Abuse Certification Board
- 19 Treasury Board, The, Department of the Treasury
- 20 Virginia Aviation Board
- 21 Virginia Board for Asbestos and Lead
- 22 Virginia Fire Services Board
- 23 Virginia Gas and Oil Board
- 24 Virginia Health Planning Board
- 25 Virginia Manufactured Housing Board
- 26 Virginia Natural Resources Council
- 27 Virginia Parole Board
- 28 Virginia Public Broadcasting Board
- 29 Virginia Soil and Water Conservation Board
- 30 Virginia Voluntary Formulary Board
- 31 Virginia Waste Management Board
- 32 Virginia Workforce Council
- 33 (For effective date, see Editor's note) Volunteer Firefighters' and Rescue Squad Workers' Pension
- 34 Fund Board
- 35 Waste Management Facility Operators, Board for.

CHAPTER 12.1.

VIRGINIA NATURAL RESOURCES POLICY ACT.

Article 1.

General Provisions.

§ 10.1-1222. Purpose.

The purpose of this chapter is to recognize the importance of fostering consistency between the Commonwealth's natural resource protection programs and the Commonwealth's economic contributions to projects that may have adverse impacts on the value of the state's natural resource base. The Commonwealth's financial commitment to natural resource programs, while constituting a small percentage of the overall spending of the Commonwealth, is, nevertheless, substantial. In order to improve and protect those investments in the value of our natural resources, it is imperative that projects that utilize state funding be evaluated so as to be certain that the state's financial investments in natural resource conservation are protected for future generations.

The economic welfare of the Commonwealth, the health and preservation of its natural resources, the health, safety and welfare of its citizens, the efficient and economical use and adequacy of its infrastructure and the fiscally responsible utilization of state financial resources will be promoted by coordinated approaches that (i) promote consistency and coordination in the development and implementation of programs and actions affecting the Commonwealth's natural resources; (ii) provide information, guidance and support to local and regional efforts; (iii) ensure that tax dollars are spent

1 effectively and efficiently in a manner that takes into account the value and contributions of the  
 2 Commonwealth's natural resources and the Commonwealth's general goals and policies to enhance  
 3 and preserve those natural resources; and (iv) are consistent with the specific policies in § 10.1-1234.

4 § 10.1-1223. Definitions.

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

6 "Major action" means any activity involving \$500,000 or more in funds made available by the  
 7 state, whether through direct payments, grants or loans, for the acquisition of an interest in land, for  
 8 the construction of any new facility or for the improvement, expansion, support or maintenance of any  
 9 existing facility.

10 "Natural resource impact" means actual or potential changes in the natural, environmental, scenic  
 11 and historical attributes of the Commonwealth from direct, indirect or cumulative effects.

12 "Natural resources" means the natural, environmental, scenic and historical attributes of the  
 13 Commonwealth.

14 Article 2.

15 Virginia Natural Resources Council.

16 § 10.1-1224. Virginia Natural Resources Council established; membership.

17 There is hereby created the Natural Resources Council (the "Council"). The Council shall be  
 18 composed of five citizen members selected by the Governor. The terms of the Council members shall  
 19 be three years. Of the initial appointments by the Governor, one shall be for a period of one year,  
 20 two shall be for a period of two years and two shall be for a period of three years. Members shall be  
 21 well-versed and experienced in fields relevant to the Council's purpose, including state and federal  
 22 environmental law, natural resource management, and land use planning. The Council shall select a  
 23 chairman annually from its membership.

24 § 10.1-1225. Council Director.

25 The Council Director, appointed by the Governor to serve at his pleasure for a term coincident  
 26 with his own, shall serve as executive officer of the Council. The Director shall, under the direction  
 27 and control of the Governor, exercise such power and perform such duties as are conferred or  
 28 imposed upon him by law and shall perform such other duties as may be required of him by the  
 29 Council. The Director may designate members of his staff to act in his place, except in the adoption  
 30 or promulgation of any regulation.

31 § 10.1-1226. General powers of the Council.

32 The Council shall have the following general powers, any of which may be delegated to the  
 33 Director as appropriate:

34 1. Employ such personnel and procure such professional services as may be necessary to carry out  
 35 the duties of the Council;

36 2. Make and enter into all contracts and agreements necessary or incidental to the performance of  
 37 its duties and the execution of its powers under this chapter, including, but not limited to, contracts  
 38 with the United States, other states, other state agencies, localities and political subdivisions of the  
 39 Commonwealth;

40 3. Accept grants from the United States government and agencies and instrumentalities thereof and  
 41 any other source. To these ends, the Council shall have the power to comply with such conditions and  
 42 execute such agreements as may be necessary, convenient, or desirable;

43 4. Accept and administer services, property, gifts and other funds donated or appropriated to it  
 44 and make contracts related thereto;

45 5. Acquire in any lawful manner personal or real property or any interest therein deemed  
 46 necessary in the performance of the Council's functions and maintain and improve such property or  
 47 dispose of it when necessary;

48 6. Initiate and supervise research programs; and

49 7. Promulgate regulations necessary to carry out the provisions of this chapter.

50 § 10.1-1227. Responsibilities and duties of Council; coordination and implementation of natural  
 51 resource policies; assistance to local governments.

52 The Council shall have the responsibility and all necessary authority to:

53 1. Review and comment on natural resource impact reports submitted pursuant to Article 3  
 54 (§ 10.1-1233 et seq.) of this chapter;

1 2. Foster and assist in the development of management and administrative systems and practices  
2 that will ensure coordinated and efficient implementation of the natural resource preservation  
3 purposes, goals and policies of this chapter;

4 3. Involve heads of agencies and other personnel in meetings to review policies and programs of  
5 mutual concern relating to natural resources;

6 4. Provide staff support to the meetings held pursuant to § 10.1-1232;

7 5. Coordinate the integration of the environmental information of state agencies as it deems  
8 necessary to achieve the purposes of this chapter; and

9 6. At the written request of a locality, provide and coordinate information and assistance to  
10 localities requesting support in evaluating projects and actions with potential natural resource  
11 impacts, including, but not limited to, development projects, road and transportation construction and  
12 planning projects, solid waste facility siting, and prison construction.

13 § 10.1-1228. Council research and reports.

14 The Council's duties shall include, after holding public hearings throughout the Commonwealth,  
15 the issuance, by October 1 of each even-numbered year, of a report on the activities of the Council,  
16 on the results of meetings held pursuant to § 10.1-1232, and on the state of the Commonwealth's  
17 natural resources. The report shall include, among other things:

18 1. An assessment of natural resource trends affecting the Commonwealth and their implications for  
19 the future of Virginia's natural resources;

20 2. An assessment of the effectiveness of state policies, procedures and practices in ensuring that  
21 the purposes and policies of this chapter are being and will be met;

22 3. Any suggested legislation and management actions to better achieve those purposes and  
23 policies;

24 4. Planning, coordination, policy and other decisions made to achieve the purposes and policies of  
25 this chapter resulting from meetings held pursuant to § 10.1-1232, including measures taken to utilize  
26 state policies and funding in a manner that preserves and protects the Commonwealth's natural  
27 resources; and

28 5. An assessment of the compliance by all state agencies, boards, authorities, commissions,  
29 political subdivisions, localities and any other branch of state government with the purposes and  
30 policies created under this chapter.

31 § 10.1-1229. Meetings.

32 The Council shall meet at least once every three months, and other meetings may be held at any  
33 time or place determined by a majority of the members of the Council or upon call of the Director.

34 § 10.1-1230. Compliance with chapter.

35 The laws, regulations and policies of the Commonwealth shall be interpreted, administered and  
36 implemented by all state agencies, boards, authorities, commissions, political subdivisions, localities  
37 and any other branch of the state government, and their officers and employees, in accordance with  
38 the purposes and policies set forth in this chapter.

39 All state agencies, boards, authorities, commissions, political subdivisions, localities and all other  
40 branches of state government shall review their statutory authorities, regulations and policies and  
41 procedures for the purpose of determining whether there are any deficiencies or inconsistencies  
42 therein that prohibit full compliance with the purposes, provisions, goals and policies of this chapter  
43 and shall take all necessary steps to achieve compliance.

44 § 10.1-1231. Cooperation of state agencies and universities.

45 All state agencies, boards, authorities, commissions, political subdivisions, localities and any other  
46 branch of the state government, and their officers and employees, shall cooperate with the Council in  
47 carrying out the purposes of this chapter. State institutions of higher education shall provide such  
48 computer-based information resources as may be available and requested by the Council.

49 § 10.1-1232. Secretarial-level coordination and review.

50 The Secretaries of the Secretariats established in Title 2.1, and all other members of the  
51 Governor's cabinet identified by him, shall meet at least quarterly in a meeting chaired by the  
52 Secretary of Natural Resources and staffed by the Virginia Natural Resource Council.

53 The purpose of the meetings shall be to review each member's programs, policies and major  
54 initiatives to:



- 1 1. Identify conflicts with natural resources preservation efforts and the purposes and policies of  
 2 this chapter;  
 3 2. Evaluate the natural resources benefits and burdens of programs, policies and initiatives,  
 4 including the expenditure of state funds. This review shall include, but not be limited to, the  
 5 evaluation of each Secretariat's distribution of funds, whether through direct payment, grant, loan, or  
 6 other financial contribution, for infrastructure, including, but not limited to, roads, water- and  
 7 sewer-related projects, and facilities, and through the Governor's Development Opportunity Fund; and  
 8 3. Develop planning, coordination, and policy decisions to achieve the objectives, goals and  
 9 policies of this chapter, including measures to utilize state funding in a manner that preserves and  
 10 protects the Commonwealth's natural resources.

11 Article 3.

12 Natural Resource Impact Review.

13 § 10.1-1233. Natural resource impact reports on major actions.

14 A. Any person, state agency, board, authority, commission, political subdivision, locality or other  
 15 branch of state government, including state-supported institutions of higher education, who is  
 16 responsible for a major action shall prepare and submit a natural resource impact report to the  
 17 Council on the major action. Those required to submit natural resource impact reports on major  
 18 actions may submit a natural resource impact report on other actions.

19 B. Natural resource impact reports shall include, but not be limited to, the following:

- 20 1. The natural resource impact of the major action, including the impact on wildlife habitat;  
 21 2. Any adverse natural resource effects that cannot be avoided if the major action is undertaken;  
 22 3. Measures proposed to minimize any adverse natural resource impact of the major action;  
 23 4. Any alternatives to the proposed major action;  
 24 5. Any irreversible natural resource changes that would be involved in the major action; and  
 25 6. Any inconsistency with the purposes and policies of this chapter, including, but not limited to,  
 26 those in § 10.1-1222 and § 10.1-1234.

27 If the major action is for the improvement, expansion, support or maintenance of a facility or land  
 28 acquisition that has not undergone the review provided for by this article, the report and review  
 29 provisions of this article shall extend to the original action as well as the proposed action.

30 For the purposes of subdivision 4, the report shall contain all alternatives considered, including,  
 31 but not limited to, the alternative of not moving forward with the major action, and the reasons why  
 32 the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives  
 33 were not considered.

34 § 10.1-1234. Policies.

35 A. It is the policy of the Commonwealth to protect and improve the environment and to avoid  
 36 adverse natural resource impacts. In making decisions regarding major actions, all state agencies,  
 37 boards, authorities, commissions, political subdivisions, localities and any other branch of state  
 38 government, in addition to other natural resource protection polices and requirements found  
 39 elsewhere in the Code, shall:

- 40 1. Support the development and redevelopment of infrastructure needed for urban and rural  
 41 development that encourages compact and efficient patterns of development, minimizes consumption of  
 42 land and reduces resource consumption;  
 43 2. Conserve and protect open space, scenic and natural areas, recreational areas, and  
 44 endangered, unique and threatened plant and animal species and their habitats;  
 45 3. Protect and enhance the Commonwealth's natural resources in order to further tourism and  
 46 maintain the Commonwealth's heritage;  
 47 4. Support and maintain the viability of agricultural and forestal lands;  
 48 5. Support coordination and consistency between and among localities in the development and  
 49 implementation of comprehensive plans and zoning and subdivision ordinances to ensure that  
 50 decisions by one locality do not adversely affect natural resources of adjacent jurisdictions;  
 51 6. Recognize the economic, health and cost avoidance benefits of environmental and natural  
 52 resource protection efforts and the maintenance of open space, wetlands and riparian buffers; and  
 53 7. Protect, manage and maintain the resources that support resource-based industries so that their  
 54 productivity is sustained for future generations.

1 § 10.1-1235. *Development of procedures for administration of article.*

2 A. *The Council shall, in conjunction with other state agencies, coordinate the development of*  
3 *criteria and procedures to ensure the orderly preparation and evaluation of natural resource impact*  
4 *reports. These procedures shall provide for submission of impact reports in sufficient time to permit*  
5 *any modification of the major action that may be necessitated because of the natural resource impact.*

6 B. *The Council shall develop procedures to give expedited review and consideration to impact*  
7 *reports that show an action that is: (i) consistent with policies set forth in this chapter; (ii) designed*  
8 *to produce positive natural resource benefits and promote the purposes and policies of this chapter;*  
9 *(iii) part of a coordinated plan between localities; (iv) projected to promote redevelopment of*  
10 *abandoned or under-utilized industrial areas within city or town boundaries; (v) in an area already*  
11 *served by adequate water and sewer, schools and roads and public transportation; (vi) consistent with*  
12 *comprehensive plans of the action's location and those of neighboring jurisdictions; or (vi) part of a*  
13 *joint plan between localities to coordinate growth and infrastructure between the localities.*

14 § 10.1-1236. *Council to review report and make statement to Governor; comments on impacts.*

15 A. *The Council shall review natural resource impact reports and comment to the Governor on the*  
16 *natural resource impact of each major action within sixty days of the receipt of a complete natural*  
17 *resource impact report. The Council may, as necessary in its judgment, return a submittal for more*  
18 *information in order to obtain a complete report. The Council shall accept written comments during*  
19 *its period of review and shall submit the comments with its statement to the Governor. The Council's*  
20 *statement shall contain a conclusion as to whether state funds should be used to fund, in whole or in*  
21 *part, the major action under review. The statement of the Council and any public comments shall be*  
22 *made available to the General Assembly and to the public at the time of submission by the Council to*  
23 *the Governor.*

24 B. *Impacts that are not in conformance with state plans for air or water quality, with commitments*  
25 *made for the restoration of the Chesapeake Bay, or the purposes and policies of this chapter, shall be*  
26 *reported by the Council as having an adverse natural resource impact.*

27 § 10.1-1237. *Approval of Governor required.*

28 A. *Until the Governor reviews the Council's report and authorizes the taking of action, no steps*  
29 *shall be undertaken in furtherance of a major action that would (i) have an adverse natural resource*  
30 *impact or (ii) limit the choice of reasonable alternatives.*

31 B. *The State Comptroller shall not authorize payments of funds from the state treasury for a major*  
32 *action reviewable by the Council unless the request is accompanied by the written approval of the*  
33 *Governor after his consideration of the comments of the Council. If the statement of the Council*  
34 *contains a conclusion that state funds should not be used to fund, in whole or in part, a major action,*  
35 *the State Comptroller shall not authorize payments of funds from the state treasury for a major action*  
36 *unless the expenditure is approved by the Governor notwithstanding the Council's statement.*

37 C. *Those wishing to take actions with an adverse natural resource impact when emergency*  
38 *circumstances make it necessary to take an action without observing the provisions of this chapter*  
39 *shall consult with the Council to develop an alternative procedure applicable only to those actions*  
40 *necessary to control the immediate impact of the emergency.*

41 § 10.1-1238. *Cooperation of state agencies; relationship to other programs.*

42 A. *All departments, commissions, boards, authorities, agencies, offices and institutions within any*  
43 *branch of the state government shall cooperate with the Council in carrying out the purposes of this*  
44 *article.*

45 B. *All powers and duties conferred or imposed upon the Director of the Department of*  
46 *Environmental Quality that are duplicative of those conferred or imposed upon the Director of the*  
47 *Council by this article shall be the responsibility of the Director of the Council or his designee.*

48 C. *Judgment of the merits of any required permit shall remain the responsibility of each respective*  
49 *board, commission, or state agency.*

50 2. *That the regulations, criteria, procedures and agreements of the Department of*  
51 *Environmental Quality implementing the provisions of Article 2 (§§ 10.1-1188 through*  
52 *10.1-1192) of Chapter 11.1 of Title 10.1 of the Code of Virginia shall continue in effect as*  
53 *regulations of the Virginia Natural Resources Council mutatis mutandis, until amended or*  
54 *repealed by the Council, for use in submitting and evaluating environmental impact statements.*

1 3. That Article 2 (§§ 10.1-1188 through 10.1-1192) of Chapter 11.1 of Title 10.1 of the Code of  
2 Virginia is repealed.

3 #

Official Use By Clerks	
<b>Passed By The House of Delegates</b>	<b>Passed By The Senate</b>
without amendment <input type="checkbox"/>	without amendment <input type="checkbox"/>
with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
substitute <input type="checkbox"/>	substitute <input type="checkbox"/>
substitute w/amdt <input type="checkbox"/>	substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
_____ Clerk of the House of Delegates	_____ Clerk of the Senate

# HB 712 Natural Resources Policy Act; created.

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Patron-Kenneth R. Plum

*Summary as introduced:*

**Virginia Natural Resources Policy Act.** Creates the Virginia Natural Resources Policy Act. The Act repeals the existing Environmental Impact Statement review process (which applies to state projects using \$100,000 in state funds) and replaces it with a natural resource impact review process, which applies to actions utilizing \$500,000 or more of state-provided funds for the acquisition of an interest in land; for the construction of any new facility; or for the improvement, expansion, support or maintenance of an existing facility. Policies against which such actions are to be judged are expressed. The Virginia Natural Resources Council is created to review the natural resource impact reports and provide comment to the Governor. State funds are not to be disbursed for actions reviewable by the Council without the Governor's approval following his review of the Council's comments. Among the Council's other duties are to (i) foster the coordination and implementation of natural resource policies; (ii) biennially produce a report that includes a review of the state of the Commonwealth's natural resources; (iii) assist localities, when requested, in the evaluation of actions with potential natural resource impacts; and (iv) provide staff support to meetings that are to be held at least quarterly by the Secretaries and other members of the Governor's cabinet. The cabinet-level meetings are to review programs, policies and major initiatives to (a) identify conflicts with natural resource preservation efforts and the purposes and policies set forth in the Act; (b) evaluate the natural resource benefits and burdens of each Secretariat's programs, policies and initiatives, including the expenditure of state funds; and (c) develop planning, coordination and policy decisions to achieve the purposes and policies of the Act, including measures to utilize state funding in a manner that preserves and protects the Commonwealth's natural resources. This is a recommendation of the Commission on the Future of Virginia's Environment.

*Full text:*

01/21/00 House: Presented & ordered printed 003829888

*Status:*

01/21/00 House: Presented & ordered printed 003829888

01/21/00 House: Referred to Committee on Conservation & Natural Resources

01/26/00 House: Assigned to C. N. R. sub-committee: 1

02/09/00 House: Continued to 2001 in Cons. & Nat. Res. (22-Y 0-N)

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 **Go to (General Assembly Home) or (Bills and Resolutions)**

## SENATE JOINT RESOLUTION NO. 134

*Establishing a farmland protection task force.*

Agreed to by the Senate, March 9, 2000

Agreed to by the House of Delegates, March 8, 2000

WHEREAS, it is the stated policy of the Commonwealth to conserve and protect agricultural lands as valued economic and natural resources, which provide food and other agricultural and forest products, essential open spaces for clean air sheds, watershed protection, and wildlife habitat, as well as for aesthetic purposes; and

WHEREAS, agriculture comprises a significant segment of the Commonwealth's economy and plays a critical role in defining the character of the Commonwealth and the quality of life of its citizens; and

WHEREAS, farmland generates more revenue for localities in property taxes than it costs in terms of public services; and

WHEREAS, the General Assembly has created a number of laws, programs and entities through which agricultural uses of land can be preserved, including the Agricultural and Forestal Districts Act, the Conservation Easement Act, the Open-Space Land Act, the Right to Farm Act, the important farmlands law, the Virginia Outdoors Foundation, the Virginia Land Conservation Foundation, and tax relief measures such as land use taxation; and

WHEREAS, Virginia has nevertheless lost an average of 45,000 acres of prime farmland each year during the past decade, according to the American Farmland Trust; and

WHEREAS, there are a number of factors that contribute to farmland loss, including suburban growth patterns and market conditions and government policies that detract from the profitability of agricultural enterprises; and

WHEREAS, states surrounding Virginia are utilizing farmland protection tools not currently available in the Commonwealth, including transferable development rights, circuit breaker tax credits, and farmland preservation programs that are funded and administered separately from other land conservation programs; and

WHEREAS, a comprehensive examination of existing and potential measures that Virginia can employ to encourage rural landowners to maintain the agricultural uses of their land is needed; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a farmland protection task force be established. The task force shall be composed of 10 members, which shall include 8 legislative members and 2 nonlegislative citizen members as follows: three members of the Senate, to be appointed by the Senate Committee on Privileges and Elections; five members of the House of Delegates, to be appointed by the Speaker, in accordance with the principles of Rule 16 of the House of Delegates; one citizen, to be appointed by the Senate Committee on Privileges and Elections; and one citizen, to be appointed by the Speaker.

In conducting its study, the task force shall develop a comprehensive farmland protection policy for the Commonwealth. The policy shall set farmland protection goals, specify strategies for meeting the goals and designate a state government agency or official who is responsible for ensuring that the policy is observed and the goals achieved. The policy shall identify the Commonwealth's existing farmland protection efforts, additional incentives that may be needed to encourage landowners to keep their land in agricultural uses, government actions that directly or indirectly tend to lead to or cause farmland conversion, and ways that such government actions can be modified so that farmland protection goals are met.


The direct costs of this study shall not exceed \$11,000.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the Department of Agriculture and Consumer Services. All agencies of the Commonwealth shall provide assistance to the task force, upon request.

The task force shall complete its work in time to submit its findings and recommendations to the Governor and the 2001 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.

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 [Go to \(General Assembly Home\)](#)

# SJ 134 Study; farmland protection.

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Patron-Emmett W. Hanger, Jr.

*Summary as passed:*

**Study; farmland protection.** Establishes a task force to develop a comprehensive farmland protection policy for the Commonwealth. This is a recommendation of the Commission on the Future of Virginia's Environment.

*Full text:*

01/21/00 Senate: Presented & ordered printed 003810432  
02/14/00 Senate: Committee substitute printed 001208432-S1  
03/17/00 Senate: Enrolled bill text (SJ134ER)

*Amendments:*

House amendments  
House amendments engrossed

*Status:*

01/21/00 Senate: Presented & ordered printed 003810432  
01/21/00 Senate: Referred to Committee on Rules  
02/14/00 Senate: Reported from Rules with substitute  
02/14/00 Senate: Committee substitute printed 001208432-S1  
02/15/00 Senate: Reading waived (39-Y 0-N)  
02/15/00 Senate: VOTE: (39-Y 0-N)  
02/15/00 Senate: Read second time  
02/15/00 Senate: Reading of substitute waived  
02/15/00 Senate: Committee substitute agreed to 001208432-S1  
02/15/00 Senate: Engrossed by Senate - comm. sub. 001208432-S1  
02/15/00 Senate: Reading waived (39-Y 0-N)  
02/15/00 Senate: VOTE: (39-Y 0-N)  
02/15/00 Senate: Agreed to by Senate by voice vote  
02/15/00 Senate: Communicated to House  
02/21/00 House: Placed on Calendar  
02/21/00 House: Referred to Committee on Rules  
03/06/00 House: Reported from Rules with amendments (17-Y 0-N)  
03/08/00 House: Taken up  
03/08/00 House: Committee amendments agreed to  
03/08/00 House: Engrossed by House as amended  
03/08/00 House: Agreed to by House with amendments (Block Vote) (98-Y 0-N)  
03/08/00 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)  
03/09/00 Senate: Reading of amendments waived  
03/09/00 Senate: House amendments agreed to by Senate by voice vote  
03/17/00 Senate: Enrolled bill text (SJ134ER)

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## 2000 SESSION

003819432

## SENATE BILL NO. 396

Offered January 21, 2000

A BILL to amend and reenact §§ 3.1-18.4, 3.1-18.5, 3.1-18.6, and 3.1-18.8 of the Code of Virginia, relating to protection of farm and forest lands.

Patrons—Hanger, Bolling, Marye and Norment; Delegates: Deeds, Moss and Plum

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-18.4, 3.1-18.5, 3.1-18.6, and 3.1-18.8 of the Code of Virginia are amended and reenacted as follows:

## CHAPTER 3.2.

## PRESERVATION OF IMPORTANT FARMLANDS PROTECTION OF FARM AND FOREST LANDS.

§ 3.1-18.4. Duties of public agencies generally.

A. The General Assembly finds that ~~important farmlands~~ farm and forest lands are being converted to nonagricultural use. The loss of this land undermines the Commonwealth's food and forest production capabilities. Agriculture, forestry, and related enterprises comprise a significant segment of the Commonwealth's economy and play a critical role in defining the character of the Commonwealth, and their preservation should be encouraged.

The policies and actions of various state agencies account for a significant portion of ~~important farmlands~~ farm and forest lands being converted to nonagricultural use. Where possible, state policies and actions should encourage the preservation of ~~important farmlands~~ farm and forest lands.

B. All agencies of the Commonwealth, in promulgating regulations and undertaking capital projects, shall encourage the preservation of ~~important farmlands~~ farm and forest lands.

§ 3.1-18.5. Characteristics to be considered in evaluating impacts on farm and forest lands.

As used in this chapter, "important farmlands" shall consist of land that has historically produced or is producing agricultural or forestal products and is soil. In preparing environmental impact reports in accordance with § 3.1-18.8, state agencies shall consider the impact of the major state project on all farm and forest lands that:

1. Have soil classified as class 1, 2, 3 or 4; or shall consist of:

~~1. Prime farmland, which are lands that have the best~~

2. Have an exceptional combination of physical characteristics for the production of food, feed, fiber, forest products, forage, oilseed and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. ~~Prime farmland includes land that possesses the above characteristics but is currently being used to produce livestock and timber. It does not include land already in, or committed to urban development or water storage;~~

~~2. Unique farmland which are lands other than prime farmland that are used~~

3. Are valuable for production of specific high-value food and fiber crops; ~~It has the such as fruits and vegetables, and have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific such crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits including grapes and apples, and vegetables; and~~

~~3. Farmland, other than prime or unique farmlands, that is of statewide;~~

4. Are of statewide or local importance for the production of food, feed, fiber, forest products, forage or oilseed crops;

5. Have been recognized under a state program such as the Clean Water Farm Award or the Century Farm Program;

6. Are part of an agricultural or forestal district or are participating in a use value assessment and taxation program for real estate devoted to agricultural, horticultural or forest use in accordance with the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1; or

7. Make a significant contribution to the local economy or the rural character of the area in which the land is located.

The governing body of each county, city and town, with the cooperation of the United States

003819432

SB396

1/21/00 18:15



1 Department of Agriculture, shall be responsible for designating the important farmlands within its  
2 jurisdiction. In designating important farmlands the governing body shall demonstrate that adequate  
3 provision has been made for nonagricultural uses within its jurisdiction.

4 § 3.1-18.6. Certain agencies to prepare plans for implementation of policy; Secretary of Commerce  
5 and Trade responsibilities.

6 Each of the following agencies shall prepare a plan for the implementation of the policies set forth  
7 in this chapter:

- 8 1. Department of Transportation;
- 9 2. Department of Health;
- 10 ~~3. State Water Control Board;~~
- 11 4 3. Department of Conservation and Recreation;
- 12 ~~5 4. State Corporation Commission;~~
- 13 6 5. Department of Environmental Quality.

14 The plan shall contain an analysis of the impact which the agency's regulations and projects have  
15 on the conversion of ~~important farmlands~~ farm and forest lands. The plan shall be updated and  
16 submitted to the Secretary of Commerce and Trade annually. The Secretary shall review the plan in  
17 consultation with the Commissioner of Agriculture and Consumer Services and the State Forester, and  
18 may recommend improvements to the plan. The Secretary shall submit a written report by December  
19 1 of each year to the chairmen of the House Committee on Agriculture and the Senate Committee on  
20 Agriculture, Conservation and Natural Resources on the impacts of state agency actions on the  
21 conversion of farm and forest lands.

22 § 3.1-18.8. Review of capital projects.

23 In preparing its report on each major state project, as required in Article 2 (§ 10.1-1188 et seq.) of  
24 Chapter 11.1 of Title 10.1, each state agency shall demonstrate that it has considered the impact that  
25 project would have on ~~important farmlands~~ farm and forest lands as required in §§ 3.1-18.4 and  
26 3.1-18.5, and further has adequately considered alternatives and mitigating measures. The ~~Council on~~  
27 ~~the Environment~~ Department of Environmental Quality, in conducting its review of each major state  
28 project, shall ensure that such consideration has been demonstrated and shall incorporate its evaluation  
29 of the effects that project would have on ~~important farmlands~~ farm and forest lands in its comments  
30 to the Governor. The procedures for review of highway and road construction projects established in  
31 accordance with § 10.1-1188 B shall include provisions requiring that the factors listed in § 3.1-18.5  
32 are considered as part of the review of each project.

Official Use By Clerks	
<b>Passed By The Senate</b> without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>	<b>Passed By The House of Delegates</b> without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
_____ Clerk of the Senate	_____ Clerk of the House of Delegates

# SB 396 Protection of farm and forest lands.

Patron-Emmett W. Hanger, Jr.

*Summary as passed:*

**Protection of farm and forest lands.** Revises the Important Farmlands law, which requires state agencies to evaluate the impacts of their actions on farm and forest lands. The bill replaces the definition of "important farmlands" with a set of characteristics that are exhibited by farm and forest lands that are worthy of protection, and clarifies that the requirement of evaluating impacts on farm and forest lands applies to highway and road construction projects. With regard to state agency farmland protection plans, the bill requires annual updates, review by the Secretaries of Commerce and Trade and Natural Resources, and that the Secretary of Commerce and Trade submit an annual report to the standing committees of jurisdiction in the General Assembly. This is a recommendation of the Commission on the Future of Virginia's Environment. This bill is identical to HB 552.

*Full text:*

01/21/00 Senate: Presented & ordered printed 003819432  
01/31/00 Senate: Committee substitute printed 003862432-S1  
03/14/00 Senate: Enrolled bill text (SB396ER)  
05/01/00 Governor: Acts of Assembly Chapter text (CHAP0778)

*Status:*

01/21/00 Senate: Presented & ordered printed 003819432  
01/21/00 Senate: Referred to Committee on Agriculture, Conservation & Nat.  
01/31/00 Senate: Reported from A. C. & N. R. w/sub (13-Y 0-N)  
01/31/00 Senate: Committee substitute printed 003862432-S1  
02/01/00 Senate: Constitutional reading dispensed (37-Y 0-N)  
02/01/00 Senate: VOTE: CONST. RDG. DISPENSED R (37-Y 0-N)  
02/02/00 Senate: Read second time  
02/02/00 Senate: Reading of substitute waived  
02/02/00 Senate: Committee substitute agreed to 003862432-S1  
02/02/00 Senate: Engrossed by Senate - comm. sub. 003862432-S1  
02/03/00 Senate: Read third time and passed Senate (38-Y 0-N)  
02/03/00 Senate: VOTE: PASSAGE R (38-Y 0-N)  
02/03/00 Senate: Communicated to House  
02/09/00 House: Placed on Calendar  
02/09/00 House: Read first time  
02/09/00 House: Referred to Committee on Agriculture  
02/16/00 House: Assigned to Agriculture sub-committee: 3  
03/01/00 House: Reported from Agriculture (22-Y 0-N)  
03/02/00 House: Read second time  
03/03/00 House: Read third time  
03/03/00 House: Passed House (Block Vote) (98-Y 0-N)  
03/03/00 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)  
03/14/00 Senate: Enrolled bill text (SB396ER)  
03/16/00 Senate: Enrolled  
03/16/00 House: Signed by Speaker  
03/17/00 Senate: Signed by President  
04/09/00 Governor: Approved by Governor-Chapter 778 (effective 7/1/00)  
05/01/00 Governor: Acts of Assembly Chapter text (CHAP0778)

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**SENATE JOINT RESOLUTION NO. 76**

Offered January 17, 2000

*Continuing the Commission on the Future of Virginia's Environment.*-----  
Patron-- Bolling-----  
Referred to Committee on Rules  
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WHEREAS, the 1996 Session of the General Assembly passed House Joint Resolution 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 long-term vision and plan for the future management Virginia's natural resources; and

WHEREAS, the 1998 Session of the General Assembly passed House Joint Resolution 136 and the 1999 Session of the General Assembly passed House Joint Resolution 719 continuing the study on the Future of Virginia's Environment; and

WHEREAS, the Commission has formed subcommittees on parks and land conservation, solid waste, the Water Quality Improvement Act, and the vision and plan for the future of Virginia's environment, each of which has met frequently and accomplished a great deal; and

WHEREAS, throughout the Commission's existence, it has been on the forefront of environmental issues coming before the General Assembly, including solid waste issues, the Water Quality Improvement Act, and land conservation issues; and

WHEREAS, due to a continuing desire to monitor the implementation of the Commission's numerous recommendations and a recognition of the role the Commission has established for itself as a body of experts on emerging environmental issues, the Commission members agree that the Commission should continue for an additional year; and

WHEREAS, Maryland's attempt to eliminate disincentives for rational development through its Smart Growth and Neighborhood Conservation Initiatives has captured the attention of many Virginians, as evidenced by the number of study resolutions that have been introduced on the subject of smart growth and other closely related subjects, such as Senate Joint Resolution 177 (1998), House Joint Resolution 195 (1998), House Joint Resolution 543 (1999), Senate Joint Resolution 53 (1998), and House Joint Resolution 719 (1999); and

WHEREAS, as a result of these resolutions, members of the General Assembly have learned about many of the problems associated with land-consumptive patterns of development that are known collectively as suburban sprawl, including the declining health of central cities, increasing costs for public services, loss of rural landscapes, and environmental degradation; and

WHEREAS, while many have acknowledged that many land use decisions leading to sprawl are made at the local level, no study committee has devoted a significant amount of time to examining the question of how decision-making at the state level can be made in a way to encourage reinvestment in existing communities, as is done in Maryland under the Smart Growth and Neighborhood Conservation Initiatives; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on the Future of Virginia's Environment be continued. The Commission shall be composed of those members appointed under HJR 221 (1996) and HJR 136 (1998), provided that members who attended less than two Commission or subcommittee meetings during the 1999 interim may be replaced by the appropriate appointing authority.

In conducting its study, the Commission shall continue to monitor the implementation of its recommendations and create opportunities for the members of the Commission to become educated on environmental issues that may require legislative action. The Commission shall also make recommendations on whether any of the five components of Maryland's Smart Growth and Neighborhood Conservation Initiatives can be employed effectively in Virginia, given those aspects of Commonwealth that differ from Maryland, including the existence of independent cities and Virginia's method of funding local infrastructure needs. The Commission shall recommend legislation designed to ensure that state spending on economic development, infrastructure and transportation discourages sprawl and encourages redevelopment of central cities and the protection of the Commonwealth's rural landscapes.


The direct costs of this study shall not exceed \$14,250.

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

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 2001 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.

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 [Go to \(General Assembly Home\)](#)

# SJ 76 Study; Future of Virginia's Environment.

Patron-William T. Bolling

*Summary as passed:*

**Study; Future of Virginia's Environment.** Continues the Commission on the Future of Virginia's Environment for a fifth year. The Commission is to continue to monitor the implementation of its recommendations and create opportunities for the members of the Commission to become educated on environmental issues that may require legislative action.

*Full text:*

01/17/00 Senate: Presented & ordered printed 003815404  
02/14/00 Senate: Committee substitute printed 003880404-S1  
03/07/00 House: Committee substitute printed 006322404-H1  
03/17/00 Senate: Enrolled bill text (SJ76ER)

*Status:*

01/17/00 Senate: Presented & ordered printed 003815404  
01/17/00 Senate: Referred to Committee on Rules  
02/14/00 Senate: Reported from Rules with substitute  
02/14/00 Senate: Committee substitute printed 003880404-S1  
02/15/00 Senate: Reading waived  
02/15/00 Senate: Read second time (39-Y 0-N)  
02/15/00 Senate: VOTE: (39-Y 0-N)  
02/15/00 Senate: Reading of substitute waived  
02/15/00 Senate: Committee substitute agreed to 003880404-S1  
02/15/00 Senate: Engrossed by Senate - comm. sub. 03880404-S1  
02/15/00 Senate: Reading waived (39-Y 0-N)  
02/15/00 Senate: VOTE: (39-Y 0-N)  
02/15/00 Senate: Agreed to by Senate by voice vote  
02/15/00 Senate: Communicated to House  
02/21/00 House: Placed on Calendar  
02/21/00 House: Referred to Committee on Rules  
03/06/00 House: Reported from Rules with substitute (14-Y 3-N)  
03/07/00 House: Committee substitute printed 006322404-H1  
03/08/00 House: Taken up  
03/08/00 House: Committee substitute agreed to 006322404-H1  
03/08/00 House: Engrossed by House - com. sub. 006322404-H1  
03/08/00 House: Agreed to by House with substitute (88-Y 10-N)  
03/08/00 House: VOTE: ADOPTION (88-Y 10-N)  
03/09/00 Senate: Reading of substitute waived  
03/09/00 Senate: House substitute agreed to by Senate by voice vote  
03/17/00 Senate: Enrolled bill text (SJ76ER)

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