

SENATE OF VIRGINIA



JOHN C. WATKINS
10TH SENATORIAL DISTRICT
ALL OF AMELIA AND POWHATAN COUNTIES;
PART OF CHESTERFIELD, CUMBERLAND,
GOOCHLAND, AND HENRICO COUNTIES;
AND PART OF THE CITY OF RICHMOND
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COMMITTEE ASSIGNMENTS:
AGRICULTURE, CONSERVATION AND
NATURAL RESOURCES
COMMERCE AND LABOR
FINANCE
TRANSPORTATION

January 9, 2008

The Virginia Commission on Immigration, as established in Chapter 849 of the 2007 Acts of Assembly, is tasked with studying, reporting, and making recommendations to address the costs and benefits of immigration on the Commonwealth.

The role of the Commission is set out in § 2.2-2530 of the *Code of Virginia*, which directs members to examine the impact of immigration on education, health care, law enforcement, local demands for services and the economy, and the effect on the Commonwealth of federal immigration and funding policies. The 20-member Commission is comprised of eight members of the House of Delegates and three members of the Senate, as well as broad and diverse citizen representation. In its deliberations, the Commission provides for the contributions of the Superintendent of State Police, the Commissioner of the Department of Motor Vehicles, the Director of the Department of Corrections, the Superintendent of Public Instruction, the Commissioner of the Department of Social Services and the Commissioner of the Department of Health.

To keep Commission members and the public fully apprised of Commission activities, a website was established to post meeting announcements, agendas, materials and minutes. The website is found on the Secretary of Health and Human Resources homepage:
<http://www.hhr.virginia.gov/Initiatives/ImmigrationCommission>.

The first meeting of the Virginia Commission on Immigration was held on September 25, 2007 in Senate Room A of the General Assembly Building. Senator John Watkins was nominated as chairman and Delegate Jackson Miller as vice chairman. The meeting included a presentation from Mr. Hal Greer of the Joint Legislative Audit and Review Commission on the Acclimation of Virginia's Foreign-Born Population (2003). Mr. William J. Benos of Williams-Mullen briefed the Commission on current Federal Immigration Laws. In addition, Commissioner Patrick Finnerty from the Department of Medical Assistance Services briefed the Commission on Immigration Policies for Virginia's Medicaid Program. The meeting concluded with the Commission discussing the topics they would like to study over the next two years.

The second Commission meeting took place on November 13, 2007 in House Room C of the General Assembly Building. This meeting began with two presentations from the Department of Education. Ms. Michelle M. Vucci presented on School Enrollment Requirements for Virginia Students. She was followed by Ms. Roberta Schlicher who presented on Programs for Limited English Proficient Students. The Commission learned about

Employment Services for Immigrants and Foreign Workers from Commissioner Delores Esser of the Virginia Employment Commission. The second meeting concluded with additional discussion on upcoming meeting topics and the format for the presentations to ensure each group's presentation covers the following topics: practices currently being utilized regarding immigration, areas in need of improvement and areas under federal oversight that cannot be addressed by state government.

The Commission met again on December 13 in Senate Room B of the General Assembly Building. This meeting included a presentation from Mr. Martin L. Kent from the Office of the Attorney General on Immigration Laws of the Commonwealth. He was followed by Commissioner D.B. Smit of the Department of Motor Vehicles with a presentation on Licensing and Identification in the Commonwealth. Finally, Colonel Steven Flaherty from the Virginia State Police presented on Immigration and Public Safety.

The fourth meeting of the Commission took place on January 4 in Senate Room A of the General Assembly Building. That meeting began with a presentation from James Towey of the Virginia State Crime Commission on the Recommendations of the Illegal Immigration Task Force. He was followed by Qian Cai of the Weldon Cooper Center for Public Service. She presented on the Demographics of Hispanic Immigrants and Citizens in Virginia. The third presentation was from Robert Redmond Jr. and Hobey Bauhan of Virginia Employers for Sensible Immigration Policy (VESIP). They presented on VESIP's mission, goals, and concerns with potential General Assembly bills related to enforcement of immigration laws. Mark Flynn of the Virginia Municipal League and Mike Edwards of the Virginia Association of Counties followed with the results of a survey of local government actions on immigration. Finally, Loudoun County Attorney Jack Roberts and Prince William County Attorney Ross G. Horton presented on Issues for Local Government Attorneys Related to Immigration Status.

A consistent theme in the testimony heard by the Commission during all of the meetings was the difference between state and federal oversight for a variety of immigration related matters. The presentations described the issue and identified how state law, regulations and policy intersect with federal oversight and statute. The attached table outlines the presentation topics, the immigration-specific issues raised during the Commission's deliberations, and the delineation of state and federal jurisdiction.

The Commission is tasked with the difficult challenge of exploring every aspect in which immigration affects the Commonwealth. In addition to the topics addressed in 2007, the Commission has outlined a detailed group of presenters for their meetings in 2008. The table below shows a tentative meeting schedule and some of the planned topics. The Commission plans to hear from the public health community in the spring with presentations from the Virginia Department of Health and the Virginia Department of Social Services. The next topic the Commission will examine is the affect of immigration on local governments. For this topic, the Commission plans to hear from the Virginia Association of Counties, the Virginia Municipal League, and various representatives from local governments around the Commonwealth that represent the diverse environment of Virginia.

Date	Area of Discussion: <i>Immigration's Impact on--</i>
Spring 2008	Public Health and Social Services
Spring/Summer 2008	Local Governments
Summer 2008	Commerce
Summer 2008	Private Health Providers
TBD	Public Hearings

Additionally, the Commission plans to hear presentations from the business community. They plan to invite the Virginia, Hispanic, and Korean Chambers of Commerce in addition to representatives from various businesses to explain to the Commission how immigration affects them. The Commission also plans to hear from the private health care sector to understand how the influx of immigrants is affecting the health care system. It is likely that the Commission will invite additional groups from other disciplines to present as new issues are identified.

As a final part of the information gathering stage, the Commission will hold four public hearings around the Commonwealth. Those sessions have been tentatively scheduled for Northern Virginia, the Fredericksburg region, the Tidewater area, and the Western part of the Commonwealth. Specific dates and locations have not been set.

We hope that this update is helpful in providing a synopsis of the Commission's 2007 activities and interests, as well as their plans for the coming year. You are encouraged to visit the Immigration Commission's website referenced earlier in this update, and to contact us any time you need additional information.

Sincerely,



John C. Watkins

JCW/mlg
Attachment

Review of Issues

Presentation	Question/Issue	Federal Responsibility	State Responsibility	Local Government Responsibility
Joint Legislative Audit and Review Commission (JLARC) <i>Immigration Policy and Virginia's Foreign-Born Population</i>	How does the Census Bureau determine legal status?	The Census Bureau does not inquire about legal status, just place of birth and citizenship. This will not change for the 2010 census unless Congress decides to pursue legislation to amend census data requirements	None	None
	What services can the foreign-born population access?	Title VI of the Civil Rights Act of 1964 mandates meaningful access of information and services Welfare Reform Act of 1996 limits TANF and Food Stamps to foreign-born	See the presentation from Attorney Generals Office for more information	Local governments use their resources to provide translation and interpreter services
	How large is the foreign-born inmate population?	Not Addressed	Foreign-born represented 10% of the State inmate population in 2003	Not Addressed
	What is the prevalence of a foreign-born population in agriculture?	Not Addressed	About 90 percent of migrant farm workers are foreign-born	Not Addressed
William J. Benos <i>Federal Immigration Law</i>	Federal Immigration Law Overview	Congress may “regulate commerce with foreign nations” according to U.S. Constitution Article I, § 8 Cl. 3 Congress may “establish a uniform Rule of Naturalization” according to	None	None

Presentation	Question/Issue	Federal Responsibility	State Responsibility	Local Government Responsibility
		U.S. Constitution Article I, § 8 Cl. 4		
	Federal Preemption of Immigration Laws	<p>Article 7 of the U.S. Constitution contains the Supremacy Clause which prevents the creation of existing state or local laws that conflict with existing federal law</p> <p>Preemption applies in three ways:</p> <ol style="list-style-type: none"> 1. Explicit preemption 2. Field Preemption 3. Implied Conflict <p>States are expressly preempted from creating laws that penalize employers who hire illegal immigrants.</p>	<p>States may enact immigration-related legislation if it passes the three part DeCanas test:</p> <ol style="list-style-type: none"> 1. Does the state law specifically regulate immigration? 2. Was it Congress' intent to limit state power in the area? 3. Does the state law conflict with or prevent an objective federal law? 	Not addressed
	State and Local Law Enforcement Authority to Enforce Immigration Law	<p>According to U.S. Code §1252(c) state law enforcement can arrest and detain an immigrant who is:</p> <ol style="list-style-type: none"> 1. Illegally present in the U.S. 2. Previously convicted of a felony in the U.S. 3. Previously deported because of a conviction <ul style="list-style-type: none"> • Law enforcement must obtain confirmation from Immigration and Customs Enforcement (ICE) • Detention can only last until the offender can be 	State law enforcement can enter into a 287(g) MOU with ICE to deputize officers as "immigration officers"	Local law enforcement can enter into a 287(g) MOU with ICE to deputize officers as "immigration officers"

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		<p>transferred into Federal custody</p> <ul style="list-style-type: none"> • U.S. Code §1324(c) permits state officers to make arrests under the anti harboring statute • U.S. Code §1357 creates the 287(g) program. (<i>See Virginia State Police section for more information on 287(g)</i>) 		
<p>Department of Medical Assistance Services</p> <p><u>Coverage of Non-Citizens in the Virginia Medicaid Program</u></p>	<p>Qualifying for Medicaid Services</p>	<p>The Welfare Reform Act of 1996 defines “qualified aliens”:</p> <ul style="list-style-type: none"> • Lawfully admitted immigrants who entered the U.S. after August 22, 1996 are barred five years from the program • Asylees and Refugees are eligible their first seven years in the country, but are barred after that time is up (Naturalization could eliminate the bar period) • Undocumented immigrants are unqualified and do not qualify for Medicaid 	<p>Qualified immigrants must be lawfully admitted to the U.S.</p> <p>Qualified immigrants are entitled to the same benefits as citizens in the program</p>	<p>None</p>
	<p>Emergency Services</p>	<p>42 U.S.C. § 435.406 mandates coverage of emergency services</p> <p>The Federal Government</p>	<p>Less than 1 percent of payments made in FY 2006 (\$14.4 million in State funding) were for people only eligible for emergency services</p>	<p>Not Addressed</p>

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		provides a 50 percent match for emergency services		
	Medicaid Citizenship Identification Requirements	None	To be eligible for Medicaid individuals: Must provide documentation when applying for Medicaid and at first re-designation on or after June 1, 2006	None
Virginia Department of Education <u>School Enrollment Requirements for all Virginia Students</u>	Enrollment Requirements for Virginia Students	U.S. Supreme Court decision Plyler v. Doe (1982) requires public schools to accept children who are undocumented immigrants without charge	According to the Code of Virginia §22.1-3.1: <ul style="list-style-type: none"> • A birth certificate or affidavit is required to enroll in public school • When a school receives the affidavit they must immediately notify local law enforcement • The Virginia Department of Education does not collect data on how many affidavits are collected in lieu of birth certificates 	Must follow Federal and Virginia education laws
	Residency Requirements for Virginia Students	Public schools in each school division must be free and available for each school age child residing within the division	Code of Virginia §22.1-3 states that each school division shall be free to each person of school age who resides within the school division	Must provide free education to each school age child in accordance with Federal and Virginia laws
Virginia Department of Education	English as a Second Language Programs (ESL)	No Child Left Behind Act of 2001 requires states to increase English proficiency for Limited English Proficiency	Code of Virginia §22.1-212.1 states that school boards must provide instruction in the English language that will	Local Governments provide majority of the funding

Presentation	Question/Issue	Federal Responsibility	State Responsibility	Local Government Responsibility
<u>Overview of Programs for Limited English Proficient Students</u>		(LEP) students.	promote the education of students for whom English is a second language	
Virginia Employment Commission <u>VEC Services for Immigrants and Foreign Workers</u>	Federal Employment Classifications	<ul style="list-style-type: none"> •H-2A farm workers •H-2B temporary non-agricultural workers •Migrant farm workers (non H-2A) •Seasonal farm workers (non H-2A) 	None	None
	Verifying Social Security Numbers or Work Authorization Numbers	<p>Employers must:</p> <ul style="list-style-type: none"> •Verify social security number with SSA •Verify work authorization number with Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlement (SAVE) program •Report every new hire to a national database 	Since March 2006, the number of "no matches" from Virginia that have been filed and verified with Social Security Administration (SSA) is negligible	None
Office of the Attorney General <u>Aliens, Criminal Law and Public Benefits</u>	Qualified Aliens	<p>As defined in 8 U.S.C. §1641 qualified aliens are any of the following:</p> <ol style="list-style-type: none"> 1. Legal Permanent Resident 2. Asylee 3. Refugee 4. Alien paroled in the United States for at least one year 5. Alien whose deportations are being withheld 	Follow Federal definition of qualified alien	Follow Federal definition of qualified alien

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		<ol style="list-style-type: none"> 6. Alien granted conditional entry prior to April 1, 1980 7. Battered alien spouses, children, the alien parents of battered children, and alien children of battered parents 8. Cuban and Haitian entrants Victims of a severe form of trafficking 		
	Required Services	<p>According to 8 U.S.C. §1621, the following services must be available to everyone regardless of immigration status:</p> <ol style="list-style-type: none"> 1. Medical assistance for an emergency medical condition 2. Short-term, non-cash, in-kind emergency disaster relief 3. Public health assistance for immunizations 4. Housing or community development programs administered by the Secretary of Housing and Urban Development 	Must provide services required by the Federal Government	Must provide services required by the Federal Government
	Discretionary Services	“Qualified Aliens” entering the country after August 22, 1996 do not qualify for “Federal means-tested public benefits.”	With a few exceptions, “Qualified Aliens” are not eligible for Food Stamps and SSI	Not Addressed

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		States have the authority to determine eligibility for TANF, Social Services Block Grant, and Medicaid	Virginia Code §32.1-325 and §63.2-503.1 require that no person who is not a U.S. citizen or legally present in the United States is eligible for State and Local Public Benefits	
	Attorney General's Opinions	Massie Opinion (July 24, 2006) states that Federal and State law prohibit the issuance of local business licenses to people who are not legally present	Stolle-Albo Opinion (October 15, 2007) states: 1. Virginia law enforcement can make arrests for violations of laws of sister states in addition to federal laws 2. It is unclear with respect to enforcement of civil violations of federal immigration law	Rust Opinion (May 10, 2007) states that Virginia local law enforcement officials can enter into memorandums of agreement with the Department of Homeland Security to enforce federal immigration laws
Department of Motor Vehicles <i>Immigration Policy and DMV Services</i>	Proof of Legal Presence to obtain a license	None	For temporary authorization in the U.S., expiration of the license matches length of legal presence document Unknown length of legal authorization licenses expire in one year If DMV receives notification from another government agency that an individual's authorized stay in the U.S. has been terminated, DMV will not renew or re-issue that license or ID	None

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	REAL ID	<ul style="list-style-type: none"> • Affects all driver's license and ID card applicants (first-time and renewal) • Must visit DMV, no internet, phone, or mail renewal • Proof of identification, social security or ineligibility number, legal presence and address • Verification of all proof documents • Scanning and storage of documents 	State must become REAL ID compliant	None
<p>Virginia Department of State Police</p> <p><u>Immigration Commission</u> <u>Presentation: VSP</u></p>	Immigration Enforcement	<p>Residential status is a Federal civil offense</p> <p>Only the U.S. Bureau of Immigration and Customs Enforcement (ICE) can deport individuals</p>	<p>Virginia law enforcement can detain illegal aliens until ICE takes custody. As defined by the Code of Virginia §19.2-81.6, to be arrested and detained, and undocumented individual must:</p> <ol style="list-style-type: none"> 1. Commit a crime 2. Be confirmed by ICE as in the U.S. illegally 3. Previously convicted of a felony 4. Return to the U.S. after being previously deported <p>As authorized by the Code of Virginia §19.2-194.2, in 2007 approx.. 37,307 records have been submitted to ICE; 400 individuals were arrested</p>	Local law enforcement follow Federal and Virginia guidelines regarding immigration enforcement

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	287(g) Program	<p>Open to state and local law enforcement via a memorandum of understanding (MOU) with ICE</p> <p>Five week training program completed at Augusta, GA facility or local law enforcement facility if training makes sense logistically and fiscally for both ICE and the locality.</p> <p>Approximately 40 state and local law enforcement agencies currently participate</p>	<p>2004 VSP had ICE train members of the multi-jurisdictional gang, drug, and counter-terrorism task forces. The agreement allows “deputized” members to detain and do paperwork for illegal immigrants.</p> <p>VSP decided against deputizing additional officers because it would just add to their paperwork and keep them off the roads for an additional 3-4 hours per person arrested.</p>	Can participate in the 287(g) Program via MOU with ICE
	Virginia Fusion Center	Joint effort with ICE, state, and local police	<p>Statewide gang intelligence sharing with ICE</p> <p>Criminal Intelligence Division leads ICE to critical infrastructure sites and threats.</p> <p>Aides ICE in DMV database access for photo capabilities</p> <p>Sends sex offender and crimes against minors registry updates to ICE</p>	Provide information for and use database
	Community Outreach	None	<ul style="list-style-type: none"> • Survival Spanish training for officers • Survival Spanish reference guide for officers 	Not Addressed

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			<ul style="list-style-type: none"> • Minority recruitment • Safe driving practices video in partnership with the Hispanic Chamber of Commerce • Over 3,300 community presentations and safety talks in 2006 • Media Outreach: Public Service Announcements, Press Releases, Interviews, Trooper Live Q & A. 	
<p>Virginia State Crime Commission</p> <p><i>Overview & Recommendations of the Illegal Immigration Task Force</i></p>	<p>Crime Commission Recommendations Referred to the Virginia Commission on Immigration</p>	<p>The Crime Commission report will be available Assembly on January 9, 2008. Please visit http://vscc.virginia.gov/IITF_Main.html for more information.</p>	<ol style="list-style-type: none"> 1. Verification Cards for Purpose of Showing Identity 2. Verification of New Employees Through “Basic Pilot Program”; Loss/Suspension of License for Knowing Employment of Illegal Immigrants 3. Documentation Required for Certain Benefits 	<p>Not Addressed</p>
<p>Weldon Cooper Center for Public Service</p> <p><i>Hispanic Immigrants and Citizens in Virginia</i></p>	<p>Virginia Statistics on Hispanic Immigrants</p>	<p>Not addressed</p>	<p>Please see presentation for statistics on population size, English proficiency, educational attainment, occupations, poverty level, health insurance, median household income, and household size</p>	<p>Not addressed</p>

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Virginia Employers for Sensible Immigration Policies <u>VESIP</u>	Mission	None	A coalition of businesses and their trade association that support a business climate that facilitates the legal employment of immigrant workers	None
	Concerns	None	Increasing the regulatory burden on Virginia's businesses Imposing penalties on employers who may not have knowingly and willingly violated immigration law could destroy businesses and greatly weaken Virginia's economy	None
Virginia Municipal League/Virginia Association of Counties <u>Local Government Response to Immigration Actions Survey</u>	Survey Questions	None	None	Please see presentation for city and county level results to the following survey questions: 1. Has your locality undertaken a cost-benefit analysis of immigration? 2. Has your locality undertaken a service responsibility analysis? 3. Has your locality prepared any other documents related to immigration?
Local Government Attorneys of Virginia	Equal Protection	Not Addressed	Plyler v. Doe (1982) states that the equal protection clause applies to all within the boundaries of the state, including aliens unlawfully present.	Must be in accordance with Plyler v. Doe in regards to equal protection

Presentation	Question/Issue	Federal Responsibility	State Responsibility	Local Government Responsibility
<u>Selected Legal Issues for Local Government Attorneys Related to Immigration Status</u>			State law violates the equal protection clause if it denies benefits to certain persons without showing an advanced a substantial state interest	
	Issues Confronting Local Law Enforcement	None	None	<ul style="list-style-type: none"> • Need to maintain trust in all communities • Need to avoid the perception that officers are acting unconstitutionally and that they are engaging in racial profiling or other illegal discrimination • Need to protect victims and witnesses who may themselves be illegal immigrants, and encourage them to cooperate with the police in the effort • Need to avoid dangerously overcrowding local jail