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## 1992 Virginia Legislative Summary

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## 1992 VIRGINIA LEGISLATIVE SUMMARY

The following are synopses of forty-four pieces of important legislation concerning Virginia's natural environment that the General Assembly enacted and the Governor signed into law in 1992, as of April 6, 1992.

### ADMINISTRATIVE LEGISLATION

#### H.B. 1055

Signed by the Governor on April 6, 1992, this law amends Title 10.1 by establishing the Virginia State Parks Foundation. The Foundation will be governed by a Board of Trustees consisting of the Director of the Department of Conservation and Recreation, the State Treasurer, and five other trustees from the Commonwealth. The Foundation will assist the Department of Conservation and Recreation in fulfilling the duties described in subtitle I of Title 10.1 which include management of historical and scenic sites, parks, and rivers; soil and water conservation; shoreline preservation; and cave protection.

#### S.B. 120

Signed by the Governor on March 17, 1992, this law amends §§ 10.1-562, 10.1-566, 10.1-569, 15.1-499.1 and 15.1-687.8 of the Virginia Code. This bill permits localities to enforce local erosion and sediment programs through civil penalties as an alternative to prosecuting violations as criminal misdemeanors. Localities administering local enforcement programs may adopt an ordinance establishing a uniform schedule of civil penalties for violations. Any schedule of civil penalties must be uniform for each type of specified violation and the civil penalty for any one violation may not exceed \$100. Each day during which the violation is found to have existed constitutes a separate offense. However, in no event shall the specified violations arising from the same set of operative facts be charged more frequently than once in any ten-day period, and in no event shall a series of specified violations arising from the same set of operative facts result in civil penalties exceeding \$3,000.

#### S.B. 207

This bill, signed by the Governor on April 3, 1992, amends § 2.1-20.01:1 of the Virginia Code relating to the authority of agency directors. This law prohibits agency directors, except those that are appointed by their respective boards, from requiring prior approval before an agency

employee may discuss the functions and policies of the agency. An agency director may, however, restrict discussion if the information is protected from disclosure by the Virginia Freedom of Information Act or any other provision of state or federal law.

### CLEAN AIR LEGISLATION

#### **H.B. 752 and S.B. 377**

Signed by the Governor on March 17, 1992 and March 20, 1992, respectively, these companion laws amend Chapter 1 of Title 33.1 by creating the Virginia Alternative Fuels Revolving Fund to provide loans to governmental entities for the conversion of publicly owned motor vehicles from the use of gasoline and diesel fuels to alternative fuels. The goals of the Fund are to improve air quality, reduce dependence on imported fuels, reduce the costs of purchasing and operating publicly owned vehicles, improve the economy, and utilize all types of alternative fuels including electric vehicles. The Fund and its loan program will be administered by the Department of Air Pollution Control and the State Air Pollution Control Board.

#### **S.B. 188**

Signed by the Governor on March 27, 1992 this law amends §§ 9-6.14:4.1 and 10.1-1322 of the Code of Virginia relating to permits and fees for sources of air pollution and establishes the Permit Program Fund. Annual fees are to be based on the actual emissions of each regulated pollutant, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year and shall be adjusted annually by the Consumer Price Index. All permit fees will be paid into the Air Pollution Permit Program Fund so that the use of the fees will be limited to the agency's direct and indirect costs of processing permits in order to more effectively issue permits and to prepare for and begin implementation of the federal Clean Air Act requirements.

#### **S.B. 447**

Signed by the Governor on April 6, 1992, this law amends § 10.1-1302 of the Code of Virginia relating to the qualifications of the members of the Air Pollution Control Board. This law eliminates the requirement that no members be subject to the regulations of the Board as long as a majority of the members represent the public interest and do not derive a

significant portion of their income from persons subject to permits or enforcement orders of the Board.

## ENERGY AND UTILITIES

### H.B. 796

Signed by the Governor on March 19, 1992, this law amends §§ 56-88 and 56-265.13:7 of the Virginia Code and adds § 56-88.1, relating to the acquisition or disposition of control of a public utility. This law requires prior approval of the State Corporation Commission for the acquisition or disposition of control of a public utility or telephone company. Control means acquisition of 25 percent of the utility's stock or actual exercise of substantial influence over the policies and actions of any public utility or telephone company.

## HISTORIC PRESERVATION

### H.B. 747

Signed by the Governor on March 3, 1992, this law requires any organization that receives \$50,000 or more from the state for renovation or reconstruction of any historic site to grant to the Board of Historic Resources an easement for the preservation of the property. If the organization does not grant the easement, it will become ineligible for further renovation or reconstruction funds. The terms of the easement must be satisfactory to the Board and must restrict the use or development of the property so as to preserve the features which led to its designation as historic.

### S.B. 510

Signed by the Governor on March 13, 1992, this law amends and reenacts § 10.1-2202 of the Code of Virginia to allow the Director of the Department of Historic Resources to accept bequests and gifts of real and personal property on behalf of the Department.

### S.B. 514

Signed by the Governor on April 6, 1992, this controversial law amends the procedure by which the Board of Historic Resources may designate a historic district and establishes procedures by which it makes recommendations that property be named to the National Register of Historic Places or designated as a National Historic Landmark. The law requires that the Governor consult with organizations representing

landowners and business interests that may be affected by historic preservation activities; previously, the Governor has been required to consult only with historic and preservation organizations. The Board shall, before July 1, 1994, promulgate regulations establishing criteria and procedures for identifying properties as historic.

The law institutes increased procedural requirements for designating historic properties and districts. New procedures include: notifying all landowners within and adjacent to a proposed historic district, holding a public hearing, holding a formal litigated issues hearing on the proposed action, conducting an evaluation of the potential economic impact of the proposed action on the use and development of the property, and requiring that a majority of the landowners consent to the designation.

Previously, the Board has been required to notify the governing body of the political subdivision of a proposed historic district designation, and was required to hold a public hearing only if requested by the political subdivision.

The law allows a majority of landowners in an existing historic district to inform the Director of the Department of Historic Resources that they object to the continuation of the designation, in which event the designation shall be removed unless and until the Board redesignates the historic district in accordance with the new procedures.

## HUNTING AND FISHING

### H.B. 89

Signed by the Governor on March 26, 1992, this law removes administration of the Virginia Fish Passage Grant and Revolving Fund from the Council on the Environment and places it under the control of the Department of Game and Inland Fisheries ("DGIF"). The Fund provides monies and loans for the construction of fishways to local governments owning dams and other artificial impediments of streams and rivers. For owners other than local governments, the Fund provides loans. The fishways will allow anadromous fish (fish that live in saltwater but return to freshwater to spawn) to reach once again their native spawning grounds. The new law requires any owner of such a dam or impediment to provide an appropriate fishway as soon as possible following design approval by the DGIF and the availability of financing. The DGIF may seek injunctive relief to compel compliance.

### H.B. 789 (and companion S.B. 439)

Signed by the Governor on March 17, 1992, this law expands the

scope of commercial fishing regulation. "Commercial fisherman" is now defined as any person "who fishes in tidal waters using any gear and who sells, trades, or barter his catch or gives his catch to another that it may be sold, traded or bartered." As such, that person shall pay \$150 for a commercial fisherman's license, the monies to be used by the Marine Fishing Improvement Fund. The law is intended to prevent recreational fishermen from selling their catch, thereby unfairly competing with licensed commercial fisherman who fish for a living. The law also provides civil penalties of \$500 for persons selling their catch and for any person purchasing fish from a person known by the purchaser not to have a commercial fishing license.

#### **H.B. 792 (and companion S.B. 438)**

Signed by the Governor on March 27, 1992, this law authorizes the Virginia Marine Resources Commission to promulgate regulations to limit the number of gear licenses or fishing permits that are issued to commercial fisherman. The Commission shall consider such factors as economic and social consequences, food production, licensees' dependence on the fishery, the efficiency of the gear used, the impacts on species and fisheries, and the abundance of the resource. Similar to House Bill 789 and its companion, Senate Bill 439, this law protects the established commercial fisherman. It seeks to prevent individuals from hastily becoming commercial fishermen in order to take advantage of a sudden resource abundance to the detriment of the resource and those persons who have continually relied on the resource for their livelihood.

### **LAND USE**

#### **H.B. 209**

Signed by the Governor on March 26, 1992, this law amends and reenacts §§ 15.1-498.2, 15.1-498.3, 15.1-498.4, 15.1-498.6, 15.1-498.7, 15.1-498.9, and 15.1-498.10 of the Code of Virginia, and adds §§ 15.1-498.11 through 15.1-498.20. It requires the establishment of an advisory committee prior to the adoption by a locality of a road impact fee ordinance. The committee shall advise and assist the local governing body in its consideration and adoption of such an ordinance. At least forty percent of the committee's membership shall be representatives from the development, building, or real estate industries. No action of the committee shall be a necessary prerequisite for the locality's adoption of the ordinance.

Any county with a population of over 200,000 may, by ordinance,

assess and impose impact fees on new residential development to pay all or part of the cost of school facility improvements attributable in substantial part to such development. The impact fee shall be imposed at the time of the issuance of a certificate of occupancy. The ordinance shall provide for appeals from administrative determinations regarding impact fees to the local governing body or some other appropriate body. The ordinance may provide for the resolution of disputes over an impact fee by arbitration. The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within fifteen years.

#### **H.B. 505**

Signed by the Governor on March 17, 1992, this law amends and reenacts § 15.1-1513.3 to include Albemarle County within the group of counties authorized to use the provisions of the Local Agricultural and Forestal Districts Act.

#### **H.B. 546**

Signed by the Governor on April 3, 1992, this law authorizes Virginia Polytechnic Institute and State University to place real property commonly known as the Middleburg Agricultural Experiment Station in Loudoun County in an agricultural and forestal district, subject to all zoning restrictions for such a district, as provided in Chapter 36 of Title 15.1 of the Code of Virginia.

#### **H.B. 787**

Signed by the Governor on March 23, 1992, this law amends and reenacts §§ 2.1-1.5, 10.1-202, and 10.1-2213 of the Code, and adds §§ 10.1-1017 through 10.1-1025. It establishes the Conservation and Recreation Fund, a special, nonreverting fund, for the purchase of interests in real property by the state, localities, or private land trusts for the preservation of ecological, cultural, or historic resources. The Fund may be used for developing purchased lands with projects such as trails, parking areas, water and sewer facilities, and interpretive projects, as long as the expenditure does not exceed twenty percent of the annual fund balance. Moneys from the general fund, bequests, and grants from the United States government and other private or public sources will be deposited to the credit of the Fund. Expenditures from the Fund for acquisition of property through eminent domain is prohibited.

The Fund will be administered by a seven-member board, whose six citizen members, appointed by the Governor, shall have expertise in

conservation, recreation, and preservation, and shall be assisted by the staff of the Department of Conservation and Recreation. The Secretary of Natural Resources shall serve as Chairman of the Board.

The Board shall develop a comprehensive plan for the implementation of the purposes for which the Fund is created, including a strategic plan for the expenditure of funds, an inventory of property, and a needs assessment. The Board shall submit an annual report to the General Assembly and the Governor, and appear annually before the House Committees on Conservation and Natural Resources, and The Chesapeake and Its Tributaries, and the Senate Committee on Agriculture, Conservation, and Natural Resources to report on the achievement of the Board's purposes.

## OIL LEGISLATION

### H.B. 508

Signed by the Governor on March 17, 1992, this law establishes the maximum administrative fees that the State Water Control Board can charge facilities for approval of oil discharge contingency plans. The fees are to reflect the average time and complexity of processing the approvals, and, by taking into account the fees charged by neighboring states, the fees shall not put Virginia industries at a competitive disadvantage.

### H.B. 793

Signed by the Governor on March 26, 1992, this law extends for one year the moratorium on oil and gas drilling in certain prohibited areas within Tidewater, Virginia, such as in Chesapeake Bay Preservation Areas. The moratorium will now expire on July 1, 1993. The law also furnishes the requirements for drilling exploratory wells in areas not prohibited by this section. A person must show proof of financial responsibility, taking into account such things as potential damage to state waters or sensitive natural resource features and the clean-up costs. The law also provides other safety requirements to protect surface and groundwater.

### H.B. 1043

Signed by the Governor on March 23, 1992, this law was introduced in response to one of the nation's largest leaks in a petroleum storage tank in Fairfax City. That leak went undetected for years and will take years to clean up. The law authorizes the State Water Control Board to promulgate regulations designed to prevent unauthorized discharges of oil into Virginia's waters, lands, and storm drain systems. The law applies

to both above and underground tanks, pipes and pipelines and requires: the installation of warning devices to prevent overflow; periodic pressure testing of pipes; formal tank inspections every five years and other daily, monthly, and quarterly inspections of facilities; and development of better emergency procedures.

In addition, local officials shall be able to recover costs in responding to emergencies, as well as having increased access to storage facilities and their records. Facilities will also be required to make immediate reports of unauthorized discharges to local officials.

The State Water Control Board shall also promulgate regulations requiring facility operators to demonstrate financial responsibility as a condition of operation, based on such factors as type of oil, capacity, and possible level of injury or damage should a leak occur. The Board must also compile an inventory of such storage facilities.

Lastly, the law protects persons rendering in good faith any containment or clean-up assistance from liability for civil damages resulting from an act or omission on their part in the course of their assistance.

#### **H.B. 1152**

Signed by the Governor on March 17, 1992, this law provides that a holder of a permit for gas, oil wells, or gathering pipelines must file monthly and annual reports of his activities by mail to the local commissioner of revenue where the permitted facility is located. The holder must already, under previous law, file such reports with the Director of the Department of Mines, Minerals, and Energy.

#### **H.B. 1172**

Signed by the Governor on April 6, 1992, this law acts very much in concert with House Bill 1043 in that it also requires the demonstration of financial responsibility for owners and operators of storage tank facilities and pipelines. In addition, the law allows access to the Petroleum Storage Tank Fund, formerly titled the Underground Petroleum Storage Tank Fund, to handle the costs of containment and clean-up of aboveground facilities. The law changes the fee determination for financing the Fund for underground tanks to a sliding scale based on gallons pumped per year by the operator.

#### **S.B. 452**

Signed by the Governor on March 17, 1992, this law allows a

political subdivision to recover its costs from the Underground Petroleum Storage Tank Fund (renamed the Petroleum Storage Tank fund by H.B. 1172) for a discharge of oil into or upon state waters, lands or storm drain systems from a state-regulated underground storage tank with a capacity of at least one million gallons.

## RECYCLING

### H.B. 403

Signed by the Governor on March 17, 1992, this law amends the second enactment of Chapter 709 of the 1990 Acts of Assembly, extending the availability of the ten percent tax credit for the cost of machinery used in recycling to January 1, 1995.

### H.B. 865

Signed by the Governor on March 19, 1992, this law amends and reenacts § 62.1-218 of the Virginia Code and adds sections to Title 62.1. The law authorizes the Virginia Resources Authority to provide grants to local governments for wastewater treatment, water supply facilities, solid waste management treatment, disposal or management facilities, and recycling projects. Preference will be given to regional projects that will utilize private industry in their operation and maintenance. As of April 1, 1992, the Assembly had not allocated additional funds to the Authority to cover the costs of this program.

### S.B. 469

Signed by the Governor on March 13, 1992, this law amends Title 33.1 of the Code, to require the Department of Transportation to promulgate and publish regulations authorizing and governing the use of recycled glass and coal ash as construction materials in highway-related construction in Virginia. The Department shall adopt a five-year plan to encourage the increased use of such recycled materials in highway projects.

## WASTE MANAGEMENT

### H.B. 37

Signed by the Governor on March 5, 1992, this law allows political subdivisions to enter into design-build or construction management contracts for the construction of a "materials recovery facility" or "solid waste processing facility." The law defines these two terms for

procurement purposes.

#### **H.B. 232**

Signed by the Governor on March 17, 1992, this law exempts political subdivisions from having to pay permit application fees to the State Waste Management Board pursuant to item 16 of § 10.1-1402 of the Code of Virginia. Prior law authorized the Board to collect in an amount application fees sufficient to cover the cost of issuing required permits from any person operating a landfill. The new law also requires the Board, in setting an application fee schedule, to consider the financial resources of applicants.

#### **H.B. 372**

Signed by the Governor on March 5, 1992, this law allows municipal corporations to provide certain exemptions from local garbage and refuse disposal fees to qualified elderly and handicapped persons.

#### **H.B. 535**

Signed by the Governor on April 6, 1992, this law allows private sanitary landfills permitted prior to December 21, 1988, to continue to operate under the requirements for liners and leachate collection systems in effect at the time of the issuance of their permit. Such landfills will be exempt from the Department of Waste Management's solid waste management regulations regarding liners and leachate collection systems until October 9, 1993, after which date they will be required to comply with applicable regulations. The law extends the deadline for compliance with these regulations from July 1, 1992 to October 1, 1993, which is the deadline for compliance with federal EPA regulations promulgated pursuant to RCRA. This law is similar to the extension for compliance with the same regulations given to publicly owned or operated sanitary landfills by Chapter 658 of the 1991 Acts of Assembly.

#### **H.B. 572**

Signed by the Governor on March 11, 1992, this law amends and reenacts Virginia Code § 15.1-1250.01 to provide that a service authority is not required to comply with the statute's public hearing requirements where the authority proposes to contract with the private sector for the removal of recyclable discarded or waste materials from nonhazardous solid waste. The affected county's board of supervisors must approve the financial agreement.

**H.B. 679**

Signed by the Governor on April 3, 1992, this law amends and reenacts § 15.1-11 of the Code, placing the lien for unpaid charges for removing trash, garbage, weeds, etc. on the same level as the lien for unpaid taxes.

**H.B. 879**

Signed by the Governor on March 17, 1992, this law extends the period in which certain public sanitary landfills containing liners and leachate collection systems may operate under the regulations in effect at the time of their permit issuance until their remaining design capacity has been exhausted. Other than the exemption from the standards in the current regulations for liners and leachate collection systems, the current regulations of the Waste Management Board will apply.

The law applies only to sanitary landfills operated by a local government, a combination of local governments, or a public service authority. In order to obtain the exemption, an operator must give written notice to the Department of Waste Management, and must certify the remaining design capacity of the landfill to the Department. An opinion from a licensed professional engineer must accompany this certification.

This law does not exempt municipal landfill operators from liability for clean-up costs resulting from failure to comply with current regulations.

**H.B. 1073**

Signed by the Governor on March 17, 1992, this law prohibits the Waste Management Board from promulgating regulations establishing construction and operating standards more stringent than federal standards. Any standards set by the Board which are more stringent than federal standards are unenforceable to the extent that they exceed the federal standards.

The Board promulgated landfill regulations in December, 1988. The U.S. Environmental Protection Agency ("EPA") promulgated landfill regulations, pursuant to Subtitle D of the Resource Conservation and Recovery Act ("RCRA") in October, 1991, which impose less stringent requirements in some areas than the Board's regulations.

**S.B. 300**

Signed by the Governor on February 26, 1992, this law allows a political subdivision bringing a civil action for improper disposal of solid waste upon its land to receive any civil penalty assessed against the

violator. Such civil penalties have previously been paid into the state Environmental Emergency Response Fund.

#### **S.B. 326**

Signed by the Governor on March 16, 1992, this law requires the Department of Waste Management to hold a public hearing in the affected political subdivision prior to issuing a permit for a new solid waste management facility. Previous law required a public hearing only if requested by the local governing body.

#### **S.B. 327**

Signed by the Governor on March 17, 1992, this law exempts operators of public sanitary landfills permitted prior to December 21, 1988, from the ground water monitoring requirements of the solid waste management regulations until January 1, 1994. Chapter 658 of the 1991 Acts of Assembly created an exemption from the liner and leachate collection system requirements of the solid waste management regulations. This law does not affect the liability or responsibility for corrective action imposed on any operator who elects to operate a landfill other than in accordance with the current solid waste management regulations.

#### **S.B. 507**

Signed by the Governor on March 26, 1992, this law expands the authority of the Director of the Department of Waste Management to (i) deny applications for hazardous waste permits or (ii) revoke, suspend, or amend permits for the transportation, storage, treatment, or disposal of hazardous waste. The new standards include violations of the orders of the Board or court or condition of a permit where the violation (i) results in a release of harmful substances, (ii) poses a threat of such a release, (iii) presents a hazard to human health, or (iv) represents a pattern, in the Director's opinion, of serious, repeated violations.

The permit denial, revocation, suspension, or amendment may also be based on the conviction of "key personnel of specified crimes punishable as felonies" if the conviction is "probative of the applicant's inability or unwillingness to operate" lawfully. In making the determination as to the disposition of the permit, the Director must consider the nature of the acts by the key personnel, the degree of culpability, the applicant's policy or history of discipline of key personnel, whether the applicant has substantially complied with the applicable laws, regulations, etc., whether the applicant has implemented management

control to minimize violations, and mitigation based on good behavior (e.g., cooperation with the investigation, termination of employment of those responsible for the violations, and prompt payment of damage).

## **WATER LEGISLATION**

### **H.B. 201**

Signed by the Governor on March 5, 1992, this law requires an applicant for a withdrawal permit in a surface water management area to submit certification from the local government that the location and operation of the facility complies with local land use ordinances.

### **H.B. 1052 (and companion S.B. 169)**

Signed by the Governor on April 3, 1992, this law requires the State Water Control Board to implement a fee schedule to recover a portion of the costs associated with the processing of applications for permits and certificates under the State Water Control Law, the Ground Water Act, and the Surface Water Management Act. The Board shall use certain criteria in developing the fee schedule, such as the average time spent in processing the permits and their complexity, and the fee schedule of adjacent states. The schedule will be effective until July 1, 1997, when the Board will reevaluate the schedule.

### **H.B. 1097**

Signed by the Governor on March 17, 1992, this law permits any city with a population of 350,000 or more (i.e. Virginia Beach) to restrict the nonessential use of groundwater during declared water shortages.

### **H.B. 1146**

Signed by the Governor on March 17, 1992, this law requires owners or operators of injection wells to provide a replacement water supply to landowners whose groundwater supply is contaminated, diminished, or interrupted by the operation or drilling of an injection well. Injection wells are wells used to place substances associated with gas or oil operations into underground strata for disposal, storage, or enhanced recovery. The drilling and operation of injection wells previously has required a permit from the Director of the Department of Mines, Minerals and Energy. Certain injection wells are regulated by the EPA under Part C of the Safe Drinking Water Act.

**S.B. 221**

Signed by the Governor on March 17, 1992, this law instructs the Board of Housing and Development to promulgate standards that provide for the installation of water conservation devices and low consumption fixtures in construction as part of the Building Code. Local governing bodies may implement the standards and apply them to all or part of their local government based on lack of present or future water supply to serve local citizens.

**S.B. 318**

Signed by the Governor on March 19, 1992, this law establishes the Combined Sewer Overflow ("CSO") Matching Fund to match federal money appropriated for CSO control projects. CSO's are systems which discharge both stormwater and untreated sewage into a river during heavy rainfall events.