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VIRGINIA'S ENVIRONMENTAL IMPACT LAW

An "Environmental Impact Report" is now required by Virginia to be prepared by any executive agency intending to construct any "major State facility." The Report is submitted to the Council on the Environment, which writes Comments to the Report. Then, before the particular agency may receive funds for the construction of its project, the Governor must review the Council's Comments on the agency's Report. However, the Governor is permitted to approve any project, despite Comments of the Council indicating that the project may have a detrimental environmental impact. The only sanction written into Virginia's impact report law is that of public opinion, which is unlikely to be effective. The law defines "major State facility" as any construction "undertaken by a State agency . . . which costs one hundred thousand dollars or more to complete"; except for all road construction, which is excluded.

The Report which the agency proposing to construct a major facility is required to submit to the Council on the Environment, must describe in detail the environmental impact of the project and include the following topics:

1. The general environmental impact of the proposed construction,
2. Any adverse environmental effects that are unavoidable,
3. Any measures the agency can take to minimize adverse environmental impact of the construction,
4. Alternatives to the proposed construction, if any, and why they have been found to be unacceptable, and
5. Irreversible environmental changes which may occur as a result of the project.

Within sixty days after the Council has received a Report from an agency, it must review the Report, submit Comments on it to the Governor, and make the Comments available to the public. Then the Governor must give his "consideration" to the Comments; and until he gives his approval to the project, the Comptroller is not permitted to disburse any State funds for the project. The Council on the Environment is given broad administrative powers to coordinate objectives and to assure "the orderly preparation and evaluation of environmental impact reports."

The Virginia environmental impact report law suffers from several obvious shortcomings. First, the Governor is not required to disapprove any project, regardless of the severity of its environmental impact. It may be expected that the vast majority of the included projects will receive only token consideration from the Governor, even if the Council's findings are clearly negative on the project's impact or its necessity. And indeed, if this happens the Governor cannot be blamed, for the General Assembly has failed to write into the law any standards for approval of these large projects, thus giving neither the Governor nor the public an adequate mechanism for enforcement.

A second shortcoming of the law is the lack of any requirement that the Council on the Environment disclose to the public the contents of the Reports submitted to them by the agencies. Since, as noted above, there is no particular standard for approval, the least that could be expected would be that every concerned citizen would have access to the information upon which the Governor and the Council make particular findings. It is encouraging that the Council includes all interested State agencies in its initial evaluation effort, but it is too much to expect that full information will become available to the public unless a specific law requires disclosure.

Third, there is some unreality in the apparent assumption of the impact report law that only facilities costing over one hundred thousand dollars will harm the environment. In this day of such knowledge as that merely altering the shape of a warning buoy on the James River can alter the nesting habits of a rare osprey family, it is not sensible to exclude totally such a large class of activities from environmental consideration. Perhaps two reporting standards, such as requiring Reports both for all activities which might substantially affect the environment and also for any project costing over one hundred thousand dollars, would be the best solution.

On balance, the impact law is at least a step in the right direction--that is, toward full disclosure of environmental hazards connected with particular State projects. There have been no reported cases concerning the present law, so it is somewhat difficult to assess its adequacy, but the appearance is certainly of extreme weakness. Until some strength is put into the laws, the most that environmentalists will be able to do is to demand adequate disclosure concerning projects they may know about. To that end, reference may be made to the listing of the State agencies participating in the initial review of impact Reports, found on pages and of this newsletter.