

Update

November 21, 2003



The newsletter of the
Virginia Municipal League

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Taxing telecommunications Restructuring proposal advances; legislation would lead to reforms

A sweeping telecommunications tax restructuring proposal has received an important endorsement. If enacted during the 2004 and 2005 legislative sessions, the reforms would take effect on July 1, 2005. In a key concession, the proposal does not include reforms related to cable and video services.

The joint subcommittee studying the state and local taxation of the telecommunications industry and its customers, HJR 651, ratified the framework for change Nov. 14. The members of the legislative tax commission, SJR 347, now must consider the proposal. If the tax commission approves the proposal it will be introduced in the upcoming legislative session. The tax commission is scheduled to meet again on Nov. 25 in Richmond. The proposed bill permits local governments and the telecom-

munications industry to continue negotiating through 2004.

Here is a summary of the framework adopted by the subcommittee:

- adopt legislation in 2004 outlining the parameters of reform;
- adopt legislation in 2005 enacting the reform. (If enacted, the reforms would take effect July 1, 2005);
- the 2004 legislation will require the collection of fiscal year 2004 local tax revenue and industry revenue data that will be used to establish the rates in the 2005 legislation; and
- for purposes of modeling FY04 revenues, the data collection will examine local rates adopted as of July 1, 2003.

A new uniform telecommunications tax

Continued on page 2

Options presented for services to immigrants

The Department of Education should examine the add-on costs of operating English as a Second Language (ESL) programs and other initiatives for limited English proficiency students, according to a study by the Joint Legislative Audit and Review Commission.

The study on the acclimation of Virginia's foreign-born population was presented to JLARC at its Nov. 10 meeting in Richmond.

The study found that local governments provide the majority of funding for the ESL program in the localities for which JLARC staff obtained cost data. For example, JLARC staff found that the Fairfax County

budget for ESL programs was \$54.1 million in fiscal year 2004, but that the county had received only \$4.5 million from the state and federal governments in fiscal year 2003. Chesterfield County budgeted \$2.6 million for ESL programs in FY 04, but received \$22,000 in state and federal funding for ESL in FY03.

The study also concluded, "demands placed on the budgets of local governments may increase given the requirements of the (federal) No Child Left Behind Act."

JLARC also concluded that foreign-born residents do not appear to use state services at a disproportionate rate from other

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FROM THE CAPITOL**Taxing
telecommunications
continued ...**

rate would be 4.5 percent; the respective E-911 fees would not be greater than 75 cents per line (landline) and wireless phone. The modeling is intended to verify these rates. The new rate of 4.5 percent would apply to the respective bill of each of the proposed taxable services. The proposed services include local exchange (local telephone calls), inter-exchange (a proposed new tax applied to long distance calls), wireless (a proposed new tax) and paging (a proposed new tax).

The proposal requires a central point for collection and distribution. The new tax would replace the following local telecommunication taxes and fees: consumer utility, local gross receipts (only the portion above 5 percent currently billed

to customers), and E-911. Additionally, the new tax would replace the Wireless E-911 and state's relay service fees. The latter assists the hearing impaired.

Industry representatives contend that the proposal is revenue neutral (in the aggregate) and revenues will grow at a rate faster than local governments will experience with the current tax system. A revenue sharing agreement would need to be developed prior to the 2005 legislative session, but after the modeling is completed. VML will not agree to reforms that reduce revenues to local governments.

A copy of the legislation is posted on VML's Web site: www.vml.org. Contact Mike Edwards at 804/649-8471 or medwards@vml.org, if you have questions.

**Services to immigrants continued ...**

segments of the population. Non-citizen usage of major social services benefit programs, such as food stamps and TANF, as well as for Medicaid and FAMIS, is low.

The study concluded, however, that foreign-born residents are more likely to be without health insurance, and therefore more likely to use services provided by local health departments, charity care services of local hospitals, and local free clinics and federally qualified health centers.

JLARC also found that localities could seek more federal reimbursement for the costs of undocumented jail inmates through the State Criminal Alien Assistance Program. Not all jurisdictions participate in this federal program. JLARC said that improved data collection could enable more localities to obtain reimbursement.

JLARC concluded that the State Compensation Board should require all jails to routinely enter information into the data system to identify an inmate's country of birth and citizenship status.

JLARC found that local governments use their own resources to translate documents, provide interpreter services, recruit bilingual employees, coordinate training and develop comprehensive policies for serving the foreign-born.

JLARC concluded that the lack of a coordinated approach has resulted in some duplication. For example, several local health departments have translated the same document.

The federal government is examining the ability of service providers in Virginia to comply with Title VI of the Civil Rights Act of 1964, which mandates access to information and services for non-English speaking individuals. Three social services offices are currently being audited due to complaints that had been filed. Two health departments in Northern Virginia also have been reviewed, but the cases were closed with "voluntary corrective action."

JLARC suggested that the state, in cooperation with local governments, could develop a comprehensive plan for dealing with language access issues, including better addressing the needs of the LEP residents, increasing the efficiency and cost-effectiveness of efforts, and helping ensure compliance with Title VI.

Local law enforcement officers and community leaders told JLARC that unreported crime is a significant problem in the immigrant population. JLARC concluded that local governments with growing immigrant populations should consider using the federal Local Law Enforcement Block Grant for outreach

efforts aimed at immigrants, and should encourage the use of programs such as Crime Stoppers.

Virginia ranks 11th in the nation in the number of foreign-born residents. Localities where foreign-born residents make up more than 10 percent of the population include the cities of Manassas, Manassas Park, Fairfax and Alexandria, and the counties of Loudoun, Fairfax, Prince William and Arlington. Schools in Virginia reported a total of at least 118 languages spoken by limited English proficient (LEP) students in 2002-2003. School districts with the largest number of languages spoken include Fairfax (77), Arlington (68), Prince William (62), Henrico (57), Virginia Beach (45) and Harrisonburg (34). Localities with the largest percentage of LEP students in 2002-2003 were Harrisonburg (30 percent), Arlington (26 percent), Alexandria (22 percent) and Manassas Park (21 percent).

A copy of the briefing paper and the full report is available on JLARC's Web site at http://jlarc.state.va.us/pubs_rec.htm. ❖

FROM THE CAPITOL**ACIR, Landfill Closure Fund recommended for elimination**

The legislative committee studying state government operations has recommended that the Virginia Advisory Commission on Intergovernmental Relations be eliminated.

The HJR 159 committee concluded its two-year study of state government by recommending the elimination of a number of advisory groups.

The ACIR includes legislative members, representatives of local governments, a member of a planning district commission, citizens and representatives of the state executive branch.

The current make up of the ACIR was the result of legislation enacted in 1991.

The committee also recommended that several existing state funds be eliminated, including the Landfill Cleanup and Closure Fund. The General Assembly never appropriated any money to the fund, which was established in 1999 to provide grants to local governments and political subdivisions for the final closure of landfills.

The committee recommended that sunset clauses be added to three funds that have never been funded, but that were created in 2000, at the onset of the recession that depleted state coffers. The committee recommended that the three funds — the Urban Public-Private Partnership Redevelopment Fund, the Virginia Removal or Rehabilitation of Derelict Structures Fund and the Housing Revital-

ization Zone Fund — be eliminated unless they are funded in fiscal years 2004, 2005, 2006 or 2007. These funds all flowed from the work of the Commission on the Condition and Future of Virginia Cities.

The committee also agreed at its Nov. 12 meeting to an overhaul of the Virginia Recycling Markets Development Council. The council is charged with promoting and coordinating the efforts of state agencies and authorities to enhance markets for recycled materials, as well as a number of other assigned tasks. The committee will adopt legislation to continue the council, and to charge it with these duties:

- upon request, assist local and state agencies in meeting recycling mandates and identify markets for recycled materials.
- identify and evaluate existing or proposed state policies and procedures that may affect businesses.
- facilitate access to markets for recycled materials
- develop a plan to fulfill its powers and duties.
- upon request of the state, report its findings and recommendations.

Members of the council will provide staff support, and no citizen members will receive compensation or expenses for service on the council.

Copies of proposed legislation as well as reports of the committee are available at the Division of Legislative Services' web site at <http://dls.state.va.us/hjr159.htm>. ❖

Tax commission report date pushed back to Dec. 30

The legislative commission studying revisions to the state tax code has been given an additional month to prepare its report to the General Assembly.

The Joint Rules Committee agreed Nov. 12 to give the Commission on the Revision of Virginia's State Tax Code and the Streamlined Sales Tax Project Agreement (SJR 347) until Dec. 30 to complete its work. The panel also received permission to meet in early January, if necessary.

The Joint Rules Committee also recommended amending procedures that currently allow either body to block a study committee's recommendations from going forward.

The rule now states that a committee's recommendations will not be adopted if a majority of the members of either house vote against the recommendations.

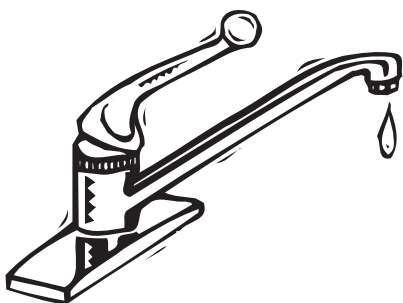
Joint Rules is recommending that the rule be amended to state that a recommendation will not be agreed to 1) if a majority of the members appointed from either house vote against a recommendation and 2) if a second vote on the question of killing the recommendation is then taken.

The premise of the rule is that if a majority of a committee from one house is opposed to a recommendation, it will not survive the legislative process, so why waste time on it.

The rule has been in effect for at least a year, but has never been invoked. The proposed amendment will make it easier for the members of one house to vote against a recommendation on principle, while allowing the decision of the committee as a whole to advance a recommendation. The amendment also will mean that a single senator or delegate, who may be the only representative of his house present at the committee, cannot block a recommendation from moving forward. ❖

FROM THE CAPITOL

Adoption of water supply regulations postponed



More than six months of work by the Department of Environmental Quality's Water Policy Advisory Committee has resulted in agreement on broad criteria and a tentative outline of the components of a state water resources plan. The DEQ's December report to the General Assembly and the State Water Commission will include these criteria, but will not include draft regulations governing local and regional water supply plans. The committee did not reach consensus on the draft regulations.

The report is a requirement of SB 1221, passed by the 2003 General Assembly. The legislation mandated that a comprehensive state water planning process be established.

After assessing the concerns of local government representatives, utility directors and other interested parties about the draft regulations, DEQ Executive Director Robert Burnley concluded that the state is not ready to adopt local water supply regulations. At the advisory committee's Nov. 4 meeting, Burnley said

that DEQ would postpone the regulatory development process, but would move forward with broad criteria and guidelines to govern the process for developing a comprehensive statewide water supply program. Burnley also said that DEQ should bring other state agencies into the process. The state water resources plan outline defines the role of the state in approving plans, facilitating the planning process, and compiling information, among other things.

Local governments were concerned because the proposed draft regulations:

- did not include funding for the mandated local and regional plans;
- imposed conservation mandates;
- did not specify if the state would streamline the permitting process; and
- did not resolve whether the state would become an advocate for approved local plans.

The advisory committee is expected to reconvene in 2004 to continue work on the local and regional water supply planning regulations. ❖

Low impact development task force issues recommendations

A Department of Environmental Quality task force has concluded that the use of low-impact development techniques can help with the management of storm water.

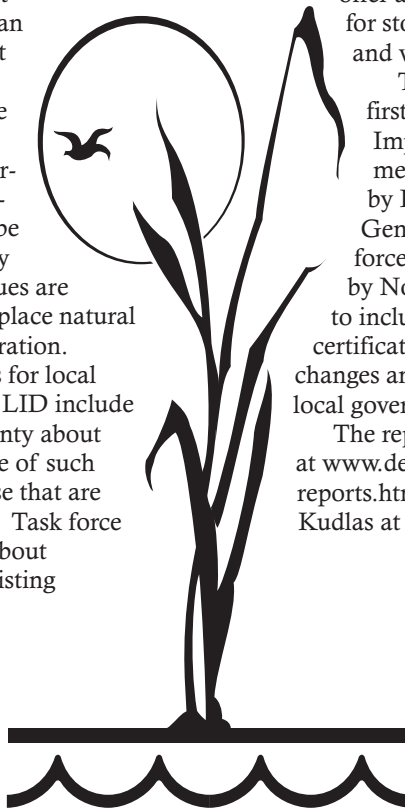
Low impact alternative technologies emphasize strategically placed smaller-scale storm water management techniques that can be distributed over a relatively large area. These techniques are designed to replicate or replace natural filtering, storage and infiltration.

Some important issues for local governments interested in LID include legal liability and uncertainty about the long-term maintenance of such practices, particularly those that are used on single-family lots. Task force members also cautioned about potential conflicts with existing

storm water management programs, or creating expectations that LID alone can offer a comprehensive approach for storm water management and watershed planning.

The Nov. 1 report is the first product of the Low Impact Development Assessment Task Force established by HB 1953 during the 2003 General Assembly. The task force will develop a final report by Nov. 1, 2004 that is expected to include recommendations for a certification process, regulatory changes and a model ordinance for local governments.

The report is available from DEQ at www.deq.state.va.us/regulations/reports.html, or by calling Scott Kudlas at 804/698-4456. ❖



IN THE COURTS

Court strikes down prisoner-rights portion of religious land-use law



A federal appeals court in Ohio has ruled that a two-year-old statute that gives prisoners additional rights based on religious practices violates the constitution's prohibition against laws that promote religion.

The case arose from lawsuits brought by prisoners in state penitentiaries who claimed that the state violated the federal Religious Land Use and Institutionalized Persons Act by not allowing them to pursue certain activities they alleged were for religious purposes.

The act has two major sections. The first protects religious institutions from state and local government land-use decisions that would "substantially burden" them. It also protects the rights of "institutionalized persons" in prisons, mental hospitals and homes for the disabled or chronically ill, to practice their religious beliefs.

The Ohio appeals court ruled that on its face, the act promotes religion by granting inmates who assert a religious basis for their activities greater rights than

those who do not. The court ruled that the act has the primary purpose of advancing religion. From reading the court's November opinion, there was a practical side to it in addition to the legal issue. The court noted that inmates were claiming that illegal activities, including in-prison gang behavior, were religious practices.

Because the decision is from the Sixth Circuit in Ohio, it does not apply in Virginia, a part of the Fourth Circuit. If the reasoning in the opinion survives an appeal to the U.S. Supreme Court, it would become law for Virginia. Other courts may also follow the lead of the Sixth Circuit's reasoning as they answer inmate appeals under the act.

For more information on the land-use portion of the act, which the decision did not address, visit VML's Web site at www.vml.org. Click on the "conferences" button to read or download a presentation on the topic delivered by Lynchburg City Attorney Walter Erwin at VML's annual conference in Roanoke. ❖

ETCETERA

Virginia Municipal Laws Manual 2003 edition available

The 2003 edition of the VML publication *Virginia Municipal Laws Manual 2003* is available for purchase. This one-volume, softbound book contains all of the state law provisions that most local government offices and officials would need for their work. It is designed to be useful for small localities as a way to have access to the state code without the expense of subscribing to the entire 32-volume set. It is also intended for the various offices of larger localities, so each department will have ready, inexpensive access to the law. For example, the planning department could use copies for the planning staff members, since the manual has all land-use laws in Title 15.2.

The manual contains the following sections of the state code:

- Constitutional provisions for local governments, education, taxation and finance
 - FOIA
 - Conflict of interests act
 - Government data collection laws
 - Procurement Act
 - Public safety line of duty act
 - Title 15.2 – all provisions of general application
 - Special authorities provisions of Title 15.2

- Education law – school boards, school property, teachers
- Elections law relating to local elected officials
- Eminent domain
- Title 46.2 – motor vehicle laws affecting local governments
- Taxation – all laws affecting local governments

The manual is available as a single-volume book for a price of \$78. In addition, an electronic version is available, either by itself, or in combination with a paper copy. With the electronic version, the entire volume can be searched and sections can be copied to insert into the text of a document the user is working on. For more information about ordering, please go to Municipal Code Corporation's Web site, www.municode.com. Go to the "Purchase Codes" page, and choose the Virginia Municipal Laws option.

VML will work with Municipal Code Corporation to update the manual each year. There is no need to insert updates. The low price allows a simple replacement of the prior year with the next year's edition. ❖

REGULATIONS

Intended Regulatory Action

Fraud Reduction/Elimination Effort. The State Board of Social Services has proposed action to amend the criteria for local departments of social services to receive full reimbursement for program costs, expand the responsibilities of local departments of social services fraud units and enhance the definitions section of the regulation. The agency does not intend to hold a public hearing. Contact Michelle Lauter, Department of Social Services, at 804/786-9170 or e-mail her at sml900@dss.state.va.us for additional information.

Proposed Regulations

Regulation for Criminal Record Checks for Child Welfare Agencies and Minimum Standards for Background Checks for Licensed Child Day Centers. The Department of Social Services has proposed regulations to (i) expand the list of crimes that are barriers to operating, working or volunteering at licensed child day centers, (ii) mandate a search of child abuse central registry, (iii) change the timeframe to receive background checks from 21 days to 30 days, and (iv) clarify persons who must undergo background checks. Other proposed changes include (i) requiring repeat background checks every three

years, (ii) allowing licensed child day centers to accept background checks dated less than six months from when contract employees begin providing services at facilities, and (iii) allowing persons to take background check findings with them and use them for another application within 90 days. Public hearings will be held. For additional information, contact Wenda Singer, Department of Social Services, at 804/692-2201 or e-mail her at wxs2@dss.state.va.us. ♦

POSITIONS

Longer version of job ads posted at www.vml.org

Because of the number of requests it receives to publish job advertisements, VML reduces the length of the position descriptions in *Update*. A full version of all of the job listings published here for the past two months appears on VML's web site at www.vml.org. Visit the VML site and click on "Marketplace" to read the complete descriptions.

Director of Public Works, Dumfries

SALARY: \$50,679-\$70,951. (Pop. 5,000) Reqs. technical, interpersonal and customer service skills; in-depth knowledge of infrastructure, public utilities, street maintenance, solid waste, site plan review, personnel supervision and contract management. B.S. in civil engineering or related field and 5 yrs. municipal public works mngmnt. exper. at director or assistant director level preferred. Resume to: Town Manager, "DPW Director Search," P.O. Box 56, Dumfries, VA 22026, or via e-mail to djohnson@dumfriesvirginia.org. Open until filled. EOE.

Environmental Compliance / Zoning Officer, King William County

SALARY: DOQ. (Pop. 13,600) Ensure compliance with land-use and environmental codes, including zoning, erosion and sediment control, and storm water manage-

ment. H.S. diploma or equiv. supplemented by exper. and/or training in code enforcement, inspections, or other regulatory functions. Bachelor's with course work in civil engineering, planning, environmental studies, or a related field preferred. Application, resume and 3 professional references to: Matt Walker, Director of Community Development, P.O. Box 215, King William, VA 23086. Complete job description and application obtained by calling 804/769-4969 or visiting www.co.king-william.va.us. Open until filled. EOE.

Assistant Director of Neighborhood & Leisure Services for Parks, Recreation and Open Spaces, Norfolk

SALARY: \$58,468-\$102,905. Perform management and leadership responsibilities including planning, organizing and directing activities related to municipal leisure service and park development and park maintenance operations. Reqs. bachelor's degree with major course work in public admin., parks and recreation, leisure services or related field; master's degree in related field preferred. Prefer 6 (+) yrs. of increasingly responsible exper., including 3 yrs. of supervisory responsibility in mid- to large-size urban municipality. Reqs. Norfolk residency. Apply: Human Resources, 100 City Hall Building, Norfolk, VA. 23510. Tel: 757/664-4010, ext. 353 or online: <http://www.norfolk.va.us>. Open until filled. EOE.

Tax Field Auditor, Winchester

SALARY: \$33,134. Must possess considerable knowledge of business accounting and the state and local codes related to taxes, licensing and auditing. Duties: Audit and

review business establishments to determine compliance with tax and business laws; issue notice of delinquent licenses fees and taxes; work with city attorney in taking legal action against violators; audit business' personal property returns. Degree in business admin. preferred with some auditing exper. req. Must possess valid driver's license. Apply: Administration Department, Rouss City Hall, 15 N. Cameron St., Winchester, VA 22601. Contact: 540/667-1815 ext. 449 or TDD 540/722-0782 or alewis@ci.winchester.va.us or visit www.ci.winchester.va.us. Open until filled. EOE.

Building Official, Appomattox County

SALARY: \$32,394 (+) benefits. Performs inspections of commercial and residential properties for compliance with ADA, Fair Housing Guidelines, all applicable federal, state and county building and building related codes. Reviews and approves plans for new construction. Certified Building Official preferred. Must pass Certified Building Official examination within 1 yr. of hire if non-certified. State certifications in erosion control preferred. Resume with cover letter and county application to: County Administrator Darrell A. Carroll Jr., P.O. Box 863, Appomattox, VA 24522. Job description and application at www.appomattox.org/newsevents.asp or call 434/352-2637. Open until filled. EOE.

Town Manager, Vinton

SALARY: \$65,000-\$80,000 DOQ (+) benefits. (Pop. 7,782) Serves as chief

Continued on page 3

POSITIONS

administrative officer responsible for day-to-day operations of full service municipality with 6 departments, 100 FTE, \$7.8 million bdtg. Reqs. bachelor's in public admin. or related field and at least 5 yrs. successful mngmnt. exper. in organization of similar size as manager or assistant. Send resume, application, salary history, salary reqs. and 3 work-related references to: Town Clerk, 311 S. Pollard St., Vinton, VA 24179, 540/983-0607. More info. and town application at www.town.vinton.va.us. Deadline: Nov. 28. EOE.

Other positions

NOTICE: The following positions also are listed on VML's Web site at www.vml.org.

Electrical Engineer (Public Utilities/Electric), Rocky Mount, N.C.

SALARY: \$51,000-\$79,000. Deadline: Dec. 5.

Director of Finance, Albemarle County

SALARY: \$61,423-\$98,275 negotiable DOQ (+) benefits. Deadline: Dec. 15.

Police Captain, Albemarle County

SALARY: \$53,000-\$70,000 negotiable DOQ (+) benefits. Deadline: Dec. 29.

Assistant County Attorney, Arlington

SALARY: \$61,532-\$99,457. Open until filled.

County Administrator, Accomack

SALARY: DOQ. Deadline: Dec. 1.

City Assessor, Winchester

SALARY: DOE. Open until filled.

Town Engineer / Public Works Director, Huntersville, N.C.

SALARY: DOQ (+) benefits. Open until filled.

Budget and Procurement Analyst, Bedford County

SALARY: \$26,905-\$32,705 starting range DOQ (+) benefits. Open until filled.

Director of Parks and Recreation, Bath County

SALARY: DOQ/DOE. Deadline: Dec. 12.

Director of Finance, Leesburg

SALARY: \$71,827-\$114,924 (+) benefits. Deadline: Nov. 26.

Director of Downtown Development, Rocky Mount, N.C.

SALARY: DOQ/DOE. Deadline: Dec. 15.

Chief of Police, Brookneal

SALARY: DOQ (+) benefits. Open until filled.

County Planner, Appomattox

SALARY: \$37,700 to start. Open until filled.

Environmental and Safety Compliance Officer, Bristol

SALARY: DOQ. Immediate opening.

Management Analyst, Manassas Park

SALARY: \$43,451-\$76,192 DOQ (+) benefits. Open until filled.

Public Works Director, Gloucester County

SALARY: \$61,911 or higher DOQ (+) benefits. Deadline: Dec. 1.

DEADLINE: *The deadline for placing a job advertisement in the next issue of Update is Friday, Nov. 28. Submit ads via e-mail to David Parsons at: dparsons@vml.org. You may also submit via FAX at: 804/343-3758. VML publishes job advertisements at no cost to its local government members. Non-members are charged a flat rate of \$25 per ad per issue, which includes posting on VML's web site and publication in Virginia Town & City (deadlines permitting). VML edits position descriptions in printed publications because of space limitations.*

CALENDAR

NLC Congress of Cities and Exposition, Dec. 9-13, Nashville

Preliminary program information will be available soon. Check www.nlc.org.

Local Government Attorneys of Virginia 2003 Fall Conference, Dec. 10-12, Williamsburg

Contact: Leisa R. Steele, Program & Members Services Coordinator, 700 E. Franklin St., Richmond, VA 23219. Tel: 804/371-0202, FAX: 804/371-0234. E-mail: lrs5c@virginia.edu.

Virginia Local Government Management Association, Feb. 18-20, Charlottesville.

Mid-Winter conference at the Boar's Head Inn, Charlottesville.

Local Government Attorneys of Virginia 2004 Spring Conference, April 22-24, Roanoke

At the Hotel Roanoke & Conference Center. Contact: Leisa R. Steele, Program & Members Services Coordinator, 700 E. Franklin St., Richmond, VA 23219. Tel: 804/371-0202, FAX: 804/371-0234. E-mail: lrs5c@virginia.edu.

Virginia Building and Code Officials Association, May 3, Charlottesville

Mid-year meeting at the Omni Hotel. Contact: Mary Jo Fields 804/649-8471 or mfields@vml.org.

Municipal Electric Power Association of Virginia, May 26-28, Virginia Beach

Annual meeting. Contact: Kimberly Pollard at kpollard@vml.org.

Virginia Local Government Management Association, June 23-26, Virginia Beach

Annual conference at the Sheraton Virginia Beach.

Virginia Municipal League Annual Conference, Oct. 3-5, Alexandria

The 99th annual meeting of VML. Contact: Joni Terry at 804/649-8471 or jterry@vml.org. Exhibitors contact: Kimberly Pollard at 804/649-8471 or kpollard@vml.org.

The deadline for placing a calendar item in the next issue of Update is Friday, Nov. 28. Preferred method of submitting items is via e-mail to David Parsons at: dparsons@vml.org. You may also submit via FAX at: 804/343-3758.

Update

The newsletter of the
Virginia Municipal League

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