



NRMCA Names Vulcan's John Swart Promoter of the Year

NRMCA has named John Swart from Vulcan Materials Company as the NRMCA Promoter of the Year for 2010. A panel of judges from the NRMCA Promotion Committee selected Swart as the award winner from among this year's nominations. Swart, who covers territory from Baltimore south to Tidewater, VA, was honored for his dedication and enthusiasm for concrete promotion and for his collaborative approach in developing interest in concrete applications.

"Successful promotion requires training and understanding among owners, specifiers, contractors, ready mixed suppliers and constituent vendors," said Diggs Bishop, president of the Northern Concrete Division, Vulcan Materials. "Through his involvement with local, state and national associations, John has supported and educated promoters, not only within our company, but throughout the industry."

Swart's greatest recent successes were in the area of concrete producer supplied value-added product conversions, notably the use of fiber and color. He has also been an enthusiastic and effective promoter of sustainable concrete applications including pervious concrete.

The 2010 Promoter of the Year winner was honored at the NRMCA Annual Convention on Tuesday, March 16, in Austin, TX.

Judges took into account the nominee's exceptional promotional efforts over the last five years in conversions to concrete resulting from promotional activities; promotional presentations to specifiers, developers, potential end-users, concrete industry personnel, or other individuals or groups; professional development support of other ready mix promoters through leadership activities; involvement in local, state and national



trade association promotional activities; and educating potential markets about advanced and innovative concrete technologies.

The VRMCA wants to take this opportunity to congratulate John Swart and Vulcan Materials Company for this national recognition of excellence. ♦

9th Annual VA Concrete Conference a Success

**By J. Keith Beazley,
Director Of Industry Services**

"Concrete: Leading The Way" was the theme the 9th Annual Virginia Concrete Conference, held March 4 and 5 at the Sheraton Hotel in Richmond. The conference opened on Thursday with presentations from VDOT and Federal Highway Officials who covered advancements in concrete transportation applications, followed by a General Session. Concurrent breakout sessions on Pavement and Bridge Concrete topics were offered Friday.

"Even with the down economy and VDOT's restricted attendance, the final attendance for the 9th Virginia Concrete Conference was the second highest ever," stated ACPA Executive Director Bob Long. "The final attendance count was 288 with a waiting list for VDOT reserved places."

The Conference is hosted by VRMCA, the American Concrete Pavement Association, the Virginia Chapter of the ACI, the Precast Concrete Association of Virginia, the Federal Highway Administration and VDOT.

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Visit the Virginia Ready-Mixed Concrete Association Website at www.vrmca.com

Technician Certification Class for Bayshore Concrete Products

By J. Keith Beazley,
Director Of Industry Services

VRMCA held a special Saturday session for ACI Concrete Technician certification at Bayshore Concrete Products in March. The examination was given in the main facility in Cape Charles, Virginia, the third session held for the Quality Control Department.

Bayshore Concrete was established in 1961 to produce the precast components for the world-famous 17-mile-long Chesapeake Bay Bridge Tunnel. Bayshore Concrete Products has continued as a permanent supplier of a wide variety of precast/prestressed concrete structural materials such as concrete docks, concrete piers, spuncast piles and poles. Bayshore has maintained a strong reputation for quality engineering and construction practices coupled with an emphasis on quality control.

The testing session was supervised by Dan Cabello, Quality Control Manager, Bayshore Concrete, and Assistant Manager of Quality Control, Larry McAllen, and the examination was conducted by George Boykin and Keith Beazley of VRMCA. The individuals selected to be included in the testing session were exceptional in their knowledge



of concrete and testing procedures and demonstrated the quality and pride the company has in quality control of their concrete and products.

The VRMCA is pleased with the close relationship with Bayshore Concrete and their dedication to quality concrete. Insuring production and use of the highest quality concrete, along with proper handling and testing techniques, are the VRMCA's primary goals. ❖

9th Annual Virginia Concrete Conference

(continued from page 1)

"All feedback from attendees has been very positive," said Long. "Hopefully, this will allow the number of VDOT attendees to be increased for the next year."

Session topics included Green and Sustainable Concrete, Nano and Fiber Reinforced Link Slab Techniques, Concrete that Cleans Itself and the Environment, Do's and Don't's of Concrete Patching and ACI Virginia Awards. Presenters were made up of leading industry professionals.

The Steering Committee has already started planning for the 2011 Conference, and they would welcome suggestions for topics of interest. Keith Beazley, VRMCA, serves on the Steering Committee each year and Bob Nablo, VRMCA, serves as a Moderator in the pavement side of the sessions.

The relationship with the Federal Highway Commission and the Virginia Department of Highways is enhanced and strengthened by participation in the Concrete Conference and the Co-op Committees of the ACPA and the VRMCA, which should benefit the usage of concrete for pavements and bridges throughout the Commonwealth. ❖



Sammy Davis and Southwest VA Council “Play Two”

by Bob Nablo,
Director of Industry Services

Those of you old enough to remember Chicago Cubs baseball player and Hall Of Famer Ernie Banks will recall his famous comment of “Let’s play two!” Banks was talking about baseball games, but the Southwest Virginia Council turned that idea into hosting two seminars on the same day. Sammy Davis of Grace generously arranged his schedule so that he could give his Decorative Concrete presentation twice – at a Roanoke breakfast hosted by Boxley Materials, and a luncheon in Lynchburg hosted by Lynchburg Ready Mix.

Southwest Council members think this presentation is one of the better promotions they offer because it focuses on the concrete contractor and their primary concern these days: the bottom line. Davis does talk about colored concrete techniques and concerns, but he also stresses how the finishing contractor can market and place decorative concrete with minimal changes while still increasing his profit. It also gives contractors a chance to interact with concrete producers and industry suppliers.



Presenter Sammy Davis speaks to Bob Chandler of Chandler Concrete.

Davis makes contractors realize that they can be the most important point of contact with the customer and that the concrete producer can help them order the proper mix and color for a project when both correctly understand the objectives and the potential problems. Davis explains how weather, timing,

materials, mix design and especially added water can significantly affect the finished product. He stresses how a little communication and planning can reduce call-backs and removals – two of the biggest headaches for contractors and producers. ❖

Blue Ridge Hosts ACI Class, NRMCA Software Demonstration

by Bob Nablo,
Director of Industry Services

The Blue Ridge Council recently held its first two events for 2010 with an ACI Testing Technician Grade 1 class and exam, and a brief seminar on the NRMCA Concrete Paving Analyst software.

Class sizes for the ACI Grade 1 certification instructed by George Boykin

have been unexpectedly large in all parts of the Commonwealth, and the Harrisonburg session was no exception. Thanks to volunteer help from VRMCA members and VDOT these events have been successfully completed, but the pressure is on for supplemental volunteers and VRMCA staff.

The larger numbers are a mixed blessing because we are fortunate to be

getting more trained, certified technicians into the field, but the increase in students puts a significant strain on our resources – particularly on volunteer examiners. The Harrisonburg event will likely have to be moved to a larger facility for the practical exam, and Boykin has already begun using a larger classroom – the VDOT Harrisonburg Residency – for the instruction.

Blue Ridge Council also continued its pattern of holding a short self-education presentation during the regular business meetings, as Scott Stanley gave a PowerPoint demonstration of the NRMCA software to attending members. This software has proved helpful in other parts of the state in converting parking areas designed in asphalt to ready-mixed concrete, and the Blue Ridge Council hopes to continue that trend. ❖



Concrete vs. Asphalt: "Questions Are The Answers"

by Hessam Nabavi,
Director of Industry Services

Recently, the NVCAC Paving Committee visited an old friend. A lot of you who are reading this brief know about this old friend, "Concrete Intersection, Manassas Drive & Centerville Road." Built with a great anticipation in 1997, this intersection has been in use for 13 years - it needs some cleaning but has never required any repairs or maintenance. It has been working day and night, 365 days a year under various traffic and weather conditions and has never asked for anything.

I remember I read a book years ago by Allan Pease called "Questions are the Answers." Following are some of the questions that NVCAC is asking:

- How much more maintenance would have been required if this had been an asphalt intersection?
- How much more of the taxpayers' money would have been spent to repair the intersection?
- How many times would the county have had to close the intersection for repairs, and what would have been the reaction of the citizens to all the inconveniences?
- Why has NO other concrete intersection been built since then?
- Is asphalt sustainable?
- If asphalt is not sustainable, why is it being used almost all the time?

These and other questions resound in the minds of authorities when considering the use of concrete verses asphalt, with answers such as it costs too much, takes too long to place, is too difficult to repair. . . and they really believe that!

But what is the truth?

It costs too much?

With the rising cost of petroleum and petroleum-driven products, concrete and asphalt can be very close in cost. If they calculate the life cycle cost (reduced maintenance and rehabilitation costs over the pavement's life cycle) in the equation, concrete will cost far less than asphalt.



Takes too long to place?

With all the technological advancements in fast-track technology, more advanced placement methods and equipment can allow concrete pavements to be opened in just a few short hours. This reduces congestion and thousands of work-zone-related accidents.

Is too difficult to repair?

Whether we use asphalt or concrete, eventually repairs will be required. But how often does it need to be repaired and how much will it cost the taxpayers over the next 15 to 20 years for all the repairs? Concrete pavement does not need to be repaired as often as asphalt, and it would hardly cost anything for years to come as our old friend in Manassas has proven.

So...

- Why not concrete, and why asphalt?
- Why not more durable, and why asphalt?
- Why not low maintenance, and why asphalt?
- Why not low costs, and why asphalt?
- Why not use the taxpayers' money more wisely, and why asphalt?
- Why not sustainable, and why asphalt?
- What is this invisible force that ignores all the benefits of concrete and still paves everything in asphalt?

"Questions are the Answers." ❖

Progress Report: NVCAC “Reinventing Itself”

by Hessam Nabavi,
Director of Industry Services

Last December I wrote an article titled “NVCAC Reinventing Itself- Creating More Accountability, Increasing Productivity.” As I reported in that article, the plan for NVCAC is that the council will meet quarterly, the leadership group will meet 6 to 8 times a year and the committees meet every month. This idea was developed by the leadership group as a “Small Group” approach to create more involvement, more accountability and ultimately more results.

I am happy to report that since NVCAC implemented this idea, Committees have been meeting regularly to discuss their goals, check their progress and make necessary adjustments. The Leadership Group had its first meeting in February, during which the Council’s goals, activities, upcoming events and finances were discussed.

The full Council had its first quarterly meeting on Thursday, March 11, 2010 in Algonkian Regional Park Golf Course. This greatly anticipated meeting started with a large turn out, lots of enthusiasm and excitement. Our featured speaker was Mr. Robert Garbini, President of NRMCA. In his presentation Mr. Garbini talked about “State of the Economy, Stimulus Money and the Economic Forecast for NOVA 2010.” Mr. Garbini’s presentation was received highly by the membership. We are very thankful to Mr. Garbini for making the time to participate in the NOVA council meeting and for his informative presentation. Visit www.vrmca.com and click Downloads to view this presentation.

After Mr. Garbini’s presentation, VRMCA presented past NVCAC Chairman Kevin Terry with a plaque for his outstanding service in 2009. VRMCA also recognized the 2009 NVCAC committee chairs for their service.

I then gave my report on the upcoming “Building Green with Concrete EXPO” at WSSI and its potential opportunity for promotion, networking and enhancing the council’s financial status.

Next, the committee chairs provided the council with their complete reports



Hessam Nabavi presents plaque to Kevin Terry, Past NVCAC Council Chairman.



from their respective committees. They spoke about their goals, activities and results. Their message echoed with a tremendous enthusiasm in the room.

Finally Joel Woerl, 2010 NVCAC

council chairman wrapped up the event by giving a passionate speech, talking about the leadership group vision and complementing the committee chairs for their tireless effort. ❖

NVCAC Leadership Group

Joel Woerl, Titan America
Jeff Slagle, Rowe Materials
Kevin Terry, Virginia Conc.
Mark Granahan, Lehigh Cement
Tony Thompson, Virginia Conc.
Bill McNamara, EsRock
James Murray, Rowe Materials
Sean Murnane, Virginia Conc.
Duane Laughlin, Crider & Shockey
Mel Howard, DuBrook Concrete
Hessam Nabavi, VRMCA

2010 Council Chairman
2010 Vice Chairman
2009 Council Chairman
2010 Educational Committee Chairman
2010 Commercial Committee Chairman
2010 Residential Committee Chairman
2010 Paving Committee Chairman
2010 Secretary Treasure
Advisor to the Group
Advisor to the Group
Director of Industry Services

Concrete Parking Lot Sales: A Lesson Learned

by James Murray,
Rowe Materials, LLC,
NVCAC Concrete Paving
Committee Chairman

A years worth of work to convert an Asphalt parking lot to Concrete and all we have to show for it is "great effort?" Hardly!

As difficult as it may be to believe, this has been the most rewarding experience of my sales career. As a Ready Mix supplier we felt we made all the right moves, we presented the decision makers with all of the information available to make an "Apples to Apples" comparison.

To begin with, we presented the customer with a personal demonstration of Pervious Concrete. We had the design firm at the presentation as well. When Pervious Concrete was not designed into the project, we immediately shifted our focus to standard gray concrete. We gave a personal presentation of the CPA software for conversions along with a Green Building/Leed presentation to the County Administrator and County Engineer. We were well received and

were asked to continue with the conversion.

With the help of the VRMCA and Ohio Ready Mix Association, for FREE, we redesigned the 66,000-square-foot parking lot and had drawings printed for all parties included in the decision making. The engineering firm signed off on the design and signed off on the use of recycled concrete to replaced 57 stone as the substrate.

Shew!!!! We were golden !!

Not so fast there young man... What is this going to cost?

Do you mean today? Or over the life cycle of the pavement, I asked?

Well today of course; we have a budget to keep to on this project.

Hm-mm? I thought.

The Ready Mix industry can provide a product that removes maintenance expenses for fifteen years, (\$110,000 net savings) and the biggest concern is an annual budget? And I haven't even spoken about the savings in electricity usage over the same fifteen years, which in this project is \$5100 annually or \$76,500 over fifteen years. And we still want to talk about this project's budget?

"You need to overcome the tug of people against you as you reach for high goals."

- General George S. Patton

You bet they did.

We worked diligently with the General Contractor and Sub-contractor to make the numbers work as best we could and produced an "Apples to Apples" comparison. And here is the lesson learned: we are NOT "Apples to Apples" with Asphalt, we are better, much better and worth the difference in cost. Clients would prefer "Apples to Apples" in cost only. Our industry cannot produce a product as flawed as Asphalt and therefore, should not attempt to sell it that way.

As difficult as it may be, I learned we must sell our product for what it is, the most sustainable building product known to man. We may not win every battle as happened here, but with persistence, education and promotion, we will win the war. ♦

VIRGINIA READY-MIXED CONCRETE ASSOCIATION 2010 MIXER TRUCK ROADEO

VIRGINIA TRUCK CENTER, RICHMOND, VA
SATURDAY, APRIL 10, 2010

BRING YOUR KIDS!



Register online at VRMCA.com

SCHEDULE

- 9:30 AM Driver Registration
- 10:00 AM Written Exam
- 10:30 AM Pipsqueak the Clown
- 10:30 AM Course Walk-thru
- 11:00 AM Lunch Buffet
- 11:30 AM Pre-trip Inspection /
Driving Competition begins!
- 11:30 AM Kids Activities Begin
- 3:00 PM Awards Presentation

Hampton Roads Advisory Council Golf Tournament

**By J. Keith Beazley,
Director Of Industry Services**

The Hampton Roads Concrete Advisory Council will host the Spring Golf Tournament in Kiln Creek Golf Club on Thursday, April 22, 2010. The Newport News location and facilities have proved to be very popular for the Council's Tournament. The proceeds of the Tournament will be used for the funding of the Scholarship presented each year at Cox High School in Virginia Beach.

The Chairman of the event is Charles Malbon who oversees the details that make this a very special event. The format will be Four Man Florida Best Ball. Included in the entrance fee are: range balls, box lunch, raffle items, dinner and beverages. Prizes will be presented for first, second and third place, as well as

longest drive and closest to pin. The fee is \$400 per team and \$75 for a hole sponsor.

This Virginia college/university sponsorship is particularly important

this year due to raising tuition costs and the strain of the economy. For reservations or questions please call Charlie Malbon at 757-630-6902. ❖



NRMCA Introduces Highway Work Zone Safety Program

The National Ready Mixed Concrete Association has introduced the latest in its growing library of mixer driver safety materials, Safety Series #16: Highway Work Zone Safety for the Ready Mixed Concrete Industry. This CD-based PowerPoint presentation and instructor notes are designed to teach mixer drivers the importance of safety in highway work zones. These work zones are especially challenging as motorists navigate different traffic patterns along with assorted lights and cones as well as flagmen directing traffic. The new Occupational Safety and Health Administration high-

way work zone letter of interpretation is covered along with the three classes of reflective attire (safety vest) available. Finally, a quiz and training documentation form is included to help track personnel training.

The Highway Work Zone title joins other popular offerings that have helped improve mixer truck drivers' safety records over the years, including customized CD or PowerPoint programs that address preventing backing accidents and rollovers, and investigating accidents. Click here for more information.

"We made these training programs

ready mixed concrete specific for a quicker transfer of knowledge to the workforce," said Steve Jones, director of safety and human resources at NRMCA member company Chandler Concrete Co., Inc. and NRMCA Safety Task Group chairman. "These courses were created in conjunction with member company volunteers to ensure maximum training effectiveness."

"NRMCA will continue to proactively address safety issues in the ready mixed concrete industry," added Gary Mullings, NRMCA's senior vice president of operations and compliance. ❖

For coverage in future issues, please send announcements/press releases and accompanying photographs to derek.breen@easterassociates.com or mail to:



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Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space.

Consumer Health Association Comments on New Bill

James P. Carroll,
Consumer-Health.net

The following are some comments regarding the recently passed Health Care Bill. Please keep in mind that this is a 2000+ page bill and that no regulations have been published as of yet. Regulations are the instructions from the various governmental agencies that guide us with respect to compliance. Also, most of the provisions in the bill take effect on January 1, 2014.

Here are some major provisions and I will identify those provisions that take effect in 2010:

1. Community rating- standards are being established for a modified community rating basis. This means that insurance companies will be allowed to rate using only age, tobacco use, family composition, and geographic regions. Experience rating (rating based claim history) would be prohibited. Throughout the bill there is emphasis placed on wellness.

2. Children up to age 26, including married children, can be covered under their parents plan. This will be effective in 2010.

3 Coverage must be offered on a guarantee issue basis in all markets and be guaranteed renewable. Exclusions based on preexisting conditions and policy rescissions would be prohibited in all markets.

4. Lifetime limits are banned and this is effective in 2010.

5. In January 2014 each state must create an Exchange for the sale of individual plans and for small groups.

6. Initially, small groups are defined as employers with up to 100 employees. States can elect to reduce this definition to 50 in 2016.

7. Carriers must pool all individual market and small group market in respective single risk pools.

8. The Department of Health and Human Services (DHHS) must establish four types of coverage (bronze, silver, gold, and platinum). All individual and small group insurers would be required to offer the silver and gold plans.

9. Benefits are expanded beyond the ambulatory, emergency, hospitalization, maternity, prescription, newborn to include behavioral, rehabilitative, preventive and vision care.

10. Insurers who contract to market on a multistate basis must have plans available in all states by year four of participation.

11. Within 90 days of enactment, any individual who has been uninsured for at least 6 months and has a preexisting medical condition can receive coverage through a high risk pool. The pool will end in 2014.

12. A reinsurance program will be established for individual and group markets and all carriers will be required to contribute \$25 billion total to a non-profit reinsurance entity over a two year period.

13. Employers do not have to provide coverage, but if they employ 50 full-time employees they must pay a fine from \$750 to \$2,000 for each full time employee they don't cover, but exempts the first 30 employees from the fine.

14. Effective December 31, 2013 all American citizens

must purchase qualified health insurance.

15. Individuals must report on their federal income tax return the months of the year for which they had qualified health insurance plans. Employers are required to report the value of health benefits on W-2 forms.

16. Individuals and employer group plans that wish to keep their current policy would be able to do so if they included the new mandatory benefits. (Children to 26, no preexisting condition clause, elimination of lifetime maximums, etc.)

17. With respect to HSA's, HRA's, and FSA's, over-the-counter prescriptions drugs can not be reimbursed with these funds.

18. The Secretary of DHHS, together with the states, have new authority to monitor health insurance company premium increases. This begins in 2010.

19. Create a voucher system of tax credits for people with incomes between the 100% and 400% of the Federal Poverty Level (FPL). The voucher would be used at the exchanges.

20. Beginning in 2010, provides tax credits for qualified small employer contributions to purchase coverage for employees. Average annual wages must be under \$40,000.

21. Creates incentives for wellness program for up to 50% of premiums. Establish a 10-state pilot program.

22. The bill assumes the use of agents and brokers to sell, enroll, and assist individuals.

23. Allows the creation of interstate plans and national plans.

24. Creates a National Long Term Care Program for adults who have or develop functional impairments. There would be a 5 year vesting period before beneficiaries would be eligible for benefits. No underwriting would be required.

25. An Excise tax of 40% would apply to insurance premiums in excess of \$8,500 for individuals and \$23,000 for families. Increases the Medicare payroll tax from 2.9% to 3.8% for wages and self-employment income above \$200,000 (\$250,000 married). Increases the penalty for "taxable distributions" for non-qualified medical expenses from HSA's from 10% to 20%.

At this writing, the bill is being sent back to the House of Representatives for corrections. Over the next weeks, months, and I expect years we will be receiving information as how to proceed with various aspects of the bill. I will keep you informed as we learn more about the bill and the respective administrative procedures required to comply. ❖



**CONSUMER
HEALTH
ASSOCIATION**



EMPLOYMENT LAW UPDATE: New Rules and Regulations from the Feds

By John G. Kruchko and
Kevin B. McCoy*

For most news consumers, the last several months have been dominated by Congress' health care debate (or debacle, depending on your perspective). Even the Employee Free Choice Act (i.e., the card check bill), once considered an imminent foregone conclusion, has disappeared into the health care morass that has consumed the valuable time of our federal congressmen and senators. If you didn't know it, you might think that the entire federal government has done nothing else at all in the interim. Regrettably for employers, the current administration is continuing its efforts (sort of "on the sly") to provide more rights and remedies to employees and punish unwary employers. What follows are a few examples that could dramatically impact your business.

A. Its Time to Re-evaluate Your Company's Independent Contractors

Depending on the industry or area of the country in which your company does business, you may recognize such terms as "consultant," "contractor," or even "1099 employee," which are all used interchangeably to describe those

individuals who perform services for a company but are not considered to be regular employees. It will come as a surprise to many to learn that such terms have no legal meaning whatsoever. Legally speaking, there are only two terms that matter: "employee" and "independent contractor." Furthermore, whether a person is an "independent contractor" or "employee" cannot be determined by a private agreement between the parties. For years, employers have blurred the lines between these two types of workers, often preferring to classify people as "independent contractors," because such personnel are not due health insurance, vacation, sick leave, nor are they subject to payroll employment taxes. As a result, employers routinely misclassify their contractor personnel, and the law provides hefty fines and penalties (some accruing daily) for such errors.

In its 2011 budget, the Obama administration set aside \$25 million dollars for new Internal Revenue Service ("IRS") compliance investigations. In particular, the agency is adding about 100 new enforcement personnel who will spearhead the agency's crackdown on employers' misclassifying their workers as "independent contractors." With

its strengthened staff, in February 2010, the IRS began a three-year audit of 6,000 small and large U.S. based companies. Unlike a tax audit, these investigations are being done by statistical sampling, i.e., random selection, so there is no way to predict which employers will be hit or when the IRS will come knocking. To make matters worse, several states are getting tough too – enacting legislation or ramping up enforcement efforts of existing legislation to try to correct erroneous worker classifications.

From an economic standpoint, it's easy to understand the enforcement push. At the federal level, the government estimates that employers' non-compliance with federal employment-related tax laws creates an annual \$350 billion dollar tax shortfall. Many states also estimate tax shortfalls from similar non-compliance. With both states and the federal government lacking for cash in the current economic climate, recouping money they feel is already due them is one way to help alleviate the budget crunch.

However, government investigations are not the only risk employers are

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running. Workers who are misclassified may simply sue the company for whom they are performing services to recoup unpaid wages, statutory penalties, and attorneys' fees. For example, a worker who has been misclassified as an "independent contractor" and was, in the eyes of the law, really an "employee," may be due back overtime wages for hours he or she worked in excess of forty per week. Or worse yet, the person's agreed upon contractor rate may not have met the minimum hour wage requirement (state or federal) when dividing their contractor payments by the number of hours they actually performed services.

So, what should employers do? Be proactive. Before the IRS comes knocking or before one of your "consultants" decides to sue you for unpaid wages, conduct a thorough wage and hour audit to determine these workers' true legal status. With the assistance of your Labor and Employment counsel, reviewing the job descriptions and duties of those persons the company believes are "independent contractors" is an easy and cost effective way to manage risks associated with non-compliance.

B. Do You Have a Social Media Policy? If Not, It's Time to Get One

For the last several years, many employers have toiled over what to do about the outgrowth of social media. Sites such as Facebook, My Space, You Tube, Twitter, and a myriad of blogging sites are but a few examples of the electronic tools through which employees can post information about their employers. A public space in which employees can freely disseminate information

about the company is problematic on many levels; it implicates everything from defamation, to the disclosure of company secrets, to violation of securities laws, for those publicly-traded companies. Yet, many employers have declined to create a comprehensive social media policy as part of their employee handbook. Recent action by the Federal Trade Commission ("FTC"), however, has now made employer ambivalence about social media a real liability risk that must be addressed.

In October, 2009, the FTC issued new regulations that will substantially impact every business – particularly, businesses whose employees use or have access to the internet (both during and after work). Among other responsibilities, the FTC is charged with protecting consumers against false and deceptive advertisements by businesses. The agency's recent regulations concerning the use of endorsements and testimonials provide that advertisers will be subject to liability for "false or unsubstantiated statements made through endorsements, or for failing to disclose material connections between themselves and their endorsers." Interestingly, individual endorsers may also be held liable for false statements they make in the body of the endorsement, itself. An "endorsement" is defined to include any advertising message that a consumer reasonably believes reflects the beliefs or experiences of someone other than the advertiser. So what is the impact on employers?

Under the new regulations, any time an employee endorses her employer's product or service, she is required to disclose the fact that she is an employee

of the company. In other words, employees are now obligated to disclose their connection to the company whenever they promote or defend the company or the products and services it offers. For example, if Jane (an employee of XYZ Company) posts a statement in an on-line blog attesting to the "world class" engineering services offered by XYZ, she must also disclose the fact that she is an employee of the company. If Jane fails to disclose her connection, both Jane and the employer are subject to liability if her statement turns out to be false or unsubstantiated. Thankfully, the FTC rules do not allow aggrieved consumers to directly sue either Jane or the employer, but consumers can certainly report both parties to the FTC, who can then conduct an investigation or sue the parties for any violations on the consumers' behalf.

The crucial point for employers to take from the new FTC regulations is that it is now time (if you have not done so already) to create a social media policy and to educate your workforce about public statements made about the company to third parties via the myriad of social media applications now available for use. As this is an emerging area of the law, we strongly recommend you consult your Labor and Employment counsel to assist with drafting a policy that is specifically tailored to your type of business and workforce. ♦

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Save The Date

VRMCA Spring Convention

May 16-18, 2010

The Homestead Resort, Hot Springs, VA



SPECIAL SECTION: 2010 Industry-Related Legislation

(2010 Legislative Summary Final Update: March 18, 2010)

HB 22 Handheld personal communications device; prohibits use while operating motor vehicle, etc., penalty. Prohibits any use of a handheld personal communications device while operating a motor vehicle, bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped on the highways in the Commonwealth and makes such use a primary offense. Patron: Howell, A.T. 02/16/10 House: Left in Militia, Police and Public Safety

HB 25 Greenhouse gas emissions; Statewide Transportation Plan to include quantifiable measures and goals. Requires that the Statewide Transportation Plan include quantifiable measures and achievable goals for greenhouse gas emissions. Patron: Herring. 02/16/10 House: Left in Transportation

HB 37 Overload and overweight permits; fees established by Commissioner. Revises the fees for vehicle overload and overweight permits to conform to recommendations of the Virginia Transportation Research Council. Patron: Marshall, R.G. 01/26/10 House: Passed by in Transportation with letter

HB 58 Wireless telecommunications devices; prohibits talking on such device unless in hands-free mode. Extends prohibition on use of wireless telecommunications devices in motor vehicles to talking on such device, unless the device is configured for hands-free operation and is being used in the hands-free mode. Patron: Dance. 02/16/10 House: Left in Militia, Police and Public Safety

HB 127 Overweight permits; makes carriers of coal, etc., responsible for obtaining. Makes "carriers" (rather than "owners or operators") responsible for obtaining the permits and complying with other requirements. A definition of "carrier" is provided. Overweight penalties are changed to civil penalties, and the amount of time allowed for load shifting is limited to one hour. Patron: Kilgore. 01/28/10 House: Passed by in Transportation with letter

HB 155 Stormwater management programs; delays for two years DCR's regulations governing. Delays for two years the Department of Conservation and Recreation's regulations governing the stormwater management program that were to be implemented on July 1, 2010. Patrons: Dance, Hugo and Bulova. 02/10/10 House: Incorporated by Agriculture, Chesapeake and Natural Resources (HB1220-Hugo)

HB 197 Secondary highway system; requirements for taking new streets into system. Provides that any street or segment of a street within a network addition that meets one or more of the public service requirements addressed in the regulations can be accepted into the secondary system, provided that the network addition satisfies all other requirements adopted pursuant to this section. In cases where a majority of the lots along the street or street segment remain undeveloped and construction traffic is expected to utilize that street or street segment after acceptance, the bonding requirement for such street or street segment may be required by VDOT to be extended for up to one year beyond that required in the secondary street acceptance requirements. Patron: Ware, R.L. 02/10/10 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N) 03/09/10 Senate: Passed Senate (36-Y 4-N)



HB 212 Handheld personal communications device; texting while driving primary offense. Makes texting while driving a primary offense. Patrons: Bulova, Kory, Plum, Scott, J.M., Sickles and Watts; Senators: Barker, Howell, Marsden, Puller, Ticer and Whipple. 02/16/10 House: Left in Militia, Police and Public Safety

HB 221 Handheld personal communication device; person guilty of careless driving unless in hands-free mode. Provides that a person is guilty of careless driving, a Class 3 misdemeanor, if he commits a moving violation under Title 46.2 while using a handheld personal communications device, unless he is using such communications device in hands-free mode. Patrons: Watts, Plum, Scott, J.M. and Sickles; Senators: Howell and Ticer. 02/16/10 House: Left in Militia, Police and Public Safety

HB 222 Secondary highway system; VDOT & DRPT to review new design standards components therefor. Provides that for urban and urban development areas in jurisdictions using the urban county executive form of government, the Virginia Department of Transportation shall work in conjunction with the jurisdiction and the Department of Rail and Public Transportation to review new design standards for state secondary highway system components that the jurisdiction proposes. Patrons: Watts, Bulova, Herring, Keam, Kory, Plum, Scott, J.M., Sickles and Surovell; Senators: Barker, Howell, Petersen and Ticer. 03/02/10 Senate: Passed Senate with amendment (40-Y 0-N) 03/04/10 House: VOTE: --- ADOPTION (80-Y 19-N)

HB 224 Highways; payments to cities and towns for maintenance. Equalizes municipal street payments to comparable amounts paid for state maintenance. Patrons: Watts, Herring, Kory, Plum, Sickles and Surovell; Senators: Barker, Howell and Ticer. 02/16/10 House: Left in Transportation

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2010 Industry-Related Legislation

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HB 230 Motor fuels tax rate increase; allocation of construction funds for primary highway system. Increases the motor fuels tax by \$0.10 per gallon, minus \$0.01 for each \$0.20 that the average price of gasoline exceeds \$3.00. The tax will be indexed every two years beginning July 1, 2011, by an amount equal to the percentage change in the U.S. Department of Labor's Producer Price Index for Highway and Street Construction. The revenue generated is used for transportation purposes as required by existing law, and allocates primary system highway construction funds among the nine highway construction districts on the basis of the ratio of vehicle miles traveled on primary highways divided by the lane miles of primary highways in each highway construction district, weighted 90 percent, and a need factor, weighted 10 percent. Patron: Watts. 02/16/10 House: Left in Finance

HB 250 Contractors, Board for; raises threshold for Class C contractors license. Raises the threshold for which a person must have a Class C contractor's license from less than \$7,500 to less than \$10,000. As a result, the Class B threshold is also raised from \$7,500 or more to \$10,000 or more. Patrons: Merricks and Marshall, D.W. 03/09/10 Governor: Approved by Governor-Chapter 62 (effective 7/1/10)

HB 269 Retail Sales and Use Tax; increases rate on motor fuels in Northern Virginia. Increases the rate of the state sales tax on motor fuels in Northern Virginia from 2.1 percent to 4.2 percent. Patron: Englin. 02/16/10 House: Left in Finance

HB 277 Washington Bypass transportation corridor; Transportation Board to establish. Requires the Commonwealth Transportation Board to establish a Washington Bypass transportation corridor. Patrons: Albo, Rust and Hugo. 02/16/10 House: Left in Appropriations

HB 280 Fraud to accomplish vote on union organization; person guilty of misdemeanor. Any person who (i) knowingly and intentionally fails to provide full and complete information regarding the consequences of a signature or a vote or an affirmation by another, or (ii) by fraud, material artifice, trickery, or deception, causes or assists in causing a vote to be taken by non-union employees on whether to organize a union, is guilty of a Class 1 misdemeanor. Patrons: Albo, Gilbert and Lingamfelter. 02/10/10 House: Continued to 2011 in Courts of Justice

HB 299 Uniform Statewide Building Code; increases civil penalty. Increases the civil penalty for an initial violation from \$100 to \$200; for each subsequent violation from \$150 to \$500; and the total for violations arising from the same operative set of facts from \$3,000 to \$5,000. This brings the Uniform Statewide Building Code in line with civil penalties for violation of zoning ordinances. Patrons: Torian and Anderson. 01/28/10 House: Incorporated by General Laws (HB687-Miller, J.H.)

HB 391 Highways; payments to cities and towns for maintenance of certain. Reduces unrestricted right-of-way widths from 50 to 40 feet and hard-surface widths from 30 to 22 feet before payment can be made by the Commissioner to any city or town for maintenance of certain highways if such highway was constructed on or after January 1, 2011 and is classified as a local street. Patron: Lohr.

03/08/10 Senate: Left in Transportation

HB 402 Hampton Roads Bridge-Tunnel; VDOT to accept for review unsolicited proposals to add capacity. Directs the Virginia Department of Transportation to accept for review unsolicited proposals to add capacity to the Hampton Roads Bridge-Tunnel. Patron: Oder. 03/11/10 Governor: Approved by Governor-Chapter 126 (effective 7/1/10)

HB 404 Transportation funding and administration; provides funding in certain localities. Provides for transportation funding and administration in Hampton Roads, Northern Virginia, the Richmond Highway Construction District, the Staunton Highway Construction District, and the Salem Highway Construction District. The amount of funding is based on: (i) for Northern Virginia, a portion of the growth in certain state tax revenues in Northern Virginia; (ii) for Hampton Roads, a portion of the growth in certain state tax revenues generated or facilitated by the marine terminals in Hampton Roads; (iii) for the Richmond Highway Construction District, a portion of the growth in certain state tax revenues generated or facilitated by the Port of Richmond; (iv) for the Staunton Highway Construction District, a portion of the growth in certain state tax revenues generated or facilitated by the Inland Port at Front Royal; and (v) for the Salem Highway Construction District, a portion of the growth in certain state tax revenues expected to be generated or facilitated by the Elliston Intermodal Facility. Patrons: Oder and Stolle. 02/16/10 House: Left in Appropriations

HB 426 Public Procurement Act; cooperative procurement. Prohibits a local public body from using another local public body's contract for construction where the cost of the project is in excess of \$200,000 and the other local public body is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The bill provides an exception to the above limitation for contracts for the installation of artificial turf or other artificial surfaces. The bill contains technical amendments. Patrons: Griffith and Ware, O. 03/09/10 Senate: Passed Senate with amendment (26-Y 14-N) 03/10/10 House: VOTE: --- ADOPTION (97-Y 0-N)

HB 473 Weight limits; extends sunset provision for trucks hauling gravel, etc., in coal-producing counties. Extends "sunset" on increased weight limits applicable to trucks hauling gravel and certain other cargoes in coal-producing counties to July 1, 2011. Patrons: Carrico and Morefield; Senator: Puckett. 02/09/10 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N) 03/02/10 Senate: Passed Senate (40-Y 0-N)

HB 540 Salem Highway Construction District Transportation Revenue Fund; established. Provides funds for transportation in the Salem Highway Construction District by allocating revenue attributable to a portion of economic growth due to or facilitated by the Inland Port in Montgomery County. Patrons: Marshall, D.W. and Merricks. 02/16/10 House: Left in Appropriations

HB 567 Public Procurement Act; state-aid construction projects. Raises the competitive bidding/competitive negotiation dollar threshold from \$30,000 to \$50,000 for state-aid construction projects. Patron: Iaquinto. 01/29/10 House: VOTE: BLOCK VOTE PASSAGE (96-Y 0-N) 03/08/10 Senate: Passed Senate (40-Y 0-N)

HB 614 Income tax laws; conformity to Internal Revenue Code. Advances the date as of which Virginia's system of taxation conforms

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2010 Industry-Related Legislation

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with the Internal Revenue Code (IRC) from December 31, 2008, to December 31, 2009, and adds two new exceptions; the deferral of certain income under § 108 (i) of the IRC, and the original issue discount on applicable high yield discount obligations under IRC § 163 (e)(5)(F). Taxpayers are preparing and filing returns during the Session, therefore, the bill contains an emergency clause. Patron: Purkey. 02/16/10 House: Left in Appropriations

HB 665 Budget bill; Governor to provide for additional appropriations to Transportation Trust Fund. Requires the Governor, in submitting his biennial budget bill, to provide for additional appropriations to the Transportation Trust Fund from general fund revenues in cases in which general fund revenues for a fiscal year are projected to grow by at least three percent. Any such additional appropriation to the Transportation Trust Fund recommended by the Governor would be required to be in an amount not less than one percent of the projected growth in general fund revenues for the fiscal year. Patrons: May, Albo, Cole, Comstock, Cox, J.A., Crockett-Stark, Greason, Iaquinto, LeMunyon, Lingamfelter, Rust and Scott, E.T. 02/23/10 Senate: Continued to 2011 in Finance (14-Y 1-N)

HB 666 Transportation Capital Projects Revenue Bonds; used for new road or highway construction projects. Provides that at least 50 percent of the proceeds of Commonwealth of Virginia Transportation Capital Projects Revenue Bonds would be used for new road or highway construction projects. The bill defines a new road or highway construction project as the construction of, enhancement of, or addition to a road or highway (or a portion or segment of a road or highway), which construction, enhancement, or addition did not commence prior to January 1, 2010. Commonwealth of Virginia Transportation Capital Projects Revenue Bonds were authorized for issuance in 2007 pursuant to House Bill No. 3202. Patrons: May, Albo, Comstock, Crockett-Stark, Greason, Hugo, Iaquinto and Rust. 02/02/10 House: Passed by in Transportation with letter

HB 737 E-Verify Program; requires state agencies and those newly hired to perform work in State. Requires agencies of the Commonwealth to enroll in the E-Verify Program by December 1, 2012, and to use the Program for each newly hired employee who is to perform work within the Commonwealth. Patrons: Albo, Anderson, Athey, Carrico, Cole, Gilbert, Hugo, Lingamfelter, Marshall, R.G., Miller, J.H., Rust and Tata. 03/10/10 Senate: Passed Senate with amendments (37-Y 3-N) 03/11/10 House: VOTE: --- ADOPTION (87-Y 8-N)

HB 756 Offshore drilling; royalties to be deposited in Transportation Trust Fund, etc. Requires that all revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling shall be distributed as follows: (i) 70 percent to the Transportation Trust Fund, (ii) 20 percent to the Virginia Coastal Energy Research Consortium, and (iii) 10 percent to localities for improvements to infrastructure and transportation. Patrons: Stolle, Albo, Anderson, Bell, Richard P., Byron, Carrico, Cole, Comstock, Cosgrove, Cox, J.A., Crockett-Stark, Gilbert, Greason, Hugo, Iaquinto, Jones, Knight, Landes, LeMunyon, Lingamfelter, Lohr, Miller, J.H., Oder, Pogge, Poindexter, Purkey, Scott, E.T., Tata and Villanueva. 03/09/10 Governor: Approved by Governor-Chapter 98 (effective 7/1/10)

HB 805 Offshore drilling; portion of royalties to be deposited in Transportation Trust Fund. Requires that 80 percent of any revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling shall be deposited to the Transportation Trust Fund. The remaining 20 percent shall be used to encourage and incentivize non-petroleum based transportation fuels. Patrons: Poindexter. 02/01/10 House: Incorporated by Appropriations (HB756-Stolle)

HB 831 Public Procurement Act; foreign & domestic businesses authorized to transact business in State. Requires all public bodies to include in every written contract a provision that the contractor must be authorized to transact business in Virginia as a domestic or foreign business entity as required by the State Corporation Commission, if such is required by law. Such status shall be maintained during the term of a contract. A contract entered into by a business in violation of the requirements is voidable at the option of the public body. Patrons: Surovell; Senator: Petersen. 03/08/10 Senate: Passed Senate with substitute (40-Y 0-N) 03/10/10 House: VOTE: --- ADOPTION (95-Y 1-N)

HB 970 Transportation Trust Fund; increases amount of general fund surplus. Increases from two-thirds to 75 percent the amount of the general fund surplus designated to the Transportation Trust Fund within the Comptroller's annual report following the close of each fiscal year. The governor would include in his budget bill an amount for deposit into the Transportation Trust Fund equivalent to the amount designated by the Comptroller. Patrons: Rust, Albo, Anderson, Bell, Richard P., Bulova, Comstock, Greason, Hugo, Iaquinto, Keam, LeMunyon, Lingamfelter and Sickles. 03/08/10 Senate: Left in Finance

HB 971 Northern Virginia Transportation Authority Sales and Use Tax Fund; established. Provides additional funding for transportation by (i) imposing a transportation infrastructure users fee on motor fuels sold by a distributor to a retail dealer at the rate of one percent, to be used for highway maintenance in the highway construction district in which the fuel is sold; (ii) increasing the state sales and tax in Northern Virginia by 0.5 percent for transportation projects in Northern Virginia; and (iii) imposing a regional congestion relief fee on the recordation of deeds in Northern Virginia at a rate of \$0.40 per \$100. Neither the fees nor the tax increase shall become effective until the unemployment rate in the Commonwealth is equal to or lower than it was in January 2008 for six consecutive months. The bill also requires a performance audit of the Commonwealth's transportation programs. Patrons: Rust, May, Watts and Kory. 02/10/10 House: Continued to 2011 in Finance

HB 1068 Overweight vehicles; penalties. Provides that, in assessing penalties for vehicles whose weight exceeds that authorized in an overweight permit issued for the vehicle, the amount of the penalty is to be based on the amount by which the weight of the vehicle exceeds that authorized by the permit, not the amount by which its weight exceeds the weight limit that would have been applicable had no overweight permit been issued. Patron: Athey. 01/26/10 House: Passed by in Transportation with letter

HB 1137 Groundwater withdrawal permit fees; increases maximum amount State Water Control Board can charge. Increases the maximum amount that the State Water Control Board can charge for a permit to withdraw ground water from \$6,000 to \$12,000. The

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term of a ground water permit is up to 10 years. The State Water Control Board is also authorized to set up a fee schedule to allow permit holders to pay their permit fees on an annual basis over the term of the permit. Patrons: Morgan and Abbitt; Senator: Ticer. 02/16/10 House: Left in Appropriations

HB 1153 Motor fuels tax; converts rates of taxation from cents per gallon to percentage rates. Converts the rates of taxation on motor fuels from cents per gallon to percentage rates. The percentage rates shall be calculated by the Commissioner of the Department of Motor Vehicles in an amount that will most closely yield the amount of cents per gallon being charged on the applicable motor fuel prior to the effective date of the bill. Thereafter, the percentage rates would not change, but would be applied against the average price per gallon of the fuel, less federal and state taxes, as determined by the Commissioner of the Department of Motor Vehicles over rolling six-month periods, to determine the cents to be charged. Patrons: Scott, J.M. and Kory. 02/16/10 House: Left in Finance

HB 1220 Stormwater management regulations; changes effective date that establishes local program criteria. Delays the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria. The regulation, however, shall be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay-wide Total Maximum Daily Load, but no later than December 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulation. This bill incorporates HB 1311 and HB 155. This bill is identical to SB 395. Patrons: Hugo, Dance, Bulova, Gilbert, Scott, E.T. and Villanueva. 03/11/10 Governor: Approved by Governor-Chapter 137 (effective 7/1/10)

HB 1264 Green Public Buildings Act; created. Requires public bodies entering the design phase for construction of a new building greater than 5,000 gross square feet in size, or renovating such a building where the cost of renovation exceeds 50 percent of the value of the building, to build to either the LEED Silver or Green Globes two globe standards. The buildings shall be designed, constructed, verified, and operated to achieve energy savings that exceed the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1-2004 (Energy Standard for Buildings Except Low-Rise Residential Buildings) by at least 15 percent for new construction and 10 percent for major renovation. In addition, water systems designed for such buildings shall be required to provide water use savings of at least 25 percent over the baseline standard established in the federal Energy Policy Act of 1992. Exemptions from the requirement may be granted by the Director of the Department of General Services for state construction projects or by the governing body of a locality or school board for local projects. Patrons: Hope, Brink, Ebbin, Herring, Kory, Scott, J.M., Sickles and Surovell. 02/16/10 House: Left in General Laws

HB 1311 Stormwater management regulations; extends effective date that establishes local program criteria. Delays the effective date of regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria for stormwater to no later than September 1, 2011. The bill also requires the Virginia Soil and Water Conservation Board to conform

the regulation to be consistent with this effective date. Patron: Bulova. 02/10/10 House: Incorporated by Agriculture, Chesapeake and Natural Resources (HB1220-Hugo)

HB 1319 Carbon dioxide emissions; defers USEPA enforcement of any standards or cap and trade provisions. Defers to the U.S. Environmental Protection Agency (USEPA) the enforcement of any carbon dioxide standards or cap and trade provisions that are included in the federal Clean Air Act. The bill requires the Governor, in consultation with the Attorney General, to examine these provisions and determine whether Congress has the authority to enact mandates upon the states. The Governor is to report his findings to the General Assembly. The bill authorizes the Attorney General to bring an action against the USEPA if he finds that the mandated standards are based on a finding that is not scientifically demonstrated. Patrons: Marshall, R.G., Morefield and Cole. 02/10/10 House: Continued to 2011 in Agriculture, Chesapeake and Natural Resources

HB 1323 Tolls; provided at Monitor Merrimac Memorial Bridge-Tunnel & Hampton Roads Bridge-Tunnel. Provides for tolls at the Monitor Merrimac Memorial Bridge-Tunnel and the Hampton Roads Bridge-Tunnel. Patron: May. 02/09/10 House: Continued to 2011 in Transportation (18-Y 3-N)

HJ 67 Constitutional amendment; Transportation Funds (first resolution). Requires the General Assembly to maintain permanent and separate Transportation Funds to include the Commonwealth Transportation Fund, Transportation Trust Fund, and Highway Maintenance and Operating Fund. All revenues dedicated to Transportation Funds on January 1, 2009, by general law, other than a general appropriation law, shall be deposited to the Transportation Funds, unless the General Assembly by general law, other than a general appropriation law, alters the revenues dedicated to the Funds. The amendment limits the use of Funds moneys to transportation and related purposes. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of the members voting in each house, and the loan or reduction must be repaid with reasonable interest within four years. Patron: Marshall, R.G. 02/16/10 House: Left in Privileges and Elections

HJ 68 Highway; Joint Commission on Transportation Accountability to develop plan to place toll on certain. Directs the Joint Commission on Transportation Accountability to develop a plan to toll certain highways. Patron: Rust. 03/05/10 Senate: Failed to Report in Rules

HJ 69 Constitutional amendment; Transportation Funds (first reference). Requires the General Assembly to maintain permanent and separate Transportation Funds to include the Commonwealth Transportation Fund, Transportation Trust Fund, Highway Maintenance and Operating Fund, and other funds established by general law for transportation. All revenues dedicated to Transportation Funds on January 1, 2011, by general law, other than a general appropriation law, shall be deposited to the Transportation Funds. The General Assembly by general law, other than a general appropriation law, may alter the revenues dedicated to the Funds. The amendment limits the use of Fund moneys to transportation and related purposes. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of

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the members voting in each house, and the loan must be repaid with reasonable interest within four years. Moneys designated for deposit into funds other than Transportation Funds shall not be used for any transportation-related purpose except for making certain debt service payments on transportation-related bonds and notes. Patron: Watts. 02/16/10 House: Left in Privileges and Elections

HJ 86 Constitutional amendment; Transportation Trust Fund (first reference). Provides that the Transportation Trust Fund established in 1986 will be a permanent fund and receive all revenues generated by the 1986 package of tax and fee increases and any later enactments dedicating additional revenues to the Fund. The amendment limits the use of Trust Fund moneys to purposes of highway construction, maintenance, and improvements; public transportation; railways; seaports; and airports. The General Assembly may use fund proceeds for other purposes only by a two-thirds vote of the members in each house and, fund proceeds thus approved for other purposes must be repaid to the Fund within three years. Patrons: Marshall, D.W., Anderson, Athey, Bell, Robert B., Byron, Cleaveland, Cox, J.A., Crockett-Stark, Hugo, Landes, Lingamfelter, Lohr and Merricks. 02/16/10 House: Left in Privileges and Elections

HJ 186 Commending Titan America. Patrons: Putney, Albo, Alexander, Athey, Byron, Cleaveland, Comstock, Griffith, Hugo, Miller, J.H., Miller, P.J., Oder, Poindexter, Spruill and Ware, O. 01/29/10 House: Agreed to by House by voice vote 02/04/10 Senate: Agreed to by Senate by voice vote

SB 10 Wireless telecommunications devices; prohibits talking on such device unless in hands-free mode. Extends prohibition on use of wireless telecommunications devices in motor vehicles to talking on such device, unless the device is configured for hands-free operation and is being used in the hands-free mode. This bill was incorporated into SB 517. Patron: Blevins. 01/28/10 Senate: Incorporated by Transportation (SB517-Norment) (15-Y 0-N)

SB 34 Worker Misclassification Act; created. Prohibits an employer from classifying an individual as an independent contractor if he is an employee. An individual shall be considered an employee of the party which pays that remuneration, for purposes of Titles 40.1 (Labor and Employment), 60.2 (Unemployment Compensation), and 65.2 (Workers' Compensation) unless and until it is shown to the satisfaction of the Department of Labor and Industry that (i) the individual has been and will continue to be free from direction and control of the employer, both under his contract of service and in fact, (ii) the service is outside the usual course of the business of the employer, and (iii) the individual is customarily engaged in an independently established trade, occupation, profession, or business, both under his contract of service and in fact. Discrimination or taking adverse action against any person in retaliation for exercising rights protected under this measure is also prohibited. Violators are subject to criminal penalties, civil penalties, debarment from public contracts, private actions, and stop-work orders. Patron: Lucas. 02/01/10 Senate: Continued to 2011 in Commerce and Labor (15-Y 0-N)

SB 76 Salem Highway Construction District Transportation Revenue Fund; established. Provides funds for transportation in the

Salem Highway Construction District by allocating revenue attributable to a portion of economic growth due to or facilitated by the Inland Port in Montgomery County. Patrons: Reynolds; Delegate: Armstrong. 02/16/10 Senate: Left in Finance

SB 105 Mechanics' and materialmen's liens; removes certain requirements. Removes the definitional requirement that one must give consent in writing in order to be a "mechanics' lien agent." The bill also authorizes any person entitled to claim a lien to notify the mechanics' lien agent that he seeks payment for labor performed or material furnished if the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent. Current law provides that any person entitled to claim a lien may notify the mechanics' lien agent that he seeks payment for labor performed or material furnished only if, at the time of issuance, the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent. Patron: McDougle. 01/21/10 Senate: Read third time and passed Senate (39-Y 0-N) 02/03/10 03/04/10 House: VOTE: --- PASSAGE (98-Y 0-N) 03/11/10

SB 114 Motor fuels tax; rate increase or decrease each year using fuel efficiency index. Increases or decreases each year the rates of Virginia's fuels taxes using a fuel efficiency index. The bill would define the fuel efficiency index as the quotient that is obtained when using as the numerator the total annual vehicle miles traveled in the Commonwealth for the relevant year and using as the denominator the total gallons of motor fuel consumed for highway use in the Commonwealth for the relevant year. The numerator and denominator would be the corresponding amounts as published by the Federal Highway Administration of the United States Department of Transportation. The bill would establish 2007 as the base year for the fuel efficiency index. Thus, the percentage change in the fuel efficiency index between the current year and 2007, the base year, would determine the annual percentage increase or decrease in the rates of Virginia's fuels taxes. Each December the Commissioner of the Department of Motor Vehicles would compute the adjusted rates of fuels taxes. Currently, Virginia's fuels taxes are fixed at the rate of \$0.175 per gallon for each gallon of gasoline, gasohol, and diesel fuel. Patron: Petersen. 02/16/10 Senate: Left in Finance

SB 132 Retail Sales and Use Tax; increases distribution to Transportation Trust Fund. Increases the distribution to the Transportation Trust Fund from the sales and use tax revenue generated by a one-half percent sales and use tax to the sales and use tax revenue generated by a one percent sales and use tax upon the Comptroller determining in any fiscal year that (i) the growth in general fund revenues for the most recently completed fiscal year was at least three percent, and (ii) the actual dollar increase in general fund revenues for the most recently completed fiscal year was at least equal to the sales and use tax revenue generated by a one-half percent sales and use tax. Patron: Obenshain. 02/16/10 Senate: Left in Finance

SB 164 Transportation; source of revenue by increase of motor vehicle sales and use tax. Creates additional sources of revenue for transportation by increasing the motor vehicle sales and use tax by one-half percent and the motor vehicle rental tax by one percent, and by imposing a five percent tax on the wholesale price of gasoline. The new revenue sources will be directed to the Rail Enhancement Fund, the Transportation Trust Fund, the Highway Maintenance and Operating Fund for transportation projects and

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needs of the Commonwealth, and certain priority transportation projects, as designated by the Commonwealth Transportation Board, in Northern Virginia and Hampton Roads. The bill would also eliminate the one-half percent sales tax on food currently going to the Transportation Trust Fund, and would raise the allowed credit for low-income taxpayers. Patron: Edwards. 02/16/10 Senate: Left in Finance

SB 179 Income tax laws; conformity to Internal Revenue Code. Advances conformity with federal income tax laws to December 31, 2009, for taxable year 2009 and to December 31, 2010, for taxable year 2010, with three additional exceptions. The bill also provides that amendments to the Internal Revenue will not apply for Virginia tax purposes in taxable years beginning in the calendar year in which the amendments are enacted if the Tax Commissioner determines that (i) the amendment, or combination of related amendments, would reduce Virginia tax revenue by \$5 million or more in any fiscal year, or (ii) any group of amendments would together reduce Virginia tax revenue by \$25 million or more in any fiscal year. Patron: Stosch. 02/10/10 Senate: Continued to 2011 in Finance (15-Y 0-N)

SB 181 Public-Private Acts of 1995 and 2002; certain grant agreements. Authorizes state agencies and state authorities, upon the approval of the Governor, to enter into agreements with private entities under the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002 for the development of a project by the private entity, which agreements provide for the private entity to be paid grants from a portion of the growth in state taxes and fees attributable to the development of the project. The bill also would allow local governments, agencies, and authorities, upon the approval of the governing body of the locality, to join in the agreement entered into between the private entity and the state agency or state authority. Patrons: Stosch, Blevins, Hanger, Martin, McDougle, McWaters, Newman, Obenshain, Quayle, Ruff, Stuart, Vogel, Wagner, Wampler and Watkins. 02/11/10 Senate: Failed to report (defeated) in Finance (6-Y 8-N)

SB 184 MEI Project Approval Commission; shall review financing for individual incentive packages, etc. Expands the scope of incentive packages to be reviewed by the MEI Project Approval Commission by eliminating the limitation that the Commission may only review incentive packages for MEI projects that are proposed to be funded by bonds of the Virginia Public Building Authority and by providing for the Commission to review incentive packages for which (i) one or more of the incentives in the incentive package is not authorized under current law or (ii) an amendment by the General Assembly is being sought to one or more currently existing incentives included as part of the incentive package. A Major Employment and Investment project is defined under current law as a regional economic development project in which a private entity is expected to make a capital investment exceeding \$250 million in the Commonwealth and to create more than 400 new full-time jobs. As part of its review, the Commission may endorse certain incentive packages for MEI projects for approval by the General Assembly. Patron: Colgan. 03/05/10 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N) 03/09/10 Senate: House substitute agreed to by Senate (40-Y 0-N)

SB 212 Overload and overweight permits; Transportation Board, et

al. to establish new schedule of fees. Requires the Commonwealth Transportation Board, in consultation with the Commissioner of the Department of Motor Vehicles, to establish a new schedule of fees for issuance of overweight and overload vehicle permits. Such fees shall not apply to all vehicles hauling cargoes subject to a coal or gas severance tax. Patron: Barker. 02/04/10 Senate: Subject matter referred by letter to the Joint Commission on Transportation Accountability

SB 223 Motor fuels tax; converts rates of taxation from cents per gallon to percentage rates. Replaces the current fuels tax on gasoline, gasohol, and diesel fuel with a tax that is a percentage of the wholesale price of a gallon of self-serve unleaded regular gasoline. The percentage shall be established by the Commissioner by determining the percentage that would most closely yield seventeen and one-half cents per gallon, based on the average wholesale price of a gallon of self-serve unleaded regular gasoline for the period beginning October 1, 2009, and ending March 31, 2010. Patron: Barker. 02/16/10 Senate: Left in Finance

SB 225 Public Procurement Act; verification of legal presence for employment in U.S. Requires all public contractors and their subcontractors to register and participate in a federal Electronic Work Verification Program or similar electronic verification of work authorization program to determine that their employees and individual independent contractors are legally eligible for employment in the United States. Contractors and subcontractors are required to verify the employment status of their employees and independent contractors, and are prohibited from employing or contracting with an individual who is not determined to be legally eligible for employment in the United States as determined through the verification of the individual's status. Contractors who do not register and participate in the registration program are ineligible for prequalification. Patron: Barker. 02/17/10 Senate: Left in Commerce and Labor

SB 245 Stormwater management regulations; extends effective date that establishes local program criteria. Delays the effective date of regulations that establish local program criteria and delegation procedures and the water quality and water quantity criteria for stormwater management from July 1, 2010, to July 1, 2011. Any regulation adopted prior to this date shall be considered outside the scope of authority granted by the General Assembly. Patrons: Watkins and Newman. 02/01/10 Senate: Incorporated by Agriculture, Conservation and Natural Resources (SB395-Wagner) (15-Y 0-N)

SB 254 Commonwealth Transportation Commissioner; advertising for bids. Provides that the Commonwealth Transportation Commissioner may let projects costing below \$300,000 to contract. The bill further provides that the Commissioner may, at his discretion, build or maintain any of the roads by state or local employees as he may designate, in cases of emergency or on projects costing not more than \$600,000. This bill is the same as HB 631 (E. T. Scott). Patron: Miller, Y.B. 03/08/10 Governor: Approved by Governor-Chapter 50 (effective 7/1/10)

SB 261 Weights and measures; moneys collected from imposition of fees shall be deposited into Fund. Imposes a fee of one-tenth of one cent on fuels subject to Virginia's fuels taxes with the proceeds to be used solely to test petroleum dispensing pumps. Patron: Whipple. 03/14/10 House: Left in Appropriations

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SB 290 Housing and Community Development, Board for; promulgation of Green Building Code. Requires the Board for Housing and Community Development to promulgate a Green Building Code as a part of the Uniform Statewide Building Code. Patrons: Deeds and Petersen. 01/27/10 Senate: Continued to 2011 in General Laws and Technology (15-Y 0-N)

SB 343 Fuels taxes; annually adjusted. Adjusts fuels taxes each year on April 1 by the percentage increase in the Corporate Average Fuel Economy (sales volume weighted), Total Fleet (the CAFE) for the immediately preceding calendar year over the CAFE for calendar year 2009. The first adjustment would occur on April 1, 2011. Patrons: Hanger and Petersen. 03/01/10 House: Continued to 2011 in Finance

SB 395 Stormwater management regulations; changes effective date that establishes local program criteria. Delays the regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria. The regulation, however, shall be adopted within 280 days after the establishment of the U.S. Environmental Protection Agency's Chesapeake Bay-wide Total Maximum Daily Load, but no later than December 1, 2011. The bill also directs the Virginia Soil and Water Conservation Board to establish an advisory panel to review the regulation and make recommendations on possible revisions to the regulation. This bill incorporates SB 677, SB 245, and SB 681. This bill is identical to HB 1220. Patrons: Wagner, Hanger, McDougale, Watkins and Whipple. 02/26/10 House: VOTE: BLOCK VOTE PASSAGE (96-Y 0-N) 03/02/10 Senate: House amendment agreed to by Senate (40-Y 0-N)

SB 545 Income tax laws; conformity to Internal Revenue Code. Advances the date as of which Virginia's system of taxation conforms with the Internal Revenue Code (IRC) from December 31, 2008, to December 31, 2009, and adds two new exceptions: the deferral of certain income under § 108 (i) of the IRC for taxable year 2009 is only allowed ratably through taxable year 2011 and the deferral is not allowed for taxable years other than 2009, and deconformity from the original issue discount on applicable high yield discount obligations under IRC § 163 (3)(5)(f). Taxpayers are preparing and filing returns during the General Assembly Session, therefore, the bill contains an emergency clause. Patron: Colgan. 03/14/10 House: Left in Appropriations

SB 562 Unemployment benefits; eligibility of individuals part-time employed and in training programs. Provides that certain individuals who have exhausted eligibility for unemployment benefits and who are enrolled in approved training programs are eligible for up to 26 weeks of additional benefits. The measure also provides that an individual who was employed part time during at least one-half of the weeks of work in the individual's base period is deemed to satisfy the requirement that he be available for work and actively seeking and unable to obtain suitable work if he is available for and actively seeking work that is comparable to his part-time work experience in his base period. Patrons: Puckett, Barker, Herring, Marsden, Petersen, Puller, Reynolds, Saslaw, Ticer and Whipple; Delegates: Bulova, Herring, Kory, Plum, Scott, J.M., Sickles, Sur-ovell and Watts. 02/01/10 Senate: Incorporated by Commerce and Labor (SB239-Watkins) (15-Y 0-N)

SB 600 Transportation Trust Fund; increases amount of general fund surplus. Increases from two-thirds to 75 percent the amount of the general fund surplus designated to the Transportation Trust Fund within the Comptroller's annual report following the close of each fiscal year. The governor would include in his budget bill an amount for deposit into the Transportation Trust Fund equivalent to the amount designated by the Comptroller. Patrons: Wagner, Blevins, Martin, McWaters, Smith and Vogel. 02/02/10 Senate: Failed to report (defeated) in Finance (6-Y 9-N)

SB 601 Offshore drilling; royalties to be deposited in Transportation Trust Fund, etc. Requires that at least 80 percent of any revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling shall be deposited to the Transportation Trust Fund. Patrons: Wagner, Blevins, Hurt, Martin, McDougale, Newman, Ruff, Smith, Stosch and Vogel. 02/10/10 Senate: Continued to 2011 in Finance

SB 607 Comptroller; changes description in annual report of allocation of surplus general funds. Changes the description in the Comptroller's annual report of the allocation of certain surplus general fund balances for nonrecurring expenditures, and for the Transportation Trust Fund, from "designates" to "assigns." The bill also changes the description of such surplus funds from fund balance not otherwise "reserved or designated," to fund balance not otherwise "restricted, committed, or assigned." Patron: Stosch. 02/02/10 Senate: Read third time and passed Senate (40-Y 0-N) 03/08/10 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)

SB 650 Stormwater regulation; amends current law. Amends current law by removing the requirement that waivers given to federal, state, or local government agencies that develop, redevelop or retrofit outfalls, discharges or property so that there is a permanent reduction in postdevelopment stormwater flow and pollutant loading be full waivers. The amount of the waiver to such agencies shall be equal to the product of the fee that would be charged to the agency multiplied by the percentage of the stormwater runoff captured by the agency's storm drainage or stormwater control facilities. Patron: Quayle. 02/16/10 Senate: Continued to 2011 in Finance (15-Y 0-N)

SB 677 Stormwater management regulations; extends effective date that establishes local program criteria. Delays the effective date of stormwater regulations establishing local program criteria and delegation procedures and the water quality and water quantity criteria until July 1, 2011. The bill also requires the Department of Conservation and Recreation, in consultation with the Department of Environmental Quality, to determine the effect the total maximum daily load (TMDL) allocation for the Chesapeake Bay may have on these regulations. If the agency finds that the TMDL implementation plan approved by the Environmental Protection Agency requires a change in the criteria, the Virginia Soil and Water Conservation Board is to adopt a new regulation that is consistent with the source allocations made in the approved TMDL plan. Patron: Hanger. 02/01/10 Senate: Incorporated by Agriculture, Conservation and Natural Resources (SB395-Wagner) (15-Y 0-N)

SB 681 Stormwater management regulations; extends effective date that establishes local program criteria. Delays the effective date of regulation that establishes local program criteria and delegation procedures and the water quality and water quantity criteria for

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stormwater to no later than September 1, 2011. The bill also requires the Virginia Soil and Water Conservation Board to conform the regulation to be consistent with this effective date. Patrons: Whipple and Reynolds. 02/01/10 Senate: Incorporated by Agriculture, Conservation and Natural Resources (SB395-Wagner) (15-Y 0-N)

SB 684 Transportation; provides new and increased taxes, tolls, etc., & general fund revenues for funding. Provides new and increased taxes, tolls, royalties from offshore natural gas and oil drilling, and general fund revenues for transportation funding. The bill would (i) decrease the motor fuels tax from \$0.175 per gallon to \$0.05 per gallon and establish a five percent tax on motor fuels sales based upon the statewide average wholesale price of a gallon of self-serve unleaded regular gasoline; (ii) subject to the amount of the additional revenues generated by the changes described in clause (i), increase the motor fuels tax rate by \$0.10 per gallon in increments of \$0.02 per gallon each year over a the five-year period beginning in 2011; (iii) beginning in 2011 increase the motor vehicle sales and use tax by 0.50 percent each year for four years; (iv) provide that of the retail sales and use tax revenues generated by the Commonwealth's four percent tax on sales of automobile parts and automobile accessories, an amount equivalent to the revenues generated by a three percent retail sales and use tax on such parts and accessories would be deposited into the Highway Maintenance and Operating Fund; (v) subject to receipt of federal authorization, authorize the Commonwealth Transportation Board to impose and collect a toll of \$1 per axle on every vehicle entering the Commonwealth from the state of North Carolina via Interstate Route 85 and Interstate Route 95; (vi) dedicate for highway maintenance purposes 10 percent of the future growth in certain state taxes that is attributable to economic activity generated or facilitated by the public and private general cargo marine terminals and inland ports of the Commonwealth; and (vii) dedicate for transportation purposes all royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling. All amounts generated under the bill would be deposited into the Highway Maintenance and Operating Fund to be used for highway maintenance except the revenues from tolls on vehicles entering the Commonwealth from North Carolina and the revenues from royalties as a result of offshore drilling, which would be deposited into the Transportation Trust Fund. Patron: Miller, J.C. 02/16/10 Senate: Left in Finance

SB 694 Budget bill; Governor to provide for additional appropriations to Transportation Trust Fund. Authorizes the Governor, in submitting his biennial budget bill, to provide for additional appropriations to the Transportation Trust Fund from general fund revenues in cases in which general fund revenues for a fiscal year are projected to grow by at least three percent. Any such additional appropriation to the Transportation Trust Fund recommended by the Governor would be required to be in an amount not less than one percent of the projected growth in general fund revenues for the fiscal year. Patrons: McWaters, Blevins, Martin, McDougle, Newman, Norment, Smith, Vogel and Wagner. 02/09/10 Senate: Failed to report (defeated) in Finance (6-Y 9-N)

SB 695 Public Procurement Act; cooperative procurement. Provides that in cases where the cooperative procurement agreement involves construction, the public body awarding the contract must comply with the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002 requiring posting, public notice

and access to certain procurement records. Patrons: McWaters and Wagner. 02/10/10 Senate: Failed to report (defeated) in General Laws and Technology (6-Y 8-N 1-A)

SB 703 Public Procurement Act; preference for construction contractors hiring local residents. Authorizes a locality to develop and implement a bidding system providing a preference to construction contractors that hire residents of the locality or the Commonwealth. Patron: Marsden. 02/03/10 Senate: Continued to 2011 in General Laws and Technology (15-Y 0-N)

SJ 100 Constitutional amendment; Transportation Funds (first reference). Requires the General Assembly to maintain permanent and separate Transportation Funds to include the Commonwealth Transportation Fund, Transportation Trust Fund, Highway Maintenance and Operating Fund, Priority Transportation Fund, and other funds established by general law for transportation. All revenues dedicated to Transportation Funds on January 1, 2013, by general law, other than a general appropriation law, shall be deposited to the Funds, unless the General Assembly by general law, other than a general appropriation law, alters the revenues dedicated to the Funds. The amendment limits the use of Fund moneys to transportation and related purposes. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of the members voting in each house, and the loan must be repaid with reasonable interest within four years. Patron: Newman. 01/19/10 Senate: Continued to 2011 in Privileges and Elections (15-Y 0-N)

SJ 137 Constitutional amendment; Transportation Funds (first reference). Requires the General Assembly to maintain permanent and separate Transportation Funds to include the Commonwealth Transportation Fund, Transportation Trust Fund, Highway Maintenance and Operating Fund, and Priority Transportation Fund. All revenues dedicated to Transportation Funds on January 1, 2011, by general law, other than a general appropriation law, shall be deposited to the Transportation Funds, unless the General Assembly by general law, other than a general appropriation law, alters the revenues dedicated to the Funds. The amendment requires Funds be appropriated only for transportation systems and projects. The General Assembly may borrow from the Funds for other purposes only by a vote of two-thirds plus one of the members voting in each house, and the loan or reduction must be repaid with reasonable interest within three years. The amendment also limits the use of general and other nontransportation funds for transportation purposes except for certain debt service payments. Patron: Norment. 02/02/10 Senate: Continued to 2011 in Privileges and Elections (10-Y 0-N) ❖

There are a number of online resources available on the official Virginia General Assembly website (<http://legis.state.va.us/>) to assist you in taking an active role in the legislative process. Contact your representative about a particular issue before the Legislature takes action on it.



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