

Secure Commonwealth Panel
Business and Industry Sub-panel Meeting
September 25, 2008

Leigh Middleditch - Chair

A meeting of the Secure Commonwealth Panel's Business and Industry Subpanel was held on June 18, 2008 at the Charlottesville office of McGuire Woods. Participants included: Jim Neale, Mike Seifert, Todd Haymore, Andres Alvarez, Mary Loose DeViney, Ben Burgess, Camille Hinojosa, Don Butts, Christina Ayoitis, Jeff Rezin, Lila Behrens, Lisa Kardell, Mary Urquhart, Mary Kay Wakefield, Matt Bennedetti, Rob Clendenin, Miguel Riva, Dennis Pittman, Janet Clements, Don Gray, Joanne White, David Smith, Austin White, Pat Satterfield, Suzen Collins, Bob Bradshaw, Renee Wentworth, Leigh Middleditch and Marc Follmer.

Virginia Post-Disaster Anti-Price Gouging Act

Following opening remarks, the Subpanel received a presentation on the Virginia Post-Disaster Anti-Price Gouging Act from Commission Todd Haymore, Commissioner of the Virginia Department of Agriculture and Consumer Services (VDACS) and from Andres Alvarez, Director of the Division of Consumer Protection, VDACS.

Mr. Haymore and Mr. Alvarez explained that the Price-Gouging Act (Act) resulted from perceived price gouging following Hurricane Isabel for generators, building supplies, baby food, etc. The first investigations of potential fuel price gouging came following Hurricane Katrina. VDACS has received approximately 2300 telephone calls relative to fuel prices since Hurricane Ike, mostly from southwest VA. Mr. Haymore noted that a Governor's declaration of emergency is a necessary predicate to the application of the Act. While no emergency declared for Hurricane Ike, the Governor had declared an emergency for Hurricane Hanna. The Act specifies that the price-gouging period extends for 30 days following the declaration of an emergency and therefore covered the time period following Hurricane Ike.

The typical complaint was rapid price escalation – price climbed from \$3.25 to \$3.40 pre-storm to \$4.25 to \$5.00+. Mr. Alvarez explained that VDACS process is to gather information from the consumer and the business and turn that information over to the Attorney General's Office for review and enforcement if necessary.

Several subpanel members voiced concern over the Act's "unintended consequences", namely that when the wholesale price of fuel increases rapidly, many fuel retailers did not purchase gasoline at the higher prices because they believed prices would fall quickly. That business decision resulted in some stations running out of fuel. Some retailers feared complaints if they raised prices in-line with their increased costs and decided not to sell creating a perception of fuel shortage. Other retailers did not wish to

raise prices or close their stations and sold fuel at a loss. The subpanel agreed that it is difficult to distinguish price gouging by a business versus a business needing to charge a higher price because they paid a high price to their supplier and suggested that VDACS contemplate a public education effort on the issue.

Aid Matrix

The subpanel also received a presentation from Mike Seifert of Aid Matrix, a web-based system for management of donations during disasters and emergencies. Aid Matrix helps to coordinate the efforts of government, the private sector and the volunteer sector. Aid Matrix allows businesses wishing to make donations online in a secure database available to the State's Emergency Operations Center. The Virginia Emergency Operations Center feels that Aid Matrix provides an excellent structure for donations, freeing up EOC personnel for other emergency management operations. Virginia's Aid Matrix system is being upgraded to allow for the Department of Emergency Management to specifically list those items needed for recovery.

Members can learn more about becoming a partner on Aid Matrix at: http://www.aidmatrix.org/an_corporate.html, and can review the Virginia site at: <http://www.aidmatrixnetwork.org/fema/states.aspx?ST=Virginia>. Once registered on the system, members are able to donate to emergency relief efforts in Virginia or in other states that have adopted the Aid Matrix system.

Mr. Middleditch then requested reports from each of the Subpanel's Taskforces.

Credentialing Taskforce: Mr. Follmer provided the report for the Credentialing Taskforce on behalf of Dan Jenkins.

The taskforce is working to obtain needed funding for the credentialing programming to begin. Mr. Follmer has discussed the project with representatives of Virginia Interactive, which manages the commonwealth's portal and brands and markets eGovernment websites and services, who estimated the project costs would be approximately \$400,000. Mr. Follmer stated that a combination of public and private resources would be used to fund the project and that Target Corporation had recently pledged assistance and that he and Mr. Burgess were exploring private foundations for potential donations. Mr. Follmer reported the Virginia State Police had endorsed the Priority Access System and had provided a letter of endorsement for use in seeking donations and/or grant funding.

Draft documentation was previously distributed to subpanel members for review and comment and consisted of:

- A Mock Credential that the system would produce;
- Potential Re-entry Tiers for businesses; and
- Terms and Conditions of use of the site.

Mr. Follmer responded to subpanel member comments reporting that the system would be managed by the Virginia Emergency Operations Center but that local incident

commanders will remain in control of access to restricted areas. Mr. Follmer explained that all emergencies are local and that local emergency managers must have the flexibility to determine when and in what order businesses are admitted to restricted areas. The Re-entry Tiers are guidelines to aid local emergency managers and not State-mandated categories that cannot be altered. Candy Lindenzweig suggested that agricultural companies should be included in the Re-entry Tiers.

Mr. Follmer stated that the Attorney General's office had provided additional language to the Terms and Conditions making it clear that businesses are responsible for those individuals they register and will be held accountable for the actions of those individuals while in restricted areas. Ed Martella suggested developing an outline to help employers to determine what information should be obtained from employees to register them on the system. Mr. Martella also suggested the development of standards and protocols for use of the credential in an emergency.

Mr. Middleditch requested Mr. Follmer to begin a more formal effort to solicit donations from other businesses and foundations. A target start date of July 1, 2009 was suggested, dependent upon funding becoming available.

Education Taskforce: Mary Loose DeViney provided the report for the Education Taskforce.

The Education Taskforce demonstrated the introduction module of the "Business as Usual" e-learning system. Reaction was favorable with several subpanel members commenting that the system will need to be on-line in order to hold the participant's attention. Other subpanel members commented that voiceovers should not be played at the same time a question is to be read/answered.

The Taskforce will proceed with development of the modules (approximately 10 modules are planned) based on National Fire Protection Association standard 1600. NFPA 1600 has been listed as one of the potential standards for the Voluntary Business Preparedness Certification standards being designed by the Department of Homeland Security. The introduction was programmed *pro bono* but costs for additional modules were estimated to be approximately \$10,000 per module.

Mr. Follmer noted that the Taskforce will be seeking private funding for completion of the system and will continue to contact colleges and universities to determine if a graduate student could work on the project. The Taskforce will seek to raise awareness of the system through local chambers of commerce, bar associations, insurance companies, bankers, CPA, etc.

Information Sharing Taskforce: Mr. Follmer provided the report of the Information Sharing Taskforce on behalf of Fred Vincent and Evan Smith.

The Taskforce's focus is to develop a business resource network (BRN) that would be a web-based system with links to a database with businesses assets throughout the state that may be available to the government in times of emergency.

The Virginia Emergency Operations Center has received several presentations from various providers of BRNs and was impressed with one developed by Apex Innovations which runs the BRN for 4 states. The program will work with Web EOC, the Commonwealth's disaster management system. The VEOC thought the system was good and would provide greater ability to work with merchants, give them more current contact in order to better build relationships – not just working with them when an emergency strikes.

The cost to fund the initial licenses and training is approximately \$25,000. Annual maintenance costs thereafter are approximately \$8,000.

Potential Legislation for 2009 General Assembly Session

Mr. Follmer discussed potential legislation for limiting the liability of businesses and non-profits that assist the Commonwealth during a disaster through the use of assets such as equipment, personnel, products, office space, space for staging areas, etc. The legislation, to be drafted with the help of the Attorney General's office, would most likely take the form of an amendment to existing emergency management statutes in Title 44 of the Code of Virginia.

The goal of the legislation would be to provide immunity from lawsuits where:

- The Governor has declared an emergency;
- A business or non-profit provides assets at the request of – or under the direction of – the Virginia Emergency Operations Center; and
- There is no gross negligence or willful misconduct on the part of the business.

Coverage may be extended to pre-event planning and training activities to encourage advanced coordination. Mr. Follmer is working with the Attorney General's office to research any other state's laws that can serve as a model in this regard.

The subpanel enthusiastically endorsed the concept with one member commenting that this legislation would make it much easier for them to volunteer (company manufactured) products to the Commonwealth during emergencies.

There being no further business, the meeting was adjourned.