A summary of existing rural land use legislation in Virginia

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A SUMMARY OF EXISTING RURAL LAND USE LEGISLATION IN VIRGINIA

By

John W. Russell
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FOREWORD

This study is an attempt to bring related statutes together concerning land use in Virginia, presenting them in a simplified manner so that they can be read and understood by the layman. It is intended by no means to be taken as authoritative nor complete in detail. For the details and omission made herein, the Code of Virginia should be consulted.

Persons who are interested in conservation and development both local and state, may find here what laws exist in Virginia, that may be applied to land planning.

J. W. R.
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chapter i

department of conservation

in 1899, eugene c. massie in an address before the state bar association sounded the first note for a reform of the land laws of virginia. it was not until 1926, however, that any great improvement was made in reorganizing the several administrative agencies and placing them together under the supervision of a single department.

prior to 1926, the enforcement of the laws of the state of virginia as regards to the use of land and waters was distributed among many separate agencies namely; the state geological commission, the state geological survey, the office of the state geologist, the waterpower and development commission and the office of the state forester. with the approval of an act on march 17, 1926, the state commission on conservation and development was created for the purpose of placing in the hands of a single commission the power to condemn and acquire land and any other property that might be needed for park purposes.

(1) massie, eugene c., reform of our land laws, p. 3.
(2) laws of virginia relating to state commission on conversation and development, p. 3.
(3) ibid.
(4) ibid.

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In 1927, a reorganization act brought together the Commission of Game and Inland Fisheries, the Commission of Fisheries and the Commissioner of Fisheries within the Department of Conservation and Development.

This newly created commission was vested with the rights, duties and powers which had been formerly vested in several administrative agencies. It also took over the title to and control of all property that at the time was held or controlled by the agencies. Measures affecting the regulation, conservation or development of water power, were referred to a board of three persons known as the Water and Development Board, which is appointed by the Chairman of the Commission on Conservation and Development with the approval of the governor.

The State Commission on Conservation and Development consists of five members appointed by the governor subject to confirmation by the General Assembly. Two of the members are appointed for two years, the remaining three for four years each. The governor designates one of the members to become chairman of the commission, who is a salaried officer of $6,600 per year and who devotes his full time to the performance of his official duties. The other members of the

(5) Ibid. p.10.
(6) Code of Virginia of 1936, Sec. 585(39)
(7) Ibid.
(8) Ibid.
commission are not salaried and receive only traveling expenses and a sum of $10 a day in time spent carrying out their duties.

The reorganization has by no means completely centralized the administration of state laws relating to public lands and waters. There are still several agencies outside of this commission that should be contained therein. Statutes, however, establish within the Department of Conservation and Development six divisions: (1) Public Lands, (2) Parks, (3) Drainage and Waters, (4) Forestry, (5) Geology, (6) Game and Fish. The powers of the State Department of Conservation which before 1928 were exercised by various agencies are given here under the headings in the following pages.

(9) Laws of Virginia Relating to the State Commission on Conservation and Development, p. 3.
Virginia, unlike some of the states, does not own any vast amount of wealth in lands and minerals. The acquisition of lands has been primarily for parks and state forest purposes. This, however, does not include all lands owned by the state.

Lands become a part of the public domain of the Commonwealth in many different ways. The State Commission on Conservation and Development has been given the power to acquire "land, or any estate or interest therein of scenic beauty, recreation utility, historical interest, remarkable phenomena or any other unusual features," which in the judgment of the Commission should be "acquired, preserved and maintained for the use, observation, education, health and pleasure of the people of Virginia." This power of acquisition must be within the limits of any appropriation the General Assembly may make for the purchase of such property, or of voluntary gifts placed in the hands of the Commission for such purposes. Where any property is acquired without the aid of any appropriation by the General Assembly,

(10) Code of Virginia of 1936, Sec. 585(47).
(11) Ibid.
(12) Ibid.
and exclusively with the aid of gifts or contributions which are given over to the Commission, such property may be placed in the hands of the donator or donators for a period not to exceed 99 years, upon terms approved by the governor which the Commission upon careful study, may think best for the preservation and maintenance of such property in the interest of the people of Virginia.

Not only may the commission accept gifts and contributions from individuals, corporations and associations, but it may accept the same for the United States government or any agencies of the national government.

A great deal of the land comes to the state from delinquent taxes or reversion to the state of lands which are privately owned and on which taxes have become delinquent. During periods of prosperity, as well as depression, in certain parts of the state, taxes become delinquent at a surprising rate. This is particularly true in sections of the state where the land is less fertile and profits coming therefrom are exceedingly small, if any at all.

A general procedure, by which property reverts to the Commonwealth because of failure to have real estate entered on the land book of the county or for non-payment of taxes, is given in the discussion that follows.

(13) Ibid.
(14) Ibid, Sec. 526.
Real property must be entered in the land books of the 15 county by the owner or claimant. If he fails to do so after receiving notice in writing from a commissioner authorized to assess such property, the court upon giving a ten day notice, may declare the real estate absolutely forfeited to the Commonwealth and liable to entry and securing as waste lands and unappropriated lands unless good reason for failure to do so is given. Not only can this be done in counties, but the town may acquire land likewise for town taxes.

When any real estate is offered for sale because of failure to pay taxes, levees, etc., and there is no bid equal to the amount of the charges thereon, the Treasurer purchases this land in the name of the Comptroller for the benefit of the 18 state, city, county or town respectively. This land, however, may be redeemed by any person having the right to, because of previous ownership or inheritance, on payment of the price paid at the sale plus additional taxes and levees that would have accumulated if such land had not been purchased by the 19 Treasurer.

If the real estate purchased by the Commonwealth for

(15) Ibid, Sec. 2451.
(16) Ibid, Sec. 2452.
(17) Ibid, Sec. 2457.
(18) Ibid, Sec. 2499.
(19) Ibid, Sec. 2491.
delinquent taxes is not redeemed in two years from the date
of purchase, the land is no longer subject to further sale
and the State Commission on Conservation and Development
files an application for the fee simple title with the clerk
of the court in which county the land lies.

Another of the many ways of securing land for public lands
is from escheated property.

The governor appoints, in each city and county, one
escheator, and annually in May each Commissioner of Revenue
furnishes to the escheator of his county or city a "list of
the lands therein of which any person shall have died seized
of an estate of inheritance interstate, and without any known
heir or known person" to whom may be entitled to such. No
land, however, is liable for escheat if for twenty years it
has been in actual possession of one claiming this land and
paying the taxes within that time. The escheator upon re-
ceiving the list holds an inquest to see if the list has been
escheated to the commonwealth.

When the personal estate of every decedent is distributed
and there is no other distributee, the same is accrued to the

(20) Ibid, Sec. 2492.
(21) Code of Virginia of 1887, Sec. 2371.
(22) Ibid, Sec. 2374.
(23) Ibid.
(24) Ibid, Sec. 2375.
Whenever any property having no rightful owner is in the possession of some person, the same may be recovered from such a person by a bill of equity in the name of the Commonwealth. All land levied on under execution, on behalf of the Commonwealth which will not sell for the amount of the debt on said land, the auditor or agent of the Commonwealth may purchase this land for the state.

When the owner of land or property, desired for purchase by the State or a chartered company vested with powers of eminent domain, refuses to sell at a price that either the State or the company is willing to pay, the land or property may be condemned through the exercise of the power of eminent domain. This is the method used whenever there has been the authority by law to take property for public use or public services. The specific purposes for which lands are condemned are: (1) forests, (2) parks, (3) public schools, (4) highways, (5) telephone and telegraph and other companies.

(26) Ibid, Sec. 518.
(27) Ibid, Sec. 2535.
(28) Ibid, Sec. 4362-63.
(29) Ibid, Sec. 526.
(30) Ibid, Sec. 585 (527-(57).
(31) Ibid, Sec. 4385.
(32) Ibid, Sec. 4385(a).
(33) Ibid, Sec. 4384(a).
Not only is the power of eminent domain given to the State and chartered companies, but an act of the assembly gives to the United States government or agencies the right to acquire land or property by condemnation. Towns and cities may also condemn for public park purposes.

The policy of the State has been to dispose of state acquired lands as rapidly as possible. Legislation in most cases have provided for the sale of these lands and the use of the profits acquired therefrom. When legislation has been passed for the permanent acquisition of lands, such legislation has been to bring in financial gains to the state and county.

Proceeds from the sale of public lands donated by Congress for school purposes, all escheated property, all waste and unappropriated land and all property accruing to the state for forfeitures are set aside for a permanent and perpetual literary fund. In the event that lands put up to be sold for failure to pay taxes or levees, and the bid does not come to the amount due, the land is purchased for the state, city or county. This, however, does not give the state immediate ownership, as any person having a former right to such land may redeem it upon the payment of the sale price plus additional accrued taxes.

(34) Ibid, Sec. 4388(b).
(35) Ibid, Sec. 4388(43).
(36) Ibid, Sec. 632.
(37) Ibid, Sec. 2489.
A statute enacted in 1928 gave the power to the Commission on Conservation and Development to lease property, granted to state, to the grantor for a period not to exceed ninety-nine years upon terms and conditions of usage approved by the governor.

The General Assembly passed an act in 1936 providing for what is known as county planning. It provided for the Board of Supervisors in any county to be given the power to create a planning commission. The commission was to consist of five persons, one of whom was to be the county manager, county executive, county engineer or county director of public works and the others were to be appointed by the Board of Supervisors for five years.

The function and duty of such a commission is to adopt a Master Plan for the development of the unincorporated territory of the county. It may, however, include planning of incorporated towns if the latter be willing, but it must always be in accord with the State Department of Highways. The plan should in all cases give or exhibit maps, charts, plates, descriptive data and all information that may be necessary.

The purpose of county planning is to furnish guidance and administration to bring about the proper development of the county in accordance with the present or future needs.

(38) Ibid, Sec. 585(47).
(39) Ibid, Sec. 2772
(40) Ibid.
(41) Ibid, Sec. 2773(82).
(42) Ibid.
(43) Ibid.
(44) Ibid, Sec. 2773(83) - 10 -
Such planning should bring to the county better health, greater safety, greater efficiency and economy in the use of lands, and provide for the general welfare of the people.

A plan once formulated must be certified by the planning commission, approved by the Board of Supervisors and adopted by the municipalities. Such a plan should cooperate with the state planning board, and provide cooperation between incorporated and unincorporated territory.

The county board of supervisors has the power to appoint a zoning commission of not more than five members. This commission should divide the county into districts, if necessary, with uniform regulation in each district. A zoning plan should be to lessen traffic on congested roads, provide safety from fires, promote the health and general welfare of the people.

An act of 1937 gave jurisdiction to the United States over various parcels of lands for the building of forts, magazines, arsenals, dockyards and other buildings needed, national cemeteries and for many other purposes. Special

(45) Ibid.
(46) Ibid, Sec. 2773(85).
(47) Ibid, Sec. 2773(87).
(48) Ibid, Sec. 2773(85).
(49) Ibid, Sec. 2773(88).
(50) Ibid, Sec. 2773(86).
(51) Ibid, Sec. 2880q.
(52) Ibid, Sec. 2880L.
(53) Ibid, Sec. 2880M.
(54) Ibid, Sec. 2880N.
(55) Ibid, Sec. 17
acts for the transfer of property and jurisdiction must be passed in each case by the General Assembly.

Sec. 18 provides for acquisition or lease of land belonging to the Commonwealth for the site of a lighthouse, beacon, life saving station or other aids to navigation, provided such land does not exceed ten acres. In case the construction of such is not started in two years or completed in ten, the title of the land reverts back to the state.

Sec. 19 gives to the United States a conditional consent to acquire from individuals, firms, association or corporate bodies lands, for sites for customhouses, courthouses, post offices, arsenals, forts, naval bases, military or naval air ports or fields. The condition of acquisition is the reserving of jurisdiction and power by the state to levy taxes on oils, gasoline, etc., owned by other than the United States; serve criminal and civil process on said land, and regulate intoxicating liquors.

Sec. 19C consents, with similar reservations or conditions as in Sec. 19, for acquisitions for old soldiers homes, conservation of forest and natural resources, for the retirement from cultivation, for other uses of sub-marginal agricultural lands, for the improvement of rivers and harbors, for public parks and for other purposes not contained in Sec. 19.

(56) Ibid.
If after five years the land is not used by the United States for the purpose of the conveyance, the right to such reverts to the state in which case it has been so conveyed.

The seventeenth clause, eighth section of the first article of the constitution of the United States describes the constitutionality of acquisition by the United States either by purchase, condemnation or lease of lands.

(57) Ibid, Sec. 19D
CHAPTER III

FORESTRY

The restoring of the forests of the state of Virginia is one of the major problems of the state. Certain tracts of land have been and are today in cultivation when they should be used for forest purposes only. Not only has there been a neglect in the use of land for forest but there has been a lax policy in regard to the exploitation of timber. In recent years, though, the State has encouraged private and public reforestation. An act of the General Assembly in 1930 provided that the Geological Commission should do what could be done towards reforestation of cut over lands or denude lands, forestry, woodlands, prevention of destruction by fire; also to administer to forest and forestry principles, instruct and encourage private owners in preserving and growing timber for conservation and purposes of manufacturing and all other general conservation of forest in and about the waterhead and watershed of all water courses of the state.

(59) Code of Virginia of 1936, Sec. 526
The State of Virginia has at the present time no vast amount of land for state forests. Lands that have accumulated, have done so, as a result of early legislative acts granting to the state any waste and unappropriated lands other than the unappropriated marsh or meadow lands on the Eastern Shore of Virginia to be permanently set apart for use as state forest land, if such land is best suited for this purpose. Lands which are purchased for delinquent taxes and are declared by the State Forester to be chiefly valuable for forest purposes are turned over to the Commission on Conservation and Development.

The administration of state forest is carried on by the State Forester, who is placed under the direction and control of the State Geological Commission, composed of the Governor as ex-officio chairman of this commission, the President of the University of Virginia, the President of V. P. I., the Superintendent of V. M. I., and one other citizen appointed for four years by the Governor.

The State Forester should be a trained man with a practical and theoretical knowledge of forestry.

(60) Ibid, Sec. 2494A.
(61) Ibid, Sec. 2492.
(62) Ibid, Sec. 524.
(63) Ibid, Sec. 523.
(64) Ibid, Sec. 524.
The care, management and preservation of the forest reserves of the State and the forest contained thereon and all appropriated or collected money and all property used to carry out the purposes of forestry are placed under the control of the State Geological Commission. This commission is given power to acquire lands for state forest, accept gifts to be used for state forest, to enter into agreement with the United States government for the purchase of lands for state forest.

The Commission has been given broad powers to provide for the best possible management, development and utilization of the lands that come under his jurisdiction. He may sell the products that may be derived from these lands; one fourth of the gross proceeds going to the counties in which these lands are located.

The sales of the timber in the state forests are in charge of the Geological Commission. It is only, however, on the recommendation of the State Forester that timber may be appraised and cut. Such timber that is cut must be on the basis of the principles of scientific forest management.

(65) Ibid, Sec. 525.
(66) Ibid, Sec. 526.
(67) Ibid.
(68) Ibid.
(69) Ibid, Sec. 530.
(70) Ibid.
and must not sell for less than the appraised value. The proceeds from the sale of such trees are held as a special fund for improvement or protection of state forest or for the purpose of purchasing additional lands.

In regards to gas, oils and other minerals found on the forests reserves, the Commission may make contracts to lease these minerals and using the money therefrom as in the manner of the sale of timber.

The State Forester, when so directed by the Commission, cooperate with counties, corporations and individuals in making plans for protection, management and replacement of trees, timber tracts, and wood lots, but these parties must pay expenses of the man employed in preparing such plans.

The provisions of the law in regard to prevention of forests fires are the usual provisions requiring persons who start fires to use reasonable care to see that it does not get away, Making it unlawful to set fire to unprotected clear lands, requiring spark arrestors for locomotives.

(71) Ibid.
(72) Ibid.
(73) Ibid. Sec. 532.
(74) Ibid. Sec. 342A.
(75) Ibid. Sec. 345.
(76) Ibid. Sec. 546(6).
The State Geological Commission has been authorized by an act of the General Assembly to establish, maintain and operate nurseries for the purpose of raising seedlings on any one or more of the State reservations, or upon land that it may acquire for this purpose. These seedlings or seeds are furnished to the Commonwealth and without any expense to the citizens of the state under whatever rules and regulations it may set up. Apparently, for all intents and purposes these nurseries are established for the benefit of both the State and individuals.

(77) Ibid, Sec. 533.
(78) Ibid.
CHAPTER IV

PARKS

State, national, city and county parks have been created mainly for the establishment and preservation of State forest, and also for recreation purposes. They have been on many occasions established for sites of historical importance, but more often they have been selected because of their natural beauty, and because they afford great opportunity for the conservation and development of the natural resources.

The public parks in Virginia are under the control and supervision of the State Commission on Conservation and Development, which may acquire suitable places for recreation, by purchase, gift or eminent domain; lands, property or estate for public parks.

Although parks may be established by the State Commission on Conservation and Development, most of the existing state parks have been brought about by special legislation.

Parks which have been established under special acts are (1) 12,000 acres in Westmoreland County, (2) 6,850 acres

(79) Ibid, Secs. 585(46a), (47), (51a).
(80) Ibid, Sec. 585(47)
(81) Laws of Virginia Relating to Commission on Conservation and Development, pp. 29-30
in Cumberland Mountain Area, (3) 8,000 acres in Princess Anne County, (4) 2,013 acres in Appomatox County, (5) an area to be used as a George Washington Memorial Park.

An act in 1934, was passed conveying the title of the United State lands, known of as Battlefield Park.

An act in 1932, provided that proceeds coming from all State parks that may be acquired or held by the Commission on Conservation and Development, constitute a revolving fund under the commission to be used by it for conservation and development.

Section 585(52)-(58), of the Code of Virginia of 1936, is known of as the National Park Act. This act vested in the State Commission on Conservation and Development, the power to acquire lands, buildings and other properties, in the Blue Ridge Area, of Virginia, for the use of public park purposes by the exercise of eminent domain, or by gift, purchase or other lawful means. This acquisition was for the transfer of title and jurisdiction over such lands to the United States

(82) Ibid, pp. 30-32.
(83) Ibid, pp. 32-33.
(84) Ibid, pp. 33-35.
(86) Ibid, p. 41.
(87) Ibid.
to be used as a public park. The conveyance of this land, to be known of as the Shenandoah National Park, had to meet the approval of the governor.

The counties and cities of the State of Virginia may acquire land for public use. This is a general power given to them and is of great importance in the development of parks and recreational centers.

Cities, and counties are given the power to condemn land for public parks, as also given to chartered companies to condemn for public purposes. Before any condemnation proceedings take place though, an attempt must first be made to buy such land.

In neither case may institutions of learning, hospitals, state incorporated colleges, or the land upon which they are situated be condemned except with the consent of the Assembly.

(88) Code of Virginia of 1936, Sec. 585(53) subsecs. d,e,f.
(89) Ibid, Sec. 585(54).
(90) Ibid, Sec. 585(58).
(91) Ibid, Sec. 4388(43).
(92) Ibid, Sec. 4362.
(93) Ibid, Sec. 4363.
(94) Ibid, Sec. 4384.
The drainage and reclamation of lands in Virginia is all important for the proper and best usage of land. There are in many sections of the State lands, which if properly drained could be employed for further cultivation, and thereby be more beneficial. In most cases, the laws placed on the statute books have been for the purpose of reclaiming private farming lands, that are too wet to be cultivated. In many districts, however, there are lands that should be drained, but are not because the expense of doing so would be far greater than the benefits derived therefrom. The policy of the State has been to encourage the draining of water from agricultural lands, emphasizing the need of doing so as being essential to the good and betterment of the community.

The circuit courts of the State are given the jurisdiction or power to establish levees, drainage districts, drains and canals; construct, straighten, widen or deepen any land drainage; and to erect tide gates and pumping plants, for the purpose of reclaiming wet lands, swamps, or over

(95) Ibid, Sec. 1737.
flooded lands. The Board of Supervisors in the counties are instructed to co-operate in the development of drainage districts, including the construction of public roads, bridges and drainage canals.

Whenever, fifty-one percent of the owners of land in any district, proposed as a drainage district, sign a petition for this proposal, the clerk of the court issues a summons on all land owners not in favor to show why such land should be drained. The court then appoints a disinterested engineer who surveys the proposed drainage area and makes a report as to the advisability of the project.

The report when made should set forth the following:

(a) Whether the proposed drainage is practical or not;

(b) Whether it will benefit the public health, or any public highway, or be conducive to the general welfare of the community;

(c) Whether the improvement proposed will benefit the lands sought to be benefited;

(d) The character of the lands and their probable value after the proposed drainage has been completed.

(96) Ibid.
(97) Ibid.
(98) Ibid, Sec. 1738.
(99) Ibid, Sec. 1739.
Whether or not all the lands that are benefited are included in the proposed district; (100)

The name of land owners and approximate acreage of each should be included, along with a map showing the location of improvements to be made, and all other additional information that may be thought necessary. If the report is not favorable the project is dismissed. If, however, the majority of the Board of Supervisors and the engineer favor the plan, a day will be set aside for a public hearing and consideration of the matter.

After a district is preliminarily established, the engineer or his assistants are instructed to make a complete survey of the main drains and their laterals, and see to it that the line of each ditch, levee or drain be plainly marked. This survey should show every detail of the proposed improvements and give all possible information, including the fall from one place to another.

(100) Ibid, Sec. 1744.
(101) Ibid, Sec. 1743.
(102) Ibid, Sec. 1744.
(103) Ibid.
(104) Ibid, Sec. 1750.
(105) Ibid, Sec. 1749.
(106) Ibid.
(107) Ibid.
If in the opinion of the court the cost of construction and amount of damage done is not greater than the increased value of the land affected and of the benefits that may come therefrom, the final report should be confirmed.

After the drainage district is established, a county board of drainage commissioners composed of three members is appointed by the court. This board of commissioners are in charge of the administration in all drainage districts in the county. An additional power of these commissioners is the authority to purchase in their corporate capacity, lands at any tax sale and hold such lands as taxable assets.

The cost of draining, reclaiming and establishing drainage districts is apportioned among the people or land owners according to the benefits derived therefrom.

(108) Ibid, Sec. 1756.
(109) Ibid, Sec. 1771.
(110) Ibid.
(111) Ibid.
(112) Ibid, Sec. 1752.
The State of Virginia has a definite policy in regard to its waters and watercourses. The Assembly has encouraged the conservation and utilization of the water resources to the greatest possible extent. This, however, has not brought about the best usage of the waters for which there is as great need today as it has been in the past.

All the beds of bays, rivers, creeks and the shores of the sea within the jurisdiction of the Commonwealth, conveyed by grant or compact according to the law, is the property of the State. The State, in short, owns the waters within its jurisdiction, which in the case of Virginia mean all streams or portions of streams and their beds, which have been declared navigable, and also those parts of streams or other bodies of water used or suitable for use in interstate or foreign commerce in which the construction of any dam would affect the interest of commerce.

(113) Ibid, Sec. 3573.
(114) Ibid, Sec. 3585(1).
(115) Ibid.
Laws, that have been passed by the Assembly in regard to the building and maintenance of dams have been particularly concerned that such dams do not interfere with navigation, or the passage of fish.

The State Corporation Commission controls and regulates the waters of the State. It may not, however, deprive any riparian owner of any right he may have, except by the exercise of eminent domain and upon just compensation; nor may it remove dams or other waterworks in a water course, or improve its navigation. The right to this belonging solely to the General Assembly.

Whenever a watercourse is navigable or declared by law to be a public highway, no court can grant a lease to any person to erect a dam in the navigable part of the stream, that will obstruct navigation or the passage of fish.

If, and when, a corporate body wishes to construct a dam for the sale of hydro-electric energy, it must make an application to the State Corporation Commission giving maps

(116) Ibid, Sec. 3577.
(117) Ibid.
(118) Ibid, Sec. 3581(1).
(119) Ibid.
(120) Ibid, Sec. 3576.
(121) Ibid.
(122) Ibid, Sec. 3577.
(123) Ibid, Sec. 3581(1),(2).
and information for a clear understanding of the proposed scheme of development. After this is done, there must be given a public hearing, at which time the proposed scheme is argued, both for and against.

If the plans of the applicant, provide to the greatest practicable extent for the utilization of the waters, for which the application is made, the commission is authorized to grant the applicant's petition. The purpose of this law is designed to prevent the pre-emption of dam sites to forestall competition, to prevent speculation, and to protect present adequate developments, which without such safeguards might be retarded rather than promoted.

The license granted by the Commission remains in effect for fifty years, after which the successors or assigns hold the property and rights acquired under an indeterminate license, which continues until said property or rights are purchased by the State by due process of law under eminent domain.

No dam or obstruction may be erected where law has been or maybe enacted to open up, improve or extend navigation or

(124) Ibid. Sec. 3581(3).
(125) Ibid. Sec. 3581(4).
(126) Ibid. Sec. 3581(5).
(127) Ibid.
(128) Ibid. Sec. 3581(8).
(129) Ibid.
If the court grants to a company the right to construct a dam in this case, that company must keep its dam in order, keep and build locks for the passage of boats, as an act of the Assembly requires him to do. Whenever the navigation of a watercourse is impeded or injury done to the works or property of any navigation company, the company or attorney for the Commonwealth, in the county where the damage is done, may in writing ask that certain work or construction be done to prevent further damage. If the owner does not follow the orders of the navigation company or Commonwealth's Attorney, the company or county may have necessary work done and recover the cost from the owner, unless he surrenders all his rights and interest in the dam to the company or State.

No owner may voluntarily transfer the license granted him by the State Corporation Commission for water development, unless the transferee is financially able to carry out the development project. If a transfer takes place it must be in writing and approved by the Commission. The terms of the

(130) Ibid, Sec. 3577.
(131) Ibid.
(132) Ibid, Sec. 3578.
(133) Ibid.
(134) Ibid, Sec. 3581(1).
(135) Ibid.
license must be obeyed and any violation thereof gives to the court the right to compel compliance with provisions of the license. In the event that there is a definite refusal to comply with the terms of the license the court may sell the license including therein the privileges and duties.

In addition to the general powers of eminent domain, every public service corporation engaged in the development of water power for hydro-electric energy to be sold to the public is vested with the powers of eminent domain to the extent to that which is needful for the acquisition of all lands, property and rights necessary for the operation of any dams, reservoirs, power stations or other structures, subject to rules which may be made by the State Corporation Commission, and the full compensation for property or rights acquired.

An unusual provision of the laws of Virginia is one which gives to any person the right to erect a dam across the mouth of any creek in any county in Virginia that adjoins any city with a population of 30,000 or more on navigable water. The purpose of this is for marine museums and parks. The lake

(136) Ibid, Sec. 3581(11).
(137) Ibid.
(138) Ibid, Sec. 3581(12).
(139) Ibid, Sec. 3581(14).
(140) Ibid.
(141) Ibid, Sec. 3581(a).
formed as a result of the erection of such a dam must not exceed one thousand acres, the flooded lands of which must be wholly owned or leased. Permission from the governor must first be secured if a lake of this kind is to be built.

(142) Ibid.
CHAPTER VII

GAME AND FISH

The State for many years has been active in the conservation of fish and wildlife. So numerous and so changeable are the game and fish laws that it is not necessary to describe or explain all in a report of this kind. There are, however, certain basic laws that have provided the background for the restrictions upon the taking of game and fish.

Laws relating to game and fish are administered by the Commissioner of Inland Game and Fisheries. This Commission, formerly known as the Department of Game and Inland Fisheries, is maintained for the preservation and propagation of wild life and for the administration of game and inland fish and game laws.

This Commission composed of seven members appointed by the governor and subject to the confirmation of the senate, one member of which is appointed chairman is authorized to

(143) Ibid, Sec. 3305(2).
(144) Ibid, Sec. 585(84).
(145) Ibid.
(146) Ibid, Sec. 3305(2).
acquire by lease, exchange, gifts or otherwise, waters or lands that it may think fit for buildings, dams, lakes or ponds that might be necessary to carry on operations for the propagation and preservation of wild life, to restock and replenish the lands and waters of the State. It may also acquire land and water for game refugees, public shooting preserve and fishing, and to establish such under proper regulation.

A land owner if he sees fit may assign the wild life rights to the State to be used as a sanctuary.

The commission on Game and Inland Fisheries is authorized to exercise full control over fishing and hunting in and on inland waters, but the chairman of this commission is vested with the sole jurisdiction to enforce or to have enforced the game and fish law on said lands and waters. He is also vested with similar jurisdiction to confiscate illegally killed, caught or transported birds, animals or fish, and to when and what extent it may be desirable, to restrict or extend, or prohibit provision of law in any county.

(147) Ibid, Sec. 3305(4).
(148) Ibid.
(149) Ibid, Sec. 3306.
(150) Ibid, Sec. 3305(5).
(151) Ibid, Sec. 3305(8).
(152) Ibid.
(153) Ibid, Sec. 3305(34).
The amount of money received from the state treasurer for the sale of hunting, fishing and trapping licenses with an additional fifteen percent from the dog license fund is put aside for the protection of game.

The chairman may appoint six supervisors and as many game wardens, regular or special, as are necessary. The duties of these appointees are to assist the chairman in the enforcement of the game and fish laws.

The fish laws make it unlawful to catch any fish except shad, herring or mullet, except by hook and line or rod and reel held in hand. The laws also prohibit to sell, catch or attempt to catch any of the species of bass or trout outside of season except in about nine counties and the city of Danville.

Open season, methods of taking bass and trout, bag and size of limit are given in the following:

(a) Bass except rock bass or redeye, June 15, to November 15 - 15 per day - 150 per season - not less than 6 inches.

(154) Ibid, Sec. 3305(14).
(155) Ibid, Sec. 3305(15).
(156) Ibid, Sec. 3305(39).
(b) Rock bass and redeye, July 1 to March 15 - 15 per day - 150 per season - not less than 6 inches long.

(c) Trout, April 1 to June 15 - 15 per day - 200 per season - brook or mountain trout not less than 7 inches, others not less than 8. (157)

Sec. 3305(42), (43), provides for the building of fish ladders and the prohibition of the use of substances injurious to fish.

It is unlawful to hunt, trap, possess, sell or transport wild birds except as permitted.

Live wolves, coyotes, birds and all animals classed as predatory or undesirable are not permitted to be brought into the State unless by special permit. Non-predatory animals or birds may be imported, but are subject to the laws of Virginia governing them.

The Commission of Fisheries consists of five members appointed by the governor, including the Commissioner who is the chairman, which is authorized to establish and maintain hatcheries, and cooperate with the United States in this work. The Commissioner, Commission, inspector and deputy

(157) Ibid, Sec. 3305(40).
(158) Ibid, Sec. 3305(36). For complete game laws see Sec. 3305(34)-(37).
(159) Ibid, Sec. 3305(47).
(160) Ibid, Sec. 3148.
inspector are given the power to arrest without warrant, violations of the fish and starfish law.

The fish laws give to residents of the State the right to catch fish with devices other than hand line, upon application to the oyster inspector in the district, stating where devices are to be placed, and what kind of fish is to be caught.

A license is required to catch fish in the tidal waters. The amount of license being so much per pound net and so much per float.

(161) Ibid, Sec. 3159.
(162) Ibid, Sec. 3161.
CHAPTER VIII

AIDS TO LOCAL UNITS

It has been solely through the aid of the State that the local units have been able to maintain public schools and roads. The road question now need not be a local problem, due to the fact that the State has taken over all roads in most of the counties. The schools in many sections are in desperate need of individual state aid.

Aid to the various school districts is extended by the state on many different bases, and comes to the state from five sources: the current school fund, capitation tax, literary fund, profits on state forest, and donations.

The current school fund consists of ten cents on every one hundred dollars worth of assessed value, which is to be applied annually to the free public schools of the primary and grammar grades.

The proceeds from capitation tax of $1.50 per head of votable age, is used in two ways. One dollar going to schools in proportion to their school population and the rest going

(163) Ibid, Sec. 2232(1).
to the city or county Treasury for what other purposes he may see fit.

The Constitution of Virginia provides for the establishment of a permanent literary fund. This fund is made up of the proceeds from the sale of all public lands donated by Congress for free school purposes, waste and unappropriated lands, all property accruing to the State by forfeiture and fines from offenses against the State.

The proceeds from forest reserves is paid to the county therein. The sale of all glebe lands or church property are to be used for school purposes.

Donation funds are those which come from some private source. All money or property which may be donated is managed by the county school board according to the wishes of the donator.

(164) Ibid.
(166) Ibid.
(167) Code of Virginia of 1936, Sec. 706.
(168) Ibid, Secs. 587 and 704.
(169) Ibid, Sec. 677.
CHAPTER IX

POLICE POWERS OVER USE OF LAND AND WATER

It is to the Department of Agriculture and Immigration that most of the power concerning the use of land and water has been conferred. It is to this department along with the State Board of Health that the people of Virginia must look to for the protection of their crops, health and well being. In almost every case where products that are used on farms and coming from farms are sold, such products must be registered and inspected.

Agricultural seeds offered for sale or carried from one point within the state to another must be analyzed and tested. This analysis and inspection is to determine the percent of weed seeds. Failure to do this and label properly is subject to seizure by the authorities.

The same regulations apply in the case of field and garden seeds. At any time seed samples of all kinds may be

(170) Ibid, Sec. 1153j.
(171) Ibid, Sec. 1153g.
(172) Ibid, Sec. 1153p.
(173) Ibid, Secs. 1154-1154k.
submitted by the citizens of Virginia to the Department of Agriculture and Immigration to be tested free of charge.

The office of dairy and food commissioner has been abolished and its powers conferred to the Department of Agriculture and Immigration.

It is the duty of this department to inquire into dairy, food and drink products offered for sale. Samples of all these products must be analyzed by the state chemist who tests and makes a report on the impurities. This Department must see to it that factories are sanitary.

Products not in accordance with the rules and requirements may be seized and sold. The proceeds from confiscated goods go into the general treasury fund.

Other duties of the Department of Agriculture and Immigration are: (1) analysis of soil, (2) obtain specimens for natural history, (3) prevention of the spread of blight

(174) Ibid, Sec. 1154.
(175) Ibid, Sec. 1154(1).
(176) Ibid, Sec. 1160
(177) Ibid.
(178) Ibid.
(179) Ibid, Secs. 1161-1166.
(180) Ibid.
(181) Ibid, Sec. 1280.
(182) Ibid, Sec. 1282(3).
disease, (4) Quarantine and condemn animals with contagious
diseases.

The State Board of Health has supervision and control
over water supplies and waters for purposes of sanitation.
This Board issues permits to towns or companies to furnish
water. It is also authorized to prevent the polluting of
drinking water.

(183) Ibid, Sec. 1287(4).
(184) Ibid, Sec. 1289.
(185) Ibid, Sec. 1786.
(186) Ibid, Sec. 1789.
(187) Ibid, Sec. 1784.