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Louise Ryland Thornton

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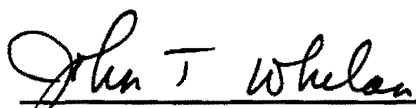
LOUSIE RYLAND THORNTON

**MASTER OF ARTS in Political Science
University of Richmond
1997**

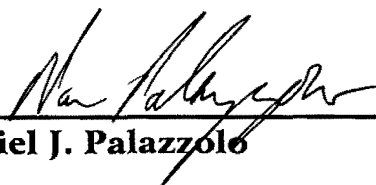
John T. Whelan, Thesis Advisor

This thesis compares and contrasts the tactics and techniques used by Virginia public interest lobbyists in the passage of the 1990 VIRGINIA INDOOR CLEAN AIR ACT with Alan Rosenthal's analysis of state legislative lobbying found in his book, THE THIRD HOUSE. Primary sources include personal interviews and legislative documents, while newspaper articles provide the secondary source of information. Lobbyists used the indirect and direct lobbying techniques, suggested in Rosenthal's framework, to persuade others to their point of view. Supporters of the CLEAN AIR BILL had to deviate, in part, from some of Rosenthal's direct lobbying strategies due to Virginia's history of economic dependence on tobacco. Nevertheless, the Rosenthal framework held true for a majority of the techniques used by the public interest groups.

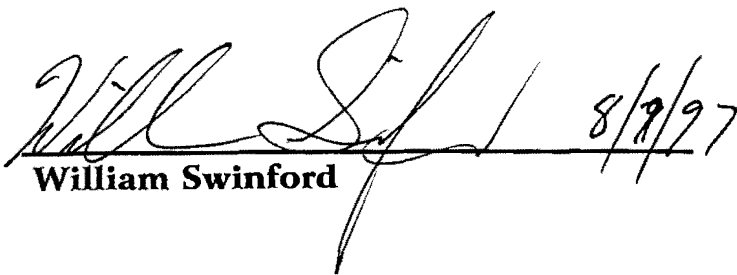
I certify that I have read this thesis and find that, in scope and quality, it satisfies the requirements for the degree of Master of Arts.



John T. Whelan, Thesis Advisor



Daniel J. Palazzolo



William Swinford

**THE 1990
VIRGINIA INDOOR CLEAN AIR ACT:
A CASE STUDY IN PUBLIC INTEREST LOBBYING**

**By
LOUISE RYLAND THORNTON
B.A., College of William and Mary, 1966**

**A Thesis
Submitted to the Graduate Faculty
of the University of Richmond
in Candidacy
for the degree of
MASTER OF ARTS
in
Political Science**

**August, 1997
Richmond, Virginia**

**In memory of my Mother and Father,
Florence H. and Thomas Earl Thornton,
and my Grandparents,
Irma C. and W. Thornton Hunnicutt,
whose love and support gave me
encouragement throughout my life.**

ACKNOWLEDGEMENTS

There are many to whom I owe thanks in the preparation of this thesis. Dr. Daniel Palazzolo gave me much encouragement during the early portion of the research. Dr. John Whelan provided endless hours of counsel and direction in the course of writing. Dr. William Swinford made time to read and give feedback on the paper.

Without the willingness of the following people, who took the time to answer my questions about their roles in the legislative process of the VIRGINIA INDOOR CLEAN AIR ACT, this paper could not have been written: Senator Thomas Michie, Delegate Bernard Cohen, Delegate Jay DeBoer, Anne Donley, Linda McMinimy, and Anthony Troy.

This paper could never have been completed without Susan Brafford's agreeing to type it. Esther Floyd, Virginia Cherry, Dr. Walter Gray, and Dr. John Blair are also thanked for their support along the way.

Thanks also go to my friends and family who have understood the pressure and were there for me. Patsy Boone, Emily Filippi, Sally Avery, William Baker, E. C. Land, and Lee Browder gave me encouragement.

My 1997 Summer School Government class always had words of support and encouragement. My cousins, Martha Russ and Margaret Hunnicutt, called me almost daily to check on the work. Most especially, I want to thank my brother, Morgan, who always challenged me to do my best.

CAST OF KEY CHARACTERS

GovernorDouglas Wilder

State Senate

Sponsor of SENATE BILL 150Thomas Michie

Sponsor of SENATE BILL 440 Granger Macfarlane

House of Delegates

Speaker A. L. Philpott

Sponsor of HOUSE BILL 1055.Richard Cranwell

Sponsor of HOUSE BILL 562 Bernard Cohen

Lobbyists

The Tobacco InstituteAnthony Troy

**The Tri-Council AgencyLinda McMinimy
(American Heart Association, American Cancer Society, and
American Lung Association)**

Group to Alleviate Smoking in Public. Anne Donley

TRACKING OF CLEAN INDOOR AIR LEGISLATION 1985-1990

1985 - Bill introduced by Bernard Cohen to prohibit smoking at DMV. DMV promised to correct the situation, but their attempts were in vain. Policy was rescinded.

1988 - H.B. 430 and S.B. 130 - Comprehensive Indoor Clean Air Bills introduced by Delegate Cohen and Senator Michie. Carried over to 1989.

1989 - H.B. 430 and S.B. 130 - defeated with agreement that opposing sides would meet in the summer to discuss clean air legislation.

1990 - S.B. 150 and H.B. 562 (Cohen and Michie) were identical Comprehensive Indoor Clean Air Bills.

- S.B. 150 introduced January 18. Referred to Senate Committee on Education and Health. Reported to Senate Floor January 25 and passed by the Senate on January 31. Sent to the House General Laws Committee. Passed with amendment in nature of a substitute. Passed in House March 9. Passed in Senate on same day. Signed by the Governor on April 18.

- H.B. 562 introduced January 22. Referred to House Committee on General Laws. Reported to House floor February 10 and struck from calendar on February 12.

- H.B. 1055 introduced January 23. Referred to House Committee on Counties, Cities, and Towns. Reported to House floor February 9 and passed House February 13. Sent to Senate February 13. Passed Senate with amendment in nature of a substitute. Passed in Senate March 9. Passed in the House on the same day. Signed by the Governor on April 18.

- S.B. 440 introduced by Senator Macfarlane on January 23. Referred to Senate Committee on Local Government. Reported to Senate floor January 30 and defeated on February 5.

NOTE: H.B. 1055 and S.B. 150 became identical and were signed by Governor Wilder, and became law on July 1, 1990.

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BIOGRAPHY

Louise Ryland Thornton is a high school Government teacher and the Social Studies Department Head in the Prince George County School System where she has taught for thirty-one years. She received her Bachelor of Arts in History in 1966, and her Master of Education in 1968, from the College of William and Mary. She is a member of Delta Kappa Gamma Teaching Society, was active in the Tri-City Republican Women's Club, and was a member of the Sussex County Republican Committee. In 1980, she attended the Republican Presidential Convention as an alternate Delegate. She is a member of Saint Mark's United Methodist Church in Petersburg, Virginia.

INTRODUCTION

In 1989, Virginia was one of only seven states which did not have a restricted smoking policy in public places (SMOKING AND HEALTH: A NATIONAL STATUS REPORT 68) (Appendix Item 1). This was not surprising in light of the historical importance of tobacco in the state's economy.

Since John Rolfe introduced the growing of tobacco into the life of the new colony, Virginia's economy has been based, in part, upon the tobacco leaf. Though the tobacco industry no longer dominates the economy as it once did, in the late 1980's it contributed much revenue and many jobs. Tobacco still led others as Virginia's most valuable cash crop (VIRGINIA STATISTICAL ABSTRACT 1). In 1986, 13,200 people worked in tobacco factories (VIRGINIA STATISTICAL ABSTRACT 562). In 1989, tobacco accounted for 25% of the state's crop income and eight percent of its total farm income. Over 10,000 farmers grew tobacco and six percent of the state's total work force was engaged in either the growing of tobacco or the manufacturing and selling of tobacco products (RICHMOND TIMES-DISPATCH February 6, 1990). Yet in 1990, the VIRGINIA INDOOR

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CLEAN AIR ACT (Virginia Code 15.1-291 et. seg. (seg. 1996)) (Appendix Item 2) became law.

Though many forces contributed to the enactment of the VIRGINIA INDOOR CLEAN AIR ACT, the roles of interest groups, especially those of a public interest nature were clearly significant. Throughout the United States public interest groups had been increasing their influence at the state level (Rosenthal 3). The demands of key public interest groups in Virginia could certainly be heard across the state and in the General Assembly. The study of indirect and direct lobbying techniques used by these groups offers an insight into why a restrictive smoking bill passed the General Assembly.

Alan Rosenthal, a professor of Political Science at the Eagleton Institute of Politics, Rutgers University, has written a book, THE THIRD HOUSE, which investigates the importance of lobbyists and lobbying in state legislatures (12-15). Specifically, the sections in the book on the role of public interest groups offer a framework of analysis to be used when examining the tactics used by Virginia public interest groups with regard to the VIRGINIA INDOOR CLEAN

AIR ACT. Before applying the Rosenthal framework, the study will first discuss the methodology to be used in the case study and the legislative route taken by the CLEAN AIR BILL.

METHODOLOGY

The research actually began in 1990, when Senator Thomas Michie was interviewed about the passage of the VIRGINIA INDOOR CLEAN AIR ACT. Michie had a fresh memory of the events surrounding the passage of this law since he was questioned the same year the law passed. Other interviews were not conducted until 1997. Interviewing people seven years after an event has occurred gives more opportunity for memories and perceptions of events to be influenced by the passing of time. Therefore, these recollections must be viewed with some tentativeness.

Unlike Congress, the Virginia General Assembly, does not keep detailed records of what is stated in committee meetings or on the floor of the General Assembly. Sometimes this lack of total written record can hinder a researcher's ability to accurately perceive and consequently portray a series of events. However, with reference to this particular case study, two of the key lobbyists had much written

information regarding the actions of their groups. Even so, some disparity among the recollections of the players with regard to certain events was found. Usually the disparity concerned dates: the major dates which were needed for a correct discussion of this case study were verified through the SENATE JOURNAL and the HOUSE JOURNAL.

Primary source materials included legal documents, interviews, the HOUSE JOURNAL, the SENATE JOURNAL, and the publications of interest groups. Newspapers provided secondary source information. Because it is the capital newspaper, The RICHMOND TIMES-DISPATCH had in-depth coverage of the passing of the INDOOR CLEAN AIR BILL. At the suggestion of Dr. William Swinford, the WASHINGTON POST was also consulted.

Interviews provided so much information and insight that they really became an integral part of the research for this case study. Senator Michie mentioned two key groups who pushed for clean air legislation: GASP (Group to Alleviate Smoking in Public) and the Tri-Council Agency (a combination of the American Heart Association, American Cancer Society, and American Lung

Association). Interviews were held with the key lobbyists for these organizations: Anne Donley represented GASP and Linda McMinimy represented the Tri-Council Agency. Anthony Troy, former Attorney General and noted lobbyist for The Tobacco Institute, was interviewed to get his perception of the direct lobbying activities used by his group and the public interest groups. Delegate Bernard Cohen, sponsor of HOUSE BILL 562, was interviewed because of his sponsorship of the 1990 CLEAN AIR BILL, as well as of the clean air bills of the late 1980's. Delegate Jay DeBoer was contacted because he represented a major tobacco area.

RICHMOND TIMES-DISPATCH state reporter Jeff Schapiro did not provide as much information in a short interview as he did in his articles. He admitted that without reviewing his writings from the 1990 Assembly, his memory of details was somewhat hazy. Though the interviewees were not always asked identical questions, all questions focused primarily on three areas: the passage of the VIRGINIA INDOOR CLEAN AIR ACT; the techniques used by lobbying groups, especially the public interest groups; and the identification of key interest groups and lobbyists.

THE LAW

An understanding of the CLEAN AIR BILL requires a review of its course through the General Assembly. The first bill to restrict smoking in public places was introduced in 1985, when Delegate Bernard Cohen sponsored a bill to make all Division of Motor Vehicle (DMV) Offices smoke free (HOUSE JOURNAL 1985 Vol. I 87). For Cohen, this bill was very personal; he was allergic to smoke and had encountered a smoke filled waiting room when he visited a local DMV office (Anne Donley). The tobacco lobby was quite upset about even the remote possibility of the bill's passing. It was withdrawn after DMV agreed to put up "No Smoking" signs in its offices throughout the state. Apparently this effort was no more pleasing to the tobacco industry than Cohen's bill had been. The industry persuaded the Governor's Office to reverse the DMV policy and the "No Smoking" signs were removed (Michie).

During the 1988 session, HOUSE BILL 430, THE COMPREHENSIVE CLEAN INDOOR AIR BILL, was introduced by Delegate Cohen (HOUSE JOURNAL 1988 Vol. I 106). This bill had been modeled after a Minnesota law which placed many restrictions

on smoking in public places (Donley). The bill was referred to the Committee on Health, Welfare, and Institutions (HOUSE JOURNAL 1988 Vol. I 106). It was then reported back to the House floor and referred to the Committee on General Laws. This committee decided to carry it over into the 1989 session (HOUSE JOURNAL 1988 Vol. II 1933). Carrying a bill over means that action is not taken on a bill until the next session of the General Assembly. Bills may only be carried over from even years to odd years (Austin 147). In theory, this delay gives committees more time to study the bill; in reality, the measure is used as a way of killing bills. In 1989, the legislature defeated 85% of the carry over bills (Austin 147).

According to a MASON-DIXON poll taken in 1988, most Virginians wanted some form of clean air legislation for public buildings; yet the bill which Senator Michie introduced in 1989, did not ultimately pass the State Senate (THE LEGISLATIVE RECORD 5). This bill required the following places to be smoke free: hospital emergency rooms, elevators, school buses, and polling places. It passed on the first vote in the Senate; however it failed by one vote when it was reconsidered. The floor vote was: Yeas - 19, Nays - 20

(SENATE JOURNAL 1989 Vol. I 191). Reconsideration of a bill is defined as revoting on that bill (Donley). In the House of Delegates the division over its passage was deep. Since neither side was sure of victory, Delegate Cohen and tobacco lobbyist Anthony Troy made an agreement that anti-smoking and tobacco people would work together before the 1990 session to produce a compromise CLEAN AIR ACT (Donley). According to Anne Donley, former Executive Director of GASP, this agreement was reached as the men rode an elevator to the House of Delegates. Before the vote was taken in the House Committee on General Laws, the committee members became aware of the agreement (McMinimy); consequently the House committee failed to pass the bill (HOUSE JOURNAL 1989 Vol. II 1650). Though the two sides met during the summer of 1989, no compromise agreement was reached (see "Analysis").

At the 1990 session, both Cohen and Michie introduced CLEAN AIR BILLS. These bills, SENATE BILL 150 and HOUSE BILL 562 (Appendix Items 3 and 4), were identical because the two men had been working closely together to pass a comprehensive CLEAN AIR ACT. These bills called for "No Smoking" areas in many public

places: public vehicles, auditoriums, theaters, retail stores with at least 20,000 square feet, and buildings leased or owned by the state. They did not allow smoking in elevators, school buses, rest rooms, hospitals, emergency rooms, polling rooms, city or county health units, or on public means of mass transportation, the last of which was subject to intrastate policies (SENATE BILL 150 and HOUSE BILL 562). These bills had a \$50 fine for violators and contained a minimum standard and regulation section. This minimum standard allowed localities to adopt ordinances which could exceed the minimum standard set forth in the Assembly bill. It would be up to the State Board of Health to enforce this legislation (SENATE BILL 150 and HOUSE BILL 562).

The Michie bill was sent to the Senate Committee on Education and Health. It was advantageous to Michie to have his bill heard in this committee since he was a member. The bill was approved in committee and on the floor of the Senate. The vote in the Senate was: Yeas - 25, Nays - 14 (SENATE JOURNAL 1990 Vol. I 296). By January 31, it was on its way to the House of Delegates (SENATE JOURNAL 1990 Vol. I 296).

Senator Granger Macfarlane had also introduced a bill to limit smoking in public places. This bill, SENATE BILL 440 (Appendix Item 5), was referred to the Committee on Local Government (SENATE JOURNAL 1990 Vol. I 197). Senator Michie was very worried about this bill. He believed the Committee on Local Government to be more favorable to the tobacco industry and was therefore worried about what would happen to his bill if the Macfarlane bill passed the Senate (Michie). Michie saw the Macfarlane bill as the weaker bill because it specified a \$25 civil penalty for persons who knowingly smoked in protected public breathing spaces and had a preemption clause which would not allow the localities to differ from the state law (SENATE BILL 440). In contrast, the Michie bill did not have a preemption clause and it required a \$50 penalty for violators (SENATE BILL 150). By the time it left the committee, the Macfarlane bill was being labeled the tobacco industry bill (McMinimy). On February 5, the Senate narrowly defeated this bill with the following vote: Yeas - 18, Nays - 21 (SENATE JOURNAL 1990 Vol. I 339).

Over in the House of Delegates, the Cohen bill would face more

opposition than the Michie bill had faced in the Senate. The tobacco influence was felt more in the House. A key reason was that the Speaker, A. L. Philpott, was a friend of the tobacco industry. Philpott was a smoker himself; he even smoked in the capitol elevators (Donley).

Speaker Philpott sent Delegate Cohen's bill to the General Laws Committee. It passed the committee, but by the time it was ready for consideration on the House floor, another restrictive smoking bill had made it out of committee. This bill, HOUSE BILL 1055 (Appendix Item 6), was sponsored by Delegate Richard Cranwell. Since the Cranwell bill reached the floor first, it was due to be discussed before the Cohen bill. Like the Macfarlane bill, the Cranwell bill had a preemption clause and there was no enforcement provision (HOUSE BILL 1055). Cohen was naturally very worried about the Cranwell bill. Cohen asked Cranwell to agree to have both bills discussed on the same day and he agreed. Cranwell had the reputation of being a coalition builder in the House, while Cohen did not. Many legislators owed Cranwell votes and that could not be said of Cohen (Donley).

Cohen's only hope of passing his bill was to use a parliamentary maneuver in which he would make an amendment on the floor, substituting his bill for Cranwell's. Cohen rose to make such an amendment, prefacing his remarks with the comment that only his bill had the support of three major health organizations: American Heart Association, American Cancer Society, and American Lung Association. Cranwell then asked to be recognized. He read a letter, which he had received from the health organizations listed above, in which they supported his bill rather than the Cohen bill. After this revelation, Cohen's proposed amendment was defeated (Donley, THE LEGISLATIVE RECORD 8). The Cranwell bill passed the House with the following vote: Yeas - 92, Nays - 5 (HOUSE JOURNAL 1990 Vol. I 887). Speaker Philpott did not allow the Cohen bill to come to a floor vote (Donley, THE LEGISLATIVE RECORD 8).

In the House, the Michie bill was in the House Counties, Cities, and Towns Committee on which Cranwell served (HOUSE JOURNAL 1990 Vol. I 1216). The Cranwell bill was in the Senate's Education and Health Committee of which Michie was a member (SENATE JOURNAL 1990 Vol. I 843). In committee, a bill can be amended; a

committee member can change a bill entirely by proposing an amendment in nature of a substitute. Both Senator Michie and Delegate Cranwell proposed amendments in nature of substitute thereby causing the Michie bill to become the Cranwell bill in the House Committee and the Cranwell bill to become the Michie bill in the Senate (Donley, THE LEGISLATIVE RECORD 9). "The press and public spent many confusing hours trying to catch up and understand. Each body passed the respective transformed bills, essentially the same bills, but with different numbers and names . . ." (Donley, THE LEGISLATIVE RECORD 9).

A compromise had to be negotiated. Cranwell called Michie and Cohen to meet and discuss the legislation. At this meeting, final plans were made for a compromise bill. The civil penalty was reduced from \$50 in the Michie to \$25 in the Cranwell bill. A Model State Ordinance was set forth with the clause that localities already having a provision exceeding this ordinance were allowed to keep it. As for the private workplace, employers were allowed to regulate smoking under specific circumstances. For example, building managers could have designated smoking areas; however these areas

were not to be so large as to preclude non-smoking areas (VIRGINIA INDOOR CLEAN AIR ACT). Public buildings with 15,000 square feet or more were to have designated "No Smoking" areas. This act was to be placed under the Local Government Code (General Assembly 1990 reconvened session).

The compromise bill was considered and passed by both chambers. The vote in the House of Delegates was: Yeas - 77, Nays - 22 (HOUSE JOURNAL 1990 Vol. II 1657). In the Senate the vote was: Yeas - 33, Nays - 7 (SENATE JOURNAL 1990 Vol. I 1163). The bill was sent to Governor Wilder, who had endorsed clean air legislation in his 1989 election campaign (McMinimy). On April 9, 1990, he sent a letter to the Senate indicating support for SENATE BILL 150 with the following amendment added to Section 15.1-291.2(A), line 4, after "or town":

The provisions of this chapter shall not apply to office work or other areas which are not entered by the general public in the normal course of business or use of the premises (SENATE JOURNAL 1990 Vol. II 158).

The amendment was approved by the General Assembly and added to the bill. Governor Wilder signed the bill on April 18, 1990

(RICHMOND TIMES-DISPATCH April 19, 1990).

FRAMEWORK OF ANALYSIS

Alan Rosenthal is considered the leading authority on interest groups and lobbying in state legislatures. His analysis on state interest groups, as presented in THE THIRD HOUSE, therefore offers the best framework for use when analyzing specific groups in the state legislative process. Rosenthal describes the types of interest groups and lobbyists operating on the state level. He comments on the types of issues which are of concern to the various groups, the importance of coalition building, and the techniques involved in indirect and direct lobbying (14-15). In order to effect a change in policy, lobbyists had to influence not only the legislators, but also the public. GASP and the Tri-Council Agency represented the most prominent public interest groups involved in the lobbying effort analyzed here (Donley). Their role in this process justifies a thorough review of Rosenthal's analysis of public and cause interest groups as they build coalitions and use indirect and direct lobbying techniques to generate support for their cause.

During deliberations on the VIRGINIA INDOOR CLEAN AIR ACT,

the public interest and cause lobbyists used various techniques to persuade, give information, and publicize their views. They wanted a traditionally pro-tobacco legislature to pass a restrictive indoor smoking policy.

The terms 'contract lobbyist' and 'cause lobbyist' need to be defined in order to better understand the lobbying done by the public interest and cause groups who supported clean air legislation in Virginia. These terms form a portion of Rosenthal's classification of lobbyists. According to Rosenthal, contract lobbyists are hired by organizations and consequently represent more than one client (21) while cause lobbyists represent public interest as well as single interest groups (22). The groups represented by the cause lobbyists have ideological rather than material or commercial concerns. These lobbyists may represent more traditional public interest groups, such as The League of Women Voters, or they may represent groups which promote controversial beliefs. Controversial groups may range from the leftist National Organization of Women to the right, represented by Christian Action Council (22-23).

Rosenthal indicates that state legislators are faced with making

major policy decisions on matters such as educational reform, interstate banking, and economic development, which find their proponents and opponents in the legislature. Environmental issues have also become a part of the policy decisions legislators must face. Other issues, such as the death penalty, abortion, and gun control involve emotional and moral questions. These issues bring out groups which range from left to right political ideologies (Rosenthal 62-63). Groups which become involved in emotional issues could very well be classified as public interest or cause groups.

Though coalition building is important for many interest groups, it is essential for the public interest and cause groups who advocate a controversial policy change in a hostile state legislature. The greater the support for the policy, the more likely the legislators will see the need for the policy change (Rosenthal 150). According to Rosenthal, "a coalition is a loose collection of organizations that cooperate to accomplish common objectives" (150). The value of coalition building lies in its influence on legislators; generally, the more groups in a coalition, the more likely legislators can be persuaded to a particular point of view (Rosenthal 150). Sometimes

a coalition is difficult to achieve because associations and groups who share common interests may not be united as to the specific goals they wish to see achieved (Rosenthal 151). Rosenthal cites the smoking issue as one which makes coalition building easier. It divides groups into two camps: the health groups who favor restraints on public smoking; and the business groups who have a vested interest in the sale of tobacco and, who, therefore do not want many restrictions (Rosenthal 152). The major problem mentioned by Rosenthal, which exists after a coalition has been formed, concerns its ability to stay together throughout the legislative process. He cites many reasons for the problems which occur within a coalition. These include the following: groups may be at cross purposes as to the specifics of the legislation; some groups may be more willing to compromise than others; and some groups may try to work independently to get agreements from the legislators (154). The potential exists for groups like GASP, a single issue cause group, and the Tri-Council Agency, a collection of public interest groups with broader policy, to pull apart before the legislative process is completed.

Rosenthal defines indirect lobbying as that "which takes place on the outside to support the efforts inside" (149). Public interest and cause groups find that indirect methods can be very effective because these groups are so often not inclined to compromise (Rosenthal 175). Through direct lobbying, these groups are able to generate support, as will be seen later, for their policies. These groups make use of grass-roots campaigning. The purpose of which is to show state legislators that local citizens have concerns and opinions on issues. Letter writing and phone calling still represent the techniques most commonly used by grass-roots campaigners (Rosenthal 160). In fact, one cause lobbyist from California said in reference to the legislators: "It doesn't take many letters to get their attention" (Rosenthal 160). Groups also make use of door-to-door canvassing as another means of getting support from the public. Having people sign petitions or post cards to send to legislators are other tactics employed by public interest groups (Rosenthal 158). Public opinion polls offer another means of showing constituent support for the goals of the interest groups. These polls can be taken either statewide or in a legislator's district (Rosenthal 163).

Another indirect technique which has proven useful to many public interest groups is the use of the media. If, for example, public opinion polling is used, then certainly the media needs to be contacted in order to publicize the poll. Media usage to publicize issues can be effective for those groups who do not have the resources to rely only on direct lobbying at the state house (Rosenthal 168). "The techniques that fall within this domain include newsletters, position papers, brochures, news releases, press conferences, television and radio interviews, . . ." (Rosenthal 168). Rosenthal contends that media featured issues have a better chance of appealing to the voters' emotions (168). Reporters generally show more favoritism to the public interest groups than to the business groups. Even the extreme groups within the public interest lobby receive more media attention than do other groups. Lobbyists for these groups get to know the members of the media and they are always willing to have their messages carried by the media. Cause groups like to use press briefings and, because they have established a friendly relationship with the reporters, they can generally count on some type of media coverage (Rosenthal 169).

Though indirect lobbying provides useful tactics, especially for the cause lobbyists, whose abilities to use inside lobbying may not be strong, direct lobbying is essential if groups want success in the state legislature (Rosenthal 175). Rosenthal defines direct lobbying as " . . . forms of personal persuasion and involvement in the legislative process itself" (175). Direct lobbying involves being present at the state capitol while the legislature is in session. It can also be done before the legislature is actually in session. Lobbyists often contact legislators between sessions (Rosenthal 98). Since public interest and cause groups often advocate changes in policy, they take the offensive role. They need to look for legislators who have power, are reliable, and have an interest in the proposed bill (183). They must find a sponsor who will gladly play an active role in generating support for the bill (Rosenthal 180). Rosenthal states that the lobbyists' main focus must be the standing committee to which a particular bill is referred, for without passage in this committee, the bill will die. The lobbyists therefore have a high degree of interest in trying to steer their bills toward a favorable committee. Groups must provide information to the legislators so

their lobbyists need to be very knowledgeable concerning the issues they represent. They have to communicate the need for the legislation to the legislators. In order to do so, they may have to present research reports to the legislators (Rosenthal 191), testify before committees or have some of the group members do so (Rosenthal 185).

Lobbyists need to show what other states are doing with regard to the proposed policy as well as the differences which will be made in that policy (Rosenthal 195). Because this information provides the justification for a legislative vote (Rosenthal 198), it is essential that the lobbyists recognize its importance. The lobbyists need not wait until the legislative session begins to provide the information. All available information should be given prior to the beginning of the session.

One critical concern for the lobbyists is that of putting the correct spin on their issue. One of the most effective ways of doing that is concentrated in the labeling of the bill. As Rosenthal states "The Clean Indoor Air Bill" maximizes the concern the public has for environmental and health issues more than "The Smoking

Restriction Bill" would (Rosenthal 196). Putting a spin on the issues might also require personalizing the issue. Public cause lobbyists are good at portraying the struggle with the opposition as being that of good v. evil (Rosenthal 197).

Many times the controversial issues need to be negotiated. Cause groups who rely on courting the press and other outside techniques have a more difficult time with compromise than do public interest groups who might be more skilled at playing the inside game. Negotiations occur with members of the state legislatures. If the lobbyists are well respected, they might easily have influence on the negotiation process. If they have angered legislators or have difficulty with compromise, they will probably not be asked to be involved in the compromise process (Rosenthal 201).

ANALYSIS

The legislative process which resulted in the enactment of the VIRGINIA INDOOR CLEAN AIR ACT brought forth many lobbyists and groups who supported a clean air policy. Some groups, like the Virginia Dental Association, the American Association of Retired Persons and the Virginia Pediatric Society were listed as members of

Organizational Friends of Clean Indoor Air (Appendix Item 7). Some members of these groups became members of GASP (Group to Alleviate Smoking in Public), a cause group whose single interest lay in clean air legislation. Its Executive Director, Anne Donley, was one of the major cause lobbyists involved in this issue (Michie). She began the GASP interest group after a conference sponsored by the Action on Smoking and Health. During this conference she attended a seminar which gave information on how to form a local anti-smoking group. Upon her return to the Richmond area, she formed the GASP group and increased membership through phoning people in other associations, like the Virginia Pediatric Society. Dr. Kevin Cooper, a doctor at MCV as well as a health commentator on a local television news show, became a very active member. Betti Prentice, Executive Director of the Pediatric Association, also joined the group. These two members facilitated publication of the GASP agenda to physicians (Donley).

By the late 1980's, the American Heart Association, the American Cancer Society, and the American Lung Association had joined together in order to form a lobbying group known as the Tri-Council

Agency. Previously these groups had belonged to a coalition called the Virginia Inter-Agency Council on Tobacco or Health. They pulled out to form the Tri-Council Agency. This left only two organizations in the coalition: GASP and the Virginia Society for Respiratory Care and caused the Virginia Inter-Agency Council to disband (Donley). The Tri-Council Agency hired contract lobbyists to represent its interests within the state legislature. Two of their main lobbyists were Linda McMinimy and David Bailey (McMinimy).

The tobacco lobby, whose coalition included The Tobacco Institute, Farm Bureau, Hospitality and Travel Association, and the Virginia Food Dealers' Association (Appendix Item 8), was opposed to a clean air bill. One of the chief lobbyists for these opponents of clean air legislation was Anthony Troy, contract lobbyist for The Tobacco Institute (Troy). Troy, a former Attorney General, was a lawyer in the Richmond law firm Mayes and Valentine (Whelan 171).

The issue of restricting smoking in public places certainly fit the term Rosenthal used to describe certain items on state legislative agendas: 'hot issues'. These issues are charged with emotion and involve much disagreement between the opposing factions

(Rosenthal 63). Clearly the clean air issue had brought arguments and disagreements for many years and quite a bit of research had been compiled on the issue. The Surgeon General's Report, released in 1964, concluded, from a survey of the data available, that cigarette smoking was a cause of lung and laryngeal cancer in men. It was also a probable cause of lung cancer in women and a cause of chronic bronchitis (PUBLIC HEALTH SERVICES III).

In 1972, for the first time, the Surgeon General's Report mentioned the concern about environmental tobacco smoke (PUBLIC HEALTH SERVICES 442). Passive smoking, the inhaling of another person's smoke, became a part of the nation's vocabulary (C. Everett Koop, M.D., 110). By 1986, the Surgeon General's Report determined that involuntary smoking could cause a disease like lung cancer in the nonsmoker. In this same report, two other conclusions were reached: children of smokers have more respiratory infections than children of nonsmokers; and separating nonsmokers from smokers may not eliminate the risk for the nonsmokers as long as the smoke is filtered through a common ventilation system (A REPORT OF THE SURGEON GENERAL 1986 VII). In 1990, the

preliminary EPA Report on clean air contained information on passive smoke. Its conclusion was that: "second hand smoke is causing 3,800 lung cancer deaths in the United States every year" (Geoffrey Cornley 59). The publication of these reports generated much discussion and concern about the smoking issue.

As has already been stated, the proponents and opponents of a clean air policy had formed coalitions. The various groups, which considered themselves proponents, were somewhat loosely tied together while the opponents, the Tobacco Coalition, were more united because they had been a coalition for a longer time and its interests were tied to keeping smoking in public places (THE LEGISLATIVE RECORD 1-2).

Rosenthal warned of the possibility that coalitions would not remain unified throughout the legislative process (154). Though this did not happen to the tobacco lobby, his warning became true for the groups supporting clean air. Those in favor of a clean air policy had the support of many interest groups. GASP and the Tri-Council Agency were the most active groups in lobbying the public and legislators (McMinimy). GASP represented a single issue cause group

while the Tri-Agency represented three health associations, who were concerned with a broader range of health issues (McMinimy). The Tri-Agency was larger than the GASP group and had volunteers all over the state. Among these volunteers were physicians who actively supported the agency. GASP, the smaller group, represented a single issue movement.

A certain tension existed between these two groups. GASP seemed to mistrust the Tri-Agency (McMinimy). The current Executive Director of GASP, Oliver Hilton, who had been a member of GASP during the late 1980's and early 1990's, referred to the Tri-Agency as naive. The Tri-Agency did not like the tactics GASP used. For example, the agency did not support GASP when it wrote Letters to the Editor in which legislators were accused of lying. The Tri-Agency believed this negative approach would bring about an adverse reaction from the legislators (McMinimy).

Yet, when pushing a measure as controversial as a smoking regulation in a tobacco producing state, it is helpful to have a cause group within the coalition. The cause group brings attention to the issue (McMinimy). As McMinimy stated in an interview, "Having

GASP out there pushed people in a certain direction. If you didn't have those outside groups saying we want only the best bill, then people might not be moved in that direction". Rosenthal has suggested that cause groups receive the attention of the press and thereby have their issues publicized. GASP's effective use of the press in its lobbying provided an example of the Rosenthal framework in action (Rosenthal 169).

During the legislative process of the CLEAN AIR ACT, GASP became very upset with the Tri-Agency over its initial support of the Granger Macfarlane bill (SENATE BILL 440), for it felt the bill did not contain strong enough restrictive smoking measures. Even after the Tri-Agency withdrew its support of the Macfarlane bill, GASP did not trust the group (Hilton). The statements and actions of the Tri-Agency and GASP justified Rosenthal's warning about the sometimes fragile coalition of groups. Yet, whatever their differences, both of these groups worked long and hard to publicize the need for some type of clean air legislation. However different these groups were, they were intent upon changing the status quo. They wanted restrictions placed on public smoking as well as protection for the

nonsmoker.

The public interest and cause groups used indirect lobbying techniques as described in the Rosenthal framework. Rosenthal defines indirect lobbying as that which occurs outside the legislature to support the efforts made inside the legislature (149). The Clean Air Coalition recognized the value of building momentum at the grass-roots level. In the 1980's the General Assembly began to feel the effects of grass-roots campaigning. This type of campaigning helped to block a movement which would have allowed uranium mining in the state. Water pollution problems also received the attention of grass-roots mobilization. The Chesapeake Bay Foundation and other public interest groups joined forces to help persuade The General Assembly to ban use of phosphates in laundry detergents (Whelan 178). Therefore, when the Clean Air Coalition began building momentum at the grass-roots level, it was following a trend which had previously been set.

In 1987, GASP helped organize a petition drive all over the state. This was carried out through GASP's solicitation of volunteers from other organizations like the American Cancer Society and the

Virginia Society for Respiratory Care to canvass malls, county and city festivals in order to obtain signatures on a petition (Donley). The statement on the petition read as follows: "We want Virginia state laws to restrict public smoking in enclosed buildings and public conveyances." (VIRGINIA GASP). There was a GASP volunteer in Winchester who obtained nearly 1,000 signatures. In Richmond, some volunteers circulated the petition at the Carytown Watermelon Festival. A member of GASP had a store there and the petition was set up outside his establishment. GASP considered the petition drive successful until the tobacco people showed up at the General Assembly with more than four times as many signatures on their petitions. It was at this time GASP realized it would have to employ other techniques (Donley).

In 1989, a volunteer post card drive, during which post cards were taken to the local county fairs to be signed by voters and sent to the appropriate delegate or senator, was begun. The message on the cards requested the passing of clean air legislation. Though many people signed the cards, there were some who did not know the names of their representatives. GASP volunteers indicated to the

voters that the representatives' names would be looked up and the cards would be sent. GASP chose not to go to the State Fair because there were so many tobacco exhibits they could not see any advantage their presence might provide (Donley).

The Tri-Agency and the Virginia Pediatric Society were heavily involved in mobilizing their members through phone calls for a letter writing campaign which targeted all members of the state legislature. These letters focused on the need to protect the health of the community and gave information on the negative effects of second hand smoke (Donley).

Rosenthal stresses the need for cause groups to make use of the media, especially if they do not have the resources to rely only on direct lobbying at the state house (168). He also stresses the tendency for the press to favor public interest concerns, and clean air legislation was viewed as a public interest concern. Donley called members of the press whenever she felt the clean air people had something to publicize. For example, in 1988, Donley, Michie, and Cohen decided to have a smoke free press conference in order to announce the two legislators who would be introducing clean air

bills in the 1988 session (Donley).

Even before Anne Donley formed GASP, she had tried to find ways to publicize the need for clean air. As soon as GASP was formed, Donley began generating a newsletter and circulating brochures. The most dramatic of these had a picture of the state on the front and underneath the picture was the phrase: "State Laws Protecting Nonsmokers in Virginia". When the brochure was opened, there was a page, blank, with the exception of the following sentences: "Want to change the picture? Join Virginia GASP". On the back was a reply coupon which explained the purpose of GASP and offered information for individuals wishing to join (STATE LAWS PROTECTING NONSMOKERS IN VIRGINIA). Since many members of GASP were in the medical field, this brochure soon found its way into doctors' offices (Donley). GASP also prepared a position paper called TOBACCO IS A GATEWAY DRUG in 1988 (Appendix Item 9), which was published by the Medical Society of Virginia in its journal (Donley).

One of the most effective media uses made by GASP came in the

summer of 1989. As indicated in the "law" section, proponents and opponents of clean air were scheduled to meet in order to discuss compromise legislation. The meetings were scheduled in the law offices of Mayes and Valentine and the participants included Michie, Cohen, Troy, and Donley. The established ground rules included the following: "no one would talk to the press about the content of the meetings while they were in progress as requested by the tobacco industry" (Donley, THE LEGISLATIVE RECORD 5). However, Donley had alerted members of the press about the first meeting and the time and place it would be held. Even though reporters knew they could not attend the meeting, they still came to Mayes and Valentine. After the series of meetings had concluded, Donley issued a press release which angered Anthony Troy, who complained that the ground rules had been broken. As Donley saw it, there was no problem because she had not spoken to the press until after the meetings were over (Donley) (Appendix Item 10).

By 1990, much publicity had been generated and more organizations had joined the clean air coalition. The Virginia PTA issued a resolution supporting clean air legislation (Donley). The

Tri-Agency sponsored a statewide public opinion poll and in 1989, the results showed a majority of Virginians were in favor of smoking restrictions in public places (McMinimy). In the same year, the results of a MASON-DIXON POLL and a RICHMOND NEWS LEADER POLL, showed similar findings (THE LEGISLATIVE RECORD 5). The MASON-DIXON POLL, during which 831 Virginians were questioned, showed 78% of those polled were in support of a statewide ban on smoking in elevators, hospital emergency rooms, and school buses while 61% wanted laws which would regulate smoking in public areas. The NEWS LEADER POLL was taken by Media General Research, Inc. and showed 72% of those in the Greater Richmond area wanted a state law restricting smoking. Some legislators took polls which were not based on random sampling, but rather on questionnaires sent to voters. Delegate Robert Tata found that 70% of those responding in his district favored clean air (Hilton). Delegate Bill Axelle of Henrico found 85% of his district was in favor of a statewide ban on smoking (Donley).

Grass-roots support, along with the indirect lobbying techniques

discussed above served to alert the members of the General Assembly that there was statewide support for a clean air bill. Without the polls, letters, and the favorable media attention, the legislators would not have known just how important clean air was to Virginians. Direct lobbying would not have been enough to persuade the legislators on this particular issue. Obviously Rosenthal was right when he observed that these techniques "can be a potent force" (166).

As Rosenthal stated in his framework, direct lobbying techniques must be used if a group is to achieve legislative success (175). Both the Tobacco Coalition and the clean air groups used direct lobbying at the 1990 General Assembly. Since the Tobacco Coalition was endeavoring to minimize changes in public smoking policy, it took a defensive position. The GASP and Tri-Agency groups took the offensive position of trying to bring about policy change. According to Rosenthal, both groups would make use of different strategies (178-181).

An offensive strategy involves finding the proper person to sponsor the bill. Normally, groups seek out party leaders or

committee chairmen. As Rosenthal states, the interest group needs the support of the chairman of the committee to which a bill is referred because this is the person who has tremendous influence on whether or not the bill is successful in the committee (184-185). In this case, finding a party leader to support a restricted smoking bill would be an impossible task. Though this bill did not divide Republicans against Democrats as much as it divided areas of the state, most of the party leaders seemed to be in support of the Tobacco Coalition (DeBoer). According to Anne Donley, party leaders like Philpott, who were from tobacco dependent areas, had traditionally been supporters of the tobacco industry. Because of his support for the tobacco industry, Speaker Philpott usually referred clean air bills to unfriendly committees (Donley).

However, in 1990, the restricted smoking groups had their sponsors in both the Senate and House. They were the men who had been involved in the fight for clean air in 1988. Prior to the 1988 session, GASP sent out a questionnaire to the legislators to find out who would sponsor a clean air bill. Delegate Bernard Cohen agreed to sponsor such a bill. He and Anne Donley, Executive Director of

GASP, asked Thomas Michie to sponsor the bill in the Senate (Cohen). Michie said he really did not know much about the bill, but was willing to sponsor it (Michie). "I got involved just that casually. That's not unusual for a member of the General Assembly. Then, I got more interested" (Michie). So, it would seem that GASP had as sponsors, Bernard Cohen, a person who was very committed to clean air legislation and Thomas Michie, one who initially did not have a strong interest. During the legislative process, Michie became very committed to the clean air legislation. This was evidenced by Linda McMinimy's statement, "Michie had a backbone of steel, and that was what was needed".

Michie had 16 co-patrons on his bill, which showed how strong the support of the bill was in the Senate (RICHMOND TIMES-DISPATCH January 18, 1990). One of the co-patrons was Hunter Andrews, Senator and Majority Leader from the Tidewater area (SENATE BILL 150). The Tidewater area was fairly receptive to a clean air bill, as were northern Virginia and all suburbs except Henrico and Chesterfield (DeBoer).

Population shifts have brought changes to the state of Virginia.

In earlier times, the rural communities had a strong impact on the legislative agenda. However, by 1990, the population had shifted to the suburbs and cities. For example, northern Virginia had more than 25% of the state vote and Fairfax County constituted approximately 15% of that vote. The urban corridor had more than 60% of the state vote. Rural Virginia now has only about 33% of the statewide vote (Sabato 138-40). This change is certainly reflected in many of the General Assembly's votes including that for clean air.

Michie met one of Rosenthal's identified major requirements for successful legislation in that his bill was referred to, and passed by a favorable committee (Michie). Cohen's bill passed its committee in the House of Delegates, but was unsuccessful on the floor (Michie). (See "Law" section above)

During the legislative process of the clean air bills, the public interest and cause groups were heavily involved in lobbying at the state capitol. Some of the direct lobbying techniques involved testimony before committee, and issuing position papers to members of the legislature. Many persons belonging to the various organizations supporting clean air, including the GASP members

Anne Donley, Dr. Kevin Cooper, Lynne Cooper, and Betti Prentice, Executive Director of the Pediatric Association testified before Senate and House Committees. Citizens from across the state volunteered to come to Richmond to give testimony. Some came with prepared statements while others spoke extemporaneously. Lobbyists like Linda McMinimy and David Bailey attended committee meetings to track what was happening (McMinimy). The message was clear: Virginia needed a clean air act (Donley).

Rosenthal cites the necessity of lobbyists providing legislators with information (190). Not only did the lobbyists carry this out through committee testimony, but they also supplied the legislators with position papers which had been prepared by GASP and the Tri-Agency. These papers focused on the health issues surrounding second hand smoke and the economic issues which are involved with tobacco related illnesses. The lobbyists gave legislators the following statistics:

- 10,000 deaths from first hand tobacco use in Virginia annually.**
- 1,000 deaths from second hand smoking in Virginia annually.**
- \$1.2 billion in health care and death costs to**

**Virginians annually.
(GASP THE ECONOMICS OF TOBACCO
RELATED ILLNESSES IN VIRGINIA)**

Indirect lobbying techniques were still being used during the 1990 session to keep the clean air issue alive and to show the legislature the voters' desire for clean air legislation. Letters to the Editor continued to appear in newspapers across the state. Some of these letters showed a division in the clean air coalition. Kevin Cooper, in a letter to the RICHMOND TIMES-DISPATCH on February 26, 1990, advocated the enactment of Senator Michie's bill rather than that of Delegate Cranwell. Cooper, who was a GASP member, represented the feeling of that cause group: Cranwell's bill was too weak (RICHMOND TIMES-DISPATCH February 26, 1990). During the same time frame, the Tri-Agency had sent Cranwell a letter giving its support to his bill. Cohen was unaware of the Tri-Agency's change until the public reading of the letter in the House of Delegates by Cranwell (THE LEGISLATIVE RECORD 8). In spite of this discrepancy, the clean air groups continued to use the media.

GASP provided press releases, many of which focused on the Cranwell bill and Anthony Troy's role in its preparation. In a news

release dated February 19,1990, the following note appeared:

While Cranwell and Anthony Troy, Tobacco Institute lobbyist, deny helping each other with this bill, an AP reporter has gone above Troy's head and straight to his tobacco headquarters and quotes Tom Lauria, Tobacco Institute in Washington, D.C., as saying the weaker bill was "drafted at least in part by tobacco interests". (GASP News Release February 19, 1990)

THE DAILY PRESS had reported this account on Sunday, February 18, 1990.

Another example of an indirect lobbying technique was when the clean air supporters held a "Lobby Day" on Martin Luther King's birthday. Since this was a state holiday, it was felt more people would be able to attend. The Lobby Day was an excellent example of a grass-roots technique and how indirect lobbying can compliment direct lobbying methods. Rosenthal gives several examples of groups who used these types of days to show support (162). Both the Tri-Agency and GASP worked hard to contact people from all parts of the state and encourage them to come to Richmond for the "Lobby Day". Those who were not able to come were encouraged to call or write their legislators, encouraging them to pass clean air

legislation (Donley).

In an interview on July 2, 1997, Anthony Troy stated that he had turned to Richard Cranwell to write a clean air bill after the Macfarlane bill had been killed on the floor of the Senate. Troy noted that even though Cranwell was a friend of the tobacco interests, he was also noted "for his ability to grovel with complex issues and find the middle ground" (Troy).

As indicated in the "Law" section, both sides knew a compromise had to be enacted once the Michie bill passed the Senate and the Cranwell bill passed the House. Again, this stage of the legislative process follows the Rosenthal comment: "negotiating is one of the most important phases of the legislative process" (198). The negotiations over the clean air bills did not take place in formal settings. Instead, informal meetings were held among the key players: Cranwell, Cohen, Michie, Troy, and lobbyists for the Tri-Agency (McMinimy). However, the final meeting to work out a compromise bill was attended only by Senator Michie, Delegate Cranwell, and Delegate Cohen. As Senator Michie told lobbyist Anne Donley, "You have done everything you can do, now it is up to

us (legislators)" (Donley). Note that representatives from GASP were not included in these meetings. According to Linda McMinimy and Anthony Troy, by this time, GASP had angered many legislators. Anthony Troy's comment on GASP explained his opinion of the group: "one of the best things we had going for us is GASP. They are so radical. If you are willing to compromise, it is easier to deal with the legislative process" (Troy). Cohen had a very different opinion of GASP and its director, Anne Donley. With reference to her influence, he said, "The CLEAN AIR BILL could not have been passed without her. She's a research mole. She has the skills of the librarian" (Cohen). According to Donley, she would rather see no state law than to see the original Cranwell bill enacted (DAILY PRESS February 18, 1990). Considering this remark, it is understandable that the GASP representatives would not be included in the negotiation process. The exclusion of GASP follows the Rosenthal premise that single issue organizations are sometimes so committed to their point of view that they are unable to accept compromise (41).

The general feeling among the key players was that a compromise

bill could be finalized. Differences were negotiated. In the final bill, there was a provision for a model state ordinance. The civil penalty was set at \$25. Public buildings with 15,000 square feet or more were to have 'no smoking' areas. Finally the act was placed under the local government code (WASHINGTON POST, March 9, 1990).

Anthony Troy made two interesting observations concerning his involvement in the negotiation process. He wanted a civil penalty as opposed to a criminal penalty. If the act did not specify who was to collect the penalty on the local level, then it would have to be collected by the State Comptroller. Because he had been the State Attorney General, Troy knew the process of collection; he knew the State Comptroller did not have the manpower to enforce this law. He saw no need to tell anyone else about this potential problem of enforcement. Troy was also pleased about this act being tied to the local government committee, which was considered more friendly to the tobacco lobby. As Troy stated, "We do not want to fight this fight every year". (Troy) These observations from Anthony Troy support Rosenthal's contention that in order to protect their clients, lobbyists need to master the fine points of negotiation (203). this

includes paying attention to details like the civil penalty versus the criminal penalty.

The clean air groups supported the bill which finally became law. Though they did not want the model state ordinance, they realized that they had accomplished something very significant. Virginia, a tobacco producing state, now had an INDOOR CLEAN AIR ACT. As Donley stated: "It was far better than what we had before. It was far better than what people thought we would get. It was truly a major victory."

The clean air people knew Governor Wilder had been in favor of anti-smoking legislation and were confident of his support. During the 1989 Gubernatorial Race, Wilder had expressed his support for a clean air policy (Donley). However, during the actual legislative session, he played a "wait and see" game (RICHMOND TIMES-DISPATCH January 18, 1990). Though no explanation was given for this "wait and see" position, Wilder eventually signed the bill into law and, as was stated earlier, it became a part of the official code on July 1, 1990 (Virginia Code 15.1-291 et. seg. (supp. 1996)).

CONCLUSION

The purpose of this case study was to compare the techniques used by the public interest and cause groups in the deliberations over clean air legislation to Alan Rosenthal's framework of analysis as laid out in *THE THIRD HOUSE*. The major points which were selected from Rosenthal's framework of analysis for comparison were: the types of groups which are represented at the state level; the types of issues which are debated by the legislators; the coalitions which come together to pass or defeat legislation; the indirect techniques of lobbying; and the direct techniques of lobbying.

From the research, it was determined that several types of lobbyists named by Rosenthal played a part in lobbying against or in favor of clean air bills. The key lobbyists were the cause and contract lobbyists. The clean air issue was controversial and therefore attracted many diverse groups. It was concluded that all groups joined together to form coalitions. The Tobacco Coalition had been in place for some years. The clean air groups worked together, though not in as cooperative a manner as those groups involved in the tobacco lobby. The clean air groups included one

single issue organization: GASP. This group behaved in a manner described by Rosenthal when he wrote of cause groups, in that it did not remain influential throughout the entire process. GASP became mistrustful of the Tri-Council Agency and found it impossible to compromise. The Tri-Council Agency acted in accordance with the Rosenthal framework; it pulled away from GASP and the Michie bill in order to work with a legislator, Granger Macfarlane, who had introduced a bill it thought more likely to pass. Yet it would go back to Michie after it had concluded the Macfarlane bill was a pro-tobacco industry bill.

Indirect lobbying techniques were used by the interest groups. Groups followed the Rosenthal model of seeking out grass-roots supporters in order to publicize their positions and also to have them apply pressure to the legislators. GASP, the cause group, and the Tri-Agency applied much of this pressure. GASP was especially strong in getting the media to focus on the clean air issue and apply pressure on the legislators. Through the use of Letters to the Editors and press interviews, it continued to drive home the point that people supported a clean air policy. GASP truly followed the

Rosenthal framework. It had an issue which was popular and members of the group were accessible to the media.

The techniques of direct lobbying were somewhat different from what the Rosenthal model had suggested in that the proponents of the legislation were challenging the status quo. Prior to the introduction of a clean air bill in 1988, the Tobacco Coalition had never been challenged. With the exception of Senator Hunter Andrews, no major legislative player sponsored or signed on as a patron of either the Cohen or Michie bills. Though Senator Michie got his bill in a favorable Senate committee, Speaker Philpott used parliamentary maneuvering to have Michie's bill face a more hostile committee in the House of Delegates. Though it was not smooth sailing for the clean air proponents, they had an advantage over the tobacco lobby: clean air legislation was popular on the national and state levels. The anti-smoking literature, including the various Surgeon General's Reports had influenced people on the subject of clean air. Therefore, the proponents overcame the problem the offense usually has of "pushing a bill through the legislative process" (Rosenthal 178). The opponents, the tobacco lobby, had the

defensive role. This time the defensive game was harder to play because of the demand that GASP and other proponents had shown for clean air legislation. When the Macfarlane bill failed, it knew the best it could get was some type of compromise bill. Yet Troy and the tobacco lobby were still able to win points in the negotiation process. Their attention to detail and their involvement in the negotiation process would help to keep a model state ordinance in the law and avoid clarifying the agency responsible for its enforcement.

The negotiation process involved in the clean air legislation seemed to follow the course described by Rosenthal. Meetings were informal and the participants who actually met were willing to find a compromise which both sides could accept. The participants drafted a compromise bill which was acceptable to the General Assembly and to the Governor.

The legislative process of the VIRGINIA INDOOR CLEAN AIR ACT provided a good example for use in this case study. Because there was so much publicity surrounding the smoking issue and because Virginia had a tradition of being pro-tobacco, the public interest and cause groups involved were not able to totally comply

with the framework set up by Rosenthal. When concentrating on the indirect lobbying techniques and strategies, Rosenthal's framework was followed very closely. The direct lobbying strategies provided a variation of Rosenthal's framework in that the groups were forced to modify the framework so that someone other than a major player could sponsor the clean air bill in the House and Senate. The clean air lobby groups used the vast majority of the techniques and strategies as they had been set up by Rosenthal. The clean air lobby did not follow the Rosenthal framework when it turned to people who were not considered power players to sponsor the CLEAN AIR BILL. This change would indicate that though Rosenthal's framework sets a standard for lobbying techniques, it is nevertheless adaptable to individual circumstances created by mixing the emotions and morals of the voters with the political climate in which a bill must survive to become a law.

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APPENDIX

1990 RECONVENED SESSION
VIRGINIA ACTS OF ASSEMBLY - CHAPTER 969

REENROLLED

An Act to amend the Code of Virginia by adding in Title 15.1 a chapter numbered 8.1, consisting of sections numbered 15.1-291.1 through 15.1-291.11, establishing the Virginia Indoor Clean Air Act.

[H 1055]

Approved APR 13 1990

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.1 a chapter numbered 8.1, consisting of sections numbered 15.1-291.1 through 15.1-291.11, as follows:

CHAPTER 8.1.

VIRGINIA INDOOR CLEAN AIR ACT.

§ 15.1-291.1. Definitions.—As used in this chapter unless the context requires a different meaning:

"Bar or lounge area" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for instruction of enrolled students, including, but not limited to, any day-care center, nursery school, public or private school, college, university, medical school, law school, or vocational school.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing home, boarding home, adult home, supervised living facility, or ambulatory medical and surgical center.

"Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

"Private work place" means any office or work area which is not open to the public in the normal course of business except by individual invitation.

"Proprietor" means the owner or lessee of the public place, who ultimately controls the activities within the public place. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.

"Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency thereof or any county, city, or town, public conveyance or public vehicle, restaurant, educational facility, hospital, nursing home, other health care facility, library, retail store of 15,000 square feet or more, auditorium, arena, theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Restaurant" means any building, structure, or area, excluding a bar or lounge area as defined in this chapter, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.

"Theater" means any indoor facility or auditorium, open to the public, which is primarily used or designed for the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture, or other similar performance.

§ 15.1-291.2. Statewide regulation of smoking.—A. The Commonwealth or any agency thereof and every county, city, or town shall provide reasonable no-smoking areas, considering the nature of the use and the size of the building, in any building owned or leased by the Commonwealth or any agency thereof or a county, city, or town. The provisions of this chapter shall not apply to office, work or other areas of the Department of Corrections which are not entered by the general public in the normal course of business or use of the premises.

B. Smoking shall be prohibited in (i) elevators, regardless of capacity; (ii) public school buses; (iii) common areas in any public elementary, intermediate, and secondary school.

including, but not limited to, classrooms, libraries, hallways, auditoriums, and other facilities; (iv) hospital emergency rooms; (v) local or district health departments; (vi) polling rooms; and (vii) indoor service lines and cashier lines.

C. Any restaurant having a seating capacity of fifty or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area, the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions.

D. The proprietor or other person in charge of an educational facility, health care facility, or a retail establishment of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe stores, shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building.

E. The proprietor or other person in charge of a space subject to the provisions of this chapter shall post signs stating "Smoking Permitted" or "No Smoking," and in restaurants, signs conspicuous to ordinary public view at or near each public entrance stating "No-Smoking Section Available." Any person failing to post such signs may be subject to a civil penalty of not more than twenty-five dollars.

F. No person shall smoke in a designated no-smoking area and any person who continues to smoke in such area after having been asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

§ 15.1-291.3. Responsibility of building proprietors and managers.—The proprietors or person who manages or otherwise controls any building, structure, space, place, or area governed by this chapter in which smoking is not otherwise prohibited may designate rooms or areas in which smoking is permitted as follows:

1. Designated smoking areas shall not encompass so much of the building, structure, space, place, or area open to the general public that reasonable no-smoking areas, considering the nature of the use and the size of the building, are not provided;

2. Designated smoking areas shall be separate to the extent reasonably practicable from those rooms or areas entered by the public in the normal use of the particular business or institution; and

3. In designated smoking areas, ventilation systems and existing physical barriers shall be used when reasonably practicable to minimize the permeation of smoke into no-smoking areas. However, this chapter shall not be construed as requiring physical modifications or alterations to any structure.

§ 15.1-291.4. Local ordinances regulating smoking.—A. No ordinances enacted by a county, city, or town prior to January 1, 1990, shall be deemed invalid or unenforceable because of lack of consistency with the provisions of this chapter.

B. Unless specifically permitted herein, local ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established in this chapter.

§ 15.1-291.5. Mandatory provisions of local ordinances.—Any local ordinance shall provide that it is unlawful for any person to smoke in any of the following places:

1. Elevators, regardless of capacity;

2. Common areas in an educational facility, including, but not limited to, classrooms, hallways, auditoriums, and public meeting rooms;

3. Any part of a restaurant designated a "no-smoking" area pursuant to the provisions of this chapter;

4. Indoor service lines and cashier areas; and

5. School buses and public conveyances.

§ 15.1-291.6. Optional provisions of local ordinances.—Any local ordinance may provide that management shall designate reasonable no-smoking areas, considering the nature of the use and the size of the building, in the following places:

1. Retail and service establishments of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores, and shoe stores;

2. Rooms in which a public meeting or hearing is being held;

3. Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries, and museums;

4. Indoor facilities used for recreational purposes;

5. Other public places; and

6. Any restaurant having a seating capacity of fifty or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent

of the no-smoking area, the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions.

§ 15.1-291.7. *Exceptions.*—The provisions of §§ 15.1-291.4 through 15.1-291.6 shall not be construed to allow local ordinances to regulate smoking in:

1. Bars and lounge areas;
2. Retail tobacco stores;
3. Restaurants, conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;
4. Office or work areas which are not entered by the general public in the normal course of business or use of the premises;
5. Areas of enclosed shopping centers or malls that are external to the retail stores therein, used by customers as a route of travel from one store to another, and consist primarily of walkways and seating arrangements; and
6. Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodation.

§ 15.1-291.8. *Chapter's application to certain local ordinances.*—Local ordinances adopted after January 1, 1990, shall not contain provisions or standards which exceed those established in this chapter. However, any local ordinance may provide that employers may regulate smoking in the private work place as they deem appropriate under the following circumstances: (i) if the designation of smoking and no-smoking areas is the subject of a written agreement between the employer and his employees, the provisions of the written agreement shall control such designation and (ii) a total ban on smoking in any work place shall only be enforced by the employer upon an affirmative vote of a majority of the affected employees voting, unless such ban is the subject of a contract of employment between the employer and the employees as a prior condition of employment. No such ordinance shall affect no-smoking policies established by employers prior to the adoption of such ordinance.

§ 15.1-291.9. *Pasting of signs.*—Any person who owns, manages, or otherwise controls any building or area in which smoking is regulated by a local ordinance shall post in an appropriate place, in a clear, conspicuous, and sufficient manner, "Smoking Permitted" signs, "No Smoking" signs, or "No-Smoking Section Available" signs.

§ 15.1-291.10. *Enforcement of local ordinances.*—A. Any local ordinance may provide a civil penalty of not more than twenty-five dollars for violations of any provision of such local ordinance.

B. Any local ordinance may provide that no person shall smoke in a designated no-smoking area and any person who continues to smoke in such area after being asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

§ 15.1-291.11. *Construction of chapter with respect to other applicable law.*—This chapter shall not be construed to permit smoking where it is otherwise prohibited or restricted by other applicable provisions of law.

SP2608125

1990 SESSION ENGROSSED

SENATE BILL NO. 150

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health)

(Patron Prior to Substitute—Senator Michie)

Senate Amendments in [] - January 30, 1990

A BILL to amend the Code of Virginia by adding in Chapter 6 of Title 32.1 an article numbered 11, consisting of sections numbered 32.1-248.1 through 32.1-248.5, establishing the Virginia Clean Indoor Air Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 32.1 an article numbered 11, consisting of sections numbered 32.1-248.1 through 32.1-248.5, as follows:

Article 11.

Clean Indoor Air Act.

§ 32.1-248.1. *Definitions.*—As used in this article unless the context requires a different meaning:

"Act" means the Virginia Clean Indoor Air Act.

"Bar" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for instruction of enrolled students, including, but not limited to, any day care center, nursery school, public and private school, college, university, medical school, law school, or vocational school.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing home, boarding home, adult home, supervised living facility, or ambulatory medical and surgical center.

"Other person in charge" means the proprietor or agent of the proprietor.

"Private work place" means any office or work area which is not open to the public in the normal course of business except by individual invitation.

"Proprietor" means the party, regardless of whether he is the owner or lessee of the public place, who ultimately controls, governs or directs the activities within the public place. The term, proprietor, may apply to a corporation, association, or partnership as well as an individual.

"Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the transportation of persons for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency or political subdivision thereof, public conveyance or public vehicle, restaurant, education facility, hospital, nursing home, other health care facility, library, retail store of 20,000 square feet or more, auditorium, arena, theater, museum, concert hall or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Restaurant" means any area, excluding a bar, having a seating capacity of [forty fifty] or more patrons, where food is available for eating on the premises, in consideration of payment.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar or cigarette, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling from a pipe, cigar, or cigarette of any kind.

§ 32.1-248.2. *Designation of nonsmoking areas; penalty.*—A. The proprietor or other person in charge of a public place shall designate reasonably substantial areas of the public place as nonsmoking areas. The proprietor may designate the entire area as smoke free. A smoking area may not be designated where prohibited by the fire marshal, or by statute, ordinance, or regulations, or in an elevator, school bus, or

1 emergency room, polling room, city or county public health unit, or public means of mass
2 transportation subject to intrastate regulation. A restaurant shall designate [~~forty percent~~
3 of the seating capacity as a nonsmoking area; a nonsmoking area sufficient to meet
4 customer demand.] The designated nonsmoking area may be located in a separate room
5 or in a separate contiguous area of seating in a room where smoking is permitted.

6 B. This section shall not be deemed to require regulation of smoking in a private
7 workplace or where one entire room or hall is used for a private social function and
8 seating arrangements are under the control of the sponsor of the function and not of the
9 proprietor or other person in charge of the facility. [~~if a bar is designated as a smoking~~
10 ~~area in its entirety, this designation shall be posted conspicuously on all entrances~~
11 ~~normally used by the public.]~~

12 C. No person shall smoke in a designated nonsmoking area in a public place. Any
13 person who continues to smoke in a nonsmoking area after being asked to refrain from
14 smoking may be fined up to fifty dollars.

15 § 32.1-248.3. Responsibility of proprietor or other person in charge.—The proprietor or
16 other person in charge of a public place in which smoking is not otherwise prohibited
17 may designate rooms or areas in which smoking is permitted as follows:

18 1. Designated smoking areas shall not encompass so much of the building, structure,
19 space, place, or area open to the general public that the demand for nonsmoking areas
20 cannot be met;

21 2. Designated smoking areas shall be separate to the extent reasonably practicable
22 from those rooms or areas entered by the public in the normal course of use of the
23 particular business or institution;

24 3. In designated smoking areas, ventilation systems and existing physical barriers shall
25 be used when reasonably practicable to minimize the permeation of smoke into
26 nonsmoking areas. However, this chapter shall not be construed as requiring physical
27 modifications.

28 4. The proprietor or other person in charge of a public place shall make reasonable
29 efforts to prevent smoking in the public place by (i) posting appropriate signs and (ii)
30 requesting persons who are smoking or violating § 32.1-248.2 to refrain from such smoking
31 or violation.

32 § 32.1-248.4. Injunction.—The State Board of Health, a local board of health, or any
33 affected party may institute an action in any court with jurisdiction to enjoin repeated
34 violations of § 32.1-248.2 of this act.

35 § 32.1-248.5. Minimum standards and regulations.—The definitions, allowances,
36 protections, prohibitions, and restrictions described in this article shall be deemed the
37 minimum standards and regulations governing public health protection for public places in
38 Virginia. Agencies and political subdivisions of the Commonwealth and private entities
39 may adopt standards and regulations regarding smoking in public places which exceed
40 these basic public health protections [: ; provided however, no political subdivision of the
41 Commonwealth may hereafter enact ordinances containing standards as to restaurants
42 which exceed those prescribed in this article.]

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HOUSE BILL NO. 562

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on February 10, 1990)

(Patron Prior to Substitute—Delegate Cohen)

A BILL to amend the Code of Virginia by adding in Chapter 6 of Title 32.1 an article numbered 11, consisting of sections numbered 32.1-248.1 through 32.1-248.5, establishing the Virginia Clean Indoor Air Act; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 32.1 an article numbered 11, consisting of sections numbered 32.1-248.1 through 32.1-248.5, as follows:

Article 11.

Clean Indoor Air Act.

§ 32.1-248.1. Definitions.—As used in this article unless the context requires a different meaning:

"Act" means the Virginia Clean Indoor Air Act.

"Bar" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for instruction of enrolled students, including, but not limited to, any day care center, nursery school, public and private school, college, university, medical school, law school, or vocational school.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing home, boarding home, adult home, supervised living facility, or ambulatory medical and surgical center.

"Other person in charge" means the proprietor or agent of the proprietor.

"Private work place" means any office or work area which is not open to the public in the normal course of business except by individual invitation.

"Proprietor" means the party, regardless of whether he is the owner or lessee of the public place, who ultimately controls, governs or directs the activities within the public place. The term, proprietor, may apply to a corporation, association, or partnership as well as an individual.

"Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the transportation of persons for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency or political subdivision thereof, public conveyance or public vehicle, restaurant, education facility, hospital, nursing home, other health care facility, library, retail store of 20,000 square feet or more, auditorium, arena, theater, museum, concert hall or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Restaurant" means any area, excluding a bar, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar or cigarette, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling from a pipe, cigar, or cigarette of any kind.

§ 32.1-248.2. Designation of nonsmoking areas; penalty.—A. The proprietor or other person in charge of a public place shall designate reasonably sufficient areas of the public place as nonsmoking areas. The proprietor may designate the entire area as smoke free. A smoking area may not be designated where prohibited by the fire marshal, or by statute, ordinance, or regulations, or in an elevator, school bus, restroom, hospital emergency

1 room, polling room, city or county public health unit, or public means of mass
2 transportation subject to intrastate regulation. A restaurant shall designate a nonsmoking
3 area sufficient to meet customer demand. The designated nonsmoking area may be located
4 in a separate room or in a separate contiguous area of seating in a room where smoking
5 is permitted.

6 B. This section shall not be deemed to require regulation of smoking in a private
7 workplace or where one entire room or hall is used for a private social function and
8 seating arrangements are under the control of the sponsor of the function and not of the
9 proprietor or other person in charge of the facility.

10 C. No person shall smoke in a designated nonsmoking area in a public place. Any
11 person who continues to smoke in a nonsmoking area after being asked to refrain from
12 smoking may be fined up to fifty dollars.

13 § 32.1-248.3. Responsibility of proprietor or other person in charge.—The proprietor or
14 other person in charge of a public place in which smoking is not otherwise prohibited
15 may designate rooms or areas in which smoking is permitted as follows:

16 1. Designated smoking areas shall not encompass so much of the building, structure,
17 space, place, or area open to the general public that the demand for nonsmoking areas
18 cannot be met;

19 2. Designated smoking areas shall be separate to the extent reasonably practicable
20 from those rooms or areas entered by the public in the normal course of use of the
21 particular business or institution;

22 3. In designated smoking areas, ventilation systems and existing physical barriers shall
23 be used when reasonably practicable to minimize the permeation of smoke into
24 nonsmoking areas. However, this article shall not be construed as requiring physical
25 modifications.

26 4. The proprietor or other person in charge of a public place shall make reasonable
27 efforts to prevent smoking in the public place by (i) posting appropriate signs and (ii)
28 requesting persons who are smoking or violating § 32.1-248.2 to refrain from such smoking
29 or violation.

30 § 32.1-248.4. Injunction.—The State Board of Health, a local board of health, or any
31 affected party may institute an action in any court with jurisdiction to enjoin repeated
32 violations of § 32.1-248.2 of this Act.

33 § 32.1-248.5. Minimum standards and regulations.—The definitions, allowances,
34 protections, prohibitions, and restrictions described in this article shall be deemed the
35 minimum standards and regulations governing public health protection for public places in
36 Virginia. Agencies and political subdivisions of the Commonwealth and private entities
37 may adopt standards and regulations regarding smoking in public places which exceed
38 these basic public health protections; however, no political subdivision of the
39 Commonwealth may hereafter enact ordinances containing standards as to restaurants
40 which exceed those prescribed in this article.

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Official Use By Clerks	
Passed By The House of Delegates without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>	Passed By The Senate without amendment <input type="checkbox"/> with amendment <input type="checkbox"/> substitute <input type="checkbox"/> substitute w/amdt <input type="checkbox"/>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

LD1623144

SENATE BILL NO. 440

Offered January 23, 1990

A BILL to amend the Code of Virginia by adding a chapter numbered 41 in Title 15.1, consisting of sections numbered 15.1-1651 through 15.1-1656, all relating to smoking in public breathing spaces; penalty.

Patrons—Macfarlane, DuVal, Joannou, Miller, E.F., Stallings, Saslaw, Holland, C.A., Buchanan, Miller, Y.B., Waddell, Colgan, Marye, Gartlan and Holland, E.M.; Delegates: Woodrum, Almand, Plum, Maxwell, Brickley, Marshall and Grayson

Referred to the Committee on Local Government

Be It enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a chapter numbered 41 in Title 15.1, consisting of sections numbered 15.1-1651 through 15.1-1656 as follows:

CHAPTER 41.

SMOKING IN PUBLIC BREATHING SPACES.

§ 15.1-1651. Authority of local governing body; minimum standards and regulations.—The local governing body of any county, city or town in this Commonwealth may, by ordinance, adopt restrictions consistent with this chapter. The definitions, allowances, protections, prohibitions and restrictions described in this chapter shall be deemed the minimum standards and regulations governing public health protection for public breathing spaces in Virginia. Local governing bodies may adopt standards and regulations regarding smoking in public breathing spaces which exceed these basic public health protections and shall have the responsibilities of enforcing the provisions of this chapter. Nothing in this chapter shall limit the authority of the private proprietor to voluntarily designate protected breathing spaces.

§ 15.1-1652. Definitions.—As used in this chapter unless the context requires a different meaning:

"Child-care facility" means any preschool education center or any child day care center or family day care home as defined in § 63.1-195 of this Code.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, clinic, nursing home, boarding home, adult home, supervised living facility, and ambulatory medical and surgical center.

"Protected public breathing space" means any area within a building, structure, space or place designated as an area where smoking shall be restricted or prohibited pursuant to this chapter.

"Public breathing space" means any enclosed, indoor area available for use by or accessible to the general public during the normal course of business including, but not limited to, lobbies, waiting areas, corridors, elevators, and restrooms.

"Public building" means any building owned or leased by the Commonwealth or any agency thereof, or by any county, city or other political subdivision of the Commonwealth that receives any funding or other support from the Commonwealth for the conduct of any business or other activity therein, including educational facilities, schools, school buses, hospitals, libraries, museums, indoor arenas, and auditoriums. Public building shall not include the General Assembly building or the Capital Building.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar or cigarette, or any other lighted smoking equipment, or the lighting, inhaling or exhaling of a pipe, cigar, or cigarette of any kind.

§ 15.1-1653. Protection of public breathing spaces.—A. It shall be unlawful for any person to smoke in the following public breathing spaces:

1. Elevators regardless of capacity.
2. Child care facilities during hours of operation.

1 J. School buses.

2 B. The following areas shall have protected breathing spaces, but unprotected breathing
3 spaces may be designated by the owner or manager.

4 1. Elementary and secondary schools, whether public or private. Smoking shall be
5 prohibited in all areas of the school. However, the school administrator may designate
6 unprotected breathing spaces with closeable entrances in which smoking by staff may be
7 permitted. The designated unprotected breathing spaces may not be in the main faculty
8 lounge.

9 2. Public areas of medical clinics shall be protected breathing spaces.

10 3. Hospitals.(a) Protected public breathing spaces shall be designated in all areas of the
11 hospital open to the public such as corridors, lobbies, patient floors and inpatient rooms
12 except in private patient rooms if the patient has a physician's authorization. The hospital
13 administrator may designate unprotected breathing spaces for the public, patients, or staff
14 providing those rooms have a closeable entrance. The person in charge shall be guided by
15 obligations to protect patient and public health and safety in designating any unprotected
16 breathing spaces where smoking may be permitted.

17 (b) Nursing homes and homes for adults shall designate patient rooms as protected
18 breathing spaces, provided that patients may smoke in private rooms while under
19 supervision. Unprotected breathing spaces may be designated in common areas by the
20 person in charge. This paragraph shall not apply to independent living apartments.

21 4. Public areas of public buildings, libraries and museums shall be protected breathing
22 spaces. The person in charge may designate unprotected breathing spaces in areas not
23 normally frequented by the public.

24 5. Theaters, auditoriums, and indoor arenas shall be protected breathing spaces. Areas
25 in the lobbies of these facilities may be designated as unprotected breathing spaces where
26 smoking is permitted.

27 § 15.1-1654. Designation of protected and unprotected breathing spaces; responsibility of
28 the owner or manager.—In any building, structure, space or place in which unprotected
29 breathing spaces are permitted, the owner, manager or other person in charge shall
30 develop a written policy for restricting smoking areas in order to assure that such
31 restrictions are consistently implemented. Such policy shall include the following
32 conditions:

33 1. Unprotected breathing areas in which smoking is permitted shall not encompass so
34 large an area that the demand for protected breathing spaces cannot be met.

35 2. In designating protected and unprotected breathing spaces pursuant to this chapter,
36 the owner, manager or other person in charge shall be guided by obligations to protect
37 public health and safety.

38 3. The owner, manager or other person in charge shall assure that protected public
39 breathing spaces are clearly labeled by posting of "Smoking" or "No Smoking" or the
40 international "No Smoking" signs in a conspicuous place.

41 § 15.1-1655. Exceptions.—This chapter shall not be construed to require smoking to be
42 permitted in any area or building.

43 § 15.1-1656. Penalties.—Any person who knowingly smokes in an area designated as a
44 protected public breathing space shall be subject to a civil penalty of twenty-five dollars.

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HOUSE BILL NO. 1053

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns)

(Patron Prior to Substitute-Delegate Cranwell)

House Amendments in [] - February 12, 1990

A BILL to amend the Code of Virginia by adding in Title 15.1 a chapter numbered 8.1, consisting of sections numbered 15.1-291.1 through 15.1-291.12, establishing the Virginia Indoor Clean Air Act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.1 a chapter numbered 8.1, consisting of sections numbered 15.1-291.1 through 15.1-291.12, as follows:

CHAPTER 8.1.

VIRGINIA INDOOR CLEAN AIR ACT.

§ 15.1-291.1. Statewide regulation of smoking in public buildings.— [A.] The Commonwealth or any agency or political subdivision thereof shall provide reasonable no-smoking areas in any building owned or leased by the Commonwealth or any agency or political subdivision thereof.

[B. Smoking shall be prohibited in: (i) elevators, regardless of capacity; (ii) public school buses; (iii) common areas in any public elementary, intermediate and secondary school, including but not limited to classrooms, libraries, hallways, auditoriums, and other facilities; (iv) hospital emergency rooms.]

§ 15.1-291.2. Definitions.—As used in this chapter unless the context requires a different meaning:

"Bar or lounge area" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for instruction of enrolled students, including, but not limited to, any day-care center, nursery school, public and private school, college, university, medical school, law school, and vocational school.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing home, boarding home, adult home, supervised living facility, or ambulatory medical and surgical center.

"Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.

"Public conveyance or "public vehicle" means any air, land, or water vehicle used for the transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency or political subdivision thereof, public conveyance or public vehicle, education facility, hospital, nursing home, other health care facility, library, retail store of 20,000 square feet or more, auditorium, arena, theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Restaurant" means any building, structure, or area, excluding a bar or lounge area as defined in this chapter, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.

"Theater" means any indoor facility or auditorium, open to the public, which is

1 production, musical recital, dance, lecture, or other similar performance.

2 § 15.1-291.3. Local ordinances regulating smoking.—A. Every county, city, or town may
3 enact an ordinance regulating smoking or the designation of smoking and no-smoking
4 areas which is consistent with this chapter.

5 B. No ordinances enacted by a county, city, or town prior to July 1, 1989, shall be
6 deemed invalid or unenforceable because of inconsistency with the provisions of this
7 chapter.

8 § 15.1-291.4. Mandatory provisions of local ordinances.—Any local ordinance shall
9 provide that it is unlawful for any person to smoke in any of the following places:

10 1. Elevators, regardless of capacity;

11 2. Common areas in an educational facility, including but not limited to, classrooms,
12 hallways, auditoriums, and public meeting rooms;

13 3. Any part of a restaurant designated a "no-smoking" area pursuant to the provisions
14 of this chapter;

15 4. Indoor service lines and cashier areas; and

16 5. School buses.

17 § 15.1-291.5. Management responsibilities under certain circumstances.—Any local
18 ordinance shall provide that management [be responsible for designating shall designate]
19 no-smoking areas in the following places:

20 1. Retail and service establishments [of 10,000 square feet or more] serving the
21 general public, including, but not limited to, department stores, grocery stores, drug stores,
22 clothing stores, and shoe stores;

23 2. Rooms in which a public meeting or hearing is being held;

24 3. Places of entertainment and cultural facilities, including, but not limited to, theaters,
25 concert halls, gymnasiums, auditoriums or other enclosed arenas, art galleries, libraries,
26 and museums;

27 4. Indoor facilities used for recreational purposes; and

28 5. Public places, public conveyances, and public vehicles.

29 § 15.1-291.6. Responsibility of building owners and managers.—Any local ordinance shall
30 provide that the owner or person who manages or otherwise controls any building,
31 structure, space, place, or area governed under this chapter in which smoking is not
32 otherwise prohibited may designate rooms or areas in which smoking is permitted as
33 follows:

34 1. Designated smoking areas shall not encompass so much of the building, structure,
35 space, place, or area open to the general public that reasonable no-smoking areas cannot
36 be designated;

37 2. Designated smoking areas shall be separate to the extent reasonably practicable
38 from those rooms or areas entered by the public in the normal course of use of the
39 particular business or institution; and

40 3. In designated smoking areas, ventilation systems and existing physical barriers shall
41 be used when reasonably practicable to minimize the permeation of smoke into
42 no-smoking areas. However, this chapter shall not be construed as requiring physical
43 modifications or alterations to any structure.

44 § 15.1-291.7. Designated no-smoking areas in restaurants.—Any local ordinance shall
45 provide that any restaurant having a seating capacity of fifty or more persons shall have
46 a designated no-smoking area sufficient to meet customer demand.

47 In determining the extent of the no-smoking area, the following shall not be included
48 as seating capacity:

49 1. Seats in the bar or lounge area of a restaurant; and

50 2. Seats in any separate room or section of a restaurant which is used exclusively for
51 private functions.

52 § 15.1-291.8. Exceptions.—The provisions of §§ 15.1-291.4 through 15.1-291.7 shall not be
53 construed to allow local ordinances to regulate smoking in:

- 1 2. Retail tobacco stores;
- 2 3. Restaurants, conference or meeting rooms, and public and private assembly rooms
- 3 while these places are being used for private functions;
- 4 4. Office or work areas which are not entered by the general public in the normal
- 5 course of business or use of the premises;
- 6 5. Areas of enclosed shopping centers or malls that are external to the retail stores
- 7 therein, are used by customers as a route of travel from one store to another, and consist
- 8 primarily of walkways and seating arrangements; and
- 9 6. Lobby areas of hotels, motels, and other establishments open to the public for
- 10 overnight accommodation.

11 § 15.1-291.9. Posting of signs.—Any person who owns, manages, or otherwise controls
 12 any building or area in which smoking is regulated by a local ordinance shall post in an
 13 appropriate place, in a clear, conspicuous, and sufficient manner, "Smoking Permitted"
 14 signs, "No Smoking" signs or "No Smoking Section Available" signs.

15 § 15.1-291.10. Enforcement.—A. The governing body of any county, city, or town or any
 16 affected party may institute an action in any court with jurisdiction to enjoin repeated
 17 violations of of this chapter.

18 B. Any local ordinance shall provide a civil penalty of not more than twenty-five
 19 dollars for a violation of the provisions of such local ordinance.

20 § 15.1-291.11. Construction of chapter with respect to other applicable law.—This
 21 chapter shall not be construed to permit smoking where it is otherwise prohibited or
 22 restricted by other applicable provisions of law.

23 § 15.1-291.12. Permissive provisions of local ordinances.—Any local ordinance may
 24 provide that employers regulate smoking as they deem appropriate, under the following
 25 circumstances: (i) if the designation of smoking and no-smoking areas is the subject of a
 26 written agreement between the employer and employees, the provisions of the written
 27 agreement shall control such designation; and (ii) no total ban on smoking in any work
 28 place may be enforced by the employer without consent of two-thirds of the affected
 29 employees, unless such total ban is the subject of a contract of employment between the
 30 employer and the employees as a previous condition of employment.

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Official Use By Clerks	
<p style="text-align: center;">Passed By</p> <p>The House of Delegates</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>	<p style="text-align: center;">Passed By The Senate</p> <p>without amendment <input type="checkbox"/></p> <p>with amendment <input type="checkbox"/></p> <p>substitute <input type="checkbox"/></p> <p>substitute w/amdt <input type="checkbox"/></p>
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

Organizational Friends of Clean Indoor Air

Assoc or org
American Assoc. of Retired Persons
Cystic Fibrosis Foundation
March of Dimes
Medical Society of Virginia
Va Assoc. of Elementary School Principals
Va Association of OB-GYN Nurses
Va Council of Life Ins & Health Ins Association
Va Licensed Practical Nurses Association
Virginia Academy of Family Physicians
Virginia Affiliate American Diabetes Association
Virginia Annual Conference UMC, Bd of Church & Society
Virginia College of Cardiology
Virginia College of Obstetricians & Gyn
Virginia Conference of Local Health Officers
Virginia Congress of Parents & Teachers
Virginia Dental Association
Virginia League of Women Voters
Virginia Medical Student Association
Virginia Medical Womens Association
Virginia Pediatric Society
Virginia Perinatal Association
Virginia Public Health Association
Virginia Society for Respiratory Care
Virginia Society of Internal Medicine

Linda McWhorter-Coville, 11/17/99

THE TOBACCO LOBBY

COALITION MEMBERS

Tobacco Institute

Individual Manufacturing companies; especially Philip Morris and RJR.

Retail Merchants

Vending Machine Association

Farm Bureau

Restaurant Association

Hospitality and Travel Association

Agribusiness Council

Manufacturers Association

Food Dealers Association

Chamber of Commerce

TACTICS:

Generous funder of campaigns - expect votes on key issues

Put intense economic pressure on business that they have any ties with to actively oppose or be silent on anti-smoking legislation

Hire well respected, connected, lawyer lobbyists

Amend tricky and damaging language into original bills

Sponsor a look a like bill

Appear to give concessions and "make a deal" not to oppose while sending coalition members to actively oppose and defeat legislation

Pre-emption of localities ordinances

Use whatever power they have with the Governor or legislative leadership to derail or block anti-smoking legislation.

TOBACCO IS A GATEWAY DRUG

Prepared by Virginia Group to Alleviate Smoking in Public, October 1988, 804-795-2006.

Tobacco is recognized officially as an addictive drug. The tobacco companies discovered decades ago that if they removed the nicotine, the addictive element, people stopped buying the tobacco products. Tobacco is also a gateway drug for teenagers. According to the National Institute on Drug Abuse, a federal government agency, teens get hooked on daily tobacco use by the time they are 12 to 14 years of age.

97% of high school seniors who smoked a pack-a-day in 1985 had begun daily smoking by the fourth grade. 53% of seniors smoking a half-a-pack a day or more said they had already tried to quit smoking and were unable to do so. 47% said they would like to quit.

There is a dramatic association between smoking and illicit drug use. 95% of pack-a-day smokers in the senior class had used an illicit drug; 81% had used an illicit drug other than marijuana; 49% had used cocaine; 67% were actively using an illicit drug.

Of the nonsmokers in the senior class, only one-fourth, 27% had tried an illicit drug (compared to 95% of smokers); only 20% had tried marijuana (94% of smokers); only 5% had tried cocaine (49% of smokers). Current marijuana use was eight times as high among the pack-a-day smokers as nonsmokers, and daily marijuana use was 20 times as high. Daily use of any illicit drug other than marijuana was 13 times as high among smokers as nonsmokers.

There is also a dramatic relationship between smoking and use of alcohol. The pack-a-day smokers are 11 times as likely to be current daily drinkers as those who never smoked (18.4% vs. 1.7%). Pack-a-day smokers are also 4 times as likely to report an occasion of heavy drinking (67.9% vs. 17.2%).

The National Institute on Drug Abuse offers some suggestions as to why there is such a strong relationship between illicit drug use and tobacco use, and between drinking and tobacco use among teenagers. "One is that the experience of smoking can teach youngsters to use a psychoactive drug to influence mood and alertness, as nicotine does, and then reinforce that behavior. The second is that smoking cigarettes prepares young people for the relevant mode of ingestion for one of the next drugs in the sequence - namely marijuana. It is pointed out that drawing a foreign substance into the lungs is not a normal behavior for humans or other animals; it is a behavior which has to be learned and rewarded enough to overcome the aversive experiences which usually result."

To allow tobacco use at schools or at any teen function is to sanction drug use. To allow adults to smoke at a teen function is to promote the image of "adult behavior" and to say clearly "I can do it and you can't. Secondhand smoke is not my worry, but yours."

Secondhand smoke is radioactive, carcinogenic, contains over 4,000 toxic chemicals and 60 known carcinogens, acts synergistically with radon and asbestos to increase health damage, and does not discriminate by age, race, sex, or political preference. Secondhand smoke denies equal access to public events by creating a barrier as real as steps are to a wheelchair person.

Information from the National Institute on Drug Abuse, *National Trends in Drug Use and Related Factors Among American High School Students and Young Adults, 1975-1986*, and from the 1986 Surgeon General's *Report on the Health Consequences of Involuntary Smoking*.

Virginia GASP is a state-wide, all-volunteer group of nonsmokers and smokers working for clean indoor air. In the time it took you to read this page, 10 Americans died of a tobacco related illness, and at least one of them never chose to smoke.

Virginia Group to Alleviate Smoking in Public

P.O. Box 38134 Richmond, Virginia 23231 804-795-2006

"...to know that even one life has breathed easier because you have lived - this is to have succeeded." R.W. Emerson

PRESS CONFERENCE, Virginia GASP

NOW IT CAN BE TOLD!

WEDNESDAY, SEPTEMBER 6, 1989, 10:00 A.M.

PLACE: CHRISTIES 3109 West Cary Street, Richmond, VA, a smoke-free restaurant

Everything you wanted to know about what happened at the meetings with the tobacco industry, and now you can ask, and even expect an answer.

Anthony Troy, a lobbyist for The Tobacco Institute, told the participants at the historic and smoke-free meetings between the pro-health groups and the pro-tobacco industry groups that the tobacco industry refused to negotiate unless everyone agreed not to discuss with the press the substance of the meetings *while they were going on*.

Those meetings have now ended. Virginia GASP has fulfilled its part of the bargain. And now it can be told. Now it must be told, to anyone interested in breathing and in freedom of choice.

In a nutshell: the tobacco industry produced two very interesting bills, "giving" Virginians smoke-free elevators and school buses, and taking away everything else, legalizing the earlier status quo, erasing all gains and many local ordinances, rolling back restaurant provisions, and eliminating all smoke-free anything, except elevators and school buses (and how often are they checked by the Board of Health?) Page Sutherland said three different times during the meetings that "the tobacco industry will never agree to allow Virginia to have any laws stronger than what any other tobacco state has."

Sutherland has said they want a bill that will be fair to the industry, fair to smokers, and fair to nonsmokers. The only way GASP knows to accomplish this feat is to have a two part bill which (1) allows smoking everywhere so long as the smoker is wearing a protective helmet which self-contains ALL secondhand smoke, recycling it within the helmet, and (2) permits smokers to sue the tobacco industry for all ailments which could have been caused by smoking.

GASP thanks Delegate Bernard S. Cohen and Senator Thomas J. Michie, Jr. for their leadership in these historic and smoke-free meetings between the pro-health groups and the pro-tobacco industry groups. GASP thanks Delegates Willard Finney and Lewis Parker, Jr. and Senator Virgil Goode for their willingness to enter the discussions.

GASP Executive Director, Anne Morrow Donley said, "Morality and common sense are old fashioned values. Hopefully the legislators in 1990 will listen to the people, and show more sense and morality than has been evidenced by the Tobacco Institute. The arrogance and cruelty exhibited by these tobacco representatives reveals the total war they have declared on health. It is past time for outraged nonsmokers and smokers to blow the smokescreen from the Emperor, so all can see them as the legalized drug pushers they are, apparently dedicated to forcing Virginia's children to smoke against their will. This is a civil rights issue - the right to equal access, the right to health, not death, for everyone who dares to breathe in public."

In order to be fair to everyone, no pre-interviews, please. Wednesday, September 6, 10:00 A.M., Anne Morrow Donley, Executive Director of Virginia GASP, will answer your questions about the *meetings with the tobacco empire*, *the effect upon the elections*, and other related topics. If you cannot attend, press handouts can be mailed or faxed to you AFTER 10:00 A.M. on the 6th. You may leave a telephone message to that effect, if you wish, at 804-795-2006.

BIOGRAPHY

Louise Ryland Thornton is a high school Government teacher and the Social Studies Department Head in the Prince George County School System where she has taught for thirty-one years. She received her Bachelor of Arts in History in 1966, and her Master of Education in 1968, from the College of William and Mary. She is a member of Delta Kappa Gamma Teaching Society, was active in the Tri-City Republican Women's Club, and was a member of the Sussex County Republican Committee. In 1980, she attended the Republican Presidential Convention as an alternate Delegate. She is a member of Saint Mark's United Methodist Church in Petersburg, Virginia.