

HEALTH: HEALTH CARE PLANNING - MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED.

CONSTITUTION OF VIRGINIA: LEGISLATURE (EFFECTIVE DATE OF LAWS).

Intent of General Assembly in enacting 1996 legislation amending § 32.1-102.3:2 was to replace moratorium with request-for-application procedure, while allowing two additional certificates of public need for nursing home projects in Grayson and Amelia Counties to be issued by Commissioner of Health as exceptions to moratorium.

The Honorable Virgil H. Goode Jr.

Member, Senate of Virginia

December 30, 1996

You ask what effect is to be given to § 32.1102.3:2 of the *Code of Virginia*, as amended and reenacted in two separate bills introduced during the 1996 Session of the General Assembly and signed into law by the Governor.¹

Chapter 849 of the 1996 Acts of Assembly amends § 32.1102.3:2² by adding two specific exceptions to the existing eighteen exemptions to a moratorium on the issuance of certificates of public need for nursing home beds.³ Furthermore, the second enactment clause in Chapter 849 requires that applications for certificates of need accepted by the Commissioner of Health pursuant to the exceptions must be filed by July 1, 1996.⁴ Chapter 901 of the 1996 Acts also amends § 32.1102.3:2⁵ by eliminating both the moratorium⁶ and the existing eighteen exceptions to the moratorium,⁷ and authorizing the Commissioner of Health to consider only such applications for certificates of need as are filed in response to Requests For Applications.⁸ Chapter 901, however, does not include the two exceptions to the moratorium that were added by Chapter 849. Both chapters became effective July 1, 1996.⁹

You specifically ask whether the procedure created by Chapter 901 repeals the authority of the Commissioner of Health under § 32.1102.3:2 to issue certificates of public need for the additional two projects specifically exempted from the statutory moratorium in Chapter 849.

It must be presumed that the General Assembly did not intend to enact inconsistent legislation.¹⁰ The fact that two bills amending the same statute are passed by the same session of the General Assembly furnishes strong

evidence that they were intended to stand together,¹¹ especially when the bills, as here, proceed virtually in lock step.¹² In addition, when construing statutes on the same subject matter, the statutes should be harmonized if possible.¹³ [W]here two statutes are in apparent conflict they should be so construed, if reasonably possible, so as to allow both to stand and to give force and effect to each.¹⁴ In cases of *irreconcilable* conflict in statutes passed at the same session of the legislature, the one last approved by the Governor must prevail.¹⁵

The well settled rule is that the law does not favor a repeal by implication, unless the repugnance be quite plain, and then only to the extent of such repugnancy.¹⁶ Repeal of a statute by implication is not favored, and, indeed, there is a presumption against a legislative intent to repeal `where express terms are not used, or the later [sic] statute does not amend the former.¹⁷

Equally accepted principles of statutory construction require that statutes which relate to the same subject be considered *in pari materia*.¹⁸ Statutes *in pari materia* `are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement.¹⁹ Such statutes must be construed to operate in harmony within the system if their terms, fairly and reasonably considered, will permit such construction.²⁰ This rule of construction is employed when two or more statutes can be reconciled.

Applying these principles of statutory construction to your question, I am of the opinion that Chapters 849 and 901 are not mutually exclusive, and lend themselves to a mutual accommodation. Chapter 901 eliminates much of the language in § 32.1102.3:2 that existed in the Virginia Code before the enactment of Chapter 849; however, Chapter 901 does not address exceptions 19 and 20, which were added to § 32.1102.3:2 in Chapter 849. Furthermore, any apparent conflict that may be perceived from a cursory review of the language in Chapters 849 and 901 is resolved by the General Assembly in the second enactment clause in Chapter 849:

That, except for this enactment clause, this act shall expire on July 2, 1996, unless the moratorium provided in § 32.1102.3:2 remains in effect. The Commissioner, however, shall continue to review and may approve any applications accepted for review through July 1, 1996, pursuant to the exceptions included in § 32.1102.3:2, as it was in effect on the date this act becomes effective. The Commissioner shall take final action on all such applications by December 31, 1996.^[21]

Statutes speak as of the time they take effect and not as of the time they were passed.²² Based on the language of the second enactment clause in Chapter 849, the two exceptions added to § 32.1102.3:2, which were not affected by Chapter 901, became effective July 1, 1996, and subsequently were extinguished the following day-July 2, 1996. Chapter 901 replaces the remaining provisions of § 32.1102.3:2 in Chapter 849 by overstriking the provisions of that statute in effect before July 1, 1996. While the technical language of the two bills might have been drawn more precisely to eliminate any ambiguity as to the correct statutory construction, it is my opinion that the General Assembly clearly intended to preserve in Chapter 849 the above-quoted second enactment clause and the two additional exceptions to the moratorium.²³

It is therefore my opinion that the 1996 Session of the General Assembly plainly intended to replace the moratorium in Chapter 849 with the Requests For Applications procedure in Chapter 901, while simultaneously allowing two additional certificates of public need to be issued by the Commissioner of Health as final exceptions to the moratorium as reflected in Chapter 849. Thus, the Commissioner may issue certificates of public need for nursing home projects in Grayson and Amelia Counties consistent with exceptions 19 and 20 in Chapter 849.

¹Section 32.1102.3:2 is a portion of Article 1.1, Chapter 4 of Title 32.1, entitled Medical Care Facilities Certificate of Public Need.

²Ch. 849, 1996 Va. Acts 1544 (introduced as H.B. No. 1071, and approved by Governor on April 8, 1996).

³*Id.* at 1547 (adding subdivisions 19 and 20 to § 32.1102.3:2). As amended in Chapter 849, § 32.1102.3:2 provides that [t]he Commissioner of Health shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article for any project which would result in an increase in the number of beds in which nursing facility or extended care services are provided through June 30, 1996. *Id.* at 1544. Section 32.1102.3:2 then enumerates 20 specific exceptions to the moratorium which the Commissioner may approve or authorize. *Id.*

⁴*Id.* at 1547.

⁵Ch. 901, 1996 Va. Acts 1680 (introduced as H.B. No. 1302, and approved by Governor on April 10, 1996).

⁶*See id.* at 1680 (§ 32.1102.3:2(A)).

⁷*See id.* at 168184.

⁸*Id.* at 1680 (§ 32.1102.3:2(A)).

⁹All laws enacted at a regular session, including laws which are enacted by reason of actions taken during the reconvened session following a regular session, but excluding a general appropriation law, shall take effect on the first day of July following the adjournment of the session of the General Assembly at which it has been enacted; unless in the case of an emergency (which emergency shall be expressed in the body of the bill) the General Assembly shall specify an earlier date by a vote of four-fifths of the members voting in each house . VA. CONST. art. IV, § 13 (1971).

¹⁰17 M.J. *Statutes* § 54 (1994); *see also Williams v. Commonwealth*, 190 Va. 280, 293, 56 S.E.2d 537, 543 (1949) (assuming that the legislature did not intend to do a vain and useless thing in enacting or amending statute).

¹¹*Lillard v. Fairfax Airport Authority*, 208 Va. 8, 13, 155 S.E.2d 338, 342 (1967); 1983-1984 Op. Va. Att'y Gen. 187, 188.

¹²Chapters 849 and 901 were presented on January 22, 1996, as House Bill Nos. 1071 and 1302, respectively, and referred to the House Committee on Health, Welfare and Institutions. On January 23, both bills were assigned to Health, Welfare and Institutions Subcommittee 2, and were reported February 8, with changes, from Health, Welfare and Institutions by a 22to0 vote. The engrossed bills passed the House on February 12 by a vote of 100 to 0, and on February 13, were referred to the Senate Committee on Education and Health, where they subsequently were assigned to the Education and Health Subcommittee on Health Care. Both bills were reported, with changes, from Education and Health: a substitute for House Bill No. 1302, on February 22, by a 14to1 vote; and an amended House Bill No. 1071, on February 29, by a 15to0 vote. House Bill No. 1302 passed the Senate on February 26, with the Senate substitute then passing the House on February 28. On March 5, House Bill No. 1071 was defeated in the Senate as an emergency measure, by a 27to13 vote, but subsequently was reconsidered and ultimately passed without the emergency clause. On March 9, both houses of the General Assembly agreed to a conference committee report. Thus, the House Bill No. 1071 conference report was adopted within a few days after the adoption of House Bill No. 1302 on February 28, thereby underscoring the presumption that the General Assembly intended the two bills to be construed together.

¹³*Prillaman v. Commonwealth*, 199 Va. 401, 40506, 100 S.E.2d 4, 78 (1957); Op. Va. Att'y Gen.: 1992 at 108, 112; 1980-1981 at 265, 266; 2B NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 51.02 (5th ed. 1992 & Supp. 1996).

¹⁴*Kirkpatrick v. B'd of Supervisors*, 146 Va. 113, 125, 136 S.E. 186, 190 (1926); accord *Prillaman v. Commonwealth*, 199 Va. at 405, 100 S.E.2d at 7.

¹⁵*Gaskill v. Commonwealth*, 185 Va. 440, 443, 39 S.E.2d 296, 297 (1946) (emphasis added).

¹⁶*Supervisors v. Commonwealth*, 116 Va. 311, 313, 81 S.E. 112, 112 (1914).

¹⁷*Albemarle County v. Marshall, Clerk*, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975) (quoting *Newmarket, &c., Co. v. Keyser*, 119 Va. 165, 170, 89 S.E. 251, 253 (1916)); see also 1990 Op. Va. Att'y Gen. 103, 105, and opinions cited therein.

¹⁸See *Prillaman v. Commonwealth*, *supra* note 13, 199 Va. at 405, 100 S.E.2d at 7. Statutes `in pari materia' are those relating to the same person or thing or having a common purpose. This rule of statutory construction, that statutes which relate to the same subject matter should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments, applies only when the particular statute is ambiguous. BLACK'S LAW DICTIONARY 791 (6th ed. 1990).

¹⁹*Prillaman v. Commonwealth*, 199 Va. at 405, 100 S.E.2d at 7 (quoting 50 AM. JUR. *Statutes* § 349 (1944), currently codified at 73 AM. JUR. 2D *Statutes* § 188, at 387 (1974)); see also 1983-1984 Op. Va. Att'y Gen. 377, 378.

²⁰See *School Board v. Patterson*, 111 Va. 482, 48788, 69 S.E. 337, 339 (1910).

²¹1996 Va. Acts, *supra* note 2, at 1547.

²²See *School Board v. Town of Herndon*, 194 Va. 810, 75 S.E.2d 474 (1953).

²³Subdivision 19 excepts from the moratorium [t]he issuance of a certificate of public need for construction of a new nursing facility project located in Grayson County at or within five miles of the county seat, if the facility's total number of beds will not exceed 120 beds, including existing beds and the proposed beds. 1996 Va. Acts, *supra* note 2, at 1547. Subdivision 20 excepts [t]he issuance of a certificate of public need to a

nursing facility project located in Amelia, Virginia, to expand to meet the needs of a large contingency of waiting residents from Amelia, Chesterfield, and surrounding counties, if (i) the facility's total number of beds will not exceed 100 beds, including sixty existing beds and forty proposed beds; and (ii) the facility's occupancy rates exceeded ninety-nine percent for the last five years. *Id.*