

COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES



SAMUEL A. NIXON, JR.
MEMBER

TWENTY-SEVENTH DISTRICT

COMMITTEE ASSIGNMENTS:
COMMERCE & LABOR
HEALTH, WELFARE &
INSTITUTIONS (Vice-Chairman)
SCIENCE & TECHNOLOGY

June 18, 2009

Mr. James F. McGuirk, II
Chairman, Information Technology Investment Board
AKLM Consulting Inc.
18341 Buccaneer Terrace
Leesburg, VA 20176

Dear Mr. McGuirk,

I am sending this letter in response to last week's action by the Information Technology Investment Board to appoint Secretary Leonard M. Pomata as the interim Chief Information Officer (CIO) of the Commonwealth. This decision raises substantial concerns regarding the system of checks and balances that was purposely crafted around the CIO position, the Virginia Information Technologies Agency (VITA), the Information Technology Investment Board, and the Governor's Office. In addition, the decision raises several questions about operational conflicts that will arise from the same person serving at the will of the Governor, as well as serving the Board as both a member and an employee.

As chief patron of House Bill 1926, the 2003 legislation that created VITA, the Board, and the CIO position, I can tell you that considerable thought led to the current IT governance structure that exists today in the Commonwealth. This structure was not created in a vacuum, but was the result of substantial work and discussion amongst myself, other members of the General Assembly, the Governor's Office, staff of the House Appropriations and Senate Finance Committees, the Joint Legislative Audit and Review Commission (JLARC), the Auditor of Public Accounts, and others. The end result was an IT governance structure that would be both centralized, as well as apolitical.

You likely recall that prior to the restructuring legislation, one of the Secretary of Technology's statutory duties was to serve as the CIO of the Commonwealth. In a 2002 report, JLARC found that a factor limiting Virginia's information systems development was that Virginia lacked a full-time CIO. JLARC recommended that such a CIO should be insulated from the political process and protected from external influences, so that all decisions would be based on technological and business needs, rather than political considerations.

Because the Secretary of Technology works at the will of the Governor, and is statutorily subject to the direction and supervision of the Governor, the restructuring legislation

created a new CIO position separate and distinct from the Secretary of Technology. The CIO was to be hired by the newly-created Information Technology Investment Board, and not directly by the Governor. And while the Board was placed in the executive branch of government, ensuring that the Board consisted of appointees and officials from both the legislative and executive branches further insulated the CIO from direct political influence. The Governor clearly has a voice on the Board, through the membership of cabinet secretaries and citizen appointees, but does not have the ability to directly control the actions of the Board or the CIO. To create further protection from the political process, the CIO was to be hired for a term of five-years, so that he would not serve concurrently with a four-year gubernatorial term. All of these safeguards were put in place to ensure that the position of CIO was not a political appointment. Authorizing someone other than the Governor to appoint an agency head is quite a departure from the normal appointment process (and in fact is only one of a few instances in the Commonwealth where this occurs), and this only further highlights the importance that was placed on keeping the CIO position removed from the political landscape.

To allow time for the newly formed Board to meet and establish an effective search committee for the new CIO, the legislation allowed the Secretary of Technology to continue to serve as CIO for an additional six months. This caveat in the legislation makes it clear that the legislative intent was not for the same person to serve in both positions; it was simply meant to ease the transition to the new structure, but not as an indication that the Secretary of Technology would be the appropriate choice as an interim CIO during future transition periods.

As you can see from this brief legislative history, appointing the current Secretary of Technology as the CIO, even on an interim basis, is contrary to the policy and intent behind the creation of the Information Technology Investment Board and the CIO position. This in and of itself is cause for concern. However, the recent appointment of Secretary Pomata as interim CIO also raises several practical questions concerning procedural and operational conflicts that will arise from one individual concurrently serving in both a political and an apolitical position. These conflicts, while perhaps not illegal, certainly provide the appearance of impropriety. Given the importance of the Commonwealth's IT infrastructure and the shear magnitude of the partnership with Northrop Grumman, even an appearance of impropriety, especially at this time, is something that should be avoided.

For instance, as noted above, the Secretary of Technology works at the will of the Governor. The CIO, however, is appointed by the Board of which the Secretary of Technology is an ex officio member with voting privileges. If an issue arises over which the Governor and the Board have differing opinions, it would be nearly impossible for Secretary Pomata to act as an independent CIO, without taking into account the political will of the Governor. Any actions taken by Secretary Pomata in his capacity as CIO will be clouded by the appearance, rightfully or not, that he may be taking actions at the direction of the Governor, and not as the independent, business-minded CIO that the Code of Virginia contemplates.

Furthermore, as a member of the Board, is it appropriate for Secretary Pomata to continue to serve as a voting member, given that in his role as CIO he is to carry out the wishes of the Board? He will, in a sense, be acting in a self-serving role if he continues to serve as both CIO and as Secretary.

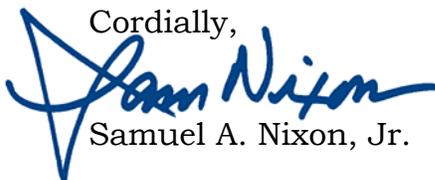
During the 2009 Session of the General Assembly, I sponsored House Bill 2539 that made additional revisions to the CIO and ITIB structure. The bill contained provisions that provided a subtle, yet significant, shift of power on the Board. The bill was in response to the recognition that while the CIO position should continue to be insulated from politics, there needed to be a stronger reporting link between the CIO and the Governor. As a result, the Secretary of Finance was added as an ex officio member of the Board, with voting privileges, and the Secretary of Technology became, by statute, the vice-chairman of the Board. The Governor's Office was supportive of the legislation and requested emergency approval of the legislation. I supported this entire legislative initiative, including passage of the emergency clause, in an effort to assist in resolving the apparent gap in reporting between the CIO and the Governor. The recent actions of the Board appointing the Secretary of Technology as the interim CIO take action far beyond the solution adopted by the General Assembly. These actions further blur the line between the Governor's Office and the CIO, and raise the question as to whether it is appropriate for the CIO to also serve as the Board's vice-chairman.

I also have concerns over how the Secretary will be able to keep separate his role on the Governor's cabinet from his role as the CIO of the Commonwealth. It seems that it might often not be clear in which capacity he is acting. For example, a Secretary enjoys broad Virginia Freedom of Information Act (FOIA) exemption that allows him to keep confidential his correspondence and working papers. The CIO does not enjoy such an exemption. In the case where the same person is serving both roles, it will be difficult for the public and the administration to discern which documents Secretary Pomata holds in his capacity as Secretary, and which he holds in his capacity as CIO. It is of the utmost importance that the public not be kept in the dark about the centralization of our IT infrastructure and our partnership with Northrop Grumman because the Secretary has the ability to exercise a FOIA exemption that an independent CIO does not.

These questions and issues are representative of the many potential conflicts that might arise from this interim appointment. With one person simultaneously serving dual roles, the delicate system of checks and balances regarding IT oversight has been disrupted.

I understand that as the search for a permanent CIO continues, it is necessary for an interim CIO to be in place to oversee the day-to-day operations at VITA and to oversee contract management and performance with Northrop Grumman. However, I feel strongly that appointing the Secretary of Technology in this role creates more problems than it solves.

As the partnership with Northrop Grumman is coming under increased public scrutiny, breaking down the walls that sought to keep the CIO insulated from political processes does not seem to be the prudent solution. Not only is it contrary to legislative intent, but the appearance of impropriety that it creates is unacceptable. As a result, I respectfully request that you and the Board take action to rescind the appointment of Secretary Pomata as interim CIO.

Cordially,

Samuel A. Nixon, Jr.

cc: The Honorable William J. Howell
The Honorable Joe T. May
The Honorable Kathy J. Byron
The Honorable Walter A. Stosch
The Honorable Mamie E. Locke
The Honorable Leonard M. Pomata
The Honorable Richard D. Brown
The Honorable Wayne M. Turnage
Members of the Information Technology Investment Board
Marcella Williamson