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Virginia Division of Legislative Services



VIRGINIA CODE COMMISSION

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Senator Edwards, chair, called the meeting to order and welcomed new members Judge Charles S. Sharp, Stafford Circuit Court, and Wesley G. Russell, Jr., Deputy Attorney General for Civil Litigation.

Legislative Update

Staff provided an overview of legislation recommended by or affecting the Virginia Code Commission (Commission) that was enacted at the 2011 Regular Session of the General Assembly.

Small Business Impact

Chapters 241 and 315, which are duplicate acts, are Code Commission recommendations based on a report of the Administrative Law Advisory Committee. The acts clarify the process for the notice of completion of the small business impact statement and review of existing regulations to minimize the economic impact of regulations on small businesses. The acts:

- Change the periodic review requirement from five years to four years to conform to the procedures for regulatory review adopted by each Governor under §§ 2.2-4013 and 2.2-4017 of the Code of Virginia.
- Require agencies to publish a notice of the review and report of the findings in the *Virginia Register of Regulations* and post the notice on the Virginia Regulatory Town Hall.
- Provide for a 21-day public comment period after publication of the notice.
- Clarify the publication requirements of agency statements required by § 2.2-4007.1 D related to extending the timeframe to review final regulations in existence on July 1, 2005, and adopted between July 1, 2006, and July 1, 2010.

Administrative Process Act Timeframes

Chapter 464 requires agencies to file updated regulations with the Registrar of Regulations within 90 days of the law's effective date when regulatory changes are (i) nondiscretionary and (ii) necessary to conform to a change in law. The act also requires agencies to file a Notice of Intended Regulatory Action with the Registrar of Regulations within 120 days of a law's effective date whenever a Virginia statutory change necessitates a change to, or repeal of, all or a portion of a regulation, or the adoption of a new regulation.

Code Commission Membership

Chapter 848 changes the appointment authority for the two circuit court member representatives to the Code Commission from the Governor to the Speaker of the House of Delegates and the Senate Committee on Rules. The legislation also adds the Governor or his designee to the Commission.

Foreword to the Code of Virginia

Volume 1 of the *Code of Virginia*, last replaced in 2008, contains the Foreword and is scheduled for replacement in September. Mr. Moncure presented a revised edition of the Foreword for the Commission's input and consideration. Comments will be incorporated and a final draft will be presented at a future meeting.

Catchline of § 18.2-479.1

The Commission chair received a request from Henry County Commonwealth's Attorney Robert Bushnell asking the Commission to consider changing the section catchline of § 18.2-479.1 of the Code of Virginia to more clearly describe the content of the section. In Mr. Bushnell's letter dated February 10, 2011, he explains that the language of § 18.2-479.1, which states that it is unlawful for a

Code Commission members received a briefing on the status of the Title 64.1 recodification. Titles 26 and 31 will be incorporated into the proposed Title 64.2.

person to flee from a law-enforcement officer to avoid an arrest, is often overlooked by police and magistrates who instead focus only on the section catchline. His letter further indicates that defendants are often erroneously charged with § 18.2-479.1 when the appropriate charge would be § 18.2-460, which prohibits obstruction of a law-enforcement officer in the performance of his duties. Mr. Bushnell suggests that an appropriate remedy would be to change the catchline of § 18.2-479.1 from “resisting arrest” to “fleeing to avoid arrest.”

After discussing Mr. Bushnell’s request, the Commission voted to change the catchline of § 18.2-479.1 to read “Resisting arrest; fleeing from a law-enforcement officer; penalty.”

Code Commission Membership

The chair informed the Commission that the second citizen member seat, appointed by Senate Rules, is available. After a brief discussion, the Commission unanimously approved a motion to recommend to the Senate Committee on Rules the appointment of E.M. Miller, Jr., to fill the vacancy. As Division of Legislative Services Director, Mr. Miller has served on the Commission in an ex officio capacity since 1988.

Work Plan

The Commission discussed the following items for inclusion in its work plan:

- Continuation of the Title 64.1 recodification, which is expected to be completed this year and be ready to prefile for introduction at the 2012 Session of the General Assembly. Title 55, Property and Conveyances, was previously proposed as a recodification candidate. The Commission will seek input in selecting its next recodification and revisit the issue at a future meeting.
- Studying of the incorporation by reference of federal law into Virginia law.
- Revising the Virginia Code Commission regulations implementing the Virginia Register Act.
- Reviewing the Model State Administrative Procedures Act adopted by the Uniform Law Commission (ULC).
- Monitoring ULC’s Electronic Legal Material Act drafting committee and considering the Act’s impact on Virginia statutory and administrative codes.
- Revisiting the status of Virginia Rules of Evidence. The Code Commission is authorized

to adopt rules of evidence upon recommendation of the Supreme Court.

- Continuing with the obsolete laws analysis project required by § 30-151.

Title 64.1 Recodification

David Cotter briefed the members on the status of the Title 64.1 recodification. The Commission reviewed approximately 50 percent of the recodification material last year. The workgroup is currently reviewing proposed Chapter 4 (Personal Representatives and Administration of Estates), and a General Provisions chapter is being created. Also, Titles 26 and 31 will be incorporated into the proposed Title 64.2. Senate Bill 750, relating to uniform guardianship and conservatorship, passed during the 2011 Regular Session of the General Assembly and will be incorporated into the new title as well. The goal is to introduce the recodification bill at the 2012 Session of the General Assembly.

Virginia Administrative Code

The Commission approved staff’s proposal to replace Volumes 4 (Corporations; Criminal Justice and Corrections; Economic Development), 5 (Education), and 13 (Housing) of the Virginia Administrative Code.

Next Meeting

The Code Commission met on Tuesday, June 7, 2011, and will meet again on Monday, July 18, 2011, in Richmond.

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Virginia Housing Commission

April 27, 2011

The Virginia Housing Commission (Commission) held its first meeting of the 2011 interim in Richmond with Delegate John Cosgrove, chair, presiding. Presentations made to the Commission and comments received can be viewed on the Commission's website at <http://dls.virginia.gov/VHC.HTM>.

Virginia Housing Agencies Update

Bill Shelton, Director, Virginia Department of Housing and Community Development

Mr. Shelton provided an overview of the Virginia Department of Housing and Community Development's (DHCD) mission, which is to work in partnership with the Virginia Housing Commission and the Virginia Housing Development Authority (VHDA) to make Virginia's communities safe, affordable, and prosperous places in which to live, work, and do business. He noted, however, that the economic reality and policy environments remain challenging, requiring creativity in responding to problems. Mr. Shelton also addressed DHCD's broader mission of taking a comprehensive view of the community with an emphasis on economically distressed communities that includes:

- Supporting affordable housing options.
- Building viable communities.
- Creating and sustaining a safer built environment.
- Assisting local and regional groups.
- Participating in critical studies.

He noted that DHCD works extensively in the area of building and safety, and that Virginia is one of the first states to have a uniform safety code.

Affordable Housing

Mr. Shelton explained that DHCD continues to oversee federally funded housing and homeless programs amid shifting federal priorities. Historically the agency's budget has been around \$100–\$120 million but recently it has received more than that amount in stimulus money alone, so the budget has almost doubled in the last two years.

During the 2011 Regular Session, the General Assembly amended The Livable Homes Tax Credit with House Bill 1950 to increase the maximum amount of credit available from \$2,000 to \$5,000. The availability of the credit increase has been extended to homebuilders and licensed contractors to allow them to use the credit.

The Communities of Opportunity launched an affordable rental tax credits program in January of 2011. The program provides tax credits to managers of affordable rental housing in less-impooverished areas within the Richmond metropolitan area who participate in the Housing Choice voucher program. This provides an incentive to use vouchers across the market instead of concentrated in areas.

Homeless Programs

State housing policy recommends more effective approaches to preventing and overcoming homelessness. DHCD is beginning to implement these approaches with more emphasis on rapid re-housing and permanent supportive housing. The agency has limited resources, but is moving state general funds it receives to support these programs. If DHCD can intervene as soon as people become homeless and move them back into housing, it reduces long-term support needs through social services. In an effort to better coordinate social services and housing for the homeless, the agency has launched the Homeless Services Coordinating Council.

Building Viable Communities

Mr. Shelton explained that DHCD conducts oversight of federally funded community development programs and has increased funding for Main Street and Enterprise Zone grants. The General Assembly made changes to the Enterprise Zone grant program in 2011, which modified Enterprise Zone job credit application requirements (House Bill 1599 and Senate Bill 1348), and authorized the DHCD to redesignate joint enterprise zones (House Bill 2131 and Senate Bill 779). Now, older "white elephant" properties are sitting vacant; these changes allow the DHCD to intervene and provide incentive money so that the building can be used for purposes that will contribute positively to the local economy. Mr. Shelton noted that DHCD is also receiving new funding for industrial site revitalization.

Safer Built Environment

Mr. Shelton advised that the 2009 Uniform Statewide Building Code and the Statewide Fire Prevention Code and related regulations are now in effect. He then updated the Commission on the defective drywall issue. DHCD is currently considering a remediation protocol for homes and

The 2011 Regular Session of the General Assembly amended The Livable Homes Tax Credit to increase the maximum amount of credit available to \$5,000.

structures containing defective drywall. Concerns include how to fund such a protocol and what standards would be used. Implementation is slow because there is no national remediation standard. There is also a concern with timing, because the standards DHCD adopts will need to satisfy any national standards that are issued.

Participating in Critical Studies

The Virginia House Development Authority provides homebuyer education to thousands of individuals a year through online classes and traditional classroom settings.

Mr. Shelton reported that DHCD is implementing housing policy initiatives this year that include social services and housing for the homeless as areas of focus. He noted that House Joint Resolution 648, passed in the 2011 Regular Session of the General Assembly, requests that DHCD study amendments to the Uniform Statewide Building Code that provide for accessible routes into public and private buildings for persons with disabilities. It does not change accessibility standards, but retrofits accessible routes from parking areas into commercial and private properties. A two-year study, it requires a report back to the General Assembly.

Susan Dewey, Director, Virginia Housing Development Authority

Ms. Dewey noted that these are challenging times for housing. There are two key issues: access to adequate capital—the Virginia Housing Development Authority (VHDA) needs to borrow at rates it can lend—and addressing housing needs in a difficult market environment.

Access to Adequate Capital

Typically, VHDA uses the tax-exempt bond market to support its lending programs. This works well with multifamily programs, but the same is not true with single family programs. This is because federal intervention has been keeping interest rates abnormally low, and VHDA cannot borrow at those rates. VHDA is currently using the Treasury bond purchase program, but that expires in December and is unlikely to be renewed. VHDA is looking at alternate ways to raise capital through Ginnie Mae and Fannie Mae.

Addressing Housing Needs

VHDA has provided \$201 million for 44 multifamily developments serving over 3,000 renter households. Some are small, four-unit properties that serve persons with disabilities, and some are larger, serving over 1,000 persons.

As the allocating agency for the federal Low-Income Housing Tax Credit program, VHDA has found that there is a sufficient demand for the program, but challenges exist in the rural area where investor interest does not give

VHDA the return that it needs to provide those credits.

VHDA is working on creating mixed income and mixed use developments with local communities as part of their revitalization plans. VHDA helps communities examine the options available to them as well as assists with funding. The biggest challenge VHDA faces is serving renters with extremely low incomes, particularly the homeless and ex-offenders. There is not enough property to serve the increasing numbers of extremely low-income households.

VHDA has the ability to provide assistance with down payments and closing costs. VHDA has provided mortgage loans to almost 2,000 first-time homebuyers so far in 2011, which is a lower number than last year. VHDA limits risks associated with lending by requiring homebuyer education and using strong underwriting criteria. They also service all loans in-house rather than selling them off, so they work directly with the homeowners. Lending has been a challenge with unemployment. They are still providing fixed, 30-year mortgages, but job loss makes it difficult to keep people in their homes.

Most of VHDA home loans are insured either by federal agencies, including the Federal Housing Administration (FHA), the U.S. Department of Veterans Affairs (VA), and the U.S. Department of Agriculture Rural Housing Service, or private mortgage insurers. Delinquencies are higher than in the state and country, but the foreclosure rate is lower. This is because VHDA does everything it can to intervene when borrowers become delinquent to ensure that they stay in their homes.

VHDA provides homebuyer education to anyone who is interested in obtaining a home; they hold classes online and in person throughout the year. VHDA also provides funding to foreclosure prevention counseling agencies.

Some of the ways VHDA supports state housing policy priorities is through the incorporation of Universal Design features in new construction, and Green Building incentives in the Federal Low-Income Housing Tax Credit program. VHDA has also provided support to the Governor's Housing Policy Initiative through the development and maintenance of the Virginia Foreclosure Task Force (Task Force) website and by tracking foreclosure trends in Virginia. VHDA has organized monthly work sessions for the Task Force to review six to seven pieces of foreclosure-related legislation referred to it by the 2011 General Assembly. VHDA is staffing the Task Force.

Charlottesville Affordable Housing Program

Jim Tolbert, Director, Neighborhood Development Services

Mr. Tolbert began with an overview of the housing situation in Charlottesville, noting that the city has a relatively high median income of \$73,800 as of 2007, and has weathered the economic downturn well. There are 16,700 occupied housing units, and 18,400 total housing units as of 2007. A 2007 American Community Survey showed that almost half of Charlottesville households spend more than 30 percent of income on housing costs. As of 2008, there were 268 homeless adults. In 2009, there were 1,933 units of supported affordable housing units, which is 10 percent of the total housing stock. The 2025 City Council vision includes quality housing opportunities for all.

A 1998 housing study found that the city needed to focus on middle-income housing, because it was losing middle-income homeowners to surrounding areas. The city's housing policy includes providing down payment assistance loans and assistance to homebuilders, as well as rehabilitating dilapidated properties in deteriorating neighborhoods.

Mr. Tolbert reviewed the efforts of The Charlottesville Housing Affordability Program and the Tax Relief for the Elderly and Disabled Program as well as other efforts by the city to rehabilitate housing stock and provide affordable housing.

Mortgage Market Overview

Sonya Waddell, Associate Regional Economist, Federal Reserve Bank of Richmond

The data in Ms. Waddell's presentation came from the Mortgage Bankers Association (MBA) and Lender Processing Services (LPS). Ms. Waddell advised that the housing situation is not getting worse, but it is still challenging. There are declines in delinquency rates, but there are also declines in housing rates. Foreclosures are at an all-time high, and existing home sales are not where they need to be for the housing market to recover.

The foreclosure rate in the fourth quarter of 2010 was two percent. There are 30,000 loans currently in the foreclosure process. Virginia continues to do better than the rest of the nation, which had a national foreclosure rate of 4.6 percent in the fourth quarter of 2010. Part of the reason for the high U.S. foreclosure rate is because of states like Florida, which has over

450,000 loans in the foreclosure process. Virginia ranks 44th out of the 50 states and the District of Columbia.

Prime, FHA, and VA loans have seen a flattening out of the foreclosure rate, while subprime foreclosures have jumped. In the first quarter of 2007 the majority of loans in foreclosure were subprime loans, which accounted for about 3,200 loans. In the fourth quarter of 2010 the majority of loans in foreclosure were prime loans, but the total number of loans in foreclosure was much higher; subprime loans accounted for about 8,000 loans. Subprime loans are still disproportionately represented in the foreclosure pool in Virginia.

The percentage of owner-occupied homes in foreclosure is highest in Northern Virginia. The percentage of owner-occupied homes with subprime mortgages is dropping, but now there are higher shares of subprime foreclosures in the southern parts of the state.

There has been a decline in 90+ day delinquencies (currently 2.7 percent, or about 3,000 homes) and a flattening out of 60+ day delinquencies. There are more 90+ day delinquencies in the central to eastern parts of the state. The numbers are not getting worse, and appear to have stabilized.

The decline in house prices will continue to be a problem. As house prices decline, negative equity is created and people choose to walk away from their homes. The bigger issue is with people who have a one-time event that causes them to get behind on their mortgage, like job loss, divorce, etc. Virginia is one of the top 10 states with negative equity at 23.4 percent, but that does not necessarily mean that there will be large jumps in house prices. House prices in Virginia rose at a faster rate than the U.S., but the decline has been the same for both.

Existing home sales are not rebounding quickly enough to move inventory off the market. The good news is that labor markets are improving, which means improved conditions for homeowners. Unemployment in March was 6.3 percent. As labor markets improve, housing markets improve, but the southern part of Virginia continues to see higher unemployment rates than the rest of the state.

The bottom line is that the housing market is still a drag on the economy. House prices are still falling and foreclosure inventories are still at record levels. However, the foreclosure inventory and the number of foreclosure starts are leveling off, and delinquency rates are falling and unemployment levels are stabilizing.

As house prices decline, negative equity is created and many people choose to walk away from their homes.

Homebuilders Overview

Lloyd Poe, Home Builders Association of Virginia

Mr. Poe is a homebuilder and resident in Chesterfield County. He noted that although the economy is improving, homebuilding is not, primarily because of the crossing of four issues:

- Foreclosure.
- Lack of job growth.
- Financing problems.
- Equity loss.

Foreclosure

Mr. Poe explained that while the foreclosure problem is not as bad as in other states, Virginia still has its share of the problem. Issues exist not just with determining resale value on foreclosed property, but also on surrounding homes. New comps for neighborhoods have dropped by \$10,000-\$11,000 because appraisers are having trouble not including foreclosed homes in valuation. New builders are competing with banks selling foreclosed inventory, and last year banks outsold new builders for the first time. Builders cannot compete in terms of price; the cost of a new home is at or beyond the resale of foreclosures. A builder holding inventory purchased at the height of the market is doing well to break even. There is no profit or contribution overhead for those builders, they are only moving debt off the books. The earliest the inventory will clear out is 2014 or 2016.

Lack of Job Growth

Mr. Poe stated that the housing demand is driven by job growth, which is stagnant in Virginia. The economy needs to improve in order for the housing situation to improve.

Financing Problems

Buyers are having difficulty obtaining financing. New builders often go to the closing table and give up more than intended under the initial contract, because buyers were unable to obtain a loan for the original amount. Virginia is still not at the bottom of the housing value curve. Acquisition, Development, and Construction (ADC) financing is essentially a thing of the past. The falling value of lots is what placed a substantial number of homes underwater, and it is unlikely that financing will ease up for the building community.

Equity Loss

Many borrowers have underwater mortgages due to equity loss. The home equity loan issue has not hit yet. Other issues that have not come

to the surface yet are problems with “robo-signing” and title insurance, where the title on foreclosed homes may not be clear, which only delays moving that inventory off the market.

The average sales price for homes in Central Virginia was \$275,000 in 2006, and was \$198,000 in March of 2011, which is a 38 percent value loss. Before house prices level off they may still increase to a 40 percent loss.

There are 254,000 housing starts on new construction nationally this year. Demand is growing, but builders have no ability to build homes at a profitable price. Each improvement is met with increasing costs, such as drywall and lumber. The remodeling industry is doing better than new homebuilding, and the industry is facing competition from homebuilders who are now going into remodeling.

The road back to normalcy will be a long one. By the fourth quarter of 2011, Virginia was 62-68 percent back to normal housing production levels. There won't be much improvement over that until Spring 2013.

Next Meeting

The full Commission will next meet on September 6, 2011, in Richmond. Information regarding Work Group and Sub-Work Group meetings can be found on the Commission's website.



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Foreclosure, lack of job growth, financing problems, and equity loss contribute to the continued lack of growth in the homebuilding industry.

Joint Commission on Technology and Science

May 3, 2011

The Joint Commission on Technology and Science (JCOTS) held its first meeting of the 2011 interim in Richmond.

Legislative Update

Staff provided an update on technology and science legislation considered during the 2011 Regular Session of the General Assembly. Of particular interest were the bills recommended by JCOTS. House Bill 2059, related to the transmission of obscene text messages, was adopted by the General Assembly. House Bill 2032 and Senate Bill 1251 were passed by indefinitely in the Senate Courts Committee. A detailed summary of all technology- and science-related legislation considered by the General Assembly in 2011 is available on the JCOTS website.

The chair noted that he saw several bills discussed during the legislation session that used outdated technology terminology, such as the use of terms like “wiretapping” or “GPS.” He said that he would like to encourage all technology-related legislation to use language that describes actions taken, and not specific types of technology. This is the approach developed several years ago when the Computer Crimes Act was adopted. He advised JCOTS members to watch for opportunities to improve the quality of legislation by ensuring that correct technology-related terminology is used.

Work Plan

A proposed work plan for the 2011 interim was introduced, based on legislation referred to JCOTS for study and other topics of interest identified by members. The following advisory committees and subcommittees were approved:

Intelligent Transportation Advisory Committee—Continued from 2010

Topics for consideration may include House Bill 2029, which relates to remote vehicle emissions testing; distracted driving; and other issues suggested by members of JCOTS or the Advisory Committee relating to transportation and technology.

Energy Advisory Committee—Continued from 2010

Topics for consideration include updates on research, development, and innovation in renewable energy technologies; House Bill 2447, which relates to incentives for use of renewable energy in state facilities; and other issues suggested by members of JCOTS or the Advisory Committee relating to energy and technology.

Electronic Privacy Advisory Committee—Continued from 2010

Topics for consideration include continued review of unauthorized use of electronic tracking devices, identification and discussion of the state of privacy generally, and other issues suggested by members of JCOTS or the Advisory Committee relating to electronic privacy.

Uniform Computer Information Transactions Act (UCITA) Advisory Committee

This advisory committee was created specifically to study House Bill 2259, which was referred to JCOTS by the General Assembly for study. The bill would amend UCITA with regards to the use of digital identity credentials.

A solicitation will be issued for applications from citizen members who wish to serve on the Advisory Committee.

Medical Database Breach Subcommittee

This subcommittee was created to study House Bill 2315, at the request of the patron. The only official members of the subcommittee will be JCOTS members, but all interested persons will be invited to join in the discussion of the issues presented by medical database breach notifications.

A member inquired as to whether staff could send out a questionnaire to technology industries in the Commonwealth asking what technology policies would be helpful to the industries. The JCOTS membership concurred with this request.

Electronic Notarization

Chip Dicks, Tim Reiniger, & Rich Hansberger, Digital Services Group, FutureLaw LLC

Mr. Dicks, Reiniger, and Hansberger provided JCOTS with an overview of electronic

The Joint Commission on Technology and Science reviewed legislation considered during the 2011 Regular Session and considered work for the interim.

notaries. They praised Virginia in being the first state that has attempted to step forward and define a “trustmark,” the issue that will be studied by the UCITA Advisory Committee during the interim. A copy of their presentation is available on the JCOTS website.


Electronic Meetings

Upon request of the chair, staff provided an overview of the current laws governing electronic meetings under the Virginia Freedom of Information Act and in other states. While a few states do not allow electronic meeting, most do. It appears that Virginia’s law contains more legal requirements for the conduct of electronic meetings than other states, such as the requirement that a quorum be physically assembled in one location. It was noted that while technology has vastly improved and changed since even the last major amendments to electronic meeting laws in Virginia in 2004, the laws themselves are often seen as an obstacle to holding such meetings. A member asked if the issue of electronic meetings could be referred to the Electronic Privacy Advisory Committee for a more thorough review, and the JCOTS membership concurred.

Virginia is the first state that has attempted to define a “trustmark” in legislation.

Next Meeting

The next meeting date for the full Commission will be posted on the Commission’s website and the General Assembly website as soon as information is available. The Transportation Advisory Committee will meet on July 6 in Richmond, the UCITA Advisory Committee will meet on August 1 in Richmond, and the Electronic Privacy Advisory Committee will meet on August 15 in Richmond.



JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

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2011 New Legislative Studies Staffed by DLS

Bill and Patron	Description	DLS Staff
HB 2014 (Pogge)	Access to Assistive Technology for Students	Sarah Stanton
HJ 735 (May)	Repatriation of Manufacturing Jobs	Frank Munyan
SB 1269 (Houck)	Autism Advisory Council	Sarah Stanton Jessica Eades
SJ 292 (Puller)*	Public Transportation in U.S. Route 1 Corridor	Caroline Stalker Alan Wambold
SJ 297 (Miller, Y.B.)*	Transit Programs in Virginia	Alan Wambold Caroline Stalker

*DRPT study to which DLS has been requested to provide staff support

Virginia Freedom of Information Advisory Council

May 3, 2011

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of 2011 in Richmond. This meeting was an organizational meeting, which included a 2011 legislative update, review of bills referred to the Council for study, establishment of a work plan with the appointment of necessary subcommittees, and the setting of future meeting dates. The Council also welcomed its newest member, James Schliessmann, Esquire, a designee of the Attorney General.

Legislative Update

Staff provided a recap of the bills amending the Freedom of Information Act (FOIA) passed by the 2011 Regular Session of the General Assembly. Twenty bills amending FOIA were passed during the 2011 Session. House Bill 1860 and identical Senate Bill 763, which require that the party against whom a FOIA petition is brought must receive a copy of the petition at least three working days prior to the filing of the petition, both passed as recommendations of the Council. Senate Bill 951, which clarifies that the Library of Virginia is the custodian of records transferred to it for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.) and for responding to requests for such records made under FOIA, also passed as a recommendation of the Council. Of the 20 bills, two bills create new records exemptions and 18 amended existing provisions of FOIA. The complete 2011 Legislative Update is available on the Council's website.

Bills Referred for Study

The Council next reviewed the four bills referred to it by the General Assembly for additional study.

- House Bill 1722 - FOIA; designation of records; penalties for certain violations.
- Senate Bill 812 - FOIA; access to salary information.
- Senate Bill 1467 - FOIA; disclosure of criminal investigative records.
- House Bill 1935 - Legal notices; use of websites, radio, and television, etc.

Senate Bill 812

Senator Martin spoke regarding the bill he had introduced, Senate Bill 812. Senator Martin told the Council that the bill was introduced as a result of the publication of state employees' salaries by the *Richmond Times-Dispatch* in its online publication. He noted that he represents many state employees and that the bill was an attempt to balance the public's right to know and the privacy of state employees. The bill sought to disconnect an employee's name from his salary.

Senator Martin noted that he did not think the original intent of FOIA was to require disclosure of lower echelon employees' salaries. Senator Martin stated that he is sensitive to the situation where a janitor whose salary is published in the newspaper goes to choir practice and everyone there knows how much he makes. The situation is embarrassing and an invasion of one's privacy. Senator Martin reminded the Council that when FOIA was first enacted, the threshold below which salary information was not required to be released was, and still is, \$10,000. He pointed out that virtually no public employee makes less than \$10,000 year in 2011. Council members questioned whether the Senator had any figure in mind, based on inflation, to raise the \$10,000 threshold. Staff noted that during the General Assembly Session, it was estimated that in today's dollars, the threshold would be approximately \$35,000. Senator Martin stated that he was told disclosure of salary information by name was bad for agency morale especially when employees found out what their supervisors earn. A Council member noted that every newspaper he had ever worked for has published salary information attributable to each public employee. He stated that all public employees should be held to the same standard, regardless of position.

After further discussion, it was a consensus of the Council to create a subcommittee to study the issues raised by Senate Bill 812, including raising the salary threshold while keeping individual public employee's salaries public. In closing, Senator Martin told the Council that he preferred his amendment proposed in the FOIA subcommittee of the Senate Committee on General Laws that would require the disclosure of both name and salary of all elected and appointed officials, including those holding upper echelon positions.

House Bill 1722

The Council next reviewed House Bill 1722 and after discussing the substantial practical difficulties in requiring each public employee creating public records to designate on the record whether it is open or exempt, the Council agreed

Twenty bills amending FOIA passed during the 2011 Regular Session of the General Assembly.

unanimously not to go forward with HB 1722. It was the consensus of the Council that trying to get government more organized vis-a-vis FOIA is a good idea; the bill, however, has the opposite effect and is unworkable as written.

Senate Bill 1467

Senate Bill 1467 was then discussed by the Council. Staff advised that this bill was substantially the same as SB 711 studied by the Council in 2010. Essentially, SB 1467 exempts criminal investigative files as long as they are “active or ongoing.” Based on the Council’s 2010 study of SB 711, it is difficult to determine when an investigation becomes inactive or closed. Staff also noted that the SB 711 subcommittee recommended a rewrite of § 2.2-3706 of the Code of Virginia to make it more easily read and understood, but that recommendation did not go forward because of the concern of unnecessary tinkering in an election year. Staff advised that the issue has remained the same over the years—reporters and others want greater access to criminal investigative files and law-enforcement agencies routinely fail to exercise any discretion because of concern for the myriad of personal and other information contained in a criminal investigative file, coupled with the time it takes to review the file. The Council member who also chaired last year’s subcommittee told the Council that the issue was not going to go away because of significant interest by many parties. He suggested that a subcommittee be appointed, at a minimum, to facilitate further discussion in the hopes of an acceptable resolution. The chair continued the subcommittee from 2010.

House Bill 1935

The Council next reviewed House Bill 1935. A Council member advised that while the issue of publication of legal notices was very important to local governments and citizens, it was his belief that it was not a FOIA issue and therefore not within the purview of the Council. The Council requested staff to identify other entities that may have subject matter jurisdiction over the issue raised by House Bill 1935. Initially, staff suggested the House Committee on Counties, Cities and Towns; the Senate Committee on Local Government; and the Governor’s Reform Commission. The Council will make a referral decision at its next meeting in July.

FOIA Training

Staff updated the Council on its efforts to accomplish last year’s Council directive to provide training for legislative agencies, committees, councils, and commissions. Staff reported that FOIA training had been provided to the joint committee of conference on the budget bill and that implementation of the advice provided by Council staff resulted in more open budget conference discussions without negative impact to the process. Staff reported that training of legislative agencies, commissions, committees, and councils will continue this spring.

Email Use

Staff advised the Council of staff concerns with the almost exclusive use of email by government entities and its impact on processing FOIA requests and subsequent charges.

The Council was reminded that this issue had been discussed last year, when the Department of Environmental Quality’s attempted to retrieve electronic records from the Virginia Information Technologies Agency (VITA) and was charged by VITA. Staff related that DEQ had received a FOIA request for records maintained by VITA. Under FOIA, DEQ remains the custodian of these records and was initially charged \$14,000 by VITA to make the records available to DEQ in response to the FOIA request. Ultimately, this charge was reduced by VITA to \$3,800. VITA’s initial estimate came one month after the records were requested by DEQ, and the last estimate was almost two months after DEQ’s request—neither time period was in compliance with the response times required by FOIA and imposed on DEQ as the custodian of the records.

At the time, the question to the Council was whether DEQ could charge the requester this additional charge to retrieve records from VITA as part of the actual charges allowed under FOIA, and further, whether it would be reasonable to do so. Staff advised that after preliminary discussions with VITA, the issue is one of organization of email and other electronic records by state and local government entities. According to VITA, it is not responsible for organizing records of agencies, but merely to maintain them. As a result, if an agency is not properly categorizing/organizing their records, what is maintained by VITA is that lack of organization. The problem is widespread and while email and electronic records were originally perceived to be a tool to help public bodies easily retrieve files and reduce charges to citizens

FOIA staff continue to provide training to legislative agencies, committees, councils, and commissions.

for providing records under FOIA, it has had the opposite effect. Searching for email and electronic records is difficult and time consuming and the charges reflect this. The skill set that applied in the paper world has not transferred to the electronic world.

Staff suggested that the Council take the lead in educating public bodies, in conjunction with the Library of Virginia, in an attempt to close this gap or at least keep it from growing wider. No statute dictates how records should be organized; it is incumbent on each governmental entity, however, to set up filing systems that facilitate the rights of the public to access public records under FOIA. Ms. Treadway advised that VITA is working on a potential solution to this problem. Mr. Wiley concurred with staff that this issue is not limited to state government and suggested that it is a different skill set required due to the sheer volume of email sent and received.

Other

The Council unanimously adopted two resolutions honoring Council members Roger Wiley, whose term will expire on July 1, 2011, and E.M. Miller, who will be retiring from state service effective July 1, 2011, for their contributions to the work of the Council.

Public Comment

Megan Rhyne, executive director of the Virginia Coalition for Open Government (VCOG) advised the Council of the organization's 2011 program about FOIA and record retention/management that will be held in several regions of Virginia. She stated that both Craig Fifer and Maria Everett are participating in this program.

James Lawrence, citizen of the City of Fredericksburg, advised the Council of his continuing FOIA issues with the Fredericksburg City Council, including the holding of meetings in violation of FOIA and prohibiting the recording of City Council meetings, also a violation of FOIA.

Ginger Stanley, executive director of the Virginia Press Association praised both Messrs. Wiley and Miller for their service on the Council. She advised the Council that HB 1935 had been studied by several committees of the Governor's Reform Commission but was referred to the Council due to the respect for Council and their process for careful consideration of access issues. Ms. Stanley reported that the number of FOIA exemption bills was down considerably in

2011, again in part due to the Council's reputation for fully examining access issues and providing a forum for access discussions.

Next Meeting

The Council set the following dates for its future meetings:

- Monday, July 18, 2011, 1:30 p.m., House Room C, General Assembly Building, Richmond.
- Monday, November 14, 2011, 1:30 p.m., House Room C, General Assembly Building, Richmond.
- Tuesday, January 3, 2012, 1:30 p.m., House Room C, General Assembly Building, Richmond.

FOIA staff discussed concerns related to the widespread use of email by governmental entities and its impact on FOIA requests and subsequent charges.



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

SENATOR R. EDWARD HOUCK, CHAIR
MARIA EVERETT, EXECUTIVE DIRECTOR
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For more information, visit study and commission websites. DLS staff members maintain comprehensive study and commission websites that contain complete summaries of meetings and links to additional information, handouts, and resources.

Virginia Sesquicentennial of the American Civil War Commission Executive Committee

May 16, 2011

The Civil War 150
Legacy Project has
collected
approximately
11,000 Civil War-
related images.

Speaker Howell called the meeting to order and welcomed those in attendance.

Civil War 150 HistoryMobile



Cheryl Jackson, Executive Director
Roy Knox, Virginia Tourism Corp.
Elizabeth Heffernan, HistoryMobile
Logistics Manager, Department of
Motor Vehicles

Staff updated Commission members on the status of several components of the Civil War 150 HistoryMobile, reporting that the design/build project is on schedule and on budget. The project team conducted a successful inspection of the trailer in April. Contracts concerning the donation of a tractor by Volvo for the project are currently under review. Ms. Jackson also distributed the finalized designer renderings of the exterior of the HistoryMobile and extended the Commission's appreciation to the Virginia Tourism Corporation, the Department of Motor Vehicles, and the Virginia Historical Society for their partnership in the Civil War 150 HistoryMobile project. Further, she reported that the Commonwealth Transportation Board is considering funding of interactive kiosks that will travel with the HistoryMobile, highlighting scenic roads and tourism information throughout Virginia.

Staff then reviewed the hosting requirements and procedures established for localities to request a visit by the HistoryMobile and presented for approval by the Executive Committee a tentative schedule for 2011. To maximize the range and efficiency of the HistoryMobile, the travel schedule will include some extended regional tours (two weeks or more) in rural communities and parts of the state that have limited access to museum exhibits.

Executive Committee members inquired as to whether the HistoryMobile travel schedule included the State Fair of Virginia and other local community fairs. Elizabeth Heffernan, Logistics Manager, indicated that the HistoryMobile will travel to local fairs as they fit into the schedule. Staff members have been working on arrangements to exhibit at the State Fair of Virginia in 2012. Committee members inquired about buying bulk diesel fuel for the HistoryMobile. Ms. Heffernan indicated that the Department of Motor Vehicles already has contracts in place for this purpose.

The Executive Committee approved the draft schedule and thanked staff and partners for their hard work.

Update on Civil War 150 Legacy Project: Document Digitization and Access

Sandra Treadway, Librarian of Virginia
Laura Drake Davis, CW 150 Project
Archivist-Western Region
Renee Savits, CW 150 Project
Archivist-Eastern Region

Dr. Treadway offered brief commentary on the overwhelming success of the Civil War 150 Legacy Project. The project has far exceeded expectations in terms of response from the public and items discovered and scanned. Dr. Treadway thanked Executive Committee members for their support of the project and introduced Laura Drake Davis and Renee Savits, the Civil War 150 Project Archivists, who indicated that the project team has conducted 53 scanning events in 38 localities with an additional 48 events scheduled through June 2012. Staff members have collected an estimated 11,000 images. If the average number of images collected per event holds, the Legacy Project will have produced more than 35,000 images by the end of the collecting and scanning phase of the project.

Ms. Davis continued by showing Executive Committee members some examples of images uncovered by the Legacy Project team, including:

- A drawing by a soldier serving in the 90th Pennsylvania Infantry regiment of General Grant's headquarters collected in Warrenton, Virginia.
- Photos of former slave, Mary Alice Mitchell, noted as a fiercely independent person who after the Civil War became a substantial land owner.
- The diary of Frederick Watkins, a soldier with the 4th New York Light Artillery who later

served as Captain of the 100th United States Colored Troops Regiment. The diary has a bullet hole through the middle of it and is reported to have saved its owner's life as it was carried in his breast pocket, stopping the bullet before it reached his heart.

- The discharge papers of Oliver Henry, a descendant of Patrick Henry and a native Southerner who fought for the Union.
- Several significant pieces of Civil War memorabilia including a slave trading tag from a slave auction house.

Members of the Executive Committee asked if there is a mechanism by which people outside of the Commonwealth of Virginia can contact the project team to donate materials. Ms. Drake-Davis explained that a remote donation procedure is in place and the project team has received requests from Ohio, California, and Florida. Additionally, project staff is hosting a joint event with Tennessee archivists in Bristol next week.

Following the presentation, Dr. Treadway outlined the budget and remaining costs of the project. Due to the enthusiastic response from the public, the workload and travel requirements of the project have increased significantly, causing an anticipated gap in funding in the spring of 2012. Committee members discussed options for bridging the gap and asked Ms. Jackson to discuss the availability of funds for the project.

A motion to endorse continuation of the Civil War 150 Legacy Project through Spring 2015, and transfer to the Library of Virginia \$200,000 for its continuation passed unanimously.

The Speaker thanked the Library of Virginia for its efforts and remarked that the project has been a wonderful investment. He noted that the project was originally conceived by former Commission member and member of the House of Delegates Albert C. Eisenberg.

Sesquicentennial Tourism Marketing Program: Recommendations

Steve Galyean, Development Director, Virginia Tourism Corporation

Mr. Galyean briefed Executive Committee members on the fifth round of grant applications for the Commission-sponsored sesquicentennial tourism marketing program. Mr. Galyean noted that of five grant applications received, the grant review committee recommended two for funding: the Washington

County Local Sesquicentennial Committee and the Chesterfield County Parks and Recreation Department.

The next grant cycle will open in June 2011. The grant recommendations were considered en bloc. A motion that the grants be approved as presented passed unanimously.

Update on An American Turning Point: The Civil War in Virginia

Paul Levensgood, President and CEO, Virginia Historical Society

Dr. Levensgood updated Executive Committee members on visitor statistics to the Commission-sponsored museum exhibition, *An American Turning Point: The Civil War in Virginia*. Approximately 30,000 people have visited the exhibition through the first week of May, including 36 group tours. Visitors have been diverse in terms of age, ethnicity, and distance traveled. The exhibition has enjoyed extensive media attention with articles in the *Richmond Times Dispatch*, *The Washington Post*, *Wall Street Journal*, *Atlanta Journal-Constitution*, and the *Los Angeles Times*.

Dr. Levensgood noted that the traveling panel exhibit based on the larger gallery exhibit is available to travel to venues that cannot provide the necessary space or security to host the gallery exhibition. Since the panel exhibit is not staffed, the Virginia Historical Society is making use of QR codes for use with smart phones to enhance visitor experiences.

Staff Update and Approval of Logo Requests

Cheryl L. Jackson, Executive Director

Staff updated Executive Committee members on other Commission activities including a new "Tracking the Sesquicentennial" web resource, which allows users to download information on sesquicentennial activities throughout the state and track the HistoryMobile.

Staff reminded members of the 2011 Signature Conference, *Military Strategy in the American Civil War*, to be held at Virginia Tech this weekend, May 21, 2011. The next Signature Conference will be held at Virginia Military Institute on March 22, 2012.

In accordance with the procedure established by the Executive Committee, Ms. Jackson presented a list of applications to affix

Approximately 30,000 people visited the Commission-sponsored museum exhibition, *An American Turning Point: The Civil War in Virginia*, during the first week of May.

the Commission's logo that have been given provisional authorization by staff.

A motion that staff recommendations for approval of logo applications be given final approval by the Executive Committee passed unanimously.

Entities across the state continue to apply to use the Commission's logo.

Next Meeting

The next meeting date will be posted on the Commission's website and the General Assembly website as soon as information is available.



VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

SPEAKER WILLIAM J. HOWELL, CHAIR
CHERYL JACKSON, EXECUTIVE DIRECTOR
MICHELE HOWELL AND KATHY DUVAL, DLS STAFF

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<http://www.virginiacivilwar.org>

2011 Acts of Assembly: Changes to State Entities

New State Entities

- **Office of the Secretary of Veterans Affairs and Homeland Security** (Department of Veterans Services, Secure Commonwealth Panel, Veterans Services Foundation, Virginia Military Advisory Council, and Virginia War Memorial Foundation report to the new Secretary's office).
- **Southwest Virginia Cultural Heritage Foundation** (Replaces the Southwest Virginia Cultural Heritage Commission, which ceases to exist on 7/1/11).
- **Office of the State Inspector General** (the office of inspector general of the Departments of Behavioral Health and Developmental Services, Corrections, Juvenile Justice, and Transportation and the Department of the State Internal Auditor are consolidated into this new office; also responsible for tobacco indemnification and revitalization). The Office becomes fully operational on July 1, 2012.
- Autism Advisory Council.
- STEM Public Private Partnership.
- Higher Education Advisory Committee.
- Research and Technology Investment Advisory Committee.

Other

- Commonwealth Transportation Commissioner title changed to Commissioner of Highways.

Name Changes of State Entities

- Virginia Liaison Office changed to Office of Intergovernmental Affairs.
- Cattle Industry Board changed to Beef Industry Council.
- Wireless E-911 Services Board to E-911 Services Board.
- Virginia Board for Asbestos, Lead, and Home Inspectors changed to Virginia Board for Asbestos, Lead, Mold, and Home Inspectors (effective 7/1/11-see Chapter 358 of the 2009 Acts of Assembly).

State Entities Abolished

- Design-Build/Construction Management Review Board.
- Migrant and Seasonal Farmworkers Board.
- Virginia Recycling Markets Development Council.
- State Interoperability Executive Committee.
- Plant Pollination Advisory Board.
- Medal of Valor Review Board.
- Tourist Train Development Authority.
- Rail Advisory Board.
- State Hazardous Materials Emergency Response Advisory Council.
- Maritime Incident Response Advisory Board.
- Mid-Atlantic Offshore Wind Energy Infrastructure Development Compact.
- Disability Services Council.

Did You Know?

Commission on Government Reform and Restructuring

Governor Robert McDonnell established the Commission on Government Reform and Restructuring last year to perform a comprehensive examination of state government to determine the effectiveness, efficiency and need for existing agencies, governing bodies, programs, and services. The Commission is composed of 23 citizen members and eight members of the Virginia General Assembly. In its first year the Commission established four subject matter committees:

- Government Simplifications and Operations.
- Intergovernmental Relations.
- Customer Service, Performance, Accountability and Transparency.
- Consolidation of Shared Services and Enterprise Architecture.

The committees were charged with reviewing suggestions and ideas in their different subject matter areas. The committees examined the viability of individual ideas and developed formal recommendations for consideration by the full Commission for possible executive or legislative action.

Over the course of the 2010 interim, the Commission and the committees held numerous meetings and public town halls. Each committee developed recommendations and presented them to the Commission on December 1, 2010. Several of the recommendations generated by the committees became legislative initiatives that were passed during the 2011 legislative session, including:

- Establishment of an Office of the State Inspector General to investigate complaints alleging fraud, waste, abuse, or corruption by a state agency or by nonstate agency officers or employees (to become fully operational on July 1, 2012).
- Consolidation of executive branch agency payroll services and certain executive branch agency reporting requirements.
- A requirement that the assessment of mandates imposed on local governments must include an estimate of the fiscal impact of the mandates on the affected local governments in addition to a written justification as to why the mandate should or should not be eliminated.
- Creation of a telework tax credit.

- Elimination of several advisory boards and commissions.

On April 12, 2011, the Commission held its first meeting of the 2011 interim. The Commission decided to use its second year to focus on a more substantive review of state government. To achieve this more in-depth, focused examination, the Commission determined that it would be more effective to divide Commissioners into work groups concentrating on specific topics rather than working through the more general committees. The work groups will be composed of Commissioners selected based on each member's interests and professional expertise and will include staff from the Governor's office and relevant executive branch entities and affected stakeholders. The work groups will be charged with developing ideas and suggestions and providing formal recommendations to the Commission and the Governor for possible executive and legislative action. The designated work groups and meeting schedules will be provided on the Commission's website: www.reform.virginia.gov.

Amigo Wade, DLS Senior Attorney

“Did You Know?” appears in each issue of the *Virginia Legislative Record*. The article features important topics or interesting facts relevant to the Virginia legislature. For general questions or issue suggestions, please contact the Division at (804) 786-3591 or email mtanner@dls.virginia.gov.

Manufacturing Development Commission

May 17, 2011

The Manufacturing Development Commission held its first meeting of the 2011 interim at the National Institute of Aerospace (NIA) in Hampton.

Virginia's aerospace industry directly employs over 9,000 Virginians.

National Institute of Aerospace

Dr. Robert E. Lindberg, President and Executive Director, NIA

Dr. Lindberg welcomed the Commission and advised that the NIA is a nongovernmental, nonprofit research and graduate education institute conceived to work with the NASA Langley Research Center and others in the aerospace community. With approximately 200 employees, students, and consultants and a \$33 million budget, the NIA is primarily engaged in research, graduate education, and public educational and outreach activities. The graduate education program provides graduate students at the nine research universities in the NIA's consortium the opportunity to earn graduate degrees while participating in leading-edge research programs not available at any single university.

Growth at the NIA has led to the construction of a new 60,000 square foot building with space for laboratories. The new facility, scheduled to open in February 2012, will host the Hampton Technology Incubator, which will provide commercialization abilities and the potential for entrepreneurial ventures.

Bayshore Concrete Products Corporation

John D. Chandler, Bayshore Concrete Products Corporation

Bayshore Concrete Products Corporation, based in Cape Charles on Virginia's Eastern Shore, manufactures and supplies various precast concrete structural materials. Mr. Chandler described Bayshore's plans to focus on manufacturing offshore wind gravity foundations and precast tunnel sections. He noted that the firm's ability to develop some new products depends on increasing the depth of the harbor to 18 feet. While dredging the harbor to this depth is estimated to cost \$40 million, the economic impact to Virginia of making the precast tunnel sections at the company's facility has been estimated at \$2.5 billion. Federal funding for dredging by the U.S. Army Corps of Engineers has not yet been approved.

NASA's Technology Initiative

Brett Vassey, Virginia Manufacturers Association (VMA)

Mr. Vassey updated the Commission on the benefits to Virginia's economy provided by the aerospace industry. The sector employs over 9,000 Virginians directly, and when indirect and imputed employment is factored in, the impact tops 28,000 jobs. In addition, spending by the aerospace industry (including direct, indirect, and imputed spending) is nearly \$7.6 billion annually.

The VMA is collaborating with NASA Langley Research Center and the Virginia Commercial Space Flight Authority to examine how advanced technologies from the aerospace industry can improve the manufacturing sector's productivity and efficiency. Areas that promise benefits include automation technology and robotics, heat exchange technology, and science, technology, and engineering (STEM) education. The collaboration reflects NASA's goal to push technology developed for aerospace applications to the private sector.

Bring Jobs Back to America Act

Thomas M. Culligan, Staff Member of Representative Frank Wolf

Mr. Culligan spoke about H.R. 516 (112th Congress), captioned the "Bring Jobs Back to America Act." Since its introduction on January 26, 2011, the bill has garnered 10 co-patrons, including Representatives Forbes and Wittman. The bill has been referred to the Subcommittee on International Monetary Policy and Trade of the House Financial Services Committee. Mr. Culligan announced that Representative Wolf intends to advance parts of his bill by including them in the budget. He also stated that Senator Warner intends to introduce companion legislation in the U.S. Senate.

The Bring Jobs Back to America Act seeks to bring jobs back to the United States and rebuild the American manufacturing base by developing a national job repatriation strategy focused on returning manufacturing and call center jobs to America that have been outsourced to China and other countries. The Act has six major parts:

- Creating a comprehensive national manufacturing strategy.
- Establishing repatriation task forces to promote repatriation of jobs or facilities to a U.S. location.
- Establishing the American Economic Security Commission.
- Making projects that facilitate the relocation of a foreign source of employment or the growth of

the U.S. manufacturing or customer service sector eligible for funding under the Public Works and Economic Development Act of 1965.

- Directing a study of tax provisions to encourage the repatriation of jobs.
- Amending federal patent law.

HJR 735: Repatriating Manufacturing Jobs/Evaluating Tax Incentives

Delegate Joe May introduced House Joint Resolution 735 in the 2011 Regular Session of the General Assembly. The resolution directs the Commission to develop a plan for repatriating manufacturing jobs and evaluating possible tax incentives. Delegate May recounted how a conversation with Representative Wolf encouraged him to carry legislation that would complement the federal efforts to recapture jobs that had been lost to offshore competition. Moreover, Delegate May has been involved in recent relocations of manufacturing operations from Eastern Europe and Mexico to locations in Virginia. He has witnessed that Virginia can compete successfully with other nations in attracting manufacturing facilities. Advantages of domestic manufacturing include lower transportation costs, security, and eliminating the expenses of sending managers overseas for extended periods to oversee operations. Virginia's improved workforce training efforts were identified as a major asset. In response to a question, he acknowledged that Virginia may not be able to effectively compete for low-skill manufacturing jobs. However, Delegate May stated that Virginia's best chances for success were in areas that require a level of workforce training that exceeds the high school level but does not reach the college level.

HJR 735 directs the Commission, in its development of a plan for repatriating manufacturing jobs and evaluating possible tax incentives, to solicit and evaluate proposals to align, reorganize, and create incentives and manufacturing-related programs to repatriate manufacturing jobs and consider possible tax incentives. The Commission is further directed to ensure that the proposed plan is mutually beneficial to the manufacturing sector and the Commonwealth's economic development programs and that the provisions are not redundant.

The Commission is to consider the proposed Bring Jobs Back to America Act in its development of the plan. The element of the Act that relates most closely to the Commission's task is § 6, which directs the Secretary of the Treasury to conduct a study on the feasibility and potential

impact of new tax provisions to encourage U.S. companies to return jobs to the United States. The study shall include a review of the past effectiveness of § 956 of the Internal Revenue Code and the potential effectiveness of other tax provisions encouraging the repatriation of foreign earnings. The issue of manufacturing repatriation has been linked to the issue of repatriating corporate profits held by foreign subsidiaries of U.S. corporations. The U.S. corporate income tax rate of 35 percent is among the highest overall of corporate rates for industrialized countries. For 2009, the combined federal and state/provincial tax rate in Organisation for Economic Cooperation and Development (OECD) nations ranged from a high of 39.54 percent in Japan to a low of 12.5 percent in Ireland. The average was 26.6 percent in 2009, down one percent from 2008. The U.S. combined rate was second highest at 39.25 percent. U.S. tax policy also discourages repatriation of foreign earnings through its imposition of tax on a worldwide basis. The U.S. is one of nine of the 30 OECD countries that tax the foreign business profits of their corporations.

To avoid the comparatively high federal tax rate on corporate profits, U.S. companies reportedly have attributed profits to subsidiaries in countries with lower corporate rates. Tax law allows American companies to defer paying taxes on foreign profits so long as the profits are invested outside the United States. Some business leaders contend that a lower tax rate on these earnings would bring back some of these foreign earnings to this country, and these earnings could be invested in jobs, capital assets, and research and development. While some economists advocate a repatriation of foreign earnings through a temporary reduction in the tax rate, others point out that the repatriation tax holiday in the 2004 Homeland Investment Act (HIA) did not increase domestic investment or employment and note that every extra dollar of repatriated cash was associated with an increase of \$0.60-\$0.92 in payouts to shareholders, largely in the form of share repurchases. Provisions in the HIA that intended to prevent the use of repatriated funds on share repurchases were undermined by the fungibility of money.

As part of developing its plan, the Commission is also required to determine the appropriateness of incorporating the priorities established in the Virginia Industrial Innovation Strategy and the recommendations proposed by the Joint Legislative Audit and Review Commission's 2007 report on the Impact of Regulations on Virginia's Manufacturing Sector

The U.S. corporate income tax of 35 percent is among the highest overall of corporate rates for industrialized countries.

and the Virginia Economic Development Partnership's Manufacturing Impact and Economic Diversification Plan (FY 2007-2011). Staff provided the Commission with an overview of the major elements of the findings of each of these documents.

Next Meeting

The next meeting date, scheduled for July in Richmond, will be posted on the Commission's website and the General Assembly website as soon as more information is available.

Work Plan

The Manufacturing Development Commission plans to survey some Virginia manufacturers to solicit input on how to make the Commonwealth a better place to do business.

In order to complete the preparation of the plan required by HJR 735 by the end of November, the Commission discussed a work plan. Prior to the Commission's next meeting, staff will solicit information from state agencies regarding current efforts and strategies to have firms relocate to the Commonwealth, including efforts to connect U.S. and foreign manufacturers. In addition, some Virginia manufacturers will be surveyed to determine what they believe could be done to make the Commonwealth a better place to do business.

Manufacturing Development Commission

MANUFACTURING DEVELOPMENT COMMISSION

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Meeting Calendar for July - August 2011

JCOTS-Transportation Advisory Committee Lisa Wallmeyer/Wenzel Cummings	1:00 p.m., Wednesday, July 6, 2011—6th Floor Speaker's Conference Room, GAB
Virginia Code Commission Jane Chaffin	10:00 a.m., Monday, July 18, 2011—6th Floor Speaker's Conference Room, GAB
FOIA Advisory Council Maria Everett/Alan Gernhardt	1:30 p.m., Monday, July 18, 2011—House Room C, GAB
Bicentennial of the War of 1812 Commission Brenda Edwards/Jeff Sharp	10:00 a.m., Monday, July 18, 2011—Citizen Advisory Council 1:30 p.m., Monday July 18, 2011—Full Commission House Room D, GAB
Virginia Housing Commission Elizabeth Palen	Affordability, Real Estate Law & Mortgages Work Group 10:00 a.m., July 19, 2011—House Room C, GAB Mortgage Sub-Work Group 1:00 p.m., July 19, 2011—6th Floor Speaker's Conference Room, GAB
JCOTS UCITA Advisory Committee Lisa Wallmeyer/Wenzel Cummings	10:00 a.m., August 1, 2011—4th Floor West Conference Room, GAB
JCOTS Electronic Privacy Adv. Committee Lisa Wallmeyer/Wenzel Cummings	10:00 a.m., August 15, 2011—6th Floor Speaker's Conference Room, GAB
Virginia Housing Commission Elizabeth Palen	Timeshare Sub-Work Group 10:00 a.m., August 16, 2011—4th Floor West Conference Room, GAB
Virginia Disability Commission Sarah Stanton	2:00 p.m., August 17, 2011—House Room C, GAB

Meetings may be added at anytime, so please check the General Assembly and DLS websites for updates.

Virginia Disability Commission

May 18, 2011

The first meeting of the Virginia Disability Commission for the 2011 interim was held in Richmond. Following introductions and opening remarks, staff reviewed the scope and purpose of the Disability Commission.

Legislative Update

Staff provided a brief overview of legislation introduced during the 2011 Regular Session of the General Assembly affecting persons with physical and sensory disabilities. The chair then spoke of the need to work cooperatively with other agencies and entities to ensure that the Disability Commission is able to fulfill its statutory purpose of serving as the primary body for coordinating proposals and recommendations for legislation or budget action affecting persons with physical and sensory disabilities and requested that a letter be sent to other agencies and entities focused on issues affecting persons with physical and sensory disabilities requesting cooperation. The Disability Commission voted to send a letter to this effect. Another member then stated that the Disability Commission should also recommend and ensure introduction of legislation to repeal the sunset provision that would end the work of the Disability Commission on July 1, 2012. Members of the Disability Commission voted to accept this recommendation.

2011 Budget Actions

Susan Massart, House Appropriations Committee Staff

Ms. Massart presented information on 2011 budget actions affecting persons with physical and sensory disabilities. Ms. Massart noted that the 2010-2012 Appropriation Act allocated approximately \$9,128.4 million to Virginia's health and human resources agencies, with \$69.5 million allocated to the Commonwealth's disability services agencies (Department of Rehabilitative Services, Woodrow Wilson Rehabilitation Center, Department for the Blind and Vision Impaired, Department for the Deaf and Hard-of-Hearing, and the Virginia Board for People with Disabilities). Totals for Virginia's health and human resources agencies included a net increase of \$173.9 million in state general funds and \$812.7 million in nongeneral funds. Additional funding was made available through a

combination of reduced agency spending, new federal fund allocations, and enhanced federal funding. Major spending initiatives for health and human resources agencies will include:

- Increased funding for Medicaid and FAMIS.
- Funding to transition individuals with intellectual disabilities from training centers into the community.
- Funding to restore or mitigate reductions to Medicaid provider rates.
- Funds to treat sexually violent predators.

Reductions in health and human resources spending included adjustments to the Medicaid and FAMIS program spending and agency administrative budget reductions.

Funding changes affecting persons with physical and sensory disabilities included:

- Restoration of Medicaid funds to lift freezes on Medicaid waiver enrollments.
- Reversal of certain eligibility reductions for SSI recipients.
- Addressing of eligibility reductions for aged, blind, and disabled individuals.
- Provision of optometry services.
- Restoration of Medicaid waiver rates.
- Restoration of funds for Centers for Independent Living.

Additional 2011 Session Medicaid restorations affecting individuals with disabilities include:

- Funds for partial restoration of Medicaid waiver rates.
- Partial restoration of funds for respite care hours.
- Funds for developmentally disabled waiver slots.
- Funds for podiatry services.

The 2011 Session restorations and initiatives for the Department of Rehabilitative Services included restoration of some funds for brain injury services and Centers for Independent Living and restoration of funds for long-term employment support services, long-term rehabilitation case management services, and extended employment services. Funds were also allocated for disability determination services and Didlake vocational services.

Following Ms. Massart's presentation, the chair requested additional information about actions related to transitioning individuals with intellectual disabilities from training centers to community settings, to which Ms. Massart replied that additional information about specific actions would be available later in the summer.

The 2010–2012 Appropriation Act allocated approximately \$9,128.4 million to Virginia's health and human resources agencies, with \$69.5 million allocated to the Commonwealth's disability services agencies.

During fiscal year 2010, the Department of Rehabilitative Services served 32,340 individuals, the largest number of persons in the agency's history.

The chair also inquired as to whether the Commonwealth had been able to maximize federal funds and secure all funding available. Ms. Masart responded that there may be some additional federal funds available for Vocational Rehabilitation programs that were not previously secured. The chair noted that the Disability Commission will work with agencies to identify and advance proposals to address funding needs and ensure that all available federal funds are received.

Department of Rehabilitative Services Update

Commissioner Jim Rothrock, Dept. of Rehabilitative Services

Commissioner Rothrock provided an update on developments affecting the agency, focusing on the vocational rehabilitation program. Commissioner Rothrock noted that the vocational rehabilitation program is funded through a combination of federal funds and state matching funds. Currently, the state match is 21.3 percent, so that the Commonwealth receives 3.69 federal dollars for every state matching dollar spent. For fiscal year 2011, \$70,577,523 was available to the Commonwealth. To collect these funds, the Department was required to provide \$17.1 million in matching funds. However, Commissioner Rothrock noted, while federal funding for the vocational rehabilitation program has increased substantially (142 percent) since 1991, state general fund matching dollars have been reduced substantially (70 percent). As a result, the Department has been forced to find creative ways to meet match requirements and obtain the maximum amount of federal funding available. In fiscal year 2011, the Department was able to meet its match requirement with some general fund dollars (\$2.4 million) and a combination of funds used for programs or services that support vocational rehabilitation clients. This year, the Department will begin to include capital funds in amounts identified for the matching requirement. Commissioner Rothrock noted that it is becoming more difficult to meet the match requirement and that failure to meet the match requirement will result in loss of federal funds.

Commissioner Rothrock also discussed the Department's increasing caseload. He noted that in fiscal year 2010 the Department served 32,340 individuals, the largest number of persons served in the agency's history. Much of the growth in demand for services is attributed to new younger clients who are under the age of 24. Many of these individuals are students who will soon be entering the work force. As a result

of the increased caseload, Commissioner Rothrock reported that the agency has had to stop taking new clients and that there is now a waiting list for services.

In closing, Commissioner Rothrock noted that the vocational rehabilitation program had 3,390 successful cases closed in fiscal year 2010, with approximately 93 percent of those cases resulting in competitive employment for the client. With regard to unsuccessful rehabilitation cases closed in fiscal year 2010, Commissioner Rothrock stated that transportation was often a serious problem limiting the success of the rehabilitation.

Following Commissioner Rothrock's presentation, Disability Commission members asked questions regarding unsuccessful case closures, demographics of the population served, and programs for students. The chair asked the Commissioner to provide to the Commission information about programs to transition students from school to work and client outcomes, particularly salaries of successfully placed clients and information about what happens to individuals whose cases are unsuccessfully closed.

Department for the Blind and Vision Impaired Update

Commissioner Raymond Hopkins, Dept. for the Blind and Vision Impaired

Commissioner Hopkins provided an overview of policy and program activities and changes affecting the Department for the Blind and Vision Impaired. He noted that the Department also provides vocational rehabilitation services and is experiencing the same challenges in meeting federal matching requirements as the Department of Rehabilitative Services. As a result, the Department's blind and vision impaired vocational rehabilitation program is under an order of selection resulting in limited access to services for persons in need of assistance.

Commissioner Hopkins also spoke about programmatic and policy initiatives at the Department for the Blind and Vision Impaired including:

- Efforts to reach out to students in need of assistance.
- Efforts to track opened cases to determine how many people receive services and follow up with those cases.
- Relationships with employment services organizations to increase successful employment placements for persons receiving services from the Department.

- Programs for students to increase access to job training services.

Commissioner Hopkins reported that the Department has been able to secure funding for two part-time job development staff positions to increase placements and strengthen relationships with the business community. He stated that the Department is also modernizing and improving its vending facility program to increase income. In closing, Commissioner Hopkins stressed the need to increase funding to address salary reimbursements to localities for special education teachers for visually impaired students, one of the major issues that the Department would like the Disability Commission to remain aware of and address.

2011 Disability Commission Work Plan

Delegate Orrock noted that the Disability Commission would meet at least three more times. Delegate Orrock also announced that the Disability Commission would have three work groups focused on (i) housing and transportation, (ii) education and employment, and (iii) publicly funded services for persons with physical and sensory disabilities. The Disability Commission would like to receive recommendations for non-Commission members to participate in the work groups. Recommendations may be emailed to staff at sstanton@dls.virginia.gov. Information about meetings of the work groups will be made available as soon as possible.

Next Meeting

The next meeting of the Disability Commission will be held on June 20, 2011, at the General Assembly Building in Richmond.

Virginia Disability Commission

VIRGINIA DISABILITY COMMISSION

DELEGATE ROBERT D. ORROCK, SR.,
CHAIR

SARAH STANTON, DLS STAFF

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Small Business Commission

May 19, 2011

The first meeting of the Small Business Commission of the interim began with the re-election of Senator Roscoe Reynolds and Delegate Glenn Oder as co-chairs of the Commission.

Link between Small Business, Jobs, and the Mortgage Crisis

Dr. Samuel D. Bornstein, Kean University School of Business

Dr. Bornstein, also a member of the firm of Bornstein & Song CPAs, provided the Commission with the results of research on the link between small business, jobs, and the mortgage crisis. He found that during the housing boom years of 2004-2007, a significant number of small business owners, in their search for capital, were attracted to cash-out refinancing of their built-up home equity using mortgages that required no or minimal documentation or deferred principal payments for the first several years of the loan term. He characterized mortgages that required sharply increased monthly payments after an initial period of minimal or negative amortization as "toxic" loans because the borrowers were not prepared for the increases when the loans were reset or recast.

He reported that 80 percent of the total debt owed by small business-owning households was held in residential home mortgages. Home-equity loans were attractive because they did not require the same level of cumbersome paperwork, including financial statements, income documentation, and an established credit history that was required of business loans. In Dr. Bornstein's view, many of these small business owners are at risk of financial distress, foreclosure, and business failure when their toxic mortgages are due to reset or be recast in 2011-2012. When the monthly mortgage payments are reset or recast, they will double and triple to unaffordable amounts, resulting in payment shock. In his opinion, these resets will usher in a second tsunami wave of foreclosures.

Dr. Bornstein focused on enterprise zone programs, most of which offer sales tax breaks, jobs tax credits, and other incentives but lack any significant incentives to promote small business lending to businesses. Four

Eighty percent of the total debt owed by small business-owning households was held in residential home mortgages.

The Commonwealth currently offers a Qualified Equity and Subordinated Debt Investment Tax Credit as an incentive for investors in small businesses in Virginia.

states (California, Illinois, Indiana, and Rhode Island) allow a net interest deduction (NID) for the lender on loans made to businesses in enterprise zones. He has recommended modifying the NID concept to address the small business owner's use of the home equity to access capital for the business, and calls it a refined net interest deduction (RNID).

An RNID for lenders in Virginia can be structured either as a subtraction from federal taxable income for lenders or a tax credit for lenders. Under this legislation, a lender is required to pass along the tax savings achieved as a result of the tax-free treatment of the interest income earned from residential mortgage loans, where the mortgagor used all or part of the loan proceeds to invest in the small business located within an enterprise zone. Dr. Bornstein concluded that the lender's tax savings should immediately flow down to the small business owner to reduce the monthly mortgage payment on the residential mortgage loan and thereby make it more affordable. Under this proposal, the lender serves as a conduit through which tax savings flow from the state to small businesses to lower the monthly mortgage payment. The lender is also required to modify the residential mortgage loan from which the interest income is derived. This loan modification could be accomplished by an interest rate reduction, term extension, principal reduction, or principal forbearance.

Several members expressed skepticism about Dr. Bornstein's solutions. Concerns included the unfairness of protecting those who made decisions viewed by others as unwise, intervening in a free market system that allows failures, and singling out a narrow group for a benefit. Some members also questioned whether it would help homeowners with an existing mortgage loan balance that substantially exceeds the home's equity, thereby precluding the refinancing of the mortgage. Co-chair Oder asked any members who were interested in pursuing Dr. Bornstein's proposal to work with staff on preparing legislation and returning to present the proposal at a future Commission meeting.

Qualified Small Business Initiative

Barry DuVal, Virginia Chamber of Commerce/Fred Russell, Virginia Capital Partners

A second approach to increasing the financing available to small businesses was offered by Barry DuVal of the Virginia Chamber of Com-

merce and Fred Russell of Virginia Capital Partners. Their approach, which they call the Virginia Qualified Small Business Incentive (VQSBI), is based on businesses raising capital through equity investments rather than through incurring loan debt.

Small businesses have historically had trouble borrowing from traditional lending sources. This problem is particularly acute today. Entrepreneurs who might borrow against their houses to provide capital are now unable to do so because of the combination of lower housing prices and reduced bank lending. In order to stimulate small business creation and growth to foster job creation, Mr. DuVal and Mr. Russell contend that it is in the Commonwealth's best interest to encourage and incentivize angel investors in Virginia.

The Commonwealth currently offers a Qualified Equity and Subordinated Debt Investment Tax Credit as an incentive for investors in small businesses in Virginia. Under this program, the credit is paid to investors today and the future benefits from small business jobs creation are generated in the future. However, the types of businesses eligible for the credit are limited and the aggregate amount of the credit is capped.

To address these shortcomings, Mr. Russell proposed that Virginia enact a VQSBI. It would be modeled on the federal qualified small business stock capital gain exclusion. The federal tax provision allows an angel investor to exclude gains realized from the sale of a small business investment from taxable income, provided the investor holds the investment for at least five years. Mr. Russell believes that the fiscal impact of a VQSBI would be minimal because the tax benefits are realized at least five years after the investment is made, and the corresponding jobs created have paid taxes for five cumulative years. Moreover, the losses realized from the investments in small businesses that fail have a limited tax revenue impact because capital losses can only be deducted against ordinary income to the extent of \$3,000 per year. Those new firms that succeed will not impact the budget for at least five years and should generate more in tax revenue to the state through new jobs creation, sales tax, property taxes, and income taxes from the successful business.

The VQSBI tax incentive would allow angel investors to allocate capital to opportunities that they believe will be successful. The market, which historically has been the most efficient means of allocating capital to its highest and best use, will determine how the capital should

be allocated. The VQSBI would eliminate professional investors and any organized pool of capital. The VQSBI tax incentive could be limited to no more than \$500,000 of investment per individual per company. In sum, Mr. DuVal and Mr. Russell contend that a VQSBI would be unique in the nation and would attract capital to the Commonwealth.

Co-chair Oder asked staff to prepare legislation that would implement the VQSBI tax incentive and have it available for discussion at a future meeting of the Commission.

House Bill 2522: Virginia Home Solicitation Sales Act

Co-chair Oder introduced House Bill 2522 during the 2011 Regular Session of the General Assembly. The bill, which would have removed from the statutorily authorized form of the notice of a buyer's right to cancel a home solicitation sale a provision that allows notice of cancellation to be sent by telegram and amended the notice form to allow notice of cancellation to be sent by facsimile, was passed by in the House Commerce and Labor Committee at the patron's request after concerns were voiced that the measure may have unintended consequences. The chair of the Committee requested, by letter, that this Commission examine the policy issues raised by the legislation.

The bill's patron requested that the matter be placed on the agenda for the next meeting of the Commission. At that time, both the specific provisions of House Bill 2522 and related issues of the Virginia Home Solicitation Sales Act will be discussed.

Small Business Legislation from the 2011 Session

Staff provided the members of the Commission with an overview of legislation of particular interest to the Commonwealth's small businesses that passed during the 2011 Regular Session of the General Assembly Session. These measures included:

- House Bill 1437, which allows localities to decide whether to impose the business, professional and occupational license tax either on a business's gross receipts or its Virginia taxable income.
- Budget Bill § 1-7 G, which requests the Joint Legislative Audit and Review Commission to study the impact on local revenue streams of restructuring the Business, Professional, and Occupational License (BPOL) tax such that the

basis of the tax is changed from gross receipts to net income.

- House Bill 1587, which permits any county, city, or town to provide exemptions, rebates, or other relief from BPOL taxes to any business locating in such locality for the first time, for the first two years after such location.
- House Bill 1837 and Senate Bill 1264, which create an income tax credit for licensed farm wineries and vineyards equal to 25 percent of the cost of certain winery equipment and materials.
- House Bill 1942, which creates a sales tax exemption and a litter tax exemption for sales of agricultural produce and eggs at farmers markets and at roadside stands if the seller's annual income from such sales does not exceed \$1,000.
- Senate Bill 1408, which allows localities to exempt from the BPOL tax businesses that lost money.
- Budget Bill Item 98 B 2, which revises the Virginia Small Business Financing Authority's Loan Guaranty Program.
- House Bill 1599 and Senate Bill 1348, which eliminate the requirement that an independent certified public accountant licensed in Virginia attest to the accuracy of certain information in enterprise zone applications if the business' base year employment is 100 or fewer positions and the business is creating 25 or fewer grant eligible positions.
- House Bill 1982 and Senate Bill 1379, which reduce the eligibility threshold for awards from the Governor's Development Opportunity Fund.
- House Bill 2324 and Senate Bill 1485, which relate to the establishment of a Small Business Innovation Research Matching Fund Program for Virginia-based technology businesses.
- House Bill 1592, which requires all state authorities, regional entities, and other political subdivisions of the Commonwealth, other than localities, to put requests for proposal and invitations to bid on the Department of General Services' website.
- House Bill 1859 and Senate Bill 1049, which require any employer with more than an average of 50 employees for the previous 12 months that enters into a contract in excess of \$50,000 with any state agency to register and participate in the federal E-Verify program.
- House Bill 1929, which requires that whenever the lowest responsive and responsible bidder on a public contract is a resident of any other state, and that state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia.
- Senate Bill 1107, which increases the small purchases exemption under the Virginia Pub-

Numerous laws related to small businesses in the Commonwealth passed the 2011 Regular Session of the General Assembly.

President Woodrow Wilson, the 28th president of the United States, was born in Staunton, Virginia.

lic Procurement Act for single or term contracts for goods and services other than professional services from \$50,000 to \$100,000.

- House Bill 2401, which increases, from two to three, the number of full-time farm and horticultural laborers an employer may have in service and remain exempt from requirements of the Workers' Compensation Act.
- House Bill 2006 and Senate Bill 1070, which revise the process for the notice of completion of the small business impact statement and review of existing regulations to minimize the economic impact of regulations on small businesses.
- HB 2206, which repeals the Bulk Sales Act.

Public Comment

Nicole Riley of the Virginia Chapter of the National Federation of Independent Business addressed the Commission during the public comment period to add to the list of important measures addressed in the 2011 Session. She mentioned that the Budget Bill included provisions phasing out the accelerated sales tax collection provision and eliminating regulatory fee increases. She also alerted the Commission to issues relating to the implementation of the federal health care reform legislation and to proposed legislation that would have incentivized insurance companies to fund Small Business Investment Companies.

Next Meeting

The Small Business Commission plans to hold its next meeting in August.

Small Business Commission

SMALL BUSINESS COMMISSION

SENATOR W. ROSCOE REYNOLDS AND
DELEGATE GLENN ODER, CO-CHAIRS
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Virginia Commission on the Centennial of Woodrow Wilson's Presidency

June 21, 2011



Photo courtesy of the Woodrow Wilson Presidential Library and Museum located in Staunton, Virginia.

The Virginia Commission on the Centennial of the Woodrow Wilson Presidency (Commission) held its inaugural meeting on June 21, 2011, in Richmond. The Virginia General Assembly charged the Commission, established by SB 350 (2010), with planning, developing, and implementing statewide programs and events to commemorate the centennial of President Woodrow Wilson's election and presidency (1913 - 1921). The Commission elected Senator Emmett Hanger and Delegate Brenda Pogge as chair and vice chair, respectively.

Website

Members of the Commission received a preview of the Commission's website, which will provide the public with information about President Wilson's life, presidency, and legacy; resources for further study; and the Commission's latest news and events. The website will also highlight significant sites related to President Wilson, including his birthplace and the Woodrow Wilson Presidential Library and Museum located in Staunton.

Woodrow Wilson

Members viewed a brief video clip on Woodrow Wilson, 28th president of the United States, Nobel Peace Prize Winner, and native of Staunton, Virginia. The son of a Presbyterian minister, Woodrow Wilson received a bachelor's degree from Princeton University, a law degree from the University of Virginia, and a doctorate from Johns Hopkins University. A noted professor of political science, Woodrow Wilson enjoyed a successful academic career, eventually serving as

president of Princeton University before entering political life as Governor of New Jersey. One of only eight native Virginians to hold the highest office in the land, Woodrow Wilson oversaw the nation's mobilization for entry into World War I. In 1918, President Wilson addressed the U.S. Congress, presenting his "Fourteen Points" and introducing his idea of a Covenant of a League of Nations, which was included in the Treaty of Versailles. After the U.S. Congress voted against accepting the Treaty of Versailles, President Wilson embarked on a nationwide tour to gain support for the League of Nations, the precursor to the United Nations. During his travels, President Wilson suffered a stroke, rendering him unable to finish his journey. He completed his presidency and died in 1924.

Commission Organization and Duties

Staff presented an overview of SB 350 (2010), the enabling legislation that details the Commission's duties. The responsibilities of the Commission include:

- Planning, developing, coordinating, and implementing statewide programs, events, and activities to commemorate the centennial of Woodrow Wilson's election and presidency.
- Promoting and encouraging research and scholarship on and an interdisciplinary examination of the life and legacy of President Wilson and the historical importance of his presidency.
- Offering educational and cultural opportunities to increase historical literacy of the Woodrow Wilson election and presidency, highlighting significant events and achievements during his administrations, and assessing the effect of his presidency on contemporary society.
- Encouraging civic, historical, educational, economic, and other organizations throughout the Commonwealth to organize and participate in activities to expand the understanding and appreciation of the significance of Woodrow Wilson's presidency.
- Identifying and implementing various means to increase public knowledge and awareness of Woodrow Wilson and memorializing and preserving his history and legacy.

Staff reviewed several organizational items, the Ground Rules for Legislative Commissions and Advisory Groups, and the role of the citizen advisory council. The Commission selected a domain for the website, gave staff permission to begin work on a logo, and decided to further deliberate several choices for a theme for the commemoration. The Commission also accepted the nominations for the Citizens Advi-

sory Council and added an additional name to the list originally compiled; staff will contact the nominees.

Work Plan

Staff noted that the commemoration offers a unique opportunity to provide a bridge from the Wilson era to contemporary events, emphasizing the importance of history to current affairs and the chance to reach out to students, teachers, scholars, and World War I descendants and enthusiasts, in addition to partnering with other state and national commemorative groups. Discussion included mention of current federal legislation to create the World War I Centennial Commission and the work of the Wilson 100, a partnership of the Woodrow Wilson Presidential Library; The Boyhood Home of President Woodrow Wilson in Augusta, Georgia; the Woodrow Wilson Family Home in Columbia, South Carolina; and the Woodrow Wilson House in Washington, D.C.

Staff presented a first draft of a commemorative work plan, which was adopted by the Commission and organized commemorative activities by legislatively mandated objectives. Highlights of the plan include:

- Hosting several signature events.
- Working with the State Council of Higher Education for Virginia and the Virginia Department of Education to provide supplemental educational materials consistent with History and Social Studies Standards of Learning.
- Partnering with appropriate groups on the local, state, and federal level.
- Pursuing federal legislation for a commemorative stamp or coin.
- Hosting symposiums and coordinating exhibits.
- Commissioning white papers on aspects of President Wilson's life, election, presidency, and legacy.

Dr. Wilson, Commission member, former archivist of the United States, and president and CEO of the Woodrow Wilson Presidential Library and Museum, distributed to Commission members and staff a listing of exhibitions and events that the Woodrow Wilson Presidential Library has been developing in anticipation of the upcoming centennial. The Commission directed staff to integrate the activities and events into the Commission's work plan to the extent practicable. Dr. Wilson also mentioned that the Library has been working on World War I commemorative activities, including contact with the National World War I Museum in Kansas City and a trench exhibit at the Library. The

President Woodrow Wilson was one of eight Virginians to become president of the United States.

Library is also working on a symposium and traveling exhibit on the Election of 1912 for next year.

Armistice Day 2011

Armistice Day (now known as Veterans Day) is celebrated on November 11. The Commission voted to send a letter to Governor McDonnell endorsing and requesting that he move upon HJR 608 (2011), which provides for the statewide observation of a moment of silence at 11 a.m. on November 11, 2011, in honor of the sacrifices of the men and women who have served in the United States Armed Forces. The Commission also directed staff to issue a statewide press release as the anniversary of Armistice Day approaches and to request that the Superintendent of Public Instruction issue a Superintendent's Memo to school divisions encouraging public schools of the Commonwealth to also observe a moment of silence.

Armistice Day, now known as Veterans Day, is celebrated on November 11.

Conclusion

Members discussed the exciting opportunity the Commission on the Centennial of the Woodrow Wilson Presidency presents for residents of the Commonwealth to have a Virginia conversation on the presidency of Woodrow Wilson and reflect on what it was like to be an American 100 years ago and now.

Next Meeting

The next meeting of the full Commission and first meeting of the Citizen Advisory Council will be posted on the General Assembly website as soon as information is available.

VIRGINIA COMMISSION ON THE CENTENNIAL OF WOODROW WILSON'S PRESIDENCY

SENATOR EMMETT HANGER, CHAIR
BRENDA EDWARDS AND MINDY TANNER, DLS STAFF

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Members of the Senate of Virginia requesting multiple copies of *The Legislative Record* should contact the Division of Legislative Services. Members of the House of Delegates requesting multiple copies of *The Legislative Record* should contact the House Clerk's Office.

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert on the next page is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as "proposed regulations" gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the *Legislative Record* will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

**TITLE 1. ADMINISTRATION
STATE BOARD OF ELECTIONS**

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

1VAC20-40. Voter Registration (adding 1VAC20-40-80).

A public hearing will be held on July 6, 2011, at 2 p.m. at the Capitol, Richmond, Virginia. Written public comments may be submitted until July 1, 2011.

Summary:

The proposed regulation provides that absent military and overseas citizens who apply to register to vote or request an absentee ballot by emailing or faxing a signed Federal Post Card Application (FPCA) to the local voting official do not also have to mail the FPCA to the local voting official.

For more information, please contact Martha Brissette, State Board of Elections, Richmond, VA, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

**TITLE 5. CORPORATIONS
STATE CORPORATION COMMISSION**

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-260, 5VAC5-20-280).

A public hearing will be held on July 12, 2011, at 10 a.m. at the State Corporation Commission, Tyler Building, Richmond, Virginia. Written public comments may be submitted until July 5, 2011.

Summary:

The proposed revisions to 5VAC5-20-260 and 5VAC5-20-280 of the State Corporation Commission's Rules of Practice and Procedure modify the opportunity for parties and the commission staff to obtain discovery in regulatory and adjudicatory proceedings. Some revisions are proposed to provide for additional discovery of the commission staff and the commission staff's experts in regulatory proceedings. Other revisions are proposed to permit the expansion of discovery regarding witnesses and items of evidence in adjudicatory proceedings.

For more information, please contact Scott White, State Corporation Commission, Richmond, VA, telephone (804) 371-9671, FAX (804) 371-9240, or email scott.white@scc.virginia.gov.

**TITLE 18. PROFESSIONAL AND
OCCUPATIONAL LICENSING
BOARD OF MEDICINE**

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-80; adding 18VAC85-130-81).

Written public comments may be submitted until August 19, 2011.

Summary:

The proposed regulation requires midwives to disclose to their clients options for consultation and referral to a physician and evidence-based information on health risks associated with a home birth when certain antepartum or intrapartum conditions exist.

For more information, please contact William L. Harp, M.D., Board of Medicine, Richmond, VA, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

BOARD OF PHYSICAL THERAPY

18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-50, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140).

Written public comments may be submitted until July 20, 2011.

Summary:

The proposed amendments, as originally proposed, (i) offer the option of passage of the Practice Review Tool in lieu of some training hours for applicants returning to practice through reinstatement, reactivation, or endorsement; (ii) reduce the traineeship hours for physical therapist assistants; (iii) allow part-time traineeships for graduates of nonapproved physical therapy schools; (iv) limit the numbers of supervisors for each trainee; (v) require co-signing of trainee documentation in patient records and identification of a trainee for the patient; and (vi) eliminate the requirement that Type 1 continuing education training be face-to-face.

Since publication of the proposed regulations, the board amended the regulations to clarify that the Practice Review Tool is not an examination but an assessment of which a physical therapist may or may not meet the standard. Since the PRT may be counted as continuing education, the board added FSBPT to the list of continuing education providers. The board also clarified that the coursework evaluation tool used to evaluate education in a non-accredited PT program should be based on the year of graduation.

For more information, please contact Lisa R. Hahn, Board of Physical Therapy, Richmond, VA, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

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