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Virginia Code Commission

June 23, 2010

Senator Edwards called the meeting to order and welcomed new member Delegate LeMunyon. Senator Edwards and Delegate Janis were elected chair and vice-chair, respectively.

Legislative Update

Staff provided an overview of the legislation recommended by the Virginia Code Commission that was adopted by the 2010 Session of the General Assembly.

Obsolete laws – Chapters 65, 91, and 92 repeal or clean up obsolete provisions in the Code of Virginia. (Effective July 1)

Recodification – Chapter 794 recodifies the banking and finance laws in Title 6.1 to Title 6.2. The legislation becomes effective October 1, 2010, and the Code of Virginia replacement volume containing newly enacted Title 6.2 will ship in September. Chapter 665 (effective July 1), which broadens the definition of “principal” for the purposes of the Mortgage Lender and Broker Act, also came out of the Title 6.1 recodification study. (Effective October 1)

Code Commission – Chapter 413 expands the membership of the Code Commission by an additional one or two nonlegislative citizen members, as may be recommended by the Commission, who have demonstrated legal knowledge and experience in the codification of session laws and recodification of statutes. Upon recommendation of the Commission, the

Speaker of the House of Delegates makes the first appointment and the Senate Committee on Rules the second. (Effective July 1)

Electronic certification of regulations – Chapter 407 allows electronic certification of final regulations in lieu of a physical signature. (Effective July 1)

Administrative Law Advisory Committee

Chris Nolen, chair of the Administrative Law Advisory Committee, presented the proposed 2010 Administrative Law Advisory Committee work plan. The Code Commission approved the following amended version of the proposed work plan.

Suspension of Regulations

Senate Bill 442 (2010) was precipitated by controversy surrounding the Stormwater Management Regulations. SB 442 broadened the scope of when a regulation may be suspended to include suspension after the regulation has become effective. Although the legislation failed to pass, ALAC proposes to consider issues related to suspension of regulations, including (i) separation of powers; (ii) timetables; and (iii) notice provisions, as these issues have not been reviewed in over 10 years.

Senator Edwards noted that SB 442 was killed in the Senate Committee on Rules because it was determined to be

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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.

unconstitutional. Mr. Nolen responded that ALAC is interested in evaluating other states' suspension processes.

Volkswagen of America v. Smit, Commissioner of DMV

In this case issued February 25, 2010, the Supreme Court of Virginia held that § 46.2-1569(7) of the Code of Virginia, as applied by the Commissioner of the Department of Motor Vehicles, was impermissibly vague in that neither the statute nor any formal or informal administrative action adequately prescribed what conduct was prohibited. In this case, DMV had neither promulgated regulations nor adopted a guidance document regarding the "equitable distribution" requirement of § 46.2-1569(7). The court's opinion indicates that a statute, which is constitutionally defective due to impermissible vagueness, could be cured by a regulation or other form of guidance that sets forth a clearly enunciated standard.

ALAC proposes to consider (i) absent an agency promulgating a regulation, whether the law can be overturned as vague as applied to a person and (ii) what role ALAC should play in notifying agencies.

Small Business Impact

ALAC proposes to review the application of § 2.2-4007.1 D of the Code of Virginia relating to the requirement that agencies review existing regulations to determine whether they should be continued without change or be amended or repealed to minimize the economic impact of regulations on small businesses. ALAC's goal is to streamline the process for consistency among agencies. Issues to be addressed include the review process, certification, and publication.

Virginia Supreme Court Rule 2A:2 Notice of Appeal

The chair asked Mr. Nolen to add another issue to ALAC's work plan. Supreme Court Rule 2A:2 requires the filing of a notice of appeal with the agency within 30 days of adoption of a regulation or service of a final order in a case decision. The notice must identify the regulation or case decision appealed from and state the following: names and addresses of the appellant, other parties and their counsel, if any; and the circuit court to which the appeal is taken. Then, under Rule 2A:4, within 30 days of filing the notice, the

appellant must file a petition for appeal with the circuit court. The petition for appeal must designate the regulation or case decision appealed from, specify the errors assigned, state the reasons why the regulation or case decision is deemed to be unlawful, and conclude with a specific statement of the relief requested. The chair asked why this two-step process is needed. Also, state agencies may be interpreting the rule differently, and it was suggested that ALAC should also examine the feasibility of standardizing practices.

Virginia Administrative Code

The Commission approved a 5.9 percent price increase request from West (Thomson-Reuters) for the Virginia Administrative Code print supplements and volumes. From January 2008 to January 2009, the Producer Price Index Industry Data for Book Publishers - Technical, Scientific, and Professional Book Publishing increased by 5.9 percent. West did not request a price increase in 2009.

The Commission also approved staff's recommendation to replace the three Health volumes consisting of Volumes 10, 11, and 12. A fourth volume is contingently approved if the page count warrants it.

2010 Code of Virginia Supplements

Brian Kennedy from LexisNexis reported that the incorporation of the 2010 legislation into the Code of Virginia supplements is complete. The Code of Virginia database on the General Assembly's website is expected to be publicly available by July 1. Four replacement volumes, as previously approved by the Commission, will be issued as follows: Volume 3B (Courts) with supplements and index, June/July 2010; Volume 7 (Motor Vehicles) and Compacts, July 2010; and Volume 1B (Alcoholic Beverages to Boundaries), which contains new Title 6.2, September 2010.

Revision of Title 64.1, Wills and Decedents' Estates

David Cotter reported on the revision of Title 64.1, Wills and Decedents' Estates. The Code Commission discussed proposed Chapters 1 (Descent and Distribution) and 2

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Volume 1B
(Alcoholic Beverages
to Boundaries),
Volume 3B (Courts),
Volume 7 (Motor
Vehicles), and
Compacts.*

(Rights of Married Persons) of Title 64.2. Proposed Chapter 1 consists of parts of existing Chapter 1 of Title 6.1, and proposed Chapter 2 consists of Chapters 1 (part), 2, 6, and 9 of Title 64.1.

Next Meeting

The Code Commission is scheduled to meet again on Wednesday, October 6, 2010, in Richmond.

SENATOR JOHN S. EDWARDS, CHAIR

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Approximately 97 percent of all firms in Virginia employ 99 or fewer employees, while small companies create between 65 and 75 percent of all new jobs in the Commonwealth.

Small Business Commission – 7/19/10

The Small Business Commission (Commission) held its first meeting of the interim in Richmond. The Commission elected Senator Reynolds and Delegate Oder as co-chairmen. Presentations made to the Commission can be found on the Commission's website at <http://dls.virginia.gov/business.htm>.

Virginia Chamber of Commerce Small Business Committee

Robert Archer, Small Business Committee, Virginia Chamber of Commerce

Mr. Archer began by noting that 55 percent of the membership of the Virginia Chamber of Commerce is classified as small business owners, approximately 97 percent of all firms in Virginia employ 99 or fewer employees, and small companies create between 65 and 75 percent of all new jobs in the Commonwealth.

After a year of developing the structure, purpose, and function of the Small Business Committee, and polling small businesses as to their needs, the Small Business Committee has identified three major recommendations for the Commission and established working groups to fully develop these recommendations. The recommendations include:

- Restructuring state-funded small business programs to best address the needs of small businesses.
- Developing a series of "access to working capital" seminars to be held around the Commonwealth.
- Considering a small business risk pool for health insurance.

The Virginia Chamber of Commerce continues to improve its ability to provide information to its members through its website and other social media tools and to establish meaningful contact with members of the new administration.

Virginia Department of Business Assistance

Peter S. Su, VA Dept. of Business Assistance (VDBA)/Assistant Secretary of Commerce and Trade

Mr. Su reported on the activities and identified the current needs of the VDBA. The VDBA has three business program categories:

- Financing, in the form of the Virginia Small Business Financing Authority.
- Information, in the form of Business Information Services.
- Workforce development, in the form of the Virginia Jobs Investment Program.

Mr. Su highlighted the success of the VDBA's Virginia Business Information Center and the Business One Stop portal as well as new initiatives such as regionally focused seminars and adventure tourism seminars. For fiscal year 2010, the VDBA has provided financing to 80 companies and technical assistance to 1,420 companies and assisted with the creation or retention of 3,784 jobs in the Commonwealth.

Mr. Su identified funding cuts and a lack of flexibility in the use of funds, staffing reductions that impair client support, lack of a marketing budget, and concern about the outcome of the Governor's Commission on Government Reform and Restructuring as factors having a negative impact on the VDBA. Mr. Su called

special attention to the \$700,000 balance in the Direct Loan Program and the need for further funds and the need for wider participation in Business One Stop by state agencies.

The Virginia Department of Business Assistance has provided technical assistance to 1,420 companies in fiscal year 2010.

HB 309/HB 310 (2010)

Delegate John M. O'Bannon and Tyler Craddock, Director of Government Affairs, Virginia Chamber of Commerce

Delegate O'Bannon and Mr. Craddock spoke about HB 309, related to the use of depositions and other documents as the basis of a motion for summary judgment, and HB 310, related to the assignment of court costs based on settlement offer and verdict amounts. The Virginia Chamber of Commerce supports both bills.

Jayne Pemberton, Sands Anderson

Ms. Pemberton, a member of the Virginia Association of Defense Attorneys (VADA), spoke at Delegate O'Bannon's invitation in favor of both HB 309 and HB 310. In response to questions about HB 310, Ms. Pemberton gave examples of cases where facts admitted during a party deposition that would be sufficient to grant summary judgment would be later denied and the case would continue unnecessarily to trial. It was noted that Virginia was the only state not to have a similar law allowing the use of deposition for motions of summary judgment, and that Virginia was consistently ranked as having conservative, business-friendly torts. Ms. Pemberton explained that HB 310 mirrors federal rules of civil procedure and allows a defendant to make a settlement offer to a plaintiff up to 10 days before trial. If the plaintiff refuses the offer and receives a lower verdict than the settlement offer, the plaintiff must pay all court costs accrued from the time of the offer.

Richard Samet, Florance Gordon Brown

Mr. Samet, a member of VADA, spoke in favor of HB 310. He discussed the fact that Virginia civil procedure does not mirror the federal system while other states' civil procedure does. A member pointed out that Virginia has adopted comparative fault, considered to be the bedrock of tort reform. In response to questions, Mr. Samet explained that adopting HB 310 would add a currently unavailable element to aid in evaluating the value and reducing the risk in a case.

Joe Owen, Owen and Owens

Mr. Owen, representing the Chesterfield County Chamber of Commerce, spoke in favor of HB 309, asserting that layers of cost could be avoided if depositions were allowed in support of summary judgment.

Steve Pearson, Virginia Trial Lawyers Association

Mr. Pearson spoke in opposition to HB 309 and HB 310, reporting that only three percent of cases result in trials in Virginia. For HB 309, Mr. Pearson stressed the importance of depositions as a discovery tool and predicted that allowing the use of depositions and other documents as the basis for summary judgment would lead to a more aggressive posture in defending depositions. In response to questions, Mr. Pearson stated that the debate on HB 309 could be seen as evaluating a reduced risk of going to trial versus the additional time a judge would take to make an early decision. Mr. Pearson also raised the point that a defendant only makes a settlement offer after admitting liability and conjectured that defendants' attorneys will engage in gamesmanship. In conclusion, Mr. Pearson pointed out to the Commission that small businesses were often the plaintiffs in cases with big businesses and that HB 309 and HB 310 could affect their access to a fair trial as well.

Work Plan

The Commission decided to form a working group to further deliberate the merits of HB 309 and HB 310.

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.

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Virginia Sesquicentennial of the American Civil War Commission – 8/11/10

Members of the Advisory Council were welcomed to the annual meeting by Dr. Sandy Treadway, Librarian of Virginia. Speaker William J. Howell, Chairman of the Commission, greeted members, spoke of the Advisory Council's importance in providing input from a wide array of constituencies, discussed the positive tourism and economic impacts of the four-year commemoration, and asked members to continue to look for ways that sesquicentennial programs can reach out to all Virginians in an inclusive and educational manner. Last, Dr. James I. Robertson, Jr. spoke about Virginia's critical role in the sesquicentennial and the many opportunities that lay ahead.

Overview of Plans in Development

Staff reviewed the Advisory Council's previous recommendations and presented a detailed overview of the Commission's plans in development.

Signature Conference series

The annual conference series began in 2009 and was widely hailed as setting a model for the sesquicentennial nationwide. Each conference covers a particular aspect of the Civil War that, when taken together, will tell all aspects of the conflict, its causes, and its legacies. The tentative conference schedule is as follows:

- 2009: *America on the Eve of the Civil War*
Conference Chair: Dr. Edward L. Ayers
University of Richmond, April 29, 2009
- 2010: *Race, Slavery and the Civil War: The Tough Stuff of American History*
Conference Chair: Dr. James O. Horton
Norfolk State University, September 24, 2010
- 2011: *American Military Strategy and the Civil War*
Conference Chair: Dr. James I. Robertson, Jr.
Virginia Tech, May 21, 2011
- 2012: *Leadership and Generalship in the Civil War*
Conference Chair: Lt. Gen. John Knapp
Virginia Military Institute, March 22, 2012
- 2013: *The Home Front in the Civil War*
Conference Co-Chairs: Dr. Scott R. Nelson and Dr. Carol Sheriff
College of William and Mary, Date: TBD

- 2014: *Civil War in a Global Context*
Conference Chair: Dr. Peter N. Stearns
George Mason University, Date: TBD
- 2015: *Memory of the Civil War*
Conference Chair: Dr. Gary Gallagher
University of Virginia, Date: TBD

DVD for schools

In partnership with the Virginia Tech Center for Civil War Studies and Blue Ridge Public Television, the Commission distributed an Emmy-nominated program, *Virginia in the Civil War: A Sesquicentennial Remembrance*, free of charge to every public school in Virginia in Fall 2009. The DVD consists of nine 20-minute chapters, divided for ease of teacher use in the classroom.

Civil War 150 HistoryMobile

Development continues in partnership with the Virginia Historical Society and the Fredericksburg and Spotsylvania National Military Park on the *HistoryMobile*, a self-contained and immersive exhibition housed in a single-expandable tractor trailer that can travel throughout Virginia and to other states. Substantial funding for the fabrication of the *HistoryMobile* has been provided from several generous grants. A Request for Proposals for design/build of the *HistoryMobile* will be sent out by the end of August enabling construction to begin by year end. The *HistoryMobile* will debut at the kickoff event in Manassas in July 2011.

Interactive website

The Commission has made available a rich array of Internet resources, including an interactive Then/Now map that details hundreds of Civil War-related sites in the state, a statewide calendar of events, vodcasts of Civil War sites, and web resources for teachers.

Walk in their Footsteps database

The Commission is developing a research portal that provides regimental history information on both Union and Confederate regiments' service in Virginia. This comprehen-

The Civil War Commission distributed an Emmy-nominated program free of charge to every public school in Virginia in the Fall of 2009.

Currently, 126 of the 134 localities have formed local sesquicentennial committees to work with the Commission.

sive database will offer a launching point for users to create a “battle plan” to map out and visit the actual sites where their ancestors may have fought while serving during the Civil War. The database may be featured on a kiosk outside of the *HistoryMobile* as it travels throughout the state and will be accessible via the Commission’s website.

Special Events

Commemorative events began in June 2009 with a successful joint kickoff event at Harpers Ferry with West Virginia’s Sesquicentennial Commission. Planning is underway for large-scale commemorative events at Manassas (July 21, 2011) and Appomattox (April 9, 2015). In addition, local committees are planning events to mark key anniversary dates throughout the state, all of which will be highlighted on the Commission’s website.

Grant Program

The Commission has designated over \$200,000 to its Sesquicentennial Tourism Marketing Grant program. Administered by the Virginia Tourism Corporation (VTC), this grant program provides matching funds to local sesquicentennial committees and their partners to market Civil War events and destinations statewide.

Travel Kiosks

Through federal enhancement grant funding, the Commission is working with the Virginia Department of Transportation, VTC, Civil War Trails, the Civil War Preservation Trust, and Virginia wineries to develop and place information kiosks in the 13 Welcome Centers throughout the Commonwealth, promoting all that Virginia has to offer to visitors.

Local Sesquicentennial Committees

Currently, 126 of the 134 localities have formed local sesquicentennial committees to work with the Commission and develop programs that highlight and enhance local history.

Overview of An American Turning Point: The Civil War in Virginia

Andrew Talkov, Sesquicentennial Exhibit Coordinator, Virginia Historical Society (VHS)

Mr. Talkov offered a detailed description of the gallery exhibition entitled, “An American Turning Point: The Civil War in Virginia.” Rich in artifacts, documents, and high-tech interactives, the exhibition will emphasize the impact of the Civil War from the battlefield, home front, and African-American perspectives. The exhibition will be organized thematically rather than chronologically, in order to better travel to other venues, and will pose questions rather than present answers, allowing visitors to sort through the issues and form their own conclusions.

The gallery exhibition will open at the VHS on February 4, 2011, and will travel to museums in Roanoke, Abingdon, Lynchburg, Winchester, Quantico, and Hampton beginning in 2012. It is scheduled to close in 2015 at Appomattox. Panel exhibitions that can travel more easily and be displayed in much smaller venues will be developed to complement the museum exhibition.

Civil War 150 Legacy Project: Document Digitization and Access

Renee Savits, Library of Virginia

Ms. Savits presented an overview of the Civil War 150 Legacy Project: Document Digitization and Access. To date, the Library of Virginia (Library) has completed pilot projects at Danville and Winchester that yielded over 800 images of Civil War-related documents that are available for viewing at www.virginiamemory.com/CW150. Ms. Savits, coordinator for the eastern region of the state, and Laura Drake Davis, coordinator for the western region, are in the process of contacting localities to schedule visits to identify, scan, and digitize additional Civil War documents that are currently held in private collections. In addition to publicizing the project using the well-established network of local sesquicentennial committees, the Library also intends to promote the project by having staff attend meetings of national groups such as the American Association for State and Local History (AASLH).

Advisory Council members discussed the project in depth and expressed their strong support for the Legacy Project due to its unparalleled potential to identify and preserve previously unknown documents related to one of the most important eras in American history. The program was also praised for its ability to engage people directly in the commemoration, allowing them to explore their personal connection to the Civil War.

Ask, Answer, and Analyze Session

The Honorable Lisa Hicks-Thomas, Secretary of Administration

Secretary Hicks-Thomas offered greetings from Governor McDonnell. Secretary Hicks-Thomas commended the Advisory Council and expressed the Governor's enthusiasm for its efforts to develop a commemoration that is inclusive and promotes Virginia. Secretary Hicks-Thomas reported that the Governor's office is working closely with the Commission, and recently sent President Obama a letter of invitation to the commemorative event at the Manassas National Battlefield Park on July 21, 2011.

Mitch Bowman, Executive Director, Virginia Civil War Trails

Mr. Bowman offered comments regarding the impact of the sesquicentennial in increasing heritage tourism in Virginia. Mr. Bowman stated that since 1995 and the creation of Civil War Trails, there has been a fourfold increase in the number of tourists that actively seek out Civil War sites. Such visitation will only increase during the sesquicentennial.

Breakout Sessions

"Ask, Answer, and Analyze" breakout sessions were then held, where members could offer comments, feedback, and suggestions on a number of topics.

Wrap-up and Adjournment

Members were thanked for their support and invited to stay involved as the commemoration begins in earnest. Members were also asked for their assistance in getting the word

out about the wide array of programs being developed, to partner with the Commission wherever possible, and to work to ensure that Virginia remains the destination for the Civil War sesquicentennial. Dr. Treadway indicated that she would report on the Advisory Council's deliberations at the next meeting of the Commission.

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**

VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

SPEAKER WILLIAM J. HOWELL, CHAIR
Cheryl Jackson and Michele Howell
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Meeting Calendar for October - November 2010

<i>Study/Commission Name</i>	<i>Meeting Information</i>	<i>DLS Staff</i>
MLK Commission/ Special Subcommittee on Public School Closings/ Town hall mtg.	1:00 p.m., Monday, October 4, 2010, Abraham Lincoln Subcommittee, Partnership & Expenditure Review Subcommittee, School Closings Subcommittee, King Commission 3:00 p.m. Town hall mtg. of the School Closings Subcommittee Granby High School, Norfolk	Brenda Edwards
Freedom of Information Advisory Council Subcommittees	Rights and Remedies Subcommittee 10:00 a.m., Monday, October 4, 2010 General Assembly Bldg., 6th Flr. Speakers Conf. Rm. Criminal Investigative Records Subcommittee 1:30 p.m., Monday, October 4, 2010 General Assembly Bldg., House Room C	Maria Everett Alan Gernhardt
Virginia Code Commission	10:00 a.m., Wednesday, October 6, 2010 General Assembly Building, 6th Floor Speakers Conf. Rm.	Jane Chaffin
JCOTS Electronic Privacy Advisory Committee	1:30 p.m., Monday, October 18, 2010 Location: To be determined	Lisa Wallmeyer David Sella-Villa
War of 1812 Commission	Advisory Council Meeting 11:00 a.m., Tuesday, October 19, 2010 General Assembly Bldg., House Room C Full Commission Meeting 2:30 p.m., Tuesday, October 19, 2010 General Assembly Bldg., House Room C	Brenda Edwards
Disability Commission	2:00 p.m., Wednesday, November 3, 2010 General Assembly Bldg., House Room D	Sarah Stanton
Virginia Code Commission	10:00 a.m., Wednesday, November 17, 2010 General Assembly Building, 6th Floor Speakers Conf. Rm.	Jane Chaffin
Virginia Housing Commission	See website for ongoing meeting information http://dls.virginia.gov/VHC.HTM	Elizabeth Palen

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

Virginia Commission on the Bicentennial of the War of 1812

6/7/10 and 8/17/10

The Virginia Commission on the Bicentennial of the War of 1812 met on June 7 and August 17 in Richmond to continue refining its plans, goals, and objectives for the statewide commemoration of the war. The Commission's meetings were preceded by the meeting of its Citizen Advisory Council. The Commission noted that while the War of 1812 is the nation's second war for independence, it is commonly called "The Forgotten War," and considerable work is needed to educate citizens concerning the significance of the war to contemporary national policies, homeland security, and diplomacy.

Star-Spangled Banner National Historic Trail/Virginia War of 1812 Heritage Trail

In May 2008, Congress amended the National Trails System Act (P.L. 110-229) to designate the Star-Spangled Banner National Historic Trail to commemorate the Chesapeake Bay Campaign of the War of 1812 and events leading up to the writing of "The Star-Spangled Banner." After meeting with representatives of the National Park Services' Star-Spangled Banner Historical Trail, the Citizen Advisory Council concluded and reported to the Commission that national initiatives to commemorate the bicentennial of the war, specifically the Star-Spangled Banner National Historic Trail, focus primarily on events that occurred in Maryland in the Chesapeake Bay Campaign. After an exhaustive and unsuccessful effort on the part of the Commission and Council to change the proposed plans for the national trail, the Commission has opted instead to pursue state-focused commemorative events, programs, and activities that accurately record and showcase Virginia's role and vast contributions to the war and by creating the Virginia War of 1812 Heritage Trail through the use of historical markers.

The Commission will build the state trail by adding new historical markers to existing markers related to the War of 1812 throughout the state. Citizen Advisory Council members were requested to submit suggestions for the new historical markers to render a complete account of the impact of the war in Virginia and to designate significant sites and recognize the contributions of relevant historical characters.

Of the several suggestions offered by the Council, 15 new historical markers were recommended by the Department and adopted by the Commission, to commence the state trail, including the erection of historic markers for Elizabeth Monroe and Dolley Madison and to recognize the African American contributions to the war. The 15 new markers are:

- Brig. Gen. Winfield Scott.
- Lt. Col. George Armistead.
- Dolley Payne Madison.
- Impact on African Americans (Tangier Island).
- Cockburn on the Chesapeake.
- Military/Naval Legacy (Fort Monroe).
- Opposition (John Randolph).
- Sack of Hampton.
- Attack on Dolphin, Arab, Racer, and Lynx.
- Mundy's Point/Kinsale (focus: participation of former slaves).
- Pleasure House/Normini Ferry/Tappahannock etc.
- Declaration of Independence hiding site.
- Harbor (Forts Norfolk, Nelson).
- Richmond Defenses (Camps Fairfield, Carter, and Holly Springs, Ft. Powhatan).
- British naval blockade (Cape Henry lighthouse).

Montpelier: Prelude to the Bicentennial

The bicentennial commemoration of the War of 1812 will be a comprehensive, balanced, and "statewide" observance of Virginia's role in the war, giving appropriate recognition to all regions of the Commonwealth and Virginia's leaders during that era, such as the Virginia Militia, the Petersburg Volunteers, the Chesapeake Bay Campaign, the Sack of Hampton and British occupation of Alexandria; Presidents James Madison, James Monroe, and William Henry Harrison; Dolley Madison and Elizabeth Monroe; Craney Island; and Tangier Island. Planning is underway for the prelude to Virginia's commemoration, which will begin in March 2011 at Montpelier on the occasion of the presidential wreath-laying ceremony for President James Madison.

Virginia OpSail 2012

OpSail 2012 is one of the Commission's signature events for the bicentennial commemoration. Given the enormous economic development and national and international public relations opportunities that OpSail 2012 presents for the Commonwealth and the Commission, the Commission will strive aggressively to maximize

this singular opportunity to promote the Commonwealth and ensure its visibility during the national commemoration.

Karen Scherberger, Executive Director, Norfolk Festevents Ltd.

Ms. Scherberger reported that Operation Sail, Inc. (OpSail) and the U.S. Navy have announced the participation of five historic U.S. ports in the commemoration of the bicentennial of the War of 1812 and the birth of "The Star-Spangled Banner."

The ports of call are:

- New Orleans.
- Norfolk/Hampton.
- Baltimore.
- Boston.
- New York during Fleet Week.

The United Kingdom and Canada, nations involved in the War of 1812, NATO countries, and other nations with tall ships are also participating in the commemoration. The City of Norfolk and the Port of Hampton Roads will host the OpSail flotilla from June 6-11, 2012, in conjunction with Norfolk's annual Harborfest celebration. The U.S. Coast Guard and the U.S. Army are also partners in the commemoration.

Legacy Symposium 2014

Plans for a significant two-day symposium are being developed as a concluding signature event for the Virginia bicentennial commemoration of the War of 1812. The Commission's Legacy Symposium will be hosted by Fort Monroe in June 2014.

Commemorative Work Plan

The commemorative work plan includes numerous activities designed to promote the participation of all Virginians in the bicentennial commemoration, including:

- Exhibits.
- Book signings.
- Supplemental educational materials for students and teachers.
- Preservation of historic records.
- Identification of War of 1812 veteran gravesites in Virginia.
- Symphonic celebrations.
- Dedication events to highlight each historical marker added to the state Heritage Trail.
- An affair to remember the British invasion of Hampton in 1813.

To further outreach and publicize the bicentennial in Virginia, the Commission has developed:

- A Facebook page.
- A logo, designed at Hampden-Sydney College, to brand the Commission's programs and events.
- A commemorative brochure citing Virginia's role in the War of 1812, which will be published.
- A new website that will soon be launched to include historical facts and an interactive timeline and map of War of 1812 events in Virginia that will allow scholars, students, teachers, citizens, and visitors to access information about battle sites and events related to the war, as well as allow the traveler to plan an itinerary to visit points of interest.

The Commission will also:

- Develop a traveling exhibit and documentary.
- Issue scholarly publications and op-eds about the war.
- Foster relationships with England, Canada, and Virginia's Native American tribes to solicit and encourage their participation in the commemoration.
- Explore collaborative ventures with other states that are commemorating the bicentennial.
- Solicit the cooperation of the U.S. Army and Virginia National Guard.
- Recommend the creation of a commemorative license plate.
- Encourage local governing bodies to participate in and pass resolutions recognizing the commemoration of the bicentennial of the War of 1812.

Next Meeting

The Commission will meet on Wednesday, October 19, 2010, with the Brochure Work Group meeting at 10:00 a.m., the Citizens Advisory Council at 11:00 a.m., and the full Commission at 2:30 p.m. in House Room C in the General Assembly Building.



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<http://www.facebook.com/VAWarof1812>

Virginia Disability Commission – 9/8/10

The second meeting of the Virginia Disability Commission for the 2010 interim was held in Richmond.

Report of the Work Groups

The three work groups established by the Disability Commission at the July 2010 meeting met for one hour before the convening of the full Disability Commission. Following opening remarks, each work group presented information on its activities and recommendations.

Work Group #1

Work Group #1 was charged with (i) reviewing the purpose and scope of the Virginia Disability Commission and determining if the purpose and scope of the Virginia Disability Commission should be expanded to include identification and recommendation of legislative priorities and policies for adoption or examination by the General Assembly to provide support for development and review of services and funding for Virginians with other disabilities, in addition to Virginians with physical and sensory disabilities; and (ii) reviewing the name of the Virginia Disability Commission and determining, with input from stakeholders and citizens, if the name of the Disability Commission should be revised. Delegate Orrock, speaking on behalf of the work group, stated that the work group had received public comment and discussed the issue, and concluded that the name of the Virginia Disability Commission should not be changed and that the Commission's enabling legislation should be amended to:

- Require the Commission to report its findings and recommendations to the Senate Finance Committee, House Appropriations Committee, Secretary of Health and Human Resources, and the Governor by October 1 of each year.
- Clarify that the Commission shall serve as the primary forum in the Commonwealth where the needs and issues of people with physical and sensory disabilities are addressed.
- Ensure that relevant state agencies and other stakeholders are included as collaborators in carrying out the work of the Commission.
- Provide that the Disability Commission shall collect information on and coordinate efforts related to statutory and policy actions affecting persons with physical and sensory disabilities and also individuals with other disabilities, in order to avoid overlap and duplication of effort.

These recommendations were unanimously approved by the Disability Commission. Draft legislation making

these changes will be prepared for the next Commission meeting.

Work Group #2

Work Group #2 was charged with:

- Evaluating the current system of services for persons with physical and sensory disabilities, including the cost of and funding sources for existing services.
- Identifying gaps in services and services needs.
- Determining the projected cost of meeting those service needs.
- Identifying potential sources of funding to meet service needs.
- Performing cost-benefit analysis of various program options.

Work Group #2 reported that it had received information on existing services, service costs, and service needs, and that a second meeting was planned to review additional information on these topics and develop recommendations. Work Group #2 did provide some preliminary recommendations, including:

- That funding previously allocated to meet the needs of persons with physical and sensory disabilities through the Consumer Services Fund and the Rehabilitative Services Incentive Fund be restored.
- That all necessary steps be taken to ensure that the Commonwealth continues to meet state match requirements for federal programs, to ensure full access to and leveraging of available resources.

Work Group #3

Work Group #3 was charged with:

- Identifying needs of persons with disabilities in the area of housing and developing recommendations for meeting those needs.
- Identifying needs of persons with disabilities in the area of transportation and developing recommendations for meeting those needs.

It was reported that Work Group #3 had met, received information on housing needs, and discussed some preliminary recommendations. However, because only two work group members were present, Work Group #3 did not adopt any recommendations to be presented to the full Disability Commission. It was announced that Work Group #3 would meet a second time to receive information on transportation issues, and to develop recommendations for the full Disability Commission on the topics of housing and transportation.

Work Plan

Members of the Disability Commission discussed topics for the third meeting of the Commission, to be held on a date and at a time to be determined. The Commission requested information on:

- The current status of efforts to comply with Olmstead requirements; the steps necessary to come into full compliance, if any; and the cost of those actions.
- The need for publicly funded in-state neurobehavioral therapies.
- The amount spent by Virginia school districts to purchase certain special education services.
- The current status of Individual and Family Developmental Disabilities Support Waiver waiting lists and steps that may be required to reduce those waiting lists.

This information, together with reports and recommendations from Work Group #2 and Work Group #3 will be presented at the next Disability Commission meeting.

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.

**DELEGATE ROBERT D. ORROCK, SR.,
CHAIR**

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Joint Commission on Science and Technology – 9/13/10

The Electronic Privacy Advisory Committee of the Joint Commission on Technology and Science held its first meeting in Richmond. Delegate Joe T. May, chair of JCOTS and the Advisory Committee, called the meeting to order.

Electronic Tracking Devices - HB 670/ SB599

After a brief overview by staff of the role of JCOTS and its Advisory Committees, focused turned to HB 670/SB 599, identical bills referred to JCOTS for review by the 2010 General Assembly. The bills would make it a Class 4 misdemeanor to place an electronic tracking device, with the intent to track the location of the vehicle, onto a motor vehicle without the owner's consent. A member of the committee contributed that such a device had been placed on his car without consent, and he was told by law enforcement that current law did not provide an avenue to address the situation. It was noted that this issue had not been previously studied by JCOTS, or been otherwise discussed or vetted prior to its introduction during the 2010 Session.

Staff noted that Georgia had recently enacted similar, but slightly more comprehensive, legislation. Staff also noted that one of the exceptions set forth in HB 670/SB599 applies to law-enforcement officers. The issue as to whether law-enforcement officers may constitutionally use electronic tracking devices without a warrant is currently being litigated at the state and federal level. Therefore, while staff will keep the Committee abreast of any developments in this area, it is not a topic that the Committee will pursue. Instead, the Committee will review the use of such devices by private persons and entities.

The Committee spent the bulk of the meeting time discussing the various elements of the bills. There was general consensus amongst the Committee members that they were interested in further exploring the bills for recommendation to JCOTS and the General Assembly, but that the bills raised several issues that would need to be considered, such as:

- The different privacy issues raised between in-person and electronic tracking.
- The definition of an electronic tracking device.
- The importance of consent and who could give consent.
- Whether intent alone was enough to commit a crime or whether malicious intent should be required.

The Committee will resume discussion on these points at its next meeting and consider revised drafts of the legislation to be prepared by staff.

Electronic Privacy

JCOTS staff provided an overview of topics related to electronic privacy that JCOTS has considered in the past. The issue of electronic privacy is not new to JCOTS, and considerable work has already been conducted. Past topics of review and legislation include:

- The collection of social security numbers by state and local government agencies.
- Access to social security numbers under the Virginia Freedom of Information Act.
- Dissemination of social security numbers by private individuals and entities.
- Database breach legislation ~ including 2010 legislation aimed at notification of breaches of medical information.

JCOTS has also previously studied radio frequency identification (RFID), but did not recommend any legislation.

In addition to the bills referred to JCOTS, the chairman has expressed interest in the Committee pursuing a broader agenda. Staff indicated that one work product of the Committee might be a research document outlining the state of privacy law in Virginia, along with considerations that should be taken into account in reviewing privacy-related legislation in the electronic age. Other specific topics for review include, but are not limited to:

- Privacy in the work place.
- Consideration of how expectations of privacy have changed in the digital age.
- The use of private electronic information for government purposes.
- The government's role in protecting personal and private information.
- Security of electronic databases.
- Opt-in versus opt-out for privacy protections.
- Data disposal.

Staff suggested that an email be sent to each member of the Committee, soliciting ideas for further review. Staff will compile the responses, and make suggested topics available to the Committee and the public. In addition, staff requested that Committee members provide suggestions for privacy-related topics that might be topics of interest for future JCOTS Policy Briefs.

Next Meeting

The next meeting of the Privacy Advisory Committee will be October 18, 2010, at 1:30. More information will be posted on the Commission's website and the General Assembly website as soon as information is available.



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For multiple copies of the *Virginia Legislative Record* or other DLS publications, please contact the House or Senate Clerks Office.

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert 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: For the following regulations, 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.

1VAC20-20. Records Administration (adding 1VAC20-20-10, 1VAC20-20-20).

Written public comments may be submitted until October 14, 2010.

Summary:

Federal and state laws require Virginia election administrators to maintain the security and confidentiality of personal voter information, including social security number and full date of birth. The proposed regulation provides a standard for encryption technology that localities may provide as an alternative to redacting personal information from applications and other documents before transmitting them electronically.

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

1VAC20-40. Voter Registration (adding 1VAC20-40-10 through 1VAC20-40-60).

Written public comments may be submitted until October 14, 2010.

Summary:

As required by § 24.2-406 D of the Code of Virginia, the State Board of Elections adopted and secured preclearance for a regulation on determining residency for voter registration in 2009. This regulation was published on the board's website as SBE Policy 2009-005 with approved correspondence before the board adopted procedures for using the Virginia Regulatory Town Hall and Virginia Register of Regulations for adopting regulations. The board recently approved procedures and the previously approved regulation is being proposed with stylistic changes to conform to Virginia Administrative Code technical specifications. A clarifying definition of address is also proposed to provide guidance and ensure uniform treatment of applicants requesting exclusion of residence addresses from published voter lists under § 24.2-418 of the Code of Virginia.

For more information, please contact James B. Alcorn, Deputy Secretary, State Board of Elections, Richmond, VA, telephone (804) 864-8944, or email james.alcorn@sbe.virginia.gov.

1VAC20-50. Candidate Qualification (adding 1VAC20-50-10, 1VAC20-50-20).

Written public comments may be submitted until October 14, 2010.

Summary:

The proposed regulation concerns material omissions from independent candidate petitions. It distinguishes

between omissions that are always material and cause a petition to be rendered invalid and omissions that are not material.

For more information, please contact Peter Goldin, Policy Analyst, State Board of Elections, Richmond, VA, telephone (804) 864-8930, FAX (804) 786-0760, or email peter.goldin@sbe.virginia.gov.

1VAC20-60. Election Administration (adding 1VAC20-60-10, 1VAC20-60-20).

Written public comments may be submitted until October 14, 2010.

Summary:

The proposed regulation provides standards to assist general registrars in determining what omissions are always material and cause a petition to call for a referendum election to be rendered invalid and what omissions are not material.

For more information, please contact James B. Alcorn, Deputy Secretary, State Board of Elections, Richmond, VA, telephone (804) 864-8944, or email james.alcorn@sbe.virginia.gov.

BOARD OF NURSING

18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-30, 18VAC90-20-40, 18VAC90-20-60, 18VAC90-20-151, 18VAC90-20-160).

18VAC90-25. Regulations Governing Certified Nurse Aides (amending 18VAC90-25-80).

18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-50).

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-70).

18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-30).

18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-30).

Written public comments may be submitted until November 12, 2010.

Summary:

The proposed amendments would increase fees charged to regulants and applicants and establish new fees to

cover the cost of continued approval of nursing education programs. Biennial renewal fees for registered nurses would be increased by \$45 and for licensed practical nurses by \$25. For initial approval of a nursing education program, there would be an increase in the application fee of \$450. Fees for survey visits and site visits to nursing education programs would be added in amounts sufficient to offset the board's expenses for such visits. Similar increases are proposed for clinical nurse specialists, licensed nurse practitioners, and certified massage therapists. For certified nurse aides, the board proposes to change the renewal cycle from a biennial cycle (current fee of \$50) to an annual cycle (proposed fee of \$30). The annual fee for medication aides would also be raised by \$5 for an annual fee of \$30. Other fees, including application, inactive licensure, and late fees for all professions would be increased proportionally.

For more information, please contact Jay P. Douglas, R.N., Executive Director, Board of Nursing, Richmond, VA, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

BOARD OF VETERINARY MEDICINE

18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-75, 18VAC150-20-100, 18VAC150-20-220).

A public hearing will be held on October 20, 2010, at 9 a.m. at the Department of Health Professions, Richmond, Virginia. Written public comments may be submitted until October 29, 2010.

Summary:

The proposed amendments increase fees charged to regulants and applicants of the Board of Veterinary Medicine. Annual renewal fees would be increased by the following amounts: (i) veterinarians, \$40 per year; (ii) veterinary technicians, \$20 per year; (iii) veterinary establishments, \$60 per year; and (iv) equine dental technicians, \$20 per year. Other fees are increased proportionally. For the renewal cycle ending January 1, 2013, a one-time debt reduction assessment of \$100 for veterinarians, \$200 for veterinary establishments, and \$50 for veterinary technicians and equine dental technicians is proposed. Other fees set proportionally to the renewal fees would also be increased. Licensees would be allowed to renew a lapsed license for one year (one renewal cycle) with payment of the renewal fee and a late fee; thereafter, the licensee would be required to reinstate the license and pay the reinstatement fee.

For more information, please contact Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, Richmond, VA, telephone (804) 662-4426, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

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