



## June/July 2014 Issue

*Activities of Virginia Legislative Study Commissions and Joint Subcommittees*



Virginia Division of Legislative Services

# Virginia Legislative Record

Volume 24 Issue 1

The *Virginia Legislative Record* is a report of the activities of Virginia legislative study commissions and joint subcommittees, reflecting the ongoing deliberations and recommendations of interim legislative studies. Meeting summaries were prepared by the staff of the Division of Legislative Services. More information concerning the individual commissions and committees is available on the DLS website (<http://dls.virginia.gov/>) or by calling 804-786-3591.

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### Regulation Information

The *Virginia Register of Regulations* is Virginia’s official publication of proposed, final, and emergency regulations. All regulations must be filed with the Registrar of Regulations to become law. The *Virginia Register*, published every other Monday, provides a snapshot of all regulatory activity in Virginia. The current *Register* issue, prior issues, and additional information about the regulatory process in Virginia are available at <http://register.dls.virginia.gov> or by calling 804-786-3591 for more information.



Virginia Division of Legislative Services

## **Virginia Bicentennial of the War of 1812 Commission and Legacy Symposium Subcommittee**

*May 19, 2014*

The Virginia Bicentennial of the War of 1812 Commission and its Legacy Symposium Subcommittee met on May 19, 2014, in Richmond to discuss and make final arrangements for the Legacy Symposium, the 2014 signature event to be held June 19-21 in Hampton.

At the morning session, the subcommittee received reports from staff, the Legacy Symposium coordinator, and representatives of Hampton University, Fort Monroe, and the Department of Education concerning the progress of conference plans, availability of housing facilities, status of registration and the fundraising campaign, and confirmation of presenters and speakers.

Upon convening the afternoon session, the full Commission received the report of Jennifer Loux, Historical Marker Director at the Virginia Department of Historic Resources. Ms. Loux informed the Commission that historical markers interpreting the British Raid on Tappahannock and Saving the Declaration of Independence were being added to the Virginia War of 1812 Heritage Trail established by the Commission. In August and September 2014, Alexandria and other Northern Virginia localities, working together with Washington, D.C., Maryland, and the British embassy, will commemorate the bicentennial of the War of 1812 with numerous signature events and activities to mark the occupation and surrender of the British in Alexandria, the burning of Washington, D.C., Virginia's role in the defense of Maryland along the Chesapeake Bay, and the origin of the national anthem, "The Star Spangled Banner."

Warren County Heritage Society Executive Director Patrick Farris updated the Commission regarding discussions with Ohio officials on the laying of the memorial to Virginians who died defending the United States in Ohio during the War of 1812. The Commission agreed that it would provide a memorial consistent with Ohio's policies and other states' memorials at the burial site of War of 1812 veterans. Mr. Farris was directed to continue his work with the state of Ohio in coordination with staff.

The staff reviewed the contracts, publicity, teacher certificates, flyers, websites, printing, symposium schedule, and registration of legislative Advisory Council members and elected officials for the Legacy Symposium with the Commission. Ann Kirwin, Legacy Symposium Coordinator, the Honorable G. Glenn Oder, Executive Director of the Fort Monroe Authority, and Bill Thomas, Associate Vice President of Governmental Relations at Hampton University, provided status reports of their respective duties and responsibilities for the Legacy Symposium.

The Commission adopted the subcommittee's recommendation that the Legacy Symposium plans proceed and that the schedule be printed as approved, subject to proofing and editorial changes.

## **Virginia Bicentennial of the War of 1812 Commission, Advisory Council, and Legacy Symposium Subcommittee**

*July 9, 2014*

The Virginia Bicentennial of the War of 1812 Commission and its Advisory Council and Legacy Symposium Subcommittee met on July 9, 2014, in Richmond to evaluate the 2014 signature event Legacy Symposium, which was held June 19-21, 2014, in Hampton.

During the morning session, the council and subcommittee received individual reports from the staff, Legacy Symposium Coordinator Ann Kirwin, and Bill Thomas of Hampton University describing their respective roles in facilitating the Symposium and assessing what was most effective and what could be improved. Although the fundraising campaign fell short of its goal, overall the Legacy Symposium was successful, and teachers especially lauded the conference. These reports were also presented at the afternoon full Commission meeting.

The staff noted the followup activities under way to conclude the Symposium, including preparing and sending thank-you letters to Symposium participants and partners and IRS acknowledgments to donors; mailing the evaluation form to teachers and museum educators; and reviewing contracts, invoices, and Contributor Agreements for the September audit.

To support the Legacy Symposium, the Commission has received \$9,000 in pledges. To date, 32 teacher stipends have been processed. After payment of expenses from the 2014 general and special fund balances, the Commission has a GF balance of \$22,230 from the 2015 appropriation.

### **Recommendations Adopted**

The Commission adopted the following recommendations of the Advisory Council:

1. The Commission should honor its commitment to the Alexandria Bicentennial.
2. The Commission should proceed with planning but defer action on the Ohio event until a complete accounting of the Commission's financial status after the Legacy Symposium has been ascertained.
3. The staff should be directed to explore ways to preserve the Commission's website to make its resources and products available to the public after its expiration on June 30, 2015. It was suggested that the staff explore linking with the Department of Education, Library of Virginia, and Virginia Historical Society and entering into agreements with the Division of Legislative Services, Virginia Currents, PBS/WCVE, C-SPAN, and the Library of Virginia to archive certain parts of the website.

### **Future Commission Bicentennial Commitments**

The Commission has committed to partnering with the Alexandria War of 1812 Bicentennial by supporting the commemorative events in August and September 2014 with its attendance and providing \$1,000 in support of the Alexandria War of 1812 Bicentennial.

The final bicentennial event, the laying of the memorial to honor Virginians who fought during the War of 1812 and are buried at Fort Meigs in Perrysburg, Ohio, will be held in 2015 at Fort Meigs. Before its expiration on June 30, 2015, the Commission will send a delegation of three persons to the site for the installation of the Virginia memorial.

## **Virginia Bicentennial of the War of 1812 Commission**

### **Delegate M. Kirkland Cox, Chair**

Brenda H. Edwards, DLS Senior Research Associate

Jeff Sharp, DLS Senior Attorney

804-786-3591 ext. 232 or 213

[va1812bicentennial.dls.virginia.gov](http://va1812bicentennial.dls.virginia.gov)



## Virginia Code Commission

*May 7, 2014*

The Virginia Code Commission held its first meeting of the 2014 interim in Richmond on May 7 with Senator John Edwards, chair, presiding. Senator Edwards recognized two new members: G. Timothy Oksman, Opinions Counsel for the Attorney General, and Carlos L. Hopkins, Counsel to the Governor. Following introductions, Delegate Jim LeMunyon was elected vice-chair.

### **Notice Provisions in the Code of Virginia**

**Kent Sinclair, Professor of Law, University of Virginia**

**Stephen D. Busch, McGuireWoods LLP**

In 2012, the Code Commission asked the Supreme Court of Virginia and Boyd-Graves Conference for assistance with studying the issue of variation in the ways that notice provisions are handled in the Code of Virginia. The Boyd-Graves Conference Statutory Notice Study Committee Report was presented at the Boyd-Graves Conference in October 2013, and the Supreme Court's Study of Notice Provisions Report was forwarded to the Code Commission in February 2014.

Professor Sinclair presented the Supreme Court of Virginia's report regarding the notice provisions in Titles 16.1, 17.1, 18.2, and 19.2 of the Code of Virginia. Professor Sinclair explained that, although there is great diversity of language regarding "notice" in the Code of Virginia, the court was not aware that this was a problem that needed to be addressed. Also, the committee focused on notice provisions for delivery of papers after the initial service of process to begin a legal proceeding. In summary, the recommendation is that generalized or global provisions allowing electronic and other forms of delivery of papers do not seem either needed or safe given the wide variety of legal contexts in which such papers are to be delivered. The only possible change is one narrow form of global cross-reference in the Code of Virginia related to use of commercial delivery services as an alternative where Code provisions call for "mail" (ordinary, registered, or certified) notice. The Supreme Court, however, is not recommending that a bill be introduced and is not planning on amending its rules.

Steve Busch, chair of the Boyd-Graves Conference Statutory Notice Study Committee, provided background on the Boyd-Graves Conference and presented the Boyd-Graves report on the study of the notice provisions in Titles 8.01, 11, 20, 25.1, 26, 43, 50, 55, and 64.2. The Boyd-Graves Conference also recommended that no changes be made. Further, Mr. Busch noted that any change regarding notice could not take a global or singular approach but would have to be carefully considered by subject matter experts, as notice provisions vary widely by subject.

Questioned by Senator Edwards, Professor Sinclair and Mr. Busch indicated that neither the court nor the committee had reviewed administrative notices. Senator Edwards called on Tom Lisk, chair of the Administrative Law Advisory Committee (ALAC), and requested that ALAC consider studying whether to expand ways administrative notice provisions are handled. Mr. Lisk advised the Commission that ALAC was meeting later that day and that he would bring up the issue in the work plan discussion.

### **Administrative Law Advisory Committee (ALAC) Vacancy**

**Tom Lisk, Chair, Virginia Administrative Law Advisory Committee**

Mr. Lisk explained that Elizabeth Andrews, the current representative from the Office of the Attorney General, left that office and is now working for another state agency. Ms. Andrews will continue on ALAC as a state agency representative, replacing Cindy Berndt. Upon Mr. Lisk's recommendation, the

Code Commission unanimously approved the appointment of Kristina Perry Stoney of the Office of the Attorney General to ALAC.

## Virginia Law Portal

**Jay Landis, Director, Division of Legislative Automated Systems**

**Jessica Harrison, Graphic Artist, Division of Legislative Automated Systems**

Mr. Landis presented an overview of the new Virginia Law portal (<http://law.lis.virginia.gov>) accessed through the Legislative Information System. The portal brings together seven sources of Virginia law: Code of Virginia, Virginia Administrative Code, Constitution of Virginia, charters, authorities, compacts, and uncodified acts. The goals of the portal are (i) professional and intuitive design and organization, (ii) compatibility with smartphones and tablets, (iii) optional offline accessibility (through the Virginia law library, which contains copies in e-book form), and (iv) a platform for developers to retrieve and reuse the data. The first beta version has received overwhelmingly positive responses. DLAS is preparing to release the second beta version, which incorporates feedback from users, including a report feature.

Ms. Harrison reviewed and demonstrated the new and improved features of the portal. To improve user orientation and navigation, the Code of Virginia now displays subtitles, parts, chapters, and articles, and a breadcrumbs string was added. The Create Report feature allows the creation of a report by segment down to the section level. In the Virginia Administrative Code, a user can quickly drill down to agencies. From the agency list, a user can drill down to chapters and sections.

Delegate Habeeb suggested that previous annual editions of the Code of Virginia be made available. Members discussed backfilling the online Code with previous annual editions, and Lilli Hausenfluck, DLS Chief Editor, described one option as a possible method to accomplish this task.

## 2014 Legislative Update

**Jane Chaffin, Code Commission Staff, Division of Legislative Services**

**Nicole Brenner, Attorney, Division of Legislative Services**

Ms. Chaffin reviewed the status of legislation recommended by the Code Commission. The three obsolete laws bills (HB 24, HB 25, HB 436) and the technical correction to Title 3.1 (SB 5) passed without amendment. Senate Bill 358, regarding the date of adoption for purposes of appeal, was passed with minor amendment, which Mr. Lisk explained to the Code Commission.

House Bill 311, to recodify Title 33.1 of the Code of Virginia, passed with minor amendments recommended by the Governor's Office. Ms. Brenner advised that all information has been provided to the publishers and that she is preparing a technical corrections bill for the Code Commission's consideration for the 2015 Session.

Delegate Habeeb asked if the term "obsolete law" was defined, as it comes up when the obsolete law bills are discussed. Ms. Chaffin explained that in 2000, the Code Commission was given the ongoing responsibility to identify obsolete statutes and Acts of Assembly and to recommend repeal or amendment. Although there is no statutory definition of "obsolete laws," the Division of Legislative Services has a manual for the review and identification process. Ms. Brenner explained that she is reviewing and updating the manual.



## Referral of HB 994

### Delegate Greg Habeeb

Delegate Habeeb provided background information regarding HB 994. As introduced, HB 994 added a new section on human trafficking to the Code of Virginia. Currently, this crime is prosecuted under § 18.2-47, which defines “abduction” and “kidnapping” but does not use the term “human trafficking.” In lieu of adding new provisions to address human trafficking, a House substitute was introduced directing the Code Commission to amend the catchline of § 18.2-47 by adding the term “human trafficking” so it would read “Abduction, human trafficking, and kidnapping defined; penalty.” The Senate Committee for Courts of Justice passed by indefinitely the substitute and referred the subject matter contained in HB 994 to the Code Commission for study. Delegate Habeeb pointed out that amending the catchline is within the scope of the Code Commission’s authority in § 30-149 and that catchlines are not part of law (reference § 1-217).

The members thoroughly discussed the viewpoints and policy considerations of amending the catchline as suggested in HB 994. Some members expressed concern about adding a term in a catchline when the term is not used or defined in the law. Other members stressed that the amendment to the catchline simply clarifies for law enforcement, prosecutors, and others that the section applies to human trafficking crimes.

In response to Senator Edwards’s suggestion that staff study the issue, Division of Legislative Services (DLS) attorney Kristen Walsh, who staffs the Senate Courts of Justice Committee, stated that DLS has looked at the issue and has no policy recommendation as to a law regarding human trafficking. Ms. Walsh further stated that this issue has been studied by both the Office of the Attorney General and the Uniform Law Commission.

Ms. Walsh advised that if the Commission decides to add “human trafficking” to the catchline, the proposed wording in HB 994 should be revised so that the catchline reads “Abduction and kidnapping defined; human trafficking; penalty.” With this change, staff believes that the order of the wording in the catchline is appropriate.

Senator McDougle’s motion to amend the catchline of § 18.2-47 by adding the term “human trafficking” after “defined” failed 2-6 with Delegate Habeeb and Senator McDougle voting for the motion.

## Recodification of Title 23: Educational Institutions

### Tom Stevens, Attorney, Division of Legislative Services

### Ryan Brimmer, Attorney, Division of Legislative Services

Mr. Stevens presented the proposed Title 23.1 organizational outline as approved by the Title 23 work group at its April 30 meeting. Mr. Brimmer explained that existing Title 23 currently consists of 54 chapters and no subtitles. The proposed organizational outline divides proposed Title 23.1 into five subtitles: Subtitle I, General Provisions of the State Council for Higher Education for Virginia; Subtitle II, Students and Campus; Subtitle III, Management and Financing; Subtitle IV, Public Institutions of Higher Education; and Subtitle V, Other Educational Institutions. The subtitles are further divided into 31 chapters. Mr. Brimmer reviewed the placement of chapters within each subtitle. The Code Commission unanimously approved the proposed organizational outline of Title 23.1 as presented.

## Virginia Administrative Code Pricing

**Jane Chaffin, Code Commission Staff, Division of Legislative Services**

Ms. Chaffin explained that the current Virginia Administrative Code (VAC) contract provides that West may increase the price of the print VAC by an amount no greater than the change in the Producer Price Index for Book Publishing for the previous year or 5.0%, whichever is less, as long as West provides notice of the price increase and the effective date no later than May 1 of each year. Ms. Chaffin stated that on April 24, 2014, West provided notice of a 3.1% increase in the print sets and volumes of the VAC effective May 1.

Ms. Chaffin also presented a request on West's behalf for a 3.1% price increase in the VAC CD-ROM pricing and explained that the contract was silent on this issue. Mr. Miller provided a brief history of the Virginia Administrative Code contract and explained that the CD-ROM price had not been raised significantly since the first contract was executed in the 1990s.

Delegate Habeeb questioned whether the CD-ROM pricing should be based on the same industry standard as the print; i.e., PPI for Book Publishing. After discussion, the chair requested the Virginia Administrative Code Subcommittee, consisting of Mr. Miller, Mr. Tavenner, and Mr. Nolen, to review the matter and make a recommendation regarding the CD-ROM price increase request as well as a longer term solution for the Code Commission's consideration at the next meeting.

## Next Meeting

The Commission is scheduled to meet on Monday, July 21, 2014.

## Virginia Code Commission

**Senator John S. Edwards, Chair**

Jane Chaffin, DLS Staff

804-786-3591 ext. 262

[codecommission.dls.virginia.gov/](http://codecommission.dls.virginia.gov/)

## Virginia Freedom of Information Advisory Council

*April 22, 2014*

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of 2014, with Delegate Jim LeMunyon presiding.

## Other Business

After calling the meeting to order, Delegate LeMunyon took up a later agenda item first because Delegate Bulova was present with his constituent, Mr. Donald Garrett. Delegate Bulova introduced Mr. Garrett, who voiced his concerns that there are currently no provisions in the Virginia Freedom of Information Act (FOIA) addressing retaliation. He related that as a student at a public institution of higher education, he had been labeled a "student of concern" after making records requests under FOIA and attending public meetings, and his motives for requesting records and attending meetings had been questioned by administrators. Mr. Garrett submitted an issue paper for the Council's consideration, available from the Council. Delegate LeMunyon asked whether the school had provided the records



Mr. Garrett had requested; Mr. Garrett replied that the response to his FOIA requests followed the law, but that he was concerned by its aftermath. Delegate LeMunyon asked whether Mr. Garrett was labeled a “student of concern” before or after he made his FOIA requests. Mr. Garrett replied that he was not entirely sure, but he became aware of it after making his FOIA requests. In response to further inquiry, Mr. Garrett said that once he was labeled a “student of concern,” he was monitored and questioned by the administration several times, most recently about a half-year ago. The Council had no further questions and took no action on this item at this time.

### **Recap of FOIA and Related Access Bills from 2014 Session**

Staff presented a preview of the 2014 Legislative Update, currently in draft form, as the Governor has submitted recommendations to amend several bills and the Reconvened Session is to be held April 23, 2014. The General Assembly passed a total of 10 bills amending the Virginia Freedom of Information Act (FOIA) during the 2014 Session. One bill that was recommended by the FOIA Council passed the General Assembly: House Bill 219 (Albo), which amends an existing record exemption for confidential letters and statements of recommendation placed in the records of educational agencies or institutions to include records respecting an application for promotion. One bill, House Bill 380 (Surovell), creates a new section in FOIA that provides that nothing in FOIA shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena, nor shall any discretionary exemption from mandatory disclosure be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law. One bill, House Bill 272 (Loupassi), adds a new records exemption to FOIA for certain records of the judicial performance evaluation program. The remaining bills all amend existing provisions of FOIA. Two of the bills amending FOIA, and several other access-related bills, were awaiting action on the Governor’s recommendations. For further details see the full Draft 2014 Legislative Update at <http://foiacouncil.dls.virginia.gov/2014updt.pdf>.

### **Bills Referred to the Council for Study by the 2014 Session**

The General Assembly referred four bills to the Council for study this year. House Bill 339 (Anderson) and SB 387 (Reeves) are identical bills that address certain proprietary records of the Department of Rail and Public Transportation. No one spoke concerning these bills.

House Bill 788 (LeMunyon) addresses out-of-state requests for records. Currently, FOIA grants rights to citizens of the Commonwealth and certain media representatives; the United States Supreme Court upheld this limitation last year in *McBurney v. Young*, 133 S.Ct. 1709 (2013). Delegate LeMunyon noted that currently out-of-state requesters get around the limitation by having someone in Virginia make the same request on their behalf but that without limitations public bodies could be inundated with a large volume of requests from out of state.

House Bill 839 (Brink) addresses the applicability of FOIA to the Office of the Attorney General (OAG). Delegate Brink stated that he introduced the bill because the former Attorney General had included with some FOIA responses a footnote indicating that the OAG may not be subject to FOIA in which he followed the reasoning of the Supreme Court of Virginia holding in *Christian v. State Corporation Commission* (282 Va. 392, 718 S.E.2d 767 (2011)) that FOIA does not apply to the State Corporation Commission. While the former Attorney General had told his staff to stop including that note, Delegate Brink indicated he felt it would be best if FOIA explicitly stated that it applies to the OAG so there would be no confusion or doubt in the future.



## FOIA Refresher

Staff presented a brief overview of FOIA addressing the statutory structure of FOIA, the policy of FOIA favoring openness as the default rule, the procedure for making and responding to records requests, open and closed meetings requirements, and the remedies provisions of FOIA. Regarding statutory structure, staff observed that FOIA begins with the policy statement and several miscellaneous provisions, such as setting forth entities that are not subject to FOIA, requiring that elected and appointed officials familiarize themselves with FOIA, and requiring state agencies to post a statement of FOIA rights and responsibilities on their websites.

The next sections of FOIA address the procedure for making and responding to FOIA requests and set forth over 100 records exemptions. Next, FOIA details the procedures for holding open and closed meetings and sets forth approximately 45 closed meeting exemptions. FOIA concludes with remedies provisions to address violations. The policy of FOIA states that all public records and meetings are presumed to be open unless a specific exemption is invoked and that all exemptions must be construed narrowly.

Staff briefly addressed the requirements for making and responding to a records request under FOIA, noting that a requester cannot violate FOIA and that FOIA requests are not meant to be adversarial. Regarding meetings, staff noted that the main requirements are that meetings be noticed and open to the public and that minutes be taken. Closed meetings require that an open meeting be convened; then there must be a motion and vote to close the meeting. After a closed meeting, the public body must reconvene in an open meeting and certify that the body only discussed matters identified in the motion that are allowed to be discussed in closed meeting.

Regarding remedies, staff noted that the statutory remedy is a petition for mandamus or injunction, meaning that a court would order the public body to do something (mandamus) or not to do something (injunction), and that each court could craft orders to fit the particular violation(s). Additionally, FOIA provides that a petitioner shall be entitled to recover reasonable costs, including court costs, attorney fees, and expert witness fees, if the petitioner substantially prevails on the merits, unless the court finds special circumstances that would make the award unjust. Staff noted that such fees can be substantial and related examples of awards in the tens of thousands of dollars. Additionally, FOIA contains provisions where an individual who is found to have knowingly and willfully violated FOIA can be made to pay a civil penalty to the State Literary Fund.

## Public Comments

Ginger Stanley of the Virginia Press Association commended the passage of House Joint Resolution No. 96 directing the Council to conduct a three-year study of FOIA. She stated that she had been involved with two prior legislative studies of FOIA and believed this one would be the most thorough. She informed the Council that she had already received dozens of comments from reporters and correspondents with concrete examples of what does and does not work in FOIA currently.

Mary Davye Devoy, a citizen concerned with issues involving the Virginia Sex Offender Registry, indicated that she felt the discretion to disclose otherwise exempt records had been used improperly. Specifically, she related that she had been denied certain records she requested from the State Police but a very similar request from researchers at Longwood University had been filled. Ms. Devoy submitted written remarks on this issue.

Megan Rhyne of the Virginia Coalition for Open Government (VCOG) announced that VCOG will hold a workshop on June 4, 2014, in Fredericksburg, at which Maria Everett would speak on FOIA, a



representative of the Library of Virginia would speak on the Virginia Public Records Act, and the Acting Public Information Director for the City of Alexandria would discuss the interaction of the two Acts. More information is available on the VCOG website ([www.opengovva.org](http://www.opengovva.org)).

### **Study of the Virginia Freedom of Information Act: HJR 96 (LeMunyon)**

House Joint Resolution No. 96 (2014) directs the FOIA Council to study all exemptions contained in FOIA to determine the continued applicability or appropriateness of such exemptions and whether FOIA should be amended to eliminate any exemption from FOIA that the FOIA Council determines is no longer applicable or appropriate. HJR 96 also requires the FOIA Council to examine the organizational structure of FOIA and make recommendations to improve the readability and clarity of FOIA. The FOIA Council is required to consider comment from citizens of the Commonwealth; representatives of state and local governmental entities; broadcast, print, and electronic media sources; open government organizations; and other interested parties. The resolution requires the FOIA Council to report its findings and recommendations by December 1, 2016.

Staff distributed a Study Plan Discussion Draft that addresses the implementation of HJR 96, which was passed as a three-year study. Staff suggested that some of the bills referred by the General Assembly could be taken up within the context of the HJR 96 study. It was agreed to begin the study as suggested in the Study Plan Discussion Draft by forming two subcommittees, one to start studying records exemptions and the other to address meetings.

Delegate LeMunyon opened the floor to questions about the study. Mr. Landon asked how the Council might look at the experience of the office, noting that there was no FOIA Council for previous legislative studies to consider and that FOIA does not have a provision concerning the Council's role as an informal mediator for FOIA disputes. Staff noted that the Council can examine any issue it chooses regarding access and open government. Mr. Landon further noted that many years ago the Office of the Attorney General (OAG) indicated it would generally agree with FOIA Council opinions unless there was severe disagreement, but that policy was not written. Staff related that the Council has always maintained a very good relationship with the OAG and is consulted on FOIA matters. Staff also noted that the specific language of HJR 96 does not address the role of the FOIA Council.

Ms. Dooley asked whether the Meetings Subcommittee suggested in the Study Plan Discussion Draft to be established in 2014 would continue its work in 2015, noting that with 45 exemptions to consider as well as procedural issues, it might not complete its work in 2014. Staff agreed that the subcommittee would continue its work in 2015 if needed, or as the Council decides.

Delegate LeMunyon noted that if the next Council meeting is in July, the subcommittees would be able to meet once or twice before then. Staff noted that it would be more convenient to schedule subcommittee meetings on the same day. Delegate LeMunyon stated that the study would take a "zero based FOIA" approach by assuming everything was open to the public and requiring justification for any exemptions. He further noted that there is no requirement to hold meetings in Richmond and suggested it might be useful to hold regional meetings to hear from local governments. Taking up the bills referred to the Council by the 2014 Session, the Council agreed without objection to refer HB 339 and SB 387 to the Records Subcommittee and to leave HB 788 and HB 839 to be considered by the full Council.

## Appointment of Subcommittees

Delegate LeMunyon asked for volunteers to serve on the subcommittees. Members Ashby, Hamlett, and Tavenner volunteered, and Mr. Payne volunteered the designee of the Attorney General, to serve on the Records Subcommittee. Members Dooley, Landon, Selph, and Whitehurst volunteered to serve on the Meetings Subcommittee. Staff was directed to contact those Council members who could not be present so that they might choose to participate in a subcommittee as well. After being contacted by staff, Mr. Oksman, the designee of the Attorney General, agreed to serve on both subcommittees.

## Of Note

### *American Tradition Institute v. Rector and Bd. of Visitors of the University of Virginia*

The decision of the Supreme Court of Virginia in *American Tradition Institute v. Rector and Bd. of Visitors of the University of Virginia* was issued Thursday, April 17, 2014. This case concerned a request for a former professor's electronic mail concerning climate science research. The decision addressed an exemption for certain higher education records and the use of the term "proprietary" in that exemption, as well as charges allowed under FOIA. In summary, the Court upheld the decisions of the trial court in favor of the University, holding that the term "proprietary" should be given its ordinary usage and reflects rights of ownership and control; that the University had established all of the elements for the exemption to apply; and that public bodies may charge under FOIA for reviewing records "to assure that those records are responsive, are not exempt from disclosure, and may be disclosed without violating other provisions of law."

### *Electronic meetings; July 1, 2014, sunset provision on subsection H of § 2.2-3708*

Subsection H of § 2.2-3708 was passed in 2013 to allow certain state-level advisory bodies to conduct meetings using audio-visual technology without assembling a quorum in a single physical location. The General Assembly did not act to extend the sunset provision; this subsection will expire on July 1, 2014. Staff observed that none of the annual electronic meeting reports received by the Council this year mentioned any use of this provision.

### *State Council on Higher Education for Virginia FOIA video press release*

Staff announced that the State Council on Higher Education for Virginia (SCHEV) had issued a press release stating that its FOIA video, created in conjunction with the Office of the Attorney General and the FOIA Council, is available on the SCHEV website. Staff noted that the video was shown at the conclusion of the December 5, 2013, meeting of the FOIA Council.

## Future Meetings

The Council scheduled the remainder of its 2014 meetings on July 8, September 16, and November 18.



## Meetings Subcommittee

*May 14, 2014*

The Meetings Subcommittee of the FOIA Council held its first meeting on May 14, 2014. The subcommittee elected Mr. Whitehurst as chair.

Staff presented a brief review of House Joint Resolution No. 96 (HJR 96), which directs the FOIA Council to conduct a three-year study of FOIA, and the study plan adopted by the FOIA Council at its meeting on April 22, 2014. HJR 96 directs the FOIA Council to examine all of the exemptions in FOIA, as well as the organization and structure of FOIA. At its meeting in April, the FOIA Council established the subcommittee with the goal of studying all of the meetings exemptions, as well as any other meetings-related issues that may arise. Staff related that the Records Subcommittee had met earlier the same day and expressed concerns over policy issues and a desire for more direction from the full FOIA Council. The subcommittee discussed the possibility of having a full FOIA Council meeting in June. Staff reminded the members that the FOIA Council already has statutory authority to study all FOIA issues and that the subcommittee may take a full view of meetings law. The subcommittee then invited others present to express their views.

Craig Merritt, representing the Virginia Press Association (VPA), observed that, though HJR 96 tasks the FOIA Council to study all exemptions for applicability and appropriateness, determining applicability would be easy but determining appropriateness is unclear. He suggested measures be defined before studying individual exclusions. Mark Flynn of the Virginia Municipal League (VML) observed that what FOIA is really about is determined by working through the details of each exemption.

In discussion among the subcommittee members, Ms. Dooley suggested approaching the exemptions using current FOIA policy as a guide to determine what is appropriate, noting the language of HJR 96 directed a study of FOIA exemptions, structure, and readability and clarity, not the underlying policy of FOIA.

Mr. Oksman observed that strictly following the existing policy of openness would allow no exemptions at all. He supported Mr. Merritt's request for guidelines and criteria to judge new exclusions and for further guidance from the full FOIA Council, but suggested that the subcommittee could begin its part of the study before receiving additional guidance. Mr. Selph agreed.

After further discussion, the subcommittee agreed it wanted further guidance on how to determine the appropriateness of exemptions. Ms. Dooley also observed that certain balancing factors expressed in the current exemptions could be used to judge appropriateness: the public good (including protection of bargaining and negotiating positions, the financial interest of the public, and attorney-client confidentiality) versus private interests (such as individual privacy, employment and education matters, and private businesses' proprietary interests).

### Conclusion

The subcommittee decided to hold approximately four more meetings. It was suggested that the subcommittee might meet again in June, perhaps on the same day as the full FOIA Council, if the full FOIA Council agreed to hold an additional meeting. Megan Rhyne of the Virginia Coalition for Open Government (VCOG) noted that in the past a lot of work was done using informal work groups, and such an approach might be helpful for the study.

## Of Note

After the meeting, staff brought the subcommittee's concerns to the attention of the chair and vice-chair of the FOIA Council who decided to issue a letter to the subcommittee members providing guidance rather than to convene a full FOIA Council meeting.

### Records Subcommittee

*May 14, 2014*

The Records Subcommittee of the FOIA Council held its first meeting on May 14, 2014. The subcommittee elected Mr. Tavenner as chair and Mr. Ashby as vice-chair.

### House Joint Resolution No. 96

Staff presented a brief review of House Joint Resolution No. 96 (HJR 96), which directs the FOIA Council to conduct a three-year study of FOIA, and the study plan adopted by the FOIA Council at its meeting on April 22, 2014. HJR 96 directs the FOIA Council to examine all of the exemptions in FOIA, as well as the organization and structure of FOIA. At that meeting the FOIA Council established the subcommittee with the goal of studying three types of records exemptions in 2014: the exemptions of general application in §§ 2.2-3705.1 and 2.2-3705.8, the proprietary records exemptions in § 2.2-3705.6, and the exemptions for specific public bodies and other limited exemptions in § 2.2-3705.7.

### HB 339 (Anderson) and SB 387 (Reeves)

Staff presented a brief review of HB 339 (Anderson) and SB 387 (Reeves), identical bills concerning certain proprietary records of the Department of Rail and Public Transportation (DRPT). Staff indicated that it was believed there was agreement on these bills during the 2014 Session, but it turned out there was no agreement and the bills were referred to the FOIA Council by the 2014 Session. Bethany Wolfe spoke on behalf of DRPT to inform the subcommittee that the goal of the bills was to amend the current state exemption to match existing federal law. She noted that ridership information was of concern to Amtrak due to competition with other vendors and that federal law exempts information on what is being carried by Norfolk Southern and CSX as freight carriers.

Craig Merritt, representing the Virginia Press Association (VPA), observed that fundamentally the bills were an attempt to put Amtrak on the same footing as a private rail company and to conform Virginia FOIA to federal law. He stated that the Senate substitute version of the bill was acceptable to VPA, but it is not clear what federal law protects. He noted that DRPT interprets the federal exemptions more broadly than VPA does.

The subcommittee discussed how it would implement the study plan. It was suggested that the subcommittee address one topic per meeting and give interested parties the opportunity to submit written comments before each meeting. Staff suggested that, at the state level, letters be sent to advise affected agencies of the subcommittee's work plan and schedule. Staff noted that representatives of the Virginia Association of Counties (VACo) and Virginia Municipal League (VML) were present and could notify their constituent member localities directly. It was suggested that proprietary records be addressed later in the year due to the complex issues they present. After further discussion, the subcommittee decided to hold four additional meetings. The first meeting will address the exemptions of general applicability and exceptions thereto found in §§ 2.2-3705.1 and 2.2-3705.8. The second meeting will address the exemptions for specific public bodies and other limited exemptions in § 2.2-3705.7. The third meeting



will address the proprietary records exemptions in § 2.2-3705.6. The fourth meeting will cover any other topics that remain to be addressed.

### **Public Comments**

Mr. Merritt suggested it might be useful to discuss the objectives of FOIA policy before plunging into specific exemptions. As an example, he noted current policies of protecting the trade secrets of a business and the negotiating and bargaining positions of both businesses and public bodies versus the competing policy of protecting only the public body's position in the interest of taxpayers. He expressed the concern that if the study begins with details, there may be no sense of what each exemption is being measured against, what is consistent with policy, and what are the overall objectives of the study. The subcommittee generally agreed that governing principles would be helpful and expressed concern over the limits of the language of HJR 96.

Megan Rhyne of the Virginia Coalition for Open Government (VCOG) noted that three of the four members of the subcommittee were from state agencies and that local government and the press were well represented at the meeting, but that the subcommittee might lack equivalent quantitative input from citizens, from whom she hears inquiries and complaints regarding the application of particular exemptions, particularly those for working papers, personnel, and legal advice. She further agreed there should be a discussion of policy and direction and suggested the use of informal work groups for more input.

### **Request for Guidance from Full Council**

The subcommittee discussed concerns over policy and whether further guidance was needed from the FOIA Council as a whole. Ms. Hamlett expressed her understanding that the FOIA policy is for government to be as open and responsive as possible while still engaging in cost-effective transactions. She noted that it is problematic when private vendors do not want to work with government out of fear their records would be disclosed. She also noted that some exemptions are based on concerns for personal information and privacy. Mr. Oksman suggested deferring decision until a legislative member of the FOIA Council could provide guidance on the underlying principles. Staff observed that the statutory authority of the FOIA Council already gives it the authority to study all of FOIA even without HJR 96, and indicated staff would contact the legislative members of the FOIA Council.

In response to Mr. Ashby, Mr. Merritt noted particular policy concerns including having measures in place by which to judge exemptions, addressing changes in technology, and weighing the convenience of government against favoring greater access. Staff observed that FOIA was written in 1968 and does not address the consequences of technological changes, such as the cost of retrieving electronic records, but that the definition of "public records" is broad enough to account for changing technology.

## **Virginia Freedom of Information Advisory Council**

### **Senator Richard H. Stuart, Chair**

Maria J.K. Everett, Executive Director and Senior Attorney

Alan Gernhardt, Staff Attorney

804-225-3056 or 866-448-4100

*foiacouncil.dls.virginia.gov*

## General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act

### Work Group 1: Construction and Design Professionals

*May 8, 2014*

Work Group 1, Construction and Design Professionals, of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act convened its first meeting in 2014 in Richmond.

#### 2013 Interim Review and 2014 Interim Study Plan

**Maria Everett, Senior Attorney, Division of Legislative Services**

**Amigo Wade, Senior Attorney, Division of Legislative Services**

Ms. Everett reviewed the status of the work group under the Virginia Freedom of Information Act (FOIA). The work group is a public body under FOIA and provisions regarding meetings and records generated by the work group are applicable. Mr. Wade provided an overview of the activities of the Joint Subcommittee during the 2013 interim and reviewed the work group’s study plan. The meeting schedule is as follows:

<b>Work Group 1: Construction and Design Professionals</b>	
Thursday, June 19, 2014	Wednesday, September 17, 2014
Wednesday, July 23, 2014	Wednesday, October 15, 2014
All meetings at 9:30 a.m. in House Room 1, The Capitol	

Mr. Wade noted that the goal over the course of the meetings is to seek consensus on as many issues as possible. Any issues or matters upon which consensus cannot be reached will be referred to the full Joint Subcommittee for final resolution.

Each member of the work group made brief introductory remarks, including a statement of the issues of greatest importance to the member’s community of interest and the goals the member wishes to achieve. Dominant themes included establishing best practices; ensuring a level playing field for small, minority-owned, and women-owned businesses; and resolution of issues related to the method of procurement, job order contracting, and cooperative procurement.

The work group reviewed the Scope of Work document (SOW) to determine which issues were manageable or on which issues consensus could be reached relatively easily. The SOW consists of the issues matrix compiled by staff in the first year of study and the legislation referred to the Joint Subcommittee from the 2014 Session. Staff offered issues related to (i) job order contracting limits (SOW Items 10 through 16, 21, and 42); (ii) technical revisions to the term contract provisions of the Virginia Public Procurement Act (SOW Items 7, 42, and 52); and (iii) suggestions to prevent the passage of legislation that conflicted with the intent of the VPPA (SOW Items 3 and 35). There was agreement that considering these three issues in the 2014 interim is manageable.

The work group also reached consensus that the following issues were worthy of further discussion as manageable or on which issues consensus could be reached relatively easily: (i) cooperative procurement (SOW Item 41), including whether construction should be authorized and how the method interacts with job order contracting; (ii) appropriate use of the small purchase contracting provision to procure construction; and (iii) reviewing options or increased oversight and enforcement, including the feasibility of establishing an entity to hear appeals (SOW Items 23 and 33).

**Public Comment**

Mark Flynn, General Counsel, Virginia Municipal League, stated that it would be improper to assume that if a public body purchases off of a cooperative contract it will pay more. The definition of construction in the VPPA is very broad, and cooperative contracting may include activities that are within that definition.

Matthew D. Benka, Coalition for Procurement Reform, stated that the Coalition for Procurement Reform does not support the inclusion of construction under cooperative contracting.

**Work Group 2: Information Technology, Goods, and Other Professional Services**

*May 8, 2014*

Work Group 2, Information Technology, Goods, and Other Professional Services, of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act convened its first meeting in 2014 in Richmond.

**2013 Interim Review and 2014 Interim Study Plan**

**Maria Everett, Senior Attorney, Division of Legislative Services**

**Amigo Wade, Senior Attorney, Division of Legislative Services**

Ms. Everett reviewed the status of the work group under the Virginia Freedom of Information Act (FOIA). The work group is a public body under FOIA and provisions regarding meetings and records generated by the work group are applicable. Mr. Wade provided an overview of the activities of the Joint Subcommittee during the 2013 interim and reviewed the work group’s study plan. The meeting schedule is as follows:

<b>Work Group 2: Information Technology, Goods, and Other Professional Services</b>	
Thursday, June 19, 2014	Wednesday, September 17, 2014
Wednesday, July 23, 2014	Wednesday, October 15, 2014
All meetings at 1:30 p.m. in House Room 1, The Capitol	

Mr. Wade noted that the goal over the course of the meetings is to seek consensus on as many issues as possible. Any issues or matters upon which consensus cannot be reached will be referred to the full Joint Subcommittee for final resolution.

Each member of the work group made brief introductory remarks, including a statement of issues of greatest importance to the member’s community of interest and the goals the member wishes to achieve. Dominant themes included ensuring appropriate use of cooperative procurement, flexibility, clarity, streamlining the procurement process, consistency and standardization, equal opportunity to participate in the procurement process, and incorporating disparity study goals for women-owned and minority-owned businesses.

The work group reviewed the Scope of Work document (SOW) to determine which issues were manageable or on which issues consensus could be reached relatively easily. The SOW consists of the issues matrix compiled by staff in the first year of study and the legislation referred to the Joint Subcommittee from the 2014 Session. Staff offered issues related to the sole source provision of the VPPA that would place a \$50,000 cap on the use of the procurement method and establish additional guidelines for the appropriate use of the method (SOW Items 8 and 14). In addition, staff noted that the



suggestion to prevent the passage of legislation that conflicted with the intent of the VPPA was aspirational (SOW Items 3 and 16). There was agreement that these two issues would not be recommended for any further action.

**Points of Consensus**

Item No.	Issue	Recommendation
3, 16	Avoid proposed changes that are in conflict with the intent of the VPPA.	No action warranted; these items are aspirational in nature.
8	Additional controls should be placed on the use of sole source contracts; such contracts should be limited to \$50,000.	A cap on the total amount of a given sole source contract is not feasible. Current statutory language provides sufficient direction to the procurement official.
14	Improper use of sole sourcing as a procurement method without clear justification or because of prior work by a specific vendor.	Additional language establishing conditions for using the method are not warranted. Overall resolution should be included in review of oversight and enforcement provisions.

The work group discussed additional SOW items and related issues for consideration. These items included (i) placing competitive negotiation and competitive sealed bidding on equal footing (SOW Item 2), (ii) reviewing options for ensuring flexibility regarding the disclosure of cost estimates in solicitations (SOW Item 27), and (iii) the viability of requiring some procurements to be noticed in newspapers.

**Public Comments**

Ida McPherson, Director, Department of Small Business and Supplier Diversity, noted that because sole source contracts involve a closed process, there is potential for abuse. She also noted that cooperative contracting may also lead to abuses and have negative impacts on SWaM programs when large cooperative contracts do not provide opportunities for smaller suppliers or vendors to participate through subcontracting.

Andrew Sinclair, Virginia Association of Governmental Purchasing, stated that he supported placing competitive negotiation and competitive sealed bidding on equal footing. He further noted that the procurements made using competitive negotiation are required to be published in a local newspaper while procurements using competitive sealed bidding do not have a publication requirement. He asserted that in order for the two procurement methods to be placed on equal footing, the mandatory publication requirement must be eliminated.

**General Laws Special Joint Subcommittee  
Studying the Virginia Public Procurement Act**

**Delegate C. Todd Gilbert, Chair**

Maria J.K. Everett, DLS Senior Attorney

Amigo Wade, DLS Senior Attorney

804-786-3591 ext. 210 or 216

*dls.virginia.gov/interim\_studies\_procurement.html*



## House General Laws Subcommittee #3 (ABC)

*April 22, 2014*

The House General Laws Subcommittee # 3 held its first meeting of the 2014 interim on April 22, 2014, with Delegate Barry D. Knight, chairman, presiding. Delegate Knight explained that the purpose of the subcommittee was to examine HB 216 (2014, Albo), which was continued to the 2015 Session, and to identify potential alternatives to the structure and operation of the Alcoholic Beverage Control (ABC) Board (the Board).

### **Organizational Structure and Powers of the ABC Board; HB 216 (2014, Albo)**

Delegate David B. Albo explained that HB 216 creates an ABC Authority (the Authority) to replace the current Board, provides for the appointment of the Authority's board of directors and a chief executive officer (CEO), delineates the powers and duties of the Authority and the CEO, sets eligibility requirements for appointment, and provides for the transfer of current ABC employees to the Authority. Delegate Albo noted that HB 216 was intended to make the business of selling and regulating spirits more efficient in the Commonwealth.

### **Presentation: Former ABC Board Members**

Former Board members testified about their experience on the Board and provided recommendations for the future operation of Virginia ABC.

Robert J. Grey, Jr., Esq., (1982–1985) testified that the character and experience of Board members are extremely influential in the efficient operation of Virginia ABC and that the relevant issue before the subcommittee is the scope of these positions. Mr. Grey noted that Virginia ABC is made up of policymakers who create Board regulations, special agents who enforce ABC laws and regulations, hearing officers who hear cases regarding alleged ABC violations, and an appeals board that conducts appellate review. Mr. Grey suggested that one person could manage the Commonwealth's ABC market but that a three-person Board is likely a better option.

Jay Cochran, Jr., (1988–1990) testified that his appointment to the Board came as a surprise because he had no experience with Title 4.1 (Alcoholic Beverage Control Act) of the Code of Virginia, but noted that he quickly became acquainted with the Commonwealth's ABC laws and the scope of his position on the Board. Mr. Cochran maintained that a three-person Board is adequate to manage the Commonwealth's ABC market and that deviation from the current method of operation might not be affordable. He objected to the transfer of ABC enforcement duties to the State Police because essential components, such as relationships within the industry, would be lost. Mr. Cochran believes such relationships are important to the efficient operation of Virginia ABC.

Robert E. Colvin (1990–1994) testified that he was “not convinced the State should be in the business of selling alcohol” because state control over the sale of spirits provides no substantial public health or safety benefits. Nevertheless, Mr. Colvin conceded that privatization of Virginia ABC would result in higher spirit prices and a considerable loss of revenue for the Commonwealth. He further stated that it would be unwise to charge one person with the management of Virginia ABC. In Mr. Colvin's view, a three-person or five-person Board should manage Virginia ABC, and it is essential that Board members are qualified to perform various tasks that require knowledge and experience within the industry, including complex appellate hearings. Finally, Mr. Colvin objected to the transfer of enforcement of Virginia's ABC laws and regulations to the State Police because Virginia's relationships within the ABC industry would likely deteriorate.

Anne P. Petera (1996–1998) testified that a CEO could manage Virginia ABC but would require some level of assistance. Ms. Petera maintained that regardless of whether one or more people control Virginia ABC, it is essential that they are qualified and experienced in the ABC industry. Ms. Petera further noted that during her time on the Board, an attempt was made to privatize Virginia ABC. She stated that this effort lowered the morale among Virginia ABC employees, noting that employees felt unappreciated and became concerned about their future employment.

Susan R. Swecker (2006–2010) testified that a three-person Board works well to manage Virginia ABC, provided the members are congenial. She maintained, however, that the Board should not alternate the role of chairman because it causes confusion among the Board and ABC employees. Ms. Swecker noted that under the current operation of Virginia ABC, Board members have the opportunity to work in the field and to develop relationships within the industry, which she believes benefits Virginia ABC. Finally, with regard to the adequacy of Virginia ABC's current resources, Ms. Swecker noted that Virginia ABC is charged with tasks beyond the regulation and sale of alcohol, such as the enforcement of laws prohibiting the sale of tobacco to minors.

J. Neal Insley, Esq., (2010–2013) testified that the most important component of the successful operation of Virginia ABC is that the governing body—Board, Authority, or otherwise—always strive to improve. Mr. Insley voiced approval of Virginia ABC's current methods of operation and noted that if the General Assembly seeks to make alterations, it must first determine the direction in which it wishes Virginia ABC to move. Mr. Insley maintained that transparency is a vital component of the successful operation of Virginia ABC. He further noted that Board members must be qualified because they are charged with an array of tasks that require knowledge and experience within the industry, including matters associated with personnel, administration, enforcement, legislation, judicial components, and sound business practices.

### **Presentation: Current ABC Board Members**

Commissioner Judy Napier, appointed to the Board by Governor Terry McAuliffe, is the former Deputy Secretary of Technology. Commissioner Napier testified that she plans to focus on information technology issues within Virginia ABC.

Commissioner Jeffrey L. Painter, also appointed to the Board by Governor Terry McAuliffe, testified that he has worked in the ABC industry for years and supports the Board's current focus on information technology issues. Commissioner Painter stated that he is also planning initiatives to improve branding and ABC retail locations. Regarding the management of Virginia ABC, Commissioner Painter asserted that division of duties among Board members is critical, as is a willingness to be flexible and work together. Commissioner Painter testified that with 346 retail locations across the Commonwealth, management and operation of Virginia ABC requires a coordinated effort.

### **Presentation: ABC Industry Representatives**

Two representatives from the private sector testified regarding the future management and operation of Virginia ABC.

Thomas Lisk testified that although he has no opinion on the creation of the Authority, in his view the current structure of management and operation of Virginia ABC lacks incentives for innovation. Mr. Lisk noted, for example, that under the current management of the Board, restaurants are unable to have spirits delivered to their establishments or pay for such spirits online, services that are available for wine and beer. Mr. Lisk believes that a change in the structure and management of Virginia ABC would



benefit the industry in these respects, among others. Finally, Mr. Lisk asserted that current ABC enforcement efforts are “spotty,” largely due to a lack of resources.

Dennis Gallagher testified that he strongly supports HB 216 and its creation of an ABC Authority to replace the current Board. Mr. Gallagher asserted that Virginia ABC would be more efficient under the management of an Authority. He further testified that it is critical that the Authority or Board members be qualified and experienced in the industry, noting that he has encountered numerous unqualified and unhelpful members in the past. In Mr. Gallagher’s view, the Authority or Board needs a strong chairman and members should be confirmed by the General Assembly because the legislature is more “schooled” on ABC issues than the Governor and executive branch. Finally, Mr. Gallagher voiced concern over an alleged lack of uniformity in ABC enforcement efforts.

### **Presentation: Role of ABC Special Agents**

Curtis Coleburn, Policy/Judicial/Legislative Director, Department of Alcoholic Beverage Control, testified about the various tasks and divisions of Virginia ABC, including the ABC Bureau of Law Enforcement. Mr. Coleburn stated that all ABC agents are certified by the Department of Criminal Justice Services and perform tasks such as assisting businesses with obtaining licenses, conducting background investigations of license applicants, inspecting licensed establishments, educating licensees and the general public about Virginia’s ABC laws, investigating ABC-related crimes, and providing special event enforcement, training, and compliance. Mr. Coleburn explained that the ABC Bureau of Law Enforcement is seeking accreditation by the Virginia Law Enforcement Professional Standards Commission.

Upon inquiry by Delegate Albo, Mr. Coleburn asserted that any lack of uniform enforcement, including enforcement of the food-to-beverage ratios, results from a shortage of resources. He testified that Virginia ABC currently has responsibilities beyond its capabilities and that Virginia ABC is currently engaged in several initiatives, including media campaigns and information technology advances, that would allow applicants to secure ABC licenses online. Upon inquiry by Delegate Albo regarding ABC’s control of profit margins, Mr. Coleburn stated that although the Board has monopoly-style control over such profit margins, it has not raised prices in the last six years and only did so upon prompting.

### **Discussion of Study Plan**

Delegate Albo recommended that the subcommittee, with input from relevant stakeholders, consolidate all relevant topics, issues, and concerns into a single document. Issues for potential consideration include (i) the food-to-beverage ratio for mixed beverage licensees; (ii) the requirement for, and potential alternatives to, temporary injunctions to prevent restaurants from serving alcohol during investigations of alleged ABC violations; and (iii) the current functions, divisions, structure, and management of Virginia ABC. Delegate Albo requested that Commissioner Painter provide the subcommittee with copies of ABC work charts prior to the next meeting.

## **House General Laws Subcommittee #3 (ABC)**

### **Delegate Barry D. Knight, Chair**

Maria J.K. Everett, DLS Senior Attorney

David May, DLS Attorney

804-786-3591 ext. 210 or 237

## Virginia Housing Commission

*April 22, 2014*

The Virginia Housing Commission met on April 22, 2014, in Richmond with Senator Mamie Locke, chair, presiding.

### Quarterly Housing Trends

**Sonya Waddell, Regional Economist, The Federal Reserve Bank of Richmond**

Ms. Waddell presented an overview of the housing trends and mortgage foreclosure numbers that have been calculated since December 2013, when she last presented to the Commission.

Materials from Ms. Waddell's presentation are available at  
[http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=3979&s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=3979&s=16)

Ms. Waddell reported that we are in a housing recovery but it is slowing in the last few months. Two factors may be contributory: bad weather and slowing in the labor market. In the fourth quarter of 2013, 1.03 percent of mortgages in the Commonwealth were in a form of foreclosure. In the Commonwealth, there are still 9,000 homes in foreclosure. Though this number is considerably lower than levels reached during the last few years, and though foreclosure numbers are falling, this is significantly above ideal levels. (Please see the attachment for charts and graphs of foreclosure numbers.) Virginia ranks 46th out of the 50 states in number of foreclosures; only four states have fewer foreclosures.

There is continued overall improvement in residential real estate in Virginia, but in general improvement has slowed in recent months due to:

- Rising house prices, though the rate of increase has tapered off recently
- Declining inventory of distressed property
- Generally rising sales, though that increase has been sluggish recently as well.

Virginia has seen recovery in jobs growth, but more growth is needed and recent data is not as positive as it should be for a strong economy. Federal government spending is a big part of Virginia's economy, which has both positive and negative implications.

### Housing Policy and Priorities of Governor McAuliffe

**Maurice Jones, Secretary of Commerce and Trade**

Secretary Jones spoke about housing policy and priorities during the McAuliffe administration. He explained:

- There are big opportunities to make a difference in the area of homelessness. Concentrations should be made regarding homelessness among veterans, the Housing Trust Fund, and housing for people with disabilities, and there is still work to be done concerning foreclosures in Virginia.
- We have to make sure that economic development is not discussed separately from housing. We need to orchestrate assets collectively, including public safety agencies, educational assets, and transportation, to create neighborhood transformation.
- We need mixed-income neighborhoods with connection to jobs. We are 122,000 jobs behind where we should be with jobs. We need a new normal and healthy balance with foreclosures.



## **Funding Historic Property Revitalization Through Public-Private Partnerships**

**Charles Rigney, Assistant Director of Development, Norfolk**

Materials from Mr. Rigney's presentation are available online at [http://services.dlas.virginia.gov/User\\_db/frmView.aspx?ViewId=3980&s=16](http://services.dlas.virginia.gov/User_db/frmView.aspx?ViewId=3980&s=16)

Mr. Rigney stated that projects developed through public-private partnerships need a certain amount of private dollars in order for the public dollars to be allotted. He has seen a 20 percent increase in investments. Projects that take two years to complete receive 15 years of tax abatement. The projects are citywide, not zone specific, and must meet certain criteria:

1. Significant capital investment;
2. Ten-year business model;
3. Catalytic impact;
4. In conformity with city needs; and
5. If not for the dollars, this deal might go to another state and be successful.

## **Interim Workgroup Agenda**

**Elizabeth Palen, Executive Director**

The workgroup assignment of subject matter was distributed. Ms. Palen reiterated that the workload was evolving and fluid and that new topics may be added as the interim progresses. The workgroups will retain their current chairpersons, and each stakeholder is asked to let Ms. Palen know if the stakeholder member no longer wishes to serve or if job or contact information has changed. An email will be sent to each stakeholder member asking for confirmation of the information on record.

## **Virginia Housing Commission**

**Senator Mamie Locke, Chair**

Elizabeth Palen, Executive Director

804-786-3591 ext. 259

[dls.virginia.gov/commissions/vhc.htm](http://dls.virginia.gov/commissions/vhc.htm)

## Joint Commission on Technology and Science

*April 23, 2014*

The Joint Commission on Technology and Science (JCOTS or the Commission) held its 2014 organizational meeting on Wednesday, April 23, 2014, in Richmond with Delegate Tom Rust, chairman, presiding.

### **Election of Chairman and Vice-Chairman**

Delegate Tom Rust was elected chairman and Senator John Watkins was elected vice-chairman.

### **2014 Legislative Update**

#### **Lisa Wallmeyer, Executive Director, JCOTS**

Ms. Wallmeyer provided an overview of technology and science legislation adopted by the 2014 Session. A comprehensive document with the summaries of all technology and science legislation adopted in 2014 is available on the JCOTS website.

Of particular note were bills recommended by JCOTS: HB 180 (Farrell), relating to invention development services; HB 759 (Rust)/SB 11 (Puller), relating to absentee voting procedures; HB 50 (Webert), relating to search warrants; and HB 936 (Surovell), relating to electronic textbooks. JCOTS also recommended changes to § 18.2-152.4, relating to computer trespass; however, that legislation was not introduced during the 2014 Session. Ultimately, HB 180 and HB 759/SB 11 passed both houses with amendments and were signed into law. HB 50 and HB 936 were left in the House Courts of Justice and House Education Committees, respectively.

### **Discussion and Adoption of the 2014 Work Plan**

Commission members discussed development of a work plan for the 2014 interim. Staff called the Commission's attention to potential issues that could be continued from 2013, which included (i) electronic identity management and education and (ii) broadband/technology and education.

During the 2014 Session, the General Assembly referred two matters to JCOTS. Senate Bill 599 (Cosgrove), referred by the Senate Committee on Education and Health, relates to student data and cloud computing. Senate Joint Resolution No. 61 (Reeves) directs JCOTS to study strategies for preventing and mitigating potential damages caused by geomagnetic disturbances and electromagnetic pulses.

In addition, Delegate Terry Kilgore informally requested that JCOTS study the establishment of a consortium on space science education to advance the study of nanosatellite technology in the Commonwealth.

Based on recommendations from JCOTS staff, the following advisory committees were approved:

1. **Identity Management:** This advisory committee will take up the work continued from the 2013 interim and will continue to solicit feedback and opinions regarding the need for legislation establishing private sector liability and state level oversight. Delegate Rust appointed Senator Watkins to chair this committee.
2. **Nanosatellites:** This advisory committee will focus on advancing the production of nanosatellites and identifying public and private partnerships between universities, companies, and aerospace organizations within the Commonwealth in order to advance the design and



implementation of innovative space missions launching from the Mid-Atlantic Regional Spaceport. Delegate Rust appointed Delegate Plum to chair this committee.

3. **Technology & Education:** This advisory committee will take up the work continued from the 2013 interim and will focus on issues related to broadband access to education as well as consider topics generally related to use of technology at the K-12 level. Delegate Rust appointed Delegate Byron to chair this committee.

Also based upon recommendations from JCOTS staff, the Commission agreed that HB 599, pertaining to student data and cloud computing, and SJ 61, relating to preventing and mitigating damages from geomagnetic disturbances and electromagnetic pulses, should be taken up by the full Commission rather than assigned to advisory committees.

It was further agreed that JCOTS staff will meet with relevant stakeholders and compile a report for submission and consideration by the full Commission regarding SJ 61. Delegate Rust suggested that Senator Reeves be invited to continue his involvement with the study.

Staff also drew the Commission's attention to the following issues and bodies that may continue to be monitored by JCOTS: unmanned vehicle systems, cybersecurity, the Broadband Advisory Council, the Modeling and Simulation Advisory Council, and the Aerospace Advisory Council.

## **Joint Commission on Technology and Science**

### **Delegate Thomas Rust, Chair**

Lisa Wallmeyer, Executive Director and Senior Attorney

804-786-3591 ext. 223

[dls.virginia.gov/commission/jcots.htm](http://dls.virginia.gov/commission/jcots.htm)

## **Manufacturing Development Commission**

*May 27, 2014*

The Manufacturing Development Commission convened its first meeting in 2014 at Hilex Poly Co., LLC, in Richmond with Senator Frank Wagner, chair, presiding. The meeting provided an update on Virginia's recycled materials industry and state funding of workforce training.

### **Staff Presentation**

#### **Mark Vucci, Senior Attorney, Division of Legislative Services**

Mr. Vucci reviewed House Joint Resolution No. 28/Senate Joint Resolution No. 75 (2014), which direct the Manufacturing Development Commission to examine the economic and environmental benefits of using recycled materials in the manufacturing process in Virginia. The resolutions state that it is in the Commonwealth's interest to grow the recycled materials market. Manufacturers that use recycled materials in the manufacturing process can experience reduced energy costs, better curtail adverse environmental impacts, and become more competitive.

The resolutions direct the Commission to make recommendations that will enhance Virginia's recycled materials market but that will not adversely impact retailers, consumers, or other groups. This directive



suggests that the Commission's final recommendations take the form of financial and other incentives for performance that is voluntarily undertaken.

The Commonwealth currently makes available a state income tax credit for machinery and equipment found to be integral to the recycling process by the Department of Environmental Quality. The credit equals 10 percent of the purchase price paid for such machinery and equipment that is used exclusively on the premises of manufacturing facilities or plant units that manufacture, process, or compound goods from recyclable materials. Corporations and businesses owned by individuals are eligible for the credit. The amount of credit that can be claimed in any year is capped at 40 percent of the corporation's or business's Virginia income tax liability for the taxable year. The credit is set to expire on December 31, 2014.

The Constitution of Virginia also authorizes tax incentives to promote recycling. Article X, Section 6(d) allows the General Assembly to directly exempt from local property taxation real property and equipment used primarily to abate or prevent air or water pollution. It also provides that the General Assembly may authorize localities to exempt such real property and equipment from property taxes. The exemption from property taxes may be full or partial.

Counties, cities, and towns have been given the option by the General Assembly under § 58.1-3661 to exempt from local property taxes recycling machinery and equipment that has been certified as integral to recycling and used primarily to abate or prevent pollution. A county, city, or town that has elected to exempt recycling machinery and equipment must provide the exemption for at least five years. In 2013, eight counties, six cities, and one town exempted recycling machinery and equipment.

## **TFC Recycling Presentation**

### **Michael Benedetto, President, TFC Recycling**

Mr. Benedetto explained the process of collecting recyclable materials from consumers for sale and reuse in other markets. TFC Recycling is a privately held and family-operated business with beginnings that trace back to 1897. After collecting recyclable items, TFC Recycling uses cameras and conveyors to separate the items.

Mr. Benedetto stated that TFC Recycling is one of the largest exporters of recyclable materials from the Mid-Atlantic states. Its customers are located in South America and Asia.

Each year Americans create 251 million tons of trash, of which 135 million tons end up in landfills and incinerators. The Institute for Local Self-Reliance has reported that one job is created for every 10,000 tons of solid waste deposited in a landfill. Mr. Benedetto stressed that the same 10,000 tons of solid waste if recycled and not deposited in a landfill can create 10 recycling jobs or 75 materials reuse jobs.

## **Hilex Poly Presentation**

### **Mike Sullivan, Director of New Product Development, Hilex Poly Co., LLC**

Mr. Sullivan spoke regarding plastics industry initiatives to increase recycling of bags and polyethylene wraps. Hilex Poly is a leading U.S. manufacturer and recycler of plastic bags, film, and wraps. Hilex Poly spent \$7 million last year on recycling education.

Mr. Sullivan suggested that the best solution to controlling litter from plastic bags is education and recycling. Hilex Poly educational programs promoting recycling include retailer take-back programs and drop-off sites, school system initiatives, online marketing and consumer education, advertising campaigns, and public/private partnerships. These programs can result in smart and sustainable



recycling, consumer education, increased recycle content, litter prevention, landfill diversion, and a robust recycling infrastructure.

Mr. Sullivan explained that plastic bags manufactured in the United States are made from a derivative of natural gas and not oil. He stated that Environmental Protection Agency data show that plastic bags make up just 0.4 percent of the municipal waste stream. Furthermore, all bag types make up just 15 percent of the waste stream.

He reported that plastic bags are 100 percent reusable and recyclable and that nine of 10 people reuse plastic bags. Hilex Poly has placed in service 30,000 recycling bins across the United States and has collected over 1 billion pounds of recyclable materials. Between 91 and 93 percent of persons living in the United States have access to recycling.

Mr. Sullivan argued that ordinances and laws restricting the use of plastic bags will not effectively reduce litter or waste and are not smart environmental policy. According to Mr. Sullivan, plastic bags typically account for less than one percent of litter.

Hilex Poly's recycling process begins with the collection of plastic bags from recycling bins. The bags are then baled and transported to a Hilex Poly recycling center. At the recycling center, the plastic bags are cleaned and repelletized. The pellets are then manufactured into new plastic bags. In 2013, Hilex Poly achieved a 34.3 percent recycled content rate in all production.

## **Workforce Training Presentation**

### **April Kees, Legislative Analyst, Senate Finance Committee**

Ms. Kees provided an update on workforce training funding and budget proposals. On October 7, 2013, Virginia Commonwealth University (VCU) published *Mapping the Virginia Workforce System: A Status Report on Workforce Programs in the Commonwealth*. Eight agencies and 24 federal and state funded career and technical education and workforce programs contributed to the report, which was commissioned by the Virginia Workforce Council. The report identifies sources of funding and annual expenditures by category for Virginia's workforce programs and uses the data collected to create a database of comprehensive workforce program information. Ms. Kees indicated that the report is an improvement from prior workforce studies. The VCU report includes all workforce programs represented on the Virginia Workforce Council and Virginia Career Pathways Workgroup; provides more comprehensive fiscal data; compiles data on specific services offered by workforce programs such as training, job search, and literacy services; includes information on secondary education career and technical education programs; and establishes performance measures for each workforce program and measures each workforce program against common performance measures.

In Program Year 2012, the 24 federal and state funded programs included in the report received \$218 million in federal funds, \$134 million in state funds, \$9 million in local funds, and \$2 million in other funds for a total of \$363 million. Ms. Kees stated that the 24 programs served 1,104,320 program participants with an average cost per participant of \$328. She told the Commission that 16,000 program participants were enrolled in Workforce Investment Act programs. Approximately one-half of workforce funding was targeted to individuals with significant barriers to employment. Ms. Kees mentioned that the \$134 million in state workforce funds was primarily dedicated to K through 12 career and technical education curriculums or as a required match for receipt of federal grants.

Ms. Kees also touched upon Virginia's Workforce System Report Card. Virginia's Workforce System Report Card annually measures the progress of the Commonwealth in meeting certain workforce goals and benchmarks. It is a collaborative effort of the Virginia Workforce Council, the Virginia Career

Pathways Workgroup, and the Council on Virginia's Future. Categories and goals tracked on the report card include Stem-H pipeline, education and workforce credentials, college and career readiness, business and employment development, and training capacity and enrollment in key industry sectors.

Ms. Kees reviewed workforce funding proposed by the House of Delegates and the Senate for the 2014-2016 biennium. She discussed a proposal by the House of Delegates to create an Advanced Manufacturing Advisory Council to assist the Governor and General Assembly in moving Virginia forward in advanced manufacturing. The proposal calls for the Virginia Economic Development Partnership to develop an Advanced Manufacturing Apprentice Academy Center and four Regional Centers of Excellence to be funded in part from a \$25 million Treasury loan. Ms. Kees indicated that the \$25 million would be used as matching funds for federal grants or other grants. The Senate did not have a similar budget proposal.

## Supporting Documents

Presentations and other supporting documents may be viewed or downloaded via the Commission's website.

### Manufacturing Development Commission

**Senator Frank Wagner, Chair**

Mark Vucci, DLS Senior Attorney

804-786-3591 ext. 211

[dls.virginia.gov/commissions/mdc.htm](http://dls.virginia.gov/commissions/mdc.htm)

## Dr. Martin Luther King, Jr. Memorial Commission and Emancipation Proclamation and Freedom Monument Subcommittee

*May 21 and June 16, 2014*

In the 2012-2014 Appropriation Act, C-1.30, the General Assembly directed the Dr. Martin Luther King, Jr. Memorial Commission, in cooperation with the Department of General Services, to plan and conduct a feasibility study and fundraising for the construction of the Emancipation Proclamation and Freedom Monument to celebrate the emancipation of slaves and freedom in Virginia and commemorate the 150th anniversary of the Emancipation Proclamation issued by President Abraham Lincoln on January 1, 1863. After an extensive search with City of Richmond, Venture Richmond, and Department of General Services representatives for an appropriate site of significance in African American history for the monument and a national request for proposal for artists/sculptors, Brown's Island in Richmond was chosen as the future location of the monument, and three sculptors were selected as finalists at the Commission's December 18, 2013, meeting.

### Sculptors

The sculptors selected as finalists for the monument are Burt Pinnock, a principal with Baskervill Studios, who presented a futuristic design; Eugene Daub and Dr. Rob Firmin, representing Daub and Firmin Studios, who offered a design depicting a timeline from slavery to emancipation, using five symbols and busts of historical figures; and Carlos Davis and Charles Fagan, representing Charles Fagan and MJ Synergy Group, LLC, who initially proposed the model of a former enslaved man with broken



shackles and chains. Each sculptor was asked to make certain modifications to his proposal to accommodate the Commission's perspective concerning how slavery, emancipation, and freedom should be depicted.

On May 21, 2014, the full Commission met jointly with its Emancipation Proclamation and Freedom Monument Subcommittee to review the scale models of the selected sculptors, begin the process of forming a § 501(c)(3) organization for fundraising purposes, review the 2014 work plan, determine the order of completion for certain statutory duties, and make final plans for several upcoming Emancipation Proclamation programs. Although a lengthy discussion ensued regarding the models, a decision was deferred for further consideration.

The full Commission met with the Emancipation Proclamation and Freedom Monument Subcommittee on June 16, 2014, to continue the deliberations begun at the May 21, 2014, meeting. The Commission also received presentations from a historian and art historian concerning slavery, emancipation, and freedom, particularly in Virginia, and artistic and historical factors that typically are considered when designing monuments. However, without a quorum, the Commission was unable to select a sculptor as the finalist or to act on other business before it. Therefore, the Commission agreed to meet again as soon as possible to make decisions on the aforementioned matters.

### **Dr. Martin Luther King, Jr. Memorial Commission**

**Delegate Jennifer L. McClellan, Vice Chairwoman**

Brenda H. Edwards, DLS Senior Research Associate

804-786-3591 ext. 232

*mlkcommission.dls.virginia.gov*

## **Virginia Sesquicentennial of the American Civil War Commission**

*January 6, 2014*

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission met on January 6, 2014, in Richmond with Speaker of the House William Howell, chair, presiding.

### **Sesquicentennial Finale Concert**

**Dr. James I. Robertson, Jr.**

Dr. Robertson provided background on the history of music in the Civil War and noted its centrality to every aspect of the war. Dr. Robertson stated that the current plan is to hold a finale concert on Memorial Day 2015 at the Carpenter Center in Richmond, which holds approximately 1,500 occupants. The program will be presented free of charge, but preregistration and ticketing will be required. Dr. Robertson distributed a proposed program for the concert, which he will narrate, and explained the rationale for the inclusion of each song. The program will include a 150-voice choir and a 75-piece orchestra. The Executive Committee agreed to move forward with Dr. Robertson's proposed program.

**Cheryl Jackson, Executive Director, Virginia Sesquicentennial of the American Civil War Commission**

Ms. Jackson introduced a proposal for a recognition ceremony and reception for local sesquicentennial committees and partners prior to the finale concert. Ms. Jackson commended the hard work of the local

sesquicentennial committees and offered a plan for recognizing their contributions. Local sesquicentennial committees will be invited to apply for recognition awards, through an application process that details programs and events that they have sponsored to help make the sesquicentennial commemoration successful. Those approved will be invited to an exclusive preconcert awards reception with members of the Commission, and the listing of programs and events will be included in the Commission's final report. Members of the Executive Committee approved the proposal.

**David Fisk, Executive Director, Richmond Symphony**

Mr. Fisk introduced a proposed budget for the concert, noting a base budget of \$52,784, with many additional options that would add to the cost. Mr. Fisk presented budgets for both Brown's Island and the Carpenter Center, but recognized the Commission's preference for the Carpenter Center. Additional options include broadcasting via either television or radio and permanent reproduction of the concert via DVD or CD. Dr. Robertson said he would be in favor of broadcasting the program for a lasting legacy. Mr. Fisk explained the costs of the various media, including distribution and manufacturing. Del. Lingamfelter proposed contacting C-SPAN to broadcast the concert, and Speaker Howell instructed staff to further explore this option.

Mr. Fisk noted that the symphony's 1812 commemorative concert was essentially a reproduction, costing about \$30,000, while its concert in commemoration of the Emancipation Proclamation cost about \$128,000. The Commission will continue to consider the scope and specifics of the program.

**Sesquicentennial Tourism Marketing Grant: Award Recommendations**

**Steve Galyean, Virginia Tourism Corporation**

**Cheryl Jackson, Executive Director**

Twelve applications were received during the Fall 2013 round of grants funded through the Sesquicentennial Tourism Marketing Program. Seven were recommended for approval as follows:

1. City of Fairfax Office of Historic Resources  
*"City of Fairfax Cemetery Civil War Trail Marker"*
  - Amount of award, \$1,400; amount of match from recipient, \$1,400
  - Funds will be used for the design, fabrication, and installation of a Virginia Civil War Trails interpretive marker at the City of Fairfax Cemetery and for the design and publication of a self-guided walking tour/map of the cemetery, which will be available both in print and as a downloadable PDF from various websites.
2. Town of Abingdon  
*Abingdon and Washington County 2014 American Civil War Commemoration Project*
  - Amount of award, \$2,448.50; amount of match from recipient, \$2,448.50
  - Funds will be used to install a new Civil War Trails interpretive marker that describes the home front experiences of citizens of Abingdon and for the reprinting and distribution of the brochure "The Washington County, Virginia Home Front During the American Civil War."
3. Shenandoah Valley Battlefields Foundation  
*Civil War Trails Markers: "War and Peace in the Valley—A Farm at the Crossroads of History"*
  - Amount of award, \$5,000; amount of match from recipient, \$5,400



- Project includes four Civil War Trails interpretive markers for the Huntsberry Farm (a new Civil War site) on the Third Winchester Battlefield. These markers will tell the story not just of the battle, but also of the farm and family that were caught up in the maelstrom and of the historic Great Wagon Road and smaller lanes that made the farm a “crossroads of history.”
4. Spotsylvania County Economic Development and Tourism  
*150th Anniversary Wilderness and Spotsylvania Courthouse Reenactment and Living History Weekend*
    - Amount of award, \$5,000; amount of match from recipient, \$5,000
    - Funds will be used (i) to design and air a cable TV commercial for the 150th commemoration; (ii) for the creation and release of an iPhone/iPad tour app of Civil War destinations near Spotsylvania Courthouse; and (iii) for trade show banners.
  5. Alleghany Highlands Chamber of Commerce and Tourism  
*Civil War Trails Markers: Australia Hot Blast Furnace and Lucy Selina Cold Blast Furnace—Suppliers to the Ironmaker of the Confederacy*
    - Amount of award, \$2,600; amount of match from recipient, \$2,600
    - Funds will be used to design and install Civil War Trails interpretive markers that describe the Australia Hot Blast Furnace and Lucy Selina Cold Blast Furnace—Suppliers to the Ironmaker of the Confederacy.
  6. Bed and Breakfasts of Historic Shenandoah Valley (BBHSV)  
*The BBHSV Social Media Marketing Project*
    - Amount of award, \$2,510.36; amount of match from recipient, \$2,510.36
    - Funds will be used to finance the BBHSV social media marketing project, which will engage Internet users and spark consumer interest in historic lodging and attractions in nearby areas.
  7. Fauquier County Department of Economic Development, Bull Run Civil War Roundtable, and Fauquier Sesquicentennial Committee  
*Auburn Battlefield Civil War Trails Marker*
    - Amount of award, \$1,240; amount of match from recipient, \$1,360
    - Funds will be used to produce and install Civil War Trails interpretive markers at Auburn Battlefield, located in Fauquier County.

Five applications were not recommended for approval on the basis of low scores. Staff will work with those applicants to strengthen future applications.

The grant recommendations were considered en bloc and approved unanimously as presented.

## Staff Report

### **Cheryl Jackson, Executive Director**

#### *(i) Proposed budget extension language*

Ms. Jackson explained language in the introduced budget bill that extends the work of the Commission through July 1, 2016. Funding for the extension year will come from carry-over balances of the Commission. An appropriation is included for FY16 to cover any gap that may occur during the

transition from operating on general fund appropriations to carry-over balances. The proposed budget language allows for any remaining Special Fund balance to be transferred to the Virginia Sesquicentennial of the American Civil War Foundation, upon an approved contract between the Foundation and the Commission. The Foundation does not have an expiration date.

*(ii) Signature Conference Series: Update on 2014 conference*

Ms. Jackson updated members on the 2014 Signature Conference, the American Civil War in a Global Context, which will be held at George Mason University on May 31, 2014. Registration for the conference opened December 1; to date, nearly 130 people have registered to attend.

*(iii) Approval of logo requests*

Three applications for logo usage have been received since the previous meeting, all of which were given provisional authorization and recommended for approval by the Executive Committee:

1. Spotsylvania County (website, commemorative program for Battles of Wilderness and Spotsylvania Courthouse Sesquicentennial)
2. Virginia Department of Conservation and Recreation (flyer to promote Civil War tourism in Virginia's state parks)
3. Museum of the Confederacy (press release for 2014 Symposium—"Person of the Year 1864")

The three logo requests were approved unanimously as presented.

*(iv) Annual Report*

Ms. Jackson briefly highlighted the 2013 Annual Report, noting particularly the success of the HistoryMobile, which saw nearly 50,000 visitors in 2013, more than in any other year. Included with the Annual Report was a review printed in the *Civil War Monitor* of the Commission's 2010 conference book, *Race, Slavery and the Civil War: The Tough Stuff of American History and Memory*, which is described as conveying "what a full and rich conversation looks like and what open and honest deliberation can be."

Dr. Robertson noted that in his travels across the country, many have indicated admiration for Virginia's sesquicentennial commemoration.

*April 8, 2014*

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission met on April 8, 2014, in Richmond with Speaker of the House William Howell, chair, presiding.

### **Sesquicentennial Tourism Marketing Grant: Award recommendations**

**Steve Galyean, Virginia Tourism Corporation**

**Cheryl Jackson, Executive Director**

Eight applications were received during the Winter 2014 round of grants funded through the Sesquicentennial Tourism Marketing Program. Three were recommended for approval by staff, as follows:

1. Lynch's Landing Foundation (A Virginia Main Street Program) and Lynchburg Sesquicentennial Committee  
*A Walking Tour of Downtown Lynchburg in the Civil War*



- Amount of award, \$4,800; amount of match from recipient, \$4,800
  - Funds will be used to create and publish a companion print brochure and website for a Walking Tour of Downtown Lynchburg in the Civil War that introduces visitors to the historic locations and people of Lynchburg's war hospitals, business district, and James River front.
2. Abingdon Convention and Visitors Bureau and Washington County Sesquicentennial Committee  
*Civil War HistoryMobile and "An American Turning Point" Exhibition Promotion*
- Amount of award, \$5,000; amount of match from recipient, \$5,000
  - Funds will be used by the Washington County Civil War Sesquicentennial Committee, William King Museum, and Abingdon Convention and Visitors Bureau to prepare an advertising initiative and marketing campaign for the Civil War 150 HistoryMobile and traveling museum exhibition "An American Turning Point: The Civil War in Virginia."
3. Hanover Tavern Foundation and Hanover Sesquicentennial Committee  
*North Anna Battlefield Park Civil War Trails Marker*
- Amount of award, \$1,600; amount of match from recipient, \$1,600
  - Funds will be used to produce, install, and market a Civil War Trails interpretive marker at the North Anna Battlefield Park in Hanover County.

The three recommended applications were considered en bloc and approved unanimously as presented.

A fourth application (below) was considered separately, as it had no recommendation from staff due to a question of eligibility. Staff explained that the application is for a comprehensive marketing campaign that promotes a weekend of activities, including lectures, exhibits, living history, and a battle reenactment. Grant eligibility guidelines exclude the funding of battle reenactments, but are unclear on the marketing of a reenactment as part of a wider range of programs. Members discussed the issue and directed staff to revise guidelines to specify that future grant funds are not to be used in the marketing of reenactments. After discussion, the application was approved unanimously.

4. Belle Grove, Inc., and Winchester/Frederick County Sesquicentennial Committee  
*Eye of the Storm: 150th Anniversary Commemoration of the Battle of Cedar Creek*
- Amount of award, \$4,924; amount of match from recipient, \$5,549.75
  - Funds will be used by local partners to advertise in local, regional, and national publications to promote commemoration events associated with the 150th anniversary of the Battle of Cedar Creek and to participate in a trade show that will help market the events.

Four applications were not recommended for approval on the basis of scoring. Staff will work with those applicants to strengthen future applications.

### Approval of Logo Requests

#### **Cheryl Jackson, Executive Director**

Ms. Jackson reported that the Commission has received four applications for logo usage since the previous meeting, all of which were given provisional authorization and recommended for approval by the Executive Committee:

1. Jamestown Settlement (poster and program for "Military Through the Ages")



2. Alleghany Highlands Chamber of Commerce and Tourism (postcard and email invitations to the unveiling of a Civil War Trails interpretive marker and hosting of the HistoryMobile)
3. Petersburg Area Regional Tourism (Visitors Guide for general regional tourism)
4. Mathews County Sesquicentennial Committee (poster for opening ceremony for Confederate Fort Nonsense)

The four logo requests were unanimously approved as presented.

### **Other Business**

#### **Cheryl Jackson, Executive Director**

Ms. Jackson noted that one of the air conditioning units in the HistoryMobile needs to be replaced and requested authorization to upgrade the support trailer to better provide for storing high-tech equipment and merchandising. The Executive Committee authorized staff to move forward on both requests.

### **Next Meeting**

The Executive Committee is scheduled to meet on August 5 in the 6th Floor Speaker's Conference Room of the General Assembly Building.

## **Sesquicentennial of the American Civil War Commission**

### **Speaker William J. Howell, Chair**

Cheryl Jackson, Executive Director

804-786-3591 ext. 276

*virginiacivilwar.org*



## Changes to State Entities in the Commonwealth

### New State Entities

Commission on Civics Education

Virginia Conflict of Interest and Ethics Advisory Council

Department of Elections with Commissioner of Elections as agency head (from 2013 Act of Assembly effective July 1, 2014)

Hampton Roads Transportation Accountability Commission

### Name Changes of State Entities

Virginia Center for School Safety changed to **Virginia Center for School and Campus Safety**.

Richmond Metropolitan Authority changed to **Richmond Metropolitan Transportation Authority**.

Secretary of Public Safety renamed **Secretary of Public Safety and Homeland Security** (with new duties relating to homeland security).

Secretary of Veterans Affairs and Homeland Security renamed **Secretary of Veterans and Defense Affairs** (with appropriate changes to responsibilities).

State Lottery Board changed to **Virginia Lottery Board**.

State Lottery Department changed to **Virginia Lottery**.

State Lottery Fund changed to **Virginia Lottery Fund**.

Virginia Workforce Council changed to **Virginia Board of Workforce Development**.

### State Entities Abolished

Advantage Virginia Incentive Program, Fund, and Foundation

### Sunset Dates Extended

Sunset provision for the Alzheimer's Disease and Related Disorders Commission extended from July 1, 2014, to July 1, 2017.

Sunset provision for the Autism Advisory Council extended from July 1, 2014, to July 1, 2016.

Sunset provision for the Joint Commission on Health Care extended from July 1, 2015, to July 1, 2018.

### New Funds and Programs

Downtown Tunnel Construction Relief Grant Fund is created with a July 1, 2015, sunset date.

Entrepreneur-in-Residence Program is created with a July 1, 2017, sunset date.

Innovation and Technology Transportation Fund is created.

Virginia Career Readiness Certificate Program is created.

Workforce Training Access Program and Fund is created.

## Legislative Meeting Calendar for July and August 2014

July 21	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
	2 p.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century	Senate Room B, GAB
July 22	1 p.m.	Joint Subcommittee Studying Recurrent Flooding	House Room C, GAB
July 23	9:30 a.m.	General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act Workgroup 1	House Room 1, The Capitol
	1:30 p.m.	General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act Workgroup 2	House Room 1, The Capitol
July 24	1 p.m.	Joint Subcommittee to Evaluate Tax Preferences	House Room D, GAB
July 30	9 a.m.	Virginia State Crime Commission Domestic Violence and Sexual Assault Funding Study Work Group	Senate Room 3, The Capitol
August 5	10 a.m.	Virginia Sesquicentennial of the American Civil War Commission Executive Committee	6th Floor Speaker's Conference Room, GAB
August 6	10 a.m.	JCOTS	House Room D, GAB
August 8	10 a.m.	Virginia Coal and Energy Commission	Wytheville Community College, Galax Building, Rooms 201 and 202, 1000 East Main Street, Wytheville ( <b>directions</b> )
August 15	9:30 a.m.	Joint Meeting of House Appropriations, House Finance, and Senate Finance Committees	House Room D, GAB
August 18	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
August 19	noon	Administrative Law Advisory Committee	House Room 1, The Capitol
	2 p.m.	Joint Subcommittee on Block Grants	Senate Room A, GAB
August 20	10 a.m.	Joint Commission on Health Care Healthy Living/Health Services Subcommittee	Senate Room A, GAB
	1 p.m.	Joint Commission on Health Care Behavioral Health Care Subcommittee	Senate Room A, GAB

Meetings may be added at any time; please check the General Assembly and DLS websites for updates.



## Other Legislative Commissions and Committees

The following legislative commissions and committees also hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

### Virginia State Crime Commission

[vscc.virginia.gov/meetings.asp](http://vscc.virginia.gov/meetings.asp)

### Joint Commission on Health Care

[jchc.virginia.gov/meetings.asp](http://jchc.virginia.gov/meetings.asp)

### Joint Legislative Audit and Review Commission (JLARC)

[jlarc.virginia.gov/meetings.shtml](http://jlarc.virginia.gov/meetings.shtml)

### Virginia Commission on Youth

[vcoy.virginia.gov/meetings.asp](http://vcoy.virginia.gov/meetings.asp)

### House Appropriations Committee

[hac.virginia.gov/](http://hac.virginia.gov/)

### Senate Finance Committee

[sfc.virginia.gov/](http://sfc.virginia.gov/)

## 2014 New Legislative Studies Staffed by DLS

Bill No.	Description	Study Entity	DLS Staff
SR 34	Staffing Levels and Employment Conditions at the Department of Corrections	Senate Committee on Rehabilitation and Social Services and Senate Committee on Rules	Sarah Stanton David May
HJ 16/ SJ 3	Joint Subcommittee Studying Recurrent Flooding (two-year study)		Jeff Sharp
HJ28/ SJ 75	Economic and Environmental Benefits of the Use of Recycled Material in the Manufacturing Process	Manufacturing Development Commission	Mark Vucci
HJ 96	FOIA Exemptions	Freedom of Information Advisory Council	Maria Everett Alan Gernhardt
SJ 47	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century (four-year study)		Sarah Stanton David Cotter
SJ 61	Strategies for Preventing and Mitigating Potential Damages Caused By Geomagnetic Disturbances and Electromagnetic Pulses	Joint Commission on Technology and Science	Lisa Wallmeyer
SR 32	Construction of Proposed Interstate 73	Senate Committees on Local Government and Transportation	Nicole Brenner Scott Meacham
SR 35	Potential Effects of the Commonwealth's Mandating Full-Day Kindergarten Programs	Senate Committee on Education and Health and Senate Committee on Finance	Tom Stevens Ryan Brimmer

## 2014 New Legislative Commissions Staffed by DLS

Bill No.	Description	DLS Staff
HB 364	Commission on Civics Education	Ryan Brimmer
HB 1211/SB 649	Virginia Conflict of Interest and Ethics Advisory Council	Meg Burruss

## 2014 Carry-Over Legislative Studies Staffed by DLS

Bill No.	Description	Study Entity	DLS Staff
HB 216	Transition of Alcoholic Beverage Control Board to Alcoholic Beverage Control Authority	House Committee on General Laws	Maria Everett David May
HB 1064	Department of Corrections to provide qualified interpreters for hearing-impaired prisoners	House Committee on Militia and Police	David Cotter
HB 1152	ABC Board authority in cases of violations by mixed beverage licensees involving the food-to-mixed beverage ratio	House Committee on General Laws	Maria Everett David May
SB 671	Electric generating stations; estimating water usage	State Water Commission	Marty Farber Scott Meacham

Complete information on meetings during the 2014 interim is available on the website of the Division of Legislative Services (<http://dls.virginia.gov/commissions.html>).

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