

**REPORT OF THE
JOINT SUBCOMMITTEE TO STUDY**

**The Appropriate Balance of Power
between the Legislative and Executive
Branches to Support a Two-Term
Governor in the Commonwealth**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**MEMBERS OF THE JOINT SUBCOMMITTEE TO STUDY
THE APPROPRIATE BALANCE OF POWER BETWEEN THE LEGISLATIVE
AND EXECUTIVE BRANCHES TO SUPPORT
A TWO-TERM GOVERNOR IN THE COMMONWEALTH**

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EXECUTIVE SUMMARY

At the 2004 Regular Session, the General Assembly agreed to House Joint Resolution No. 13 and established a joint subcommittee to study the appropriate balance of power between the legislative and executive branches to support a two-term Governor in the Commonwealth.

The joint subcommittee elected Delegate R. Steven Landes and Senator Jeannemarie Devolites Davis as its chairman and vice-chairman, respectively. The joint subcommittee held four meetings during the 2004 interim and received extensive testimony from a number of individuals from the public and private sector on the appropriate length for the Governor's term and its impact on the operations of state government and the Commonwealth's economic vitality.

The joint subcommittee heard from the current Governor, several former Governors, the chairmen of the two major political parties, and the President of the Virginia Chamber of Commerce on the question of whether the Governor should be allowed the right to succeed himself. Governor Mark Warner stated that he supported the two-term Governor proposal because long range planning is difficult with the current one-term limit.

The opinions of the former Governors varied considerably on what should be the appropriate term for the Governor. Former Governors Linwood Holton and Gerald Baliles spoke in favor of a single six-year term as a compromise position to give the Governor additional time to oversee his initiatives and provide him with insulation from the political pressure of running a reelection campaign. Former Governor Senator George Allen supported the current constitutional limit and stated that the Governor should focus on setting strong, clear, and principled goals to accomplish and issues to address during the four years in office. Former Governor James Gilmore supported the constitutional amendment to allow the Governor to succeed himself for an additional four-year term, citing the challenges and limitations faced by a one-term governor. Former Governor Charles Robb also stated that he supported succession given the current realities of the office and the relationship with the General Assembly. Additional support to allow the Governor to serve two consecutive terms came from the Chairman of the Republican Party of Virginia, the Chairman of the Democratic Party of Virginia, who stressed the importance of accountability in government, and the President of the Virginia Chamber of Commerce, who emphasized the benefits of continuity in the Governor's office to the health of the Commonwealth's economic development and growth.

In addition, the joint subcommittee identified a number of responsibilities and functions of the Governor and the General Assembly for review in concert with the constitutional amendment to allow the Governor to succeed himself. The joint subcommittee conducted a preliminary review of several restructuring proposals to (i) lengthen the session to 60 days in the odd-numbered years, (ii) shift the budget cycle, (iii)

provide for annual budgets, (iv) create an independent economic and revenue forecasting commission, (v) allow for legislative veto or suspension of administrative regulations, and (vi) increase legislative oversight of the boards of visitors of the public institutions of higher learning and the Commonwealth Transportation Board. Because of the complexity of the issues involved with these proposals, the joint subcommittee agreed that more time was needed to conduct a proper analysis and unanimously recommended seeking continuation of the study for one year.

In addition to recommending its continuation, introduced as HJR 707, the joint subcommittee agreed to endorse three legislative initiatives for consideration at the 2005 Regular Session of the General Assembly:

- A constitutional amendment to allow the Governor to succeed himself for one four-year term. Introduced as HJR 652 and SJR 401.
- A bill to provide for a more formalized and expanded confirmation process that includes review of the resumes and statements of economic interests of gubernatorial appointees by a joint subcommittee of the two Committees on Privileges and Election. Introduced as HB 2144 and SB 999.
- A bill to require the Secretary of the Commonwealth to distribute the financial disclosure statement forms to officers appointed by legislative authorities serving on executive branch boards. Introduced as HB 2136.

I. INTRODUCTION

Authority

House Joint Resolution 13 (HJR 13) passed by the 2004 General Assembly, created the Joint Subcommittee to Study the Appropriate Balance of Power Between the Legislative and Executive Branches to Support a Two-Term Governor in the Commonwealth. A copy of the resolution is contained as Appendix A. The subcommittee consisted of six legislators (four Delegates and two Senators) and six citizen members (two appointed by the Speaker of the House of Delegates, two appointed by the Senate Committee on Rules and two selected by the Chairman of the Subcommittee to participate in the deliberations). The subcommittee elected Delegate R. Steven Landes and Senator Jeannemarie Devolites Davis as its chairman and vice-chairman, respectively.

The resolution assigned the following responsibilities to the subcommittee:

- Examine the history of the Governor's power in the Commonwealth;
- Compare the powers of the governors of other states;
- Determine the balance of power established between the executive and legislative branches in other states, particularly in those states that transitioned from a one-term governor to a two-term governor; and
- Consider constitutional and statutory options for the equitable distribution of power between the legislature and executive branch to support a two-term Governor in the Commonwealth.

HJR 13 directed the Chairman of the subcommittee to submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly and to state whether the joint subcommittee intended to submit a report of its findings and recommendations for publication as a document.

Information on the HJR 13 subcommittee, including meeting materials, the executive summary, and this report can be found on the subcommittee's website at <http://dls.state.va.us/2termgov.htm>.

Study Scope

The subcommittee focused its attention on examining the current and historical arguments for and against allowing the Governor to succeed himself in office. The subcommittee met four times during the 2004 interim and received extensive testimony from a number of individuals from the public and private sector on the appropriate length

for the Governor's term and its impact on the operations of state government and influence on Virginia's economic development.

The subcommittee also explored counterbalancing proposals that would strengthen the legislative branch's oversight and authority and another proposal to improve the incoming Governor's influence on the budget. The counterbalancing proposals included (i) lengthening the session to 60 days in odd-numbered years, (ii) shifting the budget cycle to begin in odd-numbered years, (iii) providing for annual budgets, (iv) creating an independent economic and revenue forecasting commission, (v) allowing the legislature to veto or suspend administrative regulations, and (vi) increasing legislative oversight of the boards of visitors of the public institutions of higher learning and the Commonwealth Transportation Board.

II. SUBCOMMITTEE MEETINGS AND ACTIVITIES

October 27, 2004

At the organizational meeting of the subcommittee, members received briefings from academic scholars, the Secretary of the Commonwealth, and staff from the Division of Legislative Services on the evolving constitutional relationship between the legislative and executive branches, the relative strength of the Virginia's Governor compared to other state governors, and the current statutes and practices governing the appointment and confirmation of gubernatorial appointees.

Constitutional Background on the Balance of Power

The subcommittee heard from constitutional scholar, A.E. Dick Howard, who provided a constitutional framework and analysis of the evolving relationship between the legislative and executive branches. He described an executive branch that has evolved into a more "authenticated coordinated branch of government." The first executive branches were relatively powerless and subordinate to the legislature. The Governor was elected by the General Assembly for a one-year term and could not serve longer than three consecutive terms. The Governor could only take action with the advice of the Privy Council, whose members were also elected by the General Assembly.

Gradually, the Governor's office gained independence as post-revolutionary mistrust of executive authority waned and Jacksonian populism grew. The method of selecting the Governor changed in 1851 when the Governor became popularly elected and his term was lengthened to four years. However, in exchange for this independence, the Governor was prohibited from running for a successive term. Subsequent strengthening of the office focused on building the system of checks and balances between the legislative and executive branches and solving the problems of executive fragmentation. The Governor was given the ability to check legislative initiative with the power to veto bills in 1870. This power was expanded in 1902 to include the authority to send down amendments and offer line item vetoes to the budget. An amendment adopted in 1928 addressed the problem of executive fragmentation by shortening the state ballot from seven offices to the present three offices (Governor, Lieutenant Governor, and Attorney General).

The last full-scale constitutional revision in 1971 brought significant debate on allowing the Governor to serve two consecutive terms and whether this change would extend too much power to the executive branch. All living Governors opposed the change. The General Assembly also rejected the 1969 recommendation of the Commission on Constitutional Revision to allow the Governor to initiate executive reorganization of the state administration because the additional power was perceived as making the Governor too powerful. Dr. Howard concluded that although the Governor

became moderately powerful with constitutional changes, including the popular election of the office and the conversion to the short statewide ballot, the General Assembly has provided for appropriate checks to these powers to maintain the balance. For example, the shift to annual sessions was seen as a means to try to rebalance the power between the two branches. Other checks have taken the form of statutory changes and the adoption of certain practices and procedures regarding the confirmation process. A timetable of constitutional reforms that strengthen the executive branch is contained as Appendix B.

Since the last constitutional revision in 1971, members of the General Assembly have been prolific in their introduction of legislation to change constitutional provisions affecting the operations of the executive and legislative branches. From 1972 through 2004, approximately 250 constitutional proposals were introduced that would have substantially affected the election and terms as well as the powers and duties of the Governor and General Assembly.

Some of the proposed amendments affecting the election and fundamental powers of the Governor included provisions to:

- Require joint election with the Lieutenant Governor and/or Attorney General
- Preclude the Attorney General from seeking the Governor's office directly following his term as Attorney General
- Require the Governor to fill vacancies of judges and justices from names submitted by a nonpartisan judicial commission
- Provide for the popular election of the Secretary of the Commonwealth
- Require shared appointment power with the General Assembly in selecting members of the Board of Education

Other proposed amendments affecting the election and fundamental powers of the General Assembly included provision to:

- Allow for legislative recesses of 21 days (Passed 1991 Session only)
- Change the length or dates of the regular session
- Extend the term of Delegates to four years and Senators to six years
- Set term limits on legislative members (12 years or 16 years)
- Allow for initiative and referendum
- Allow for the popular election of judges
- Allow for the popular election of members of the State Corporation Commission
- Require a supermajority vote of the General Assembly to increase taxes, change dedication of special funds, etc.
- Establish a Redistricting Commission

From an examination of the outcome of these measures, staff offered a few general observations concerning the fate of these constitutional amendments:

- Most of the amendments failed

- Nearly all of the amendments failed prior to submission to the voters
- Most amendments were not bundled but stood alone by affecting one power, duty, or requirement for office. One recent exception is HJR 5, 2004 (Purkey) that bundles the right of the Governor to succeed himself with the transfer to the General Assembly of the majority appointments to the Board of Education currently made by the Governor.
- Only a handful of constitutional amendments affecting the powers enumerated in Article IV (Legislature) and Article V (Executive) have been approved by the voters:
 - 1980 - Provides for the reconvened session of the General Assembly to consider Governor's amendments and vetoes passed late in the regular or special sessions
 - 1994 - Allows the General Assembly more options for considering the Governor's amendments at the reconvened session
 - 1994 - Enables the General Assembly to change retroactively the accrual date for certain intentional torts, e.g., sexual abuse cases based on repressed memories
 - 2000 - Transfers to local government the General Assembly's power to provide for property tax exemptions

Amendments defeated on the ballot have included proposals to:

- Limit the subject matter at odd-numbered year sessions
(Defeated by referendum in 1982)
- Allow for the restoration of civil rights of felons through a process established by statute
(Defeated by referendum in 1982)
- Allow the General Assembly to grant charters of incorporation to churches
(Defeated by referendum in 1996)

One of the most popular constitutional amendments introduced since the last full-scale constitutional revision has been the proposal to allow the Governor to succeed himself. The amendment was considered by the General Assembly 20 times during the last 32 regular sessions. The prevalent version allows the Governor to serve no more than two terms (in or out of succession) and delays the effective date to exempt the present Governor from the benefit of the extended term. Other variations of the amendment have included allowing an unlimited number of terms and allowing additional terms out of succession. In several instances, the amendment was bundled with other proposals, including limiting other statewide elected officials to two terms and extending the term of House members to four years. Most of these constitutional measures were defeated early

in the legislative process by the standing committee of purview in the house of origin. HJR 196, introduced in 1985 by Delegate Ford Quillen, advanced further than any other measure by passing both houses that year, but it was defeated at the next session. A complete list of the outcome of each constitutional amendment proposing a change to the Governor's term is contained as Appendix C.

Governors' Powers Compared

Thad Beyle, a political science professor at the University of North Carolina at Chapel Hill, provided a historical account of the reform efforts undertaken by the states during the 1960s to improve accountability and promote good government. As part of the government reforms to increase accountability in government, 15 states removed the prohibition against the governor succeeding himself as a means to increase accountability within the office. Contemporaneously, many states strengthened the legislature's presence by increasing the time legislatures meet and by creating professional staffs to provide legal and research services year round to the legislative branch.

Dr. Beyle also reviewed and explained his annual ranking of state governors based on the strength of their institutional and personal powers. These rankings have been included in the publication *Politics in the American States: A Comparative Analysis* published by Congressional Quarterly Press. The rankings of the governors by their institutional powers are based on the following five factors:

- Number of separately elected executive branch officials as determined by the length of the statewide ballot
- Tenure potential of governors as determined by term limits
- Appointment powers measured in six major functional areas: corrections, K-12 education, health, highways/transportation, public utilities, and welfare
- Budget power as determined by the legislature's ability to change the budget
- Veto powers as determined by the vote needed to override the governor's veto
- Gubernatorial party control measured by the strength of governor's party in the legislature

In this comparison to other governors, Virginia's current Governor scored 3.2 on a scale of 5.0, placing him in a tie for 37th place with the Governors of California, New Hampshire, and Texas. The average score for all governors was 3.4.

The ranking of the governors by their personal powers are based on the following four factors:

- Electoral mandate as derived from the governor's margin of victory in the election
- Position on the state's political ambition ladder by counting the type and number of political offices held by the governor prior to taking office
- Personal future as determined by the governor's ability to run again and the time remaining on his current term
- Job performance measured by the margin of support in public opinion polls

In this comparison to other governors, Virginia's current Governor scored 2.8 on a scale of 5.0, placing him in a tie for 43rd place with the Governors of Alabama and New Jersey. The average score for all governors was 3.7. When the two types of powers were combined, the ranking of Virginia's Governor fell to nearly the bottom, tying with the Governor of Wyoming for 46th place.

Although the powers compared (appointment, budgetary, and veto) are standard institutional powers, members of the subcommittee questioned some of the other factors used in the comparisons. They noted that the current ranking of Virginia's Governor in the institutional powers rating would change significantly from 37th to 15th place if the Governor's party held a substantial majority in the General Assembly. The same would be true in the ranking of Virginia's Governor personal power ranking if the Governor had held other political offices, which is normally the case. Under this scenario, the Governor's personal power ranking would improve from 43rd to 32nd in the rankings. With these two adjustments, the Governor's combination ranking would significantly move up from 46th place to 25th place. The new perception would be that the Governor of Virginia represents the norm. Members also pointed out that the rankings do not factor in the Governor's powers vis-a-vis the legislature. States with part-time legislatures may find that their part-time status increases the perception of a powerful executive branch because of the year round visibility of the governor.

Except for Virginia, all states currently permit the governor to succeed himself. Fourteen states have chosen not to place a limit on the number of terms their governors may serve: Connecticut, Idaho, Illinois, Iowa, Massachusetts, Minnesota, New Hampshire, New York, North Dakota, Puerto Rico, Texas, Utah, Vermont, Washington, and Wisconsin. Two states (Vermont and New Hampshire) provide for two two-year terms that adds additional accountability to the office.

Volume of Appointments and Appointment Process

According to the Secretary of the Commonwealth, the Governor makes approximately 4,000 appointments to 350 boards and commissions over his four-year term. The appointments include filling vacancies due to the expiration of terms, resignation, or death and are evenly distributed during his term. Three-fourths of the approximately 1,000 appointments made each year are to fill positions that commence July 1. Most of the gubernatorial appointments are made to advisory boards and commissions that have little or no fiscal responsibility. Only 74 boards and commissions (25 percent) have the power to enter into contracts or make significant expenditures. The list of these boards and commissions is contained as Appendix D.

The Governor's power to appoint is often restricted by the statutory requirements imposed on the qualifications of the appointees. Out of the 2,636 total seats to which the Governor may appoint, 1799 (68 percent) of them are restricted by the Code in the following three ways:

- Appointments must be made from association lists (affecting 534 seats or 19.8 % of the total appointments made)
- Appointments must be made based on geographical requirements (affecting 516 seats or 19.5 % of the total appointments made)
- Appointments must be based on specified qualifications, i.e. professional qualifications, disability qualifications, etc. (affecting 1160 seats or 44 % of the total appointments made)

The Governor has undertaken efforts to increase the number of outreach programs to ensure that these positions are filled by qualified candidates who reflect the diversity of Virginia's population. Information pertaining to board membership is retained in a database system that tracks board profiles, including geographic distribution of appointments and attendance at meetings. As a result of recent legislation recommended by the HJR 159 joint subcommittee study on boards and commissions in 2004, the information in the database is retained and transferred to the next administration.

As part of the appointment process under § 2.2-405, the Secretary of the Commonwealth is required to prepare by January 15 of each year a list of all vacancies that are scheduled to arise during the year for presentation to the Governor and General Assembly. This requirement was enacted in 1979 to give General Assembly members the opportunity to suggest appointees to the Governor. The website for the Secretary of the Commonwealth lists current and pending vacancies. Under § 2.2-406, the Secretary notifies the chairmen of the House and Senate Committees on Privileges and Elections of appointments that have been made by the Governor during the interim. These notices are provided June 1, August 1, October 1, and December 1 and cover the period between the session's adjournment and each prior notice. This requirement was enacted in 1994 to provide notice to the chairs of appointments made by the Governor in advance of the session when confirmations will be considered

Confirmation Process of Gubernatorial Appointments

The requirement and procedures for confirmation are matters reserved for statutory law. Article VIII, Section 6, requires the General Assembly to confirm the Governor's appointment of the Superintendent of Public Instruction unless the General Assembly provides otherwise by law. Article V, Section 10, provides for gubernatorial appointments of the heads of executive branch departments, subject to such confirmation as required by law. Article V, Section 7 provides that the Governor's interim or recess appointments that are subject to confirmation "shall expire at the end of thirty days after the commencement of the next session of the General Assembly." This language applies to both regular and special sessions. The General Assembly, therefore, schedules action on the confirmation of the Governor's interim appointments during the first 30 days of the regular session. The volume of gubernatorial appointments combined with the 30-day requirement curtails the time available for scrutiny of the appointments. If a special session is called, as was the case in 2004, the General Assembly has resolved not to act on gubernatorial appointments and further resolved that its failure to act will not be deemed a refusal to confirm. Pursuant to Article V, Section 11, the refusal to confirm an

appointment has the effect of vacating the office and preventing the reappointment of the affected appointee during the ensuing recess.

The general law on confirmation provides for confirmation by the General Assembly of the Governor's appointments of agency heads (§ 2.2-106) and "members of boards, commissions, councils or other collegial bodies created by the General Assembly in the executive branch....." In addition, numerous statutes require confirmation of specific gubernatorial appointments. For example, § 2.2-100 requires confirmation of the Governor's chief of staff.

The present confirmation process consists mainly of practices adopted by each house and the standing committees of purview. Present House Rules do not specify which committee considers confirmations of gubernatorial appointments. However, the Speaker has consistently assigned the joint resolutions confirming the Governor's appointments to the Committee on Privileges and Elections since 1998 when the Committee on Nominations and Confirmations was abolished. Senate Rule 18 (h) assigns confirmation matters to the Committee on Privileges and Elections.

The General Assembly uses joint resolutions to list gubernatorial appointments and provide for the confirmation of those appointments. Since 1995, these resolutions have been organized to separate the numerous interim appointments into categories: agency heads, appointments related to each separate Secretariat, and a miscellaneous group. Prior to 1990, the interim appointments were all listed alphabetically by last name in one resolution, and, from 1991 through 1994, the appointments were organized in different batches. The use of multiple resolutions organized by Secretariat and by collegial bodies was designed to allow members and the public to look at subject areas and the appointments related to those areas, e.g., education, transportation, etc. Additional resolutions are introduced for appointments made during the session.

The Secretary of the Commonwealth provides an electronic copy of the appointments, and the Division of Legislative Services (DLS) prepares the senate joint resolutions using this electronic list. Traditionally, the confirmation resolutions are introduced by the Chairman of the Senate Committee on Privileges and Elections. After action by the Senate, the resolutions go to the House of Delegates for consideration. For the past ten years, the Secretary of the Commonwealth has provided a resume and Conflict of Interests Act (COIA) financial statement for each appointee to the General Assembly committees reviewing appointments. These materials are delivered near the beginning of the session. The long-form COIA statement (§ 2.2-3117) is provided for agency heads and appointees to several major boards (Transportation, Parole, Retirement System, and Lottery), and the short-form COIA statement (§ 2.2-3118) is provided for most other appointees. The statutory provisions allow the Governor to designate nonsalaried citizen members of other boards and commissions, including advisory boards, to file disclosure forms. The Governor has exercised this option through Executive Order 53 (June 30, 2003), effective to June 30, 2006. Materials from the appointees are delivered by DLS to the subcommittee on confirmations of each committee for review. The degree of review varies from year to year depending on the

membership of the subcommittees. In some instances the materials are copied for each subcommittee member; in most instances a box containing the materials is circulated among the subcommittee members. DLS provides a report to the subcommittee on any appointees who have failed to provide the COIA statement or resume. In some cases these appointees have been refused confirmation and their names have been stricken from the confirmation resolution. DLS does not review the forms for content.

The prevalent practice has been for the committees of substance to interview new secretaries and some agency heads early in the session and to certify their qualifications to the Committee on Privileges and Elections. In addition, special interviews have been scheduled in controversial cases by either the committee of substance or the Committee on Privileges and Elections.

A few special situations have arisen when further action was taken by the Privileges and Elections Committee:

- In the 2003 Session, the Senate and House Committees on Privileges and Elections appointed special subcommittees to look at some of the more important interim appointments. The list was comprised of members of the Charitable Gaming Commission, Lottery Board, Compensation Board, Board of Professional and Occupation Regulation, Virginia Workforce Council, State Board for Community Colleges, State Council of Higher Education for Virginia, Boards of Visitors of each of Virginia's public institutions of higher learning, Board of Health Professions, Commonwealth Transportation Board and the Board of Trustees of the Virginia Retirement System.
- In the 2004 Session, the Committees did not continue the special subcommittees but followed the usual practice of referring the confirmation resolutions to the confirmations subcommittees
- In several instances, a committee has held special public hearings related to a controversial appointment

The following issues were raised by staff for consideration during the subcommittee's deliberations:

- In view of the large volume of appointments, should the requirement for resumes and COIA statements apply to all appointments or should that requirement apply only to the more significant or controversial appointments?
- The resume form, in many cases, and short form COIA statement, in most cases, provide very little significant information. Should these forms be reviewed and revised?
- Should the review process begin before the Session starts? The flow of paper resumes and COIA statements does not begin until the beginning of the session.

- Should the House subcommittee be reduced in size from eight members to a smaller number to facilitate circulation of appointment paperwork?
- Should there be a more formal approach to scheduling interviews? Are interviews necessary and appropriate in a defined number of cases?

November 15, 2004

Making special appearances before the subcommittee to offer their views on the appropriate tenure for the Governor were former Governors A. Linwood Holton and James Gilmore, and William Leighty, Chief of Staff for Governor Mark Warner. The subcommittee also heard from the President and CEO of the Virginia Chamber of Commerce and the Executive Director of the Department of Economic Development, who shared their views on the connection between the Governor's service in office and economic development in Virginia. Staff also presented background information for three counterbalancing proposals: establishing a legislative veto of administrative regulations, shifting the budget cycle, and reassigning the responsibility for revenue forecasting. These proposals were identified by the subcommittee at the first meeting for further review.

Governors Offer Alternative Views on Ideal Term for the Governor

Governor Holton stated that he favors a single six-year term for the Governor's office as a compromise to the objections raised to both retaining the current one four-year term and allowing the Governor to succeed himself by a second four-year term. He asserted that a six-year term would eliminate the demands on the Governor's time and effort in running a reelection campaign. The extended term would increase the Governor's independence and influence on policy direction through the budget. Although the Governor begins his term under the shadow of the former Governor's budget, Governor Holton disagreed that the Governor is automatically a lame duck because of his significant influence on the next two budgets. The one downside seen by the former Governor on his proposal was that the six-year term limited the number of people who could run.

In a written statement submitted to the subcommittee, former Governor Gerald Baliles echoed the comments of Governor Holton, stating that "if the Constitution is to be changed for the sake of 'good governance,' then a single six-year term of governing would be preferable to the current one-term system or the proposed two terms because it would 'combine the best of both worlds.'"

Former Governor James Gilmore stated that he prefers the presidential model that allows the executive to serve two consecutive four-year terms. The additional time in office allows for long-term planning that is critical for overseeing transportation construction projects, environmental plans, and economic development. He also commented that the Governor is at a disadvantage with the short budget cycle that allows the Governor-elect only a few weeks to review the prior Governor's budget. To work within the confines of one term, the Governor of Virginia is under pressure to effectuate change in the first three years because at the end the one-term Governor does become a lame duck. Governor Gilmore stated that a two-term Governor could be more effective in office. In evaluating some of the powers of the Governor, Governor Gilmore found that

the appointment power of the Governor was highly overrated because many of the positions are ceremonial and without the authority to affect public policy. He stated that he believes that the selection and confirmation process work well in scrutinizing candidates.

In a written statement submitted to the subcommittee, former Governor Charles Robb stated that he supported succession of the Governor. He explained that he had never made the proposition a top priority during his own service in state government because he believed that the anyone elected Governor should come into office with a fairly well-developed agenda and priorities, and that four years of concentrated follow-through was sufficient to achieve those objectives - particularly when the relationships between the General Assembly and the Governor's office were less partisan.

William Leighty, Chief of Staff for Governor Mark Warner, conveyed the Governor's views on the succession issue. The Governor favors the two-term proposal to foster long-term relationships necessary to promote economic development. He pointed to the long tenure of James Hunt as North Carolina's Governor in successfully developing and maintaining a relationship with Toyota Motor Corporation. Governor Warner noted that Virginia's government is roughly the size of corporate giants Microsoft and Disney and suggested that these companies would not have enjoyed such immense success had it been mandated that they change their CEOs every fourth year, which Virginia's Constitution requires the voters to do. Although Virginia is committed to long-term planning as seen by its investment in the Council on Virginia's Future and the requirement of a six-year financial plan, Governor Warner admitted that long-term planning is harder to do with the current one-term limitation.

Correlation between Governor's Term and Economic Development

Hugh Keogh, President and CEO of the Virginia Chamber of Commerce, offered three major reasons why he believes that the two-term governorship would pay benefits to Virginia's economic development efforts. First, the product Virginia represents in the marketplace, i.e., the very competitive Southeast Region of the United States, is critically important. To shape and improve that product through adequate investments in infrastructure and public institutions is best done in the context of long term strategic thinking and budget planning. A single four-year term does not provide for that type of approach. Second, economic development marketing frequently, almost invariably, is heavily influenced by relationships that are created and maintained between the buyer, the industrial prospect, and the seller, in this case the Commonwealth. Prospects seek predictability and they seek access to the state's CEO, the Governor. A single term governorship frustrates both of these desires and hampers the decision-making process, which can often take years. Third, gubernatorial succession would encourage a more strategic position in the competitive marketplace. Virginia's diversity demands different economic strategies for different regions that take broad-gauge creative thinking and planning.

Mark Kilduff, Executive Director of the Virginia Economic Partnership, spoke in favor of the two-term governorship as a means to ensure the continuity needed to successfully complete business deals. Business relationships are built on trust and they remain the key to successful economic development in the Commonwealth. The Governor, like a CEO, is able to open doors and to build relationships faster than anyone else in state government. Because foreign business relationships take longer to mature, it is critical that goals and interests be shared by changing administrations to nurture these relationships. When asked if he favored the Holton/Baliles recommendation for a single six-year term, he replied that any additional time in office would be helpful in building relationships trusts and providing continued oversight of projects from start to finish.

Legislative Veto of Administrative Regulations

From 1981 through 1984, Virginia provided by statute for the legislative veto of administrative regulations. The law covered substantive nonemergency regulations and gave standing committees 90 days to defer the effect of the regulation after its adoption. A vote of the majority of the committee members present was required for the deferral. A standing committee deferring a regulation was required to prepare a joint resolution expressing the sense of the General Assembly that all or any part of the regulation should be modified or nullified. The General Assembly could approve the resolution at the next session and permanently defer the effect of the regulation in the form adopted. No rule or regulation having substantially the same object could be adopted unless and until the General Assembly repealed the resolution. If the resolution was not adopted, the regulation took effect following the standard waiting period of no less than 30 days.

Although this statute was never challenged in court, the Attorney General issued an opinion in 1982 concluding that the statute would likely be declared unconstitutional on the grounds that the law:

- Violated the separation of powers doctrine as provided in Article III, Section 1 of the Constitution of Virginia.

Section 1. Departments to be distinct.

The legislative, executive, and judicial departments shall be separate and distinct, so that none exercise the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe. Provisions may be made for judicial review of any finding, order, or judgment of such administrative agencies.

- Allowed the General Assembly to annul a properly promulgated administrative regulation by passing a resolution rather than a bill in violation of Article IV, Section 11 that requires that no law be passed except by bill.

The Attorney General stated that this was the more important and impressive argument.

The General Assembly enacted a new statute effective October 1, 1984, repealing the legislative veto procedure and substituting a new procedure that allowed a standing committee to object to a regulation and delay the regulatory process by 21 days. The current legislative review process allows any standing committee of the House and Senate or the Joint Commission on Administrative Rules to object to a nonemergency nonexempt proposed regulation and thereby delay the effective date for 21 days. The standing Committees and the Joint Commission on Administrative Rules with the concurrence of the Governor may also suspend the effective date of a nonemergency nonexempt final regulation until the end of the next regular legislative session.

The majority of states that have addressed the constitutional issue of a legislative veto have concluded that the legislature cannot permanently veto a rule promulgated by a state agency without passing a bill to overturn the rule. Once the power has been statutorily given to the agency, it is an executive function to regulate and ensure that the laws are implemented. Therefore, a legislative veto of a properly promulgated rule would constitute a violation of the separation of powers doctrine. The following states have taken exception to this conclusion through a court decision and constitutional provisions to the separation of powers article:

- Idaho's Supreme Court upheld in *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 420 (1990) the state's legislative veto statute because it found that while rules and regulations may be given the force and effect of law, they do not rise to the level of statutory law.
- North Dakota's constitution does not have a separation of powers provision. The Administrative Rules Committee may veto proposed rules for specific reasons listed in statute. The agency may appeal to the Legislative Council, and if the Legislative Council does not disapprove the committee's findings, the rule is void.
- Connecticut, Iowa, Michigan, New Jersey, and South Dakota have amended their constitutions to provide for legislative veto or suspension of administrative rules as follows.
 - Connecticut (Article XVIII)
The legislative department may delegate regulatory authority to the executive department, except that any administrative regulation of any agency of the executive department may be disapproved by the general assembly or a committee thereof in such manner as shall by law be prescribed.

- Iowa (Article III, § 40)
Nullification of administrative rules. The general assembly may nullify an adopted administrative rule of a state agency by the passage of a resolution by a majority of all of the members of each house of the general assembly.
- Michigan (Article IV, § 37)
Administrative rules, suspension by legislative committee. The legislature may by concurrent resolution empower a joint committee of the legislature, acting between sessions, to suspend any rule or regulation promulgated by an administrative agency subsequent to the adjournment of the last preceding regular legislative session. Such suspension shall continue no longer than the end of the next regular legislative session.
- South Dakota (Article III, § 30)
Power of committee of Legislature to suspend administrative rules and regulations. The Legislature may by law empower a committee comprised of members of both houses of the Legislature, acting during recesses or between sessions, to suspend rules and regulations promulgated by any administrative department or agency from going into effect until July 1 after the Legislature reconvenes.

The subcommittee directed staff to prepare a draft constitutional amendment to allow the General Assembly to suspend and nullify administrative rules and regulations by a majority vote of the members elected to each house and to authorize the standing committees of each house and joint legislative commissions designated by the General Assembly to suspend rules and regulations when the General Assembly is not in regular session.

Budget Cycle and Revenue Forecasting

Staff presented a comparison of state budget processes compiled by the National Conference of State Legislatures and published as *Legislative Budget Procedures: A Guide to Appropriations and Budget Processes in the States, Commonwealths and Territories* (updated January 23, 2004).

State budget cycles are either annual or biennial. Twenty states enact budgets on biennial schedule; 11 adopt separate budgets for two fiscal years at once, and nine pass true biennial budget. Virginia follows a biennium schedule, but the budget is routinely amended at each session. For example, the biennial budget enacted in the 2004 session for 2004-2006 was amended during the 2005 session, and will likely be amended again

during the 2006 session to affect the remaining few months of the biennium. According to the NCSL report, "The relative advantages of annual and biennial budgets have been debated at length, and states occasionally change from one to the other. The overall experience of states, however, is that neither budget cycle has overwhelming advantages and disadvantages."

Most states, including Virginia, begin the fiscal year on July 1. The federal government also followed a July 1 fiscal year until it changed to October 1 in 1974. Alabama and Michigan follow the new federal schedule. New York's fiscal year begins on April 1 and Texas begins its fiscal year on September 1. The July 1 fiscal year works well for part-time legislatures that convene their sessions in January or February. In Virginia, under § 2.2-1508, the Governor must submit the biennial budget or amendments to the biennial budget by December 20. Because of this deadline, every four years the Governor-elect must work with a budget completed by the prior administration. Four states have recognized this problem and have extended the time for the budget submission in the year the governor is elected. The extension is feasible in these states because three of states (Michigan, Pennsylvania and Ohio) have year round legislatures and Tennessee's session normally lasts until May.

Because almost all states have balanced budget requirements, an accurate revenue forecast is essential. Many states mandate that total expenditures may not exceed the official revenue forecast for the budget. For these 26 states, including Virginia, the revenue forecast "binds" the budget. The responsibility for developing the official revenue forecasts varies among the states. Seventeen states, including Virginia, entrust the responsibility to the executive. Under § 2.2-1503, revenue estimates are prepared by the Department of Taxation with input from the Governor's Advisory Board of Economists and the Advisory Council on Revenue Estimates. The legislature has a presence on the Council with representation from the leadership and the chairmen of the House Committee on Appropriations, the House Committee on Finance and the Senate Committee on Finance. However, the Board is comprised of entirely nonlegislative citizen members appointed exclusively by the Governor.

Of the states that have not vested the revenue forecasting authority in the executive, 22 states use consensus and 11 states use another mechanism to build the official forecasts, which may or may not bind the budget in those states. North Carolina is an example of a consensus state. Although there are no statutory guidelines, the Legislative Fiscal Office and the State Budget Office are encouraged to discuss the independent estimates. In years in which agreement is not achieved, the General Assembly of North Carolina uses the legislative fiscal office estimate. South Carolina is an example of a state that uses a separate entity in the revenue forecasting process. An independent Board of Economic Advisors comprised of citizens appointed by the Governor and the legislature provides advice to the State Budget and Control Board by evaluating total revenues and expenditures and by certifying amendments to the appropriations that decrease and decrease revenues.

The subcommittee expressed interest in developing draft legislation to create a different revenue forecasting model than currently used in Virginia that would increase the legislature's role in the process. Also, the subcommittee directed staff to prepare for review draft legislation that would establish an annual budget cycle.

December 6, 2004

The subcommittee continued taking testimony from distinguished guests, including a spokesperson for Senator Allen and the chairmen of the two major political parties in Virginia. Staff continued to present the subcommittee with additional background information on the confirmation process and a new comparison of state legislative powers.

Continuation of Alternative Views on Ideal Term of Governor

Mike Thomas, Chief of Staff for Senator George Allen, conveyed the Senator's remarks on the issue of the two-term Governor. Senator Allen stated that he did not believe that it was necessary to allow a Governor to run for consecutive terms and that Virginians have been well served by the present approach. In his judgment, the most important factor to having a productive term as Governor is to have a strong, clear and principled set of goals and issues to be addressed for the four years of service. It is important to set priorities based on promises and principles, and then assemble support from people and legislators on a bipartisan basis. Virginia Governors are accorded much authority to accomplish their goals. Virginia Governors have among the strongest and most extensive appointment powers, budget, legislative and regulatory authority, and administrative control of any in the nation. While in office, Senator Allen had observed that other governors who faced the possibility of a second term focused a great amount of time on winning reelection. In Virginia, there has been no shortage of qualified aspirants to the office from the days of Patrick Henry and Thomas Jefferson through the present era of exceptional administrators.

Chairman Kate Obenshain Griffin prefaced her remarks, stating that her comments were reflective of her personal opinion and had not been endorsed by the State Central Committee, which is the governing body of the Republican Party of Virginia. She noted that the issue had been passionately debated among members of the State Central Committee. She pointed out that Virginia maintains its unique standing as the only state in the Union that does not allow the Governor to succeed himself. She believes that the people of Virginia should have the ability to choose their leader, and that government should be responsive to the will of the voters. It is a core principle of the Republican Party that the people empower the government. Although she was aware of the concerns that allowing for a two-term governor could politicize the office and negatively influence job performance, she argued that that allowing an incumbent to seek reelection would establish a new level of accountability that currently does not exist. In matters of economic development and budgetary policy four years is insufficient time to allow for long-range planning. A Governor with the ability to serve up to eight years in office would gain credibility and stature as head of state and hold greater influence when competing for funding or attracting business. She was also aware of the salient arguments

related to the power of the Governor regarding appointment powers and budget authority; however, she believes that these issues could be addressed through legislative actions and do not, in themselves, offer reason to prevent consideration of this change to the Constitution. She concluded that there must be an appropriate balance of power between the executive and legislative branches of government, and it is possible that one branch might have to give up some power in order to appropriately set the balance.

Kerry Donley, Chairman of the Democratic Party of Virginia, presented a resolution adopted on June 5, 2004, as part of the Democratic Party of Virginia platform, that endorses an amendment to Article V, Section 1 of the Virginia Constitution to remove the prohibition against the a Governor serving consecutive terms. The resolution recognizes Virginia's uniqueness in prohibiting its Governor from serving two consecutive terms and stated that this limitation makes the Governor a "lame duck" upon inauguration day. The frequent changing of Governors means frequent changes of appointees at the head of state agencies, reducing the overall efficiency of state government.

Continuation of Staff Review of Confirmation Process

Staff presented the preliminary findings of a survey conducted by the National Conference of State Legislatures on the legislative confirmation process for gubernatorial appointees. As of December 6, 2004, NCSL had received 34 state responses to the survey that compared states on the following factors: who confirms the appointments (Senate or joint house confirmation), supermajority requirements in confirmation process, type of paperwork submitted, requirements for background checks, and use of a special committee or a committee of substance, and interview practices. Virginia holds a unique position among the states because of the large volume of appointments subject to confirmation, the short timetable for the confirmation process and the requirement for joint house approval. Appendix E contains a summary of the preliminary findings from the NCSL survey and a supplemental survey conducted by the staff of the Division of Legislative Services that looked at other factors, including length of session and length of recess, the timetable for confirmation action, and number of appointments. The subcommittee requested staff to prepare for review at the final meeting draft legislation that would provide a statutory timetable for the submission of appointee materials (resume and statement of economic interests) to the standing committees of review for appointments made during the interim and during the session.

Circulation of COIA Disclosure Forms

In 2002, the Secretary of the Commonwealth proposed that the Clerk of the House of Delegates and the Clerk of the Senate administer oaths and distribute the COIA forms for persons appointed to positions on executive branch agencies by their respective appointing authorities and that such persons be instructed to file their forms with the Secretary of the Commonwealth. The rationale for this proposal was that the Clerks probably have better knowledge of and contact with the legislative appointees. The Clerk of the Senate agreed to comply voluntarily with the Secretary's request. The Clerk of the

House of Delegates requested clarification on the requirements of the State and Local Government Conflict of Interests Act (COIA). COIA (§ 2.2-3100 et seq.) applies to executive, legislative, and judicial branch employees regardless of who elects, appoints, or hires the officer or employee. Section 2.2-3114 states that the Secretary of the Commonwealth shall provide the disclosure forms to "designated officers and employees" not later than November 30 of each year. In the opinion of the Secretary of the Commonwealth, it was not clear that this requirement applied to persons appointed by legislative authorities serving on executive boards. The subcommittee requested staff to prepare for review at the final meeting draft legislation that would clarify the issue and make consistent the requirement for distribution of the disclosure forms by the Secretary of the Commonwealth.

Legislatures' Powers Compared

Although no current power rankings for legislatures could be found, staff used several legislative statistics compiled by the National Conference of State Legislatures and published in the 2003 edition of the *Book of the States* to show how Virginia compares to other states. The staff comparison looked at four factors: tenure potential, party control, vote requirement to override the Governor's veto and session length.

For tenure potential, Virginia aligns with the substantial majority of other states that do not set term limits. States were grouped into the following three categories to describe tenure potential:

- No terms limits - 35 states, including Virginia
- Consecutive term limits - 9 states
- Lifetime ban term limits - 6 states

Virginia also reached the higher echelons of party dominance with at least 60 percent control in each house. Only 13 states belong to the next tier in which a party has obtained a veto-proof majority. States were grouped into the following six categories to describe party control in the legislature:

- Very strong majorities (veto proof majorities) - 13 states
- Strong majorities (neither house is under 60 %) - 10 states, including Virginia
- Moderate majorities (neither house is under 55 %) - 7 states
- Weak majorities - (one house is under 55 %) - 9 states
- Split - 10 states
- Nonpartisan - 1 state

Virginia's voting requirement for overriding the Governor's veto placed it squarely within the average. Twenty-six states have a higher voting requirement, 11 states have a lower voting requirement and 11 states have the same voting requirement as Virginia. States were grouped into the following five categories to describe the voting requirements:

- Majority elected - 6 states
- Three-fifths present - 1 state
- Three-fifths elected - 5 states
- Two-thirds present, includes Virginia (must have a majority of the members elected) - 12 states
- Two-thirds elected - 26 states

The length of the regular session was the final factor of legislative power examined. A longer session is viewed more favorably because it enhances the legislature's capacity to deal with issues and legislation. In this category, Virginia fell below the norm because of its comparatively short sessions. Almost a third of the states have no limit on the session's length during at least one year of the biennium. Another 13 states use a legislative calendar to determine session length. This has the effect of expanding the actual number of days of the session because weekends, holidays, and days on which the legislature does not meet are not counted. Of those states that follow the calendar day system, such as Virginia, 18 states had sessions longer than Virginia's. However, comparing states on the duration of their sessions is difficult because the time may vary from year to year and there are usually procedures to extend those sessions beyond the normal time. States were grouped into the following three broad categories based on how session time was calculated:

- No limit (during at least one session) - 16 states
- Legislative days - 13 states
- Calendar days - 21 states (Virginia is 19 out of 21)

The subcommittee requested staff to prepare for review at the final meeting draft legislation that would propose a constitutional amendment to allow the General Assembly to meet 60 days during odd-numbered years without having to extend the session by a two-thirds vote of both houses.

January 5, 2005

The subcommittee discussed the drafts prepared by staff on the various alternatives for changing the Governor's term and the counterbalancing proposals to strengthen the legislative presence. A summary of the arguments for and against the two-term governor based on the testimony and discussion among subcommittee members is contained as Appendix F.

Recommendations

The subcommittee recommended the following four measures for introduction at the 2005 Regular Session of the General Assembly:

- A constitutional amendment to allow the Governor to succeed himself for one four-year term. The amendment allows two four-year terms (either in succession or not in succession) but prohibits election to a third term. The amendment allows Governors elected in 2009 and thereafter to serve two successive terms. Service for more than two years of a partial term counts as service for one term.
- A bill to provide for delivery by the Secretary of the Commonwealth of the resumes and statements of economic interests for gubernatorial appointees and for a joint subcommittee of the two Committees to review those papers. The bill codifies the current practice by the Committees on Privileges and Elections for reviewing these documents. A safeguard provision is included in the bill so that an inadvertent omission or deviation from the new process will not cause an appointment confirmed by the General Assembly to be challenged for noncompliance with the confirmation process.
- A bill to require the Secretary of the Commonwealth to distribute the COIA disclosure statement forms to officers appointed by legislative authorities serving on executive branch boards.
- A continuing study resolution to allow the subcommittee to continue its work for one additional year in order to conduct a more thorough analysis of the other constitutional and statutory powers to adjust the balance of powers between the legislative and executive branches as needed.

Delegate Griffith and Delegate Joannou voted against the recommendation to introduce a constitutional amendment to allow the Governor to succeed himself. Mr. Bailey and Mr. Robertson were not present when the votes were taken on the recommendations. Copies of the legislation introduced on behalf of the subcommittee are contained as Appendix G. The text of the House version is used whenever the legislation was offered for dual introduction.

Actions Deferred for Future Study

The subcommittee unanimously agreed to defer for future study proposals to:

- Provide for annual 60-day sessions
- Provide for annual budgets
- Shift the budget cycle to begin in odd-numbered years.
- Add legislative appointments to the State Board of Education.
- Allow the General Assembly to nullify or suspend regulations by joint resolution and designate standing committees and legislative commissions to suspend regulations during the interim. The subcommittee narrowly defeated (on a vote of Y-5-N-5) a motion to recommend this legislation to the 2005 Session.
- Create an independent economic and fiscal commission that would provide the official revenue forecasts for the Commonwealth
- Add legislative appointments to the boards of visitors of public universities and colleges and the Commonwealth Transportation Board

Although preliminary drafts were reviewed by the subcommittee at the meeting, members agreed that more input was needed from affected entities, including the institutions of higher education, regarding legislative oversight of the boards of visitors. The subcommittee recommended that the staffs of the House Committee on Appropriations and the Senate Committee on Finance be included to provide support in the analysis of the budget cycle and the feasibility of creating an independent revenue forecasting commission.

III. ACTION TAKEN ON SUBCOMMITTEE'S RECOMMENDATIONS

Two-Term Governor Constitutional Amendment

Identical resolutions (HJR 652 and SJR 401) were introduced to propose a constitutional amendment to allow the Governor to succeed himself. HJR 652 (patroned by Delegate Purkey) was Passed By Indefinitely (PBI) by the House Committee on Privileges and Elections on a vote of 15-Y to 5-N. SJR 401 (patroned by Senator Locke) was PBI in the Senate Committee on Privileges and Elections on a vote of 9-Y to 5-N. During the deliberations, the Committees appeared unwilling to consider the amendments without other proposals that would counterbalance the shift of power in favor of the Governor caused by successive terms. The defeat of these measures means that the earliest date a constitutional amendment could appear on the ballot would be 2008, if the General Assembly approves a new amendment during the 2006 or 2007 session and then again during the 2008 session. However, such a delay would not affect which Governor would first be eligible to serve two consecutive terms because the amendments defeated at the 2005 Session were prospective and applied to Governors elected in 2009 and thereafter.

Confirmation Process

Identical bills (HB 2144 and SB 999) were introduced to provide for a more formalized and expanded confirmation process. The bills were referred to the House and Senate Committees on Privileges and Elections and received strong bipartisan support in committee and on the floor of each house. During the process, HB 2144 (patroned by Delegate Joannou) and SB 999 (patroned by Senator Devolites Davis) were amended to increase the number of House members to five on the subcommittee established to review the resumes and statements of economic interests of the gubernatorial appointees. The Governor offered an amendment to SB 999 to make the change consistent throughout the bill. HB 2144 (Chapter 803) and SB 999 (Chapter 938) become effective on July 1, 2005. The new confirmation process will govern the procedures used during the 2006 Regular Session.

Distribution of COIA Disclosure Forms

The bill to require the Secretary of the Commonwealth to distribute the financial disclosure statement forms to officers appointed by legislative authorities serving on executive branch board (HB 2136) was referred to the House and Senate Committees on General Laws and was passed by both houses without a dissenting vote. HB 2136

(Chapter 169) becomes effective on July 1, 2005, and will govern appointments made thereafter.

Continuation of the Study

HJR 707 (patroned by Delegate Landes) was referred to the House and Senate Committees on Rules and received unanimous support in committee and on the floor of each house. The resolution was amended in the House Committee on Rules to rename the study the "Joint Subcommittee to Study the Appropriate Balance of Power Between the Legislative and Executive Branches." The change in name reflects the broader nature of the study and the fact that the constitutional amendments to allow a two-term Governor in Virginia failed during the 2005 Regular Session.

Appendix A

HOUSE JOINT RESOLUTION NO. 13

Establishing a joint subcommittee to study the appropriate balance of power between the legislative and executive branches to support a two-term Governor in the Commonwealth. Report.

Agreed to by the House of Delegates, February 17, 2004

Agreed to by the Senate, March 9, 2004

WHEREAS, the Commonwealth is the only state that limits a governor to serving one consecutive term by its Constitution; and

WHEREAS, the Governor of Virginia has extensive formal powers, including the power to fill vacancies in state government, to veto and to propose amendments to legislation passed by the General Assembly, and the responsibility to propose a state budget; and

WHEREAS, opponents of a proposed constitutional amendment defeated at the 2003 Session to allow the Governor of Virginia to succeed himself argued that such power would disrupt the carefully achieved balance of powers between the executive and legislative branch established by the Constitution of Virginia; and

WHEREAS, proponents of the constitutional amendment argued that four years does not provide enough time for long-range planning and that the governor should have some accountability to the electorate for his actions during his term of service; and

WHEREAS, the right of succession should be evaluated with the Governor's other powers to ensure the preservation of the three equal branches of government, the cornerstone of America's democracy; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the appropriate balance of power between the legislative and executive branches to support a two-term Governor in the Commonwealth. The joint subcommittee shall consist of 10 members that include six legislative members and four nonlegislative citizen members as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; two nonlegislative citizen members at large to be appointed by the Speaker of the House of Delegates; and two nonlegislative citizen members at large to be appointed by the Senate Committee on Rules. Nonlegislative citizen members of the joint subcommittee shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the joint subcommittee and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required. The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall (i) examine the history of the Governor's power in the Commonwealth; (ii) compare the powers of the governors of other states; (iii) determine the balance of power established between the executive and legislative branches in other states, particularly in those states that transitioned from a one-term governor to a two-term governor; and (iv) consider constitutional and statutory options for the equitable distribution of power between the legislature and executive branch to support a two-term Governor in the Commonwealth.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by

the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2004 interim, and the direct costs of this study shall not exceed \$7,600 without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2004, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly. The executive summary shall state whether the joint subcommittee intends to submit to the Governor and the General Assembly a report of its findings and recommendations for publication as a document. The executive summary and the report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2004 interim.

Appendix B

Development of Historical Constitutional Executive Functions

Constitutional Year	Method of Election	Term Length	Consecutive Terms	Veto	Item Veto	Amendments	Appointment and Removal Powers
1776	General Assembly	1 year	3	No	No	No	Only with the advice of the Privy Council
1830	General Assembly	3 years	1	No	No	No	Pro tempore appointments expire at the end of the next succeeding session of the General Assembly Advice of Privy Council was curtailed to discretionary actions only
1851	Popularly Elected	4 years	1	No	No	No	Pro tempore appointments expire 30 days after the commencement of the next session Privy Council abolished
1870	Popularly Elected	4 years	1	Yes	No	No	Pro tempore appointments expire 30 days after the commencement of the next session
1902	Popularly Elected	4 years	1	Yes	Yes	Yes	Pro tempore appointments expire 30 days after the commencement of the next session Governor may suspend executive officers during the interim for malfeasance
1928	Popularly Elected	4 years	1	Yes	Yes	Yes	Pro tempore appointments expire 30 days after the commencement of the next session General Assembly's refusal within 30 days bars reappointment Governor may suspend executive officers during the interim for malfeasance
1971	Popularly Elected	4 years	1	Yes	Yes	Yes	General power of appointment and removal of executive agency heads Pro tempore appointments expire 30 days after the commencement of the next session General Assembly's refusal within 30 days bars reappointment

Appendix C

Constitutional Amendments to Governor's Term (1971-2004)

Year	Bill No.	Patron	Outcome
2004	HJ 3	Purkey	Continued to 2005 in House Committee on Privileges and Elections
2003	HJ 515	Purkey	Left in House Committee on Privileges and Elections
2003	HJ 1	Purkey	Left in House Committee on Privileges and Elections
2002	HJ 1	Purkey	Continued to 2003 in House Committee on Privileges and Elections
2001	HJ 490	Purkey	PBI in House Committee on Privileges and Elections
2000	HJ 1	Purkey	PBI in House Committee on Rules
1999	SJ 40	Marye	Passed Senate Incorporated into HJ 9 by House Committee on Rules
1999	HJ 9	Purkey	Failed to report by House Committee on Rules
1999	HJ 478	Purkey	Failed to report by House Committee on Rules
1999	HJ 10	Davies	Incorporated into HJ 9 by House Committee on Rules
1998	HJ 9	Purkey	Continued to 1999 in House Committee on Rules
1998	HJ 10	Davies	Continued to 1999 in House Committee on Rules
1997	HJ 392	Purkey	PBI in House Committee on Rules
1997	HJ 156	Purkey	No Action Taken by House Committee on Rules
1996	HJ 156	Purkey	Continued to 1997 in House Committee on Rules
1995	SJ 282	Marye	Rejected by House
1995	HJ 665	Purkey	PBI in House Committee on Rules
1995	HJ 41	Purkey	PBI in House Committee on Privileges and Elections
1995	SJ 1	Marye	Left in Senate Committee on Privileges and Elections
1994	SJ 1	Marye	Continued to 1995 in Senate Committee on Privileges and Elections
1994	HJ 41	Purkey	Continued to 1995 in House Committee on Privileges and Elections
1993	HJ 512	Purkey	PBI in House Committee on Privileges and Elections
1993	HJ 50	Purkey	PBI in House Committee on Privileges and Elections
1992	HJ 50	Purkey	Continued to 1993 in House Committee on Privileges and Elections
1991	HJ 297	Purkey	Defeated by House Committee on Privileges and Elections
1986	HJ 8	Quillen	PBI in House Committee on Privileges and Elections
1986	HB 50	Quillen	PBI in House Committee on Privileges and Elections
1985	SJ 57	Holland	No action taken by Senate Committee on Privileges and Elections
1985	HJ 196	Quillen	1985 Acts, c. 590
1984	SJ 57	Holland	Carried over to 1985 in Senate Committee on Privileges and Elections
1981	SJ 138	Garland	Died in Senate
1977	HJ 76	Saslaw	Died in House
1977	HJ 102	McMath	Passed House Died in Senate
1976	HJ 76	Saslaw	Carried over to 1977 in House Committee on Privileges and Elections
1976	HJ 102	McMath	Carried over to 1977 in House Committee on Privileges and Elections
1973	HJ 204	Giesen	Did Not Pass House

Appendix D

Boards and Commissions with Contractual or Grant Authority

Secretariat/Classification	Board/Commission	Board Category	Contract	Grants
Administration	Veterans Services Foundation	Advisory	Yes	
Administration	Board of Elections	Regulatory	Yes	
Administration	Compensation Board	Regulatory	Yes	
Authorities	Virginia Commercial Space Flight Authority	Advisory	Yes	
Authorities	Virginia Recreational Facilities Authority Board of Directors	Advisory	Yes	
Authorities	Tobacco Settlement Financing Corporation	Policy	Yes	
Authorities	Tourism Train Development Authority	Policy	Yes	
Authorities	Virginia Port Authority	Policy	Yes	
Authorities	Virginia Public School Authority Board of Commissioners	Policy	Yes	
Commerce and Trade	Virginia Small Business Financing Authority	Advisory	Yes	
Commerce and Trade	Virginia Wine Board	Advisory	Yes	
Commerce and Trade	Tobacco Indemnification and Community Revitalization Commission	General	Yes	
Commerce and Trade	Virginia Bright Flue-Cured Tobacco Board	General	Yes	
Commerce and Trade	Virginia Cotton Board	General	Yes	
Commerce and Trade	Virginia Dark-Fired Tobacco Board	General	Yes	
Commerce and Trade	Virginia Equine Center Foundation	General	Yes	
Commerce and Trade	Virginia Horse Industry Board	General	Yes	
Commerce and Trade	Virginia Peanut Board	General	Yes	
Commerce and Trade	Virginia Small Grains Board	General	Yes	
Commerce and Trade	Virginia Soybean Board	General	Yes	
Commerce and Trade	Milk Commission	Regulatory	Yes	
Commerce and Trade	Virginia Agricultural Council	Regulatory	Yes	
Commerce and Trade	Virginia Corn Board	Regulatory	Yes	
Commerce and Trade	Virginia Egg Board	Regulatory	Yes	
Commerce and Trade	Virginia Housing and Development Authority	Regulatory	Yes	
Commerce and Trade	Virginia Irish Potato Board	Regulatory	Yes	
Commerce and Trade	Virginia Resources Authority Board of Directors	Regulatory	Yes	
Education	Commonwealth Health Research Board	Advisory	No	Yes
Education	Virginia Commission for the Arts	Advisory	No	Yes
Education	Board of Education	Policy	***Yes	
Education	A.L. Philpott Manufacturing Extension Partnership Authority Board	Supervisory	**Yes	
Education	Board of Trustees of the Southwest Virginia Higher Education Center	Supervisory	Yes	
Education	Christopher Newport University Board of Visitors	Supervisory	Yes	
Education	Frontier Culture Museum Board of Trustees	Supervisory	Yes	
Education	George Mason University Board of Visitors	Supervisory	Yes	
Education	Institute for Advanced Learning and Research Board of Trustees	Supervisory	Yes	

Boards and Commissions with Contractual or Grant Authority (Continued)

Secretariat/Classification	Board/Commission	Board Category	Contract	Grants
Education	James Madison University Board of Visitors	Supervisory	Yes	
Education	Jamestown-Yorktown Foundation Board of Trustees	Supervisory	Yes	
Education	Library Board	Supervisory	Yes	
Education	Longwood University Board of Visitors	Supervisory	Yes	
Education	Norfolk State University Board of Visitors	Supervisory	Yes	
Education	Old Dominion University Board of Visitors	Supervisory	Yes	
Education	Radford University Board of Visitors	Supervisory	Yes	
Education	Roanoke Higher Education Authority	Supervisory	Yes	
Education	Science Museum of Virginia	Supervisory	Yes	
Education	State Board for Community Colleges	Supervisory	*Yes	
Education	The College of William & Mary Board of Visitors	Supervisory	Yes	
Education	University of Mary Washington Board of Visitors	Supervisory	Yes	
Education	University of Virginia Board of Visitors	Supervisory	Yes	
Education	Virginia Commonwealth University Board of Visitors	Supervisory	Yes	
Education	Virginia Military Institute Board of Visitors	Supervisory	Yes	
Education	Virginia Polytechnic Institute and State University Board of Visitors	Supervisory	Yes	
Education	Virginia State University Board of Visitors	Supervisory	Yes	
Finance	Board of the Virginia College Building Authority	Policy	Yes	
Finance	Board of the Virginia Public Building Authority	Policy	Yes	
Finance	Treasury Board	Policy	Yes	
Health & Human Resources	Family and Children's Trust Fund Board of Trustees	Advisory	Yes	
Independent	Virginia College Savings Plan	Regulatory	Yes	
Independent	Volunteer Firefighters' & Rescue Squad Workers' Service Award Pension Fund	Regulatory	Yes	
Interstate Compacts	Breaks Interstate Park Commission	Compact	Yes	
Interstate Compacts	Metropolitan Washington Airports Authority	Compact	Yes	
Interstate Compacts	Southern Regional Education Board	Compact	Yes	
Natural Resources	Alexandria Historical Restoration and Preservation Commission	Policy	Yes	
Natural Resources	Chippokes Plantation Farm Foundation Board of Trustees	Policy	Yes	
Natural Resources	Virginia Land Conservation Foundation Board of Trustees	Policy	Yes	
Natural Resources	Virginia Museum of Natural History Board of Trustees	Policy	Yes	
Public Safety	Medal of Valor Review Board	Advisory	Yes	
Public Safety	State Board of Corrections	Policy	Yes	
Public Safety	Virginia Alcoholic Beverage Control Board	Policy	Yes	
Technology	Virginia Geographic Information Network Advisory Board	Advisory	Yes	
Technology	Information Technology Investment Board	Supervisory	Yes	
Transportation	Board of Transportation Safety	Advisory	Yes	
Transportation	Commonwealth Transportation Board	Policy	Yes	
Transportation	Virginia Aviation Board	Policy	Yes	

*Board chair has chosen not to sign contracts; **Chair signs all contracts for \$10,000 or more; *** Board contracts limited to purchase of approved textbooks

Appendix E

Legislative Confirmation Processes for Gubernatorial Appointments

VARIABLES	STATES
Senate confirmation or joint house confirmation. [NCSL survey responses from 34 states.]	28 states -- Senate only 3 states -- both houses (Virginia) 3 states -- a mix
Length of session and length of recess.	Virginia's 2005 session of 46 calendar days is the shortest scheduled for the 50 states.
Timetable for confirmation action on interim appointments. [Staff survey of several other states.]	Virginia -- interim appointments must be confirmed in first 30 days of session. Other states -- majority during next session; or by April 15.
Supermajority requirements. [NCSL survey responses from 34 states.]	Most states require a majority of members present and voting. 8 states require majority of members elected. 1 state requires a 2/3 majority vote.
Number of appointments. [Staff survey of several other states.]	Virginia acted on 700+ appointments in 2004 and 1100+ appointments in 2003. Other states report acting on between 20 and 200 appointments.
Types of gubernatorial appointments requiring confirmation. [NCSL survey responses from 34 states.]	7 states act on all appointments (Virginia). 10 states act on policy and advisory board appointments. 10 states act on policy boards only. 7 states have a mixed process.

Appendix F

Summary of Arguments for and against a Two-Term Governor

From the testimony and discussion among members of the Subcommittee, the following arguments in support and in opposition to allowing a two-term Governor were voiced during the meetings:

Major Arguments in Support of a Two-Term Governor

- Honors a basic democratic right to allow the people to decide constitutional changes
- Adds accountability to the office that neither a one four-year or a single six-year term affords by allowing the voters to decide if they wish to reelect their Governor
- Provides continuity to the office that promotes efficiency in government and enables follow-through on economic development, job creation and other time-sensitive endeavors
- Enhances long-term planning that is needed to resolve numerous challenges that require longer than four years to address
- Establishes parity with other democratic systems in the United States (the President of the United States and all other state governors are allowed to succeed themselves)
- Decreases the power imbalance with the legislature whose members are not limited to fixed terms

Major Counter-Arguments in Opposition of a Two-Term Governor

- Politicizes the office and negatively influences job performance
- Overly discounts other factors essential to economic development, including the impact of a good education to stimulate the economy
- Dismisses a better alternative (the single six-year term) that provides the benefits of continuity in government and long-term fiscal planning without politicizing the office with running a reelection campaign at the same time
- Lacks a compelling reason for the change
- Increases the power imbalance with the part-time legislature whose sessions are shorter than those in other states

Persons Testifying and Offering Comments in Support for the Two-Term Governor

Governor Mark R. Warner
Governor James S. Gilmore, III
Governor Charles Robb
Kate Obenshain Griffin, Chairman of the Republican Party of Virginia
Kerry Donley, Chairman of the Democratic Party of Virginia
Hugh Keogh, President and CEO of the Virginia Chamber of Commerce
Mark Kilduff, Executive Director of the Economic Development Partnership

Persons Testifying or Offering Comments in Support of a Single Six-Year Term

Governor Linwood Holton
Governor Gerald Baliles

Person Testifying or Offering Comments in Support of the One-Term Governor

Senator George Allen

Appendix G

Recommended Legislation to the 2005 Session

HOUSE JOINT RESOLUTION NO. 652/SENATE JOINT RESOLUTION NO. 401

Proposing an amendment to Section 1 of Article V of the Constitution of Virginia, relating to executive power and the Governor's term of office.

RESOLVED by the House of Delegates, the Senate concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 1 of Article V of the Constitution of Virginia as follows:

ARTICLE V EXECUTIVE

Section 1. Executive power; Governor's term of office.

The chief executive power of the Commonwealth shall be vested in a Governor. He shall hold office for a term commencing upon his inauguration on the Saturday after the second Wednesday in January, next succeeding his election, and ending in the fourth year thereafter immediately upon the inauguration of his successor. He shall be ineligible to ~~the same office for the term next succeeding that for which he was elected, and to~~ any other office during his term of service. *No person shall be elected to the office of Governor more than twice, and no person who has held the office of Governor, or acted as Governor for more than two years of a term to which some other person was elected Governor, shall be elected to the office of Governor more than once. The authorization to serve two terms in succession shall be applicable to persons first elected to serve as Governor in 2009 and thereafter.*

HOUSE BILL NO. 2144/SENATE BILL NO. 999

A BILL to amend and reenact §§ [2.2-106](#) and [2.2-107](#) of the Code of Virginia, relating to gubernatorial appointments; confirmation processes.

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-106](#) and [2.2-107](#) of the Code of Virginia are amended and reenacted as follows:

§ [2.2-106](#). Appointment of agency heads.

Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;
2. Director of the State Council of Higher Education for Virginia;
3. Executive Director of the Department of Game and Inland Fisheries;
4. Executive Director of the Jamestown-Yorktown Foundation;
5. Executive Director of the Motor Vehicle Dealer Board;
6. Librarian of Virginia;
7. Administrator of the Commonwealth's Attorneys' Services Council;
8. Executive Director of the Virginia Housing Development Authority;
9. Executive Director of the Board of Accountancy; and ~~the~~
10. Chief Information Officer of the Commonwealth.

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed pursuant to § [2.2-3117](#) to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the

appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § [2.2-107](#), there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of three members of each Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this paragraph pertaining to the confirmation process.

For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ [23-253.7](#), [22.1-346](#), [23-14](#), [23-252](#), and; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ [2.2-215](#) et seq.) of Chapter 2 of this title.

§ [2.2-107](#). Appointment of members of commissions, boards, and other collegial bodies.

Except as provided in the Constitution of Virginia, or where the manner of selection of members of boards and commissions is by election by the General Assembly, or as provided in Title 3.1 or § [54.1-901](#), but notwithstanding any other provision of law to the contrary, the Governor shall appoint all members of boards, commissions, councils or other collegial bodies created by the General Assembly in the executive branch of state government to terms of office as prescribed by law. Each member appointed pursuant to this section shall be subject to confirmation by the General Assembly and shall have the professional qualifications prescribed by law.

As part of the confirmation process for each gubernatorial appointee, the Secretary of the Commonwealth shall provide copies of the resume and statement of economic interests filed pursuant to § [2.2-3117](#) or § [2.2-3118](#), as appropriate, to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For the purposes of this section and § [2.2-106](#), there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of three members of each Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this paragraph pertaining to the confirmation process.

HOUSE BILL NO. 2136

A BILL to amend and reenact § [2.2-3114](#) of the Code of Virginia, relating to Conflict of Interests Act; disclosure filings.

Be it enacted by the General Assembly of Virginia:

1. That § [2.2-3114](#) of the Code of Virginia is amended and reenacted as follows:

§ [2.2-3114](#). Disclosure by state officers and employees.

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and members of the State Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor or, in the case of officers or employees of the legislative branch, by the joint rules committees of the General Assembly, shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in § [2.2-3117](#) and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the State Lottery Board, shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § [2.2-3118](#) and thereafter shall file such form annually on or before January 15. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § [2.2-3118](#).

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to each officer and employee so designated, *including officers appointed by legislative authorities*, not later than November 30 of each year.

Disclosure forms shall be filed and maintained as public records for five years in the Office of the Secretary of the Commonwealth.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § [24.2-502](#).

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § [2.2-3112](#), or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address

of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 2 of § [2.2-3112](#), shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 3 of § [2.2-3112](#), shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.