



COMMONWEALTH of VIRGINIA
Office of the Attorney General

MEMORANDUM

TO: Members, Information Technology Advisory Council

FROM: Susan H. Siegfried, Assistant Attorney General
Technology and Procurement Section

DATE: November 1, 2010

SUBJECT: Information Technology Advisory Council and its 2010 Enabling Legislation

Introduction

I have been asked by staff to the Council to discuss the role of the Information Technology Advisory Council as set forth in the 2010 legislation that created the Council and vested it with certain powers and duties. I have also been asked to address the difference between advisory bodies, such as the Council, and supervisory bodies, such as the ITIB, which is no longer in existence.

Summary

The legislation that created the Council is codified in Va. Code § 2.2-2699.5, and the majority of its powers and duties are set forth in Va. Code § 2.2-2699.6. Other code sections also mention the Council. I have set forth later in this memorandum the relevant code sections for your reference.

Generally, the role of advisory bodies such as the Council is to provide advice and comment. In contrast, supervisory bodies appoint agency directors and ensure that the directors comply with all statutory directives and all directives of the supervisory body. The ITIB was given broad responsibility for information technology matters in the Commonwealth, while the role of the Council is primarily to provide advice to the Secretary of Technology and the CIO and to appoint a health information technology standards advisory committee.

The statute, now superseded, that established the ITIB contained the following language:

The Board shall be responsible for the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.

Former Va. Code Ann. § 2.2-2457 (2008).

The Council's authorizing statute contains similar language, but makes it clear that the Council's role is advisory, rather than supervisory. The statute provides the following:

The ITAC shall be responsible for advising the CIO and the Secretary of Technology on the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.

Va. Code Ann. § 2.2-2699.5 (A)(Supp. 2010).

It is likely that the role of the Council will depend largely on the CIO's and the Secretary of Technology's dialog with the Council regarding the areas and extent of advice that the CIO and the Secretary are looking for from the Council.

Legislation

Set forth below are the relevant code sections and descriptive headings in bold print that I thought would be helpful.

A. Establishment of Council

§ 2.2-2699.5. Information Technology Advisory Council; membership; terms; quorum; compensation; staff.

A. The Information Technology Advisory Council (ITAC) is established as an advisory council, within the meaning of § [2.2-2100](#), in the executive branch of state government. The ITAC shall be responsible for advising the CIO and the Secretary of Technology on the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.

B. The ITAC shall consist of not more than 14 members as follows: (i) one representative from an agency under each of the Governor's Secretaries, as set out in Chapter 2 (§ [2.2-200](#) et seq.), to be appointed by the Governor and serve with voting privileges; (ii) the Secretary of Technology and the CIO who shall serve ex officio with voting privileges; and (iii) at the Governor's discretion, not more than two nonlegislative citizen members to be appointed by the Governor and serve with voting privileges.

Nonlegislative citizen members shall be appointed for terms of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

C. The Secretary of Technology shall serve as chairman of the ITAC. The CIO shall serve as vice-chairman. A majority of the members shall constitute a quorum. The ITAC shall meet at least quarterly each year. The meetings of the ITAC shall be held at the call of the chairman or whenever the majority of the members so request.

D. Nonlegislative citizen members shall receive compensation and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, as provided in §§ [2.2-2813](#) and [2.2-](#)

[2825](#). Funding for the costs of compensation and expenses of the members shall be provided by the Virginia Information Technologies Agency.

E. The disclosure requirements of subsection B of § [2.2-3114](#) of the State and Local Government Conflict of Interests Act shall apply to citizen members of the ITAC.

F. The Virginia Information Technologies Agency shall serve as staff to the ITAC.

B. Powers and Duties of the Council

§ 2.2-2699.6. Powers and duties of the ITAC.

The ITAC shall have the power and duty to:

1. Adopt rules and procedures for the conduct of its business;
2. Advise the CIO on the development of all major information technology projects as defined in § [2.2-2006](#);
3. Advise the CIO on strategies, standards, and priorities for the use of information technology for state agencies in the executive branch of state government;
4. Advise the CIO on developing the two-year plan for information technology projects;
5. Advise the CIO on statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth;
6. Advise the CIO on statewide information technology architecture and related system standards;
7. Advise the CIO on assessing and meeting the Commonwealth's business needs through the application of information technology; and
8. Advise the CIO on the prioritization, development, and implementation of enterprise-wide technology applications; annually review all agency technology applications budgets; and advise the CIO on infrastructure expenditures. For purposes of this section, technology applications include, but are not limited to, hardware, software, maintenance, facilities, contractor services, goods, and services that promote business functionality and facilitate the storage, flow, use or processing of information by agencies of the Commonwealth in the execution of their business activities.

C. Power to appoint members of the Health Information Technology Standards Committee

§ 2.2-2699.7. Health Information Technology Standards Advisory Committee.

The ITAC may appoint an advisory committee of persons with expertise in health care and information technology to advise the ITAC on the utilization of nationally recognized technical and data standards for health information technology systems or software pursuant to subdivision 5 of § [2.2-2699.6](#). The ITAC, in consultation with the Secretary of Health and Human Resources, may appoint up to five persons to serve on the advisory committee. Members appointed to the advisory committee shall serve without

compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § [2.2-2825](#). The CIO, the Secretary of Technology, and the Secretary of Health and Human Resources, or their designees, may also serve on the advisory committee.

D. Other code sections or parts of code sections which refer to the Council

Secretary of Technology responsible to the Governor for the Council

§ 2.2-225. Position established; agencies for which responsible; additional powers.

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies, councils, and boards: **Information Technology Advisory Council**, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the Wireless E-911 Services Board. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary. (emphasis added, and omitting the balance of the code section)

The Division of Purchases and Supply and VITA to submit data standards to the Council for review

§ 2.2-1115.1. Standard vendor accounting information.

A. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall develop and maintain data standards for use by all agencies and institutions for payments and purchases of goods and services pursuant to §§ [2.2-1115](#) and [2.2-2012](#). Such standards shall include at a minimum the vendor number, name, address, and tax identification number; commodity code, order number, invoice number, and receipt information; and other information necessary to appropriately and consistently identify all suppliers of goods, commodities, and other services to the Commonwealth. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall annually review and update these standards to provide the Commonwealth information to monitor all procurement of goods and services and to implement adequate controls to pay only authorized providers of goods and services to the Commonwealth.

B. The Division and the Virginia Information Technologies Agency shall submit these standards to the Information Technology Advisory Council in accordance with § [2.2-2699.6](#) for review as statewide technical and data standards for information technology. (emphasis added)

Council as one of recipients of annual report from CIO

In relevant part, Va. Code § 2.2-2007(A)(9) provides the following:

The CIO shall prepare an annual report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects based upon major information technology projects submitted for approval pursuant to this chapter.

Council to review methodology for identifying savings

§ 2.2-2023. Virginia Technology Infrastructure Fund created; contributions.

A. The Virginia Technology Infrastructure Fund (the Fund) is created in the state treasury. The Fund is to be used to fund major information technology projects or to pay private partners as authorized in subsection B of § [2.2-2007](#).

B. The Fund shall consist of: (i) the transfer of general and nongeneral fund appropriations from state agencies which represent savings that accrue from reductions in the cost of information technology and communication services, (ii) the transfer of general and nongeneral fund appropriations from state agencies which represent savings from the implementation of information technology enterprise projects, (iii) funds identified pursuant to subsection B of § [2.2-2007](#), (iv) such general and nongeneral fund fees or surcharges as may be assessed to agencies for enterprise technology projects, (v) gifts, grants, or donations from public or private sources, and (vi) such other funds as may be appropriated by the General Assembly. **Savings shall be as identified by the CIO through a methodology reviewed by the ITAC and approved by the Secretary of Finance.** The Auditor of Public Accounts shall certify the amount of any savings identified by the CIO. For public institutions of higher education, however, savings shall consist only of that portion of total savings that represent general funds. The State Comptroller is authorized to transfer cash consistent with appropriation transfers. Appropriated funds from federal sources are exempted from transfer. Except for funds to pay private partners as authorized in subsection B of § [2.2-2007](#), moneys in the Fund shall only be expended as provided by the appropriation act. (emphasis added, omitting balance of the code section)

Description of executive branch boards, commissions and councils

§ 2.2-2100. Classification of executive branch boards, commissions and councils.

A. Effective July 1, 1986, every collegial body established by law or executive order within the executive branch of state government shall be classified according to its level of authority as follows:

"Advisory" - A board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice.

"Policy" - A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to, rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests.

"Supervisory" - A board, commission, or council shall be classified as supervisory if it is responsible for agency operations including approval of requests for appropriations. A supervisory board, commission, or council appoints the agency director and ensures that the agency director complies with all board and statutory directives. The agency director is subordinate to the board. Notwithstanding the foregoing, the Board of Education shall be considered a supervisory board.

B. Each executive branch board, commission or council shall be assigned only one of the above classifications. The classification for boards and councils that are created by law shall be designated by the enabling legislation. The classification for commissions that are created by executive order shall be designated by the executive order.