

1998

Annual Survey of Virginia Law: Technology and the Law

Diane E. Horvath

John S. Jung
University of Richmond

Follow this and additional works at: <http://scholarship.richmond.edu/lawreview>



Part of the [Internet Law Commons](#)

Recommended Citation

Diane E. Horvath & John S. Jung, *Annual Survey of Virginia Law: Technology and the Law*, 32 U. Rich. L. Rev. 1383 (1998).
Available at: <http://scholarship.richmond.edu/lawreview/vol32/iss4/13>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

TECHNOLOGY AND THE LAW

*Diane E. Horvath**
*John S. Jung***

I. INTRODUCTION

During its 1998 Session, the Virginia General Assembly passed forty-three bills related to technology that were signed into law. Of these, six bills¹ were proposed by the Joint Commission on Technology and Science ("JCOTS").² This article summarizes several enacted bills and provides reference numbers for each bill discussed in the 1998 Acts of Assembly ("1998 Acts"). Given the breadth, depth, and speed of the technological revolution, the purpose of this article is to discuss succinctly the most significant 1998 legislative actions related to technology in areas of substantive law, practice, and procedure.

* Director, Joint Commission on Technology and Science. Staff Counsel, Committee on Science and Technology, Virginia House of Delegates. B.A., 1983, Franklin College of Indiana; J.D., 1986, Washington College of Law, The American University.

** Research Assistant, Joint Commission on Technology and Science. Candidate, J.D., 1999, University of Richmond School of Law; B.A., 1996, University of California, Riverside.

1. See H.B. 275, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of May 19, 1998, ch. 892, 1998 Va. Acts 2507); H.B. 276, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 7, 1998, ch. 250, 1998 Va. Acts 375); H.B. 277, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 820, 1998 Va. Acts 2009); H.B. 278, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 14, 1998, ch. 481, 1998 Va. Acts 1190); S.B. 152, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 636, 1998 Va. Acts 1485); S.B. 153, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 13, 1998, ch. 127, 1998 Va. Acts 218).

2. The 1997 Virginia General Assembly created JCOTS "as a permanent legislative agency of the Commonwealth" to "generally study all aspects of technology and science and endeavor to stimulate, encourage, promote, and assist in the development of technology and science in the Commonwealth and sound public policies related thereto." VA. CODE ANN. § 30-85 (Repl. Vol. 1997). JCOTS consists of nine legislators, five Delegates and four Senators from the Virginia General Assembly. For more information, see *id.* §§ 30-85 to -88 (Repl. Vol. 1997) or *Joint Commission on Technology and Science* (visited Oct. 5, 1998) <<http://legis.state.va.us/jcots/jcots.htm>>.

II. TRADEMARKS

House Bill 264³ provides a state system of trademark registration.⁴ The bill replaces the current Virginia laws on trademarks, service marks, and case marks with the revised Model State Trademark Bill.⁵ The Model State Trademark, which was revised in 1992 by the International Trademark Association,⁶ has been partially or entirely adopted by the following twenty-one states: Alaska, Arizona, Arkansas, Connecticut, Idaho, Illinois, Iowa, Kentucky, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, and Wyoming.⁷

House Bill 264 provides: (i) the requirements for determining registrability of trademarks;⁸ (ii) the information required on an application for registration;⁹ (iii) a provision on the filing of applications;¹⁰ (iv) a provision on how the certificate of registration is issued;¹¹ (v) information regarding the renewal of the registration of a trademark;¹² (vi) the requirements for assigning a trademark or changing the name of the person for whom the application was filed;¹³ (vii) a provision on recordkeeping;¹⁴ and (vi) a provision on canceling a registration.¹⁵ All of

3. H.B. 264, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 819, 1998 Va. Acts 2004).

4. See VA. CODE ANN. §§ 59.1-92.1 to -92.21 (Repl. Vol. 1998).

5. *H.B. 264 Trademarks* (visited Nov. 1, 1998) <<http://leg1.state.va.us/cgi-bin/legp-504.exe?ses=981&typ=bil&val=hb264>>.

6. The International Trademark Association was formerly known as the United States Trademark Association.

7. See International Trademark Association, *INTA Revised Model State Trademark Bill: A Call to Action* (visited July 6, 1998) <<http://www.inta.org/tmbill.htm>>. For the 1999 Legislative Session, the International Trademark Association intends to lobby for the adoption of the revised Model State Trademark Bill in California, Colorado, Georgia, Hawaii, Indiana, Kansas, North Dakota, Oklahoma, South Dakota, and Wisconsin. See *id.*

8. See VA. CODE ANN. § 59.1-92.3 (Repl. Vol. 1998).

9. See *id.* § 59.1-92.4 (Repl. Vol. 1998).

10. See *id.* § 59.1-92.5 (Repl. Vol. 1998).

11. See *id.* § 59.1-92.6 (Repl. Vol. 1998).

12. See *id.* § 59.1-92.7 (Repl. Vol. 1998).

13. See *id.* § 59.1-92.8 (Repl. Vol. 1998).

14. See *id.* § 59.1-92.9 (Repl. Vol. 1998).

15. See *id.* § 59.1-92.10 (Repl. Vol. 1998).

these functions are performed under the supervision and direction of the State Corporation Commission ("SCC").¹⁶

The bill requires the SCC to establish, by regulation, a classification of goods and services¹⁷ and to provide procedures and remedies for handling fraudulent registration, trademark infringement, and business reputation injury.¹⁸ The bill also retains the Class 2 misdemeanor and Class 6 felony penalties for first and subsequent violations of trademark infringement.¹⁹ The bill prohibits the infringement of trademarks, tradenames, emblems, and other symbols associated with the United States and International Olympic Committees.²⁰

III. CIVIL PRACTICE AND PROCEDURE

A. *Virginia Tort Claims Act: Year 2000 Remediation Errors*

House Bill 277²¹ provides that civil actions may not be brought against the Commonwealth of Virginia based upon

the failure of a computer, software program, database, network, information system, firmware or any other device, whether operated by or on behalf of the Commonwealth of Virginia or one of its agencies, to interpret, produce, calculate, generate, or account for a date which is compatible with the "Year 2000" date change.²²

The "Year 2000" problem results from using a two-digit year format rather than a four-digit year format. For example, if an information system is not Year 2000 compliant, then when the year 2000 actually arrives, the system may think the current year is the year 0000. In such a system, a seventy-year-old man, who was born in 1930 and who is in need of health care benefits, may be processed as someone who is not yet born.

16. *See id.* §§ 59.1-92.1 to -92.21 (Repl. Vol. 1998).

17. *See id.* § 59.1-92.11 (Repl. Vol. 1998).

18. *See id.* §§ 59.1-92.12 to -92.20 (Repl. Vol. 1998).

19. *See id.* § 59.1-92.13(B) (Repl. Vol. 1998).

20. *See id.* § 59.1-21 (Repl. Vol. 1998).

21. H.B. 277, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 820, 1998 Va. Acts 2009).

22. VA. CODE ANN. § 8.01-195.3 (Cum. Supp. 1998).

Another example of the Year 2000 problem may occur when, in the current year, a non-Year 2000 compliant system reads a credit card that expires in the year 2002 as having already expired.²³

B. *Virginia Assistive Technology Device Warranties Act*

House Bill 941²⁴ and Senate Bill 402²⁵ create a "lemon law" for assistive technology devices.²⁶ Assistive technology devices are mechanical devices and instruments used by handicapped individuals to communicate, see, hear, or maneuver. Some examples of assistive technology devices are manual wheelchairs, motorized scooters, hearing aids and communication devices for the deaf, talking software, and Braille printers.²⁷

In addition to any express warranties, the Act will require that manufacturers of assistive technology devices impliedly warrant, for a period of at least one year following delivery to the consumers, that their products are free of any defects substantially impairing their value and that any defects will be repaired at no additional charge.²⁸ During this one-year implied warranty period, if the devices are subject to repair for the same or related problem at least three times or if the devices are not practically usable for a cumulative total of thirty days with no comparable loaner available,²⁹ the devices must be replaced within thirty days.³⁰ If the device is not replaced, the manufacturer must refund the purchaser's full purchase price and reasonable collateral costs within fourteen days.³¹

23. A more complete analysis of the Year 2000 problem was conducted by one of JCOTS' advisory committees. Advisory committees are composed of "persons with expertise in the matters under consideration by the Commission". *Id.* § 30-88 (Repl. Vol. 1997). For the advisory committee's report, see REPORT OF THE JOINT COMMISSION ON TECHNOLOGY AND SCIENCE, H. Doc. No. 89, at 12-17 (1999).

24. H.B. 941, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 3, 1998, ch. 242, 1998 Va. Acts 365).

25. S.B. 402, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 13, 1998, ch. 67, 1998 Va. Acts 139).

26. *See* VA. CODE ANN. §§ 59.1-470 to -474 (Repl. Vol. 1998).

27. *See id.* § 59.1-470 (Repl. Vol. 1998).

28. *See id.* § 59.1-471(A) (Repl. Vol. 1998).

29. *See id.* § 59.1-470 (Repl. Vol. 1998) (defining "reasonable attempt to repair").

30. *See id.* § 59.1-471(B)(2) (Repl. Vol. 1998).

31. *See id.* § 59.1-471(B)(1) (Repl. Vol. 1998).

Furthermore, the manufacturer cannot sell or lease any device previously returned unless the reason for its return is disclosed to prospective customers or lessees.³²

Consumers who purchase defective assistive technology devices are not limited to the remedies provided by the bills; they also may seek civil relief.³³ In addition, consumers have the option of submitting disputes arising under this Act to the Dispute Resolution Unit of the Office of Consumer Affairs in the Division of Consumer Protection of the Virginia Department of Agriculture and Consumer Services.³⁴

IV. CRIMINAL LAW

A. *Computer Trespass*

House Bill 275³⁵ expands the definition of computer trespass to include removing, halting or otherwise disabling "any computer data, computer programs, or computer software from a computer or computer network."³⁶ The bill also reduces the penalty for computer trespass from a Class 1 to a Class 3 misdemeanor.³⁷

If a person commits a computer trespass recklessly and causes \$2500 or more in damages, it is punishable as a Class 1 misdemeanor.³⁸ If computer trespass is committed maliciously and causes \$2500 or more in damage, it is punishable as a Class 6 felony.³⁹ House Bill 275 was introduced to give "state prosecutors another tool to prosecute computer harms."⁴⁰ Thus, House Bill 275 expressly does not "interfere with or prohibit terms or conditions in a contract or license related to comput-

32. *See id.* § 59.1-472 (Repl. Vol. 1998).

33. *See id.* § 59.1-473 (Repl. Vol. 1998).

34. *See id.*

35. H.B. 275, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of May 19, 1998, ch. 892, 1998 Va. Acts 2507).

36. VA. CODE ANN. § 18.2-152.4(A)(1) (Cum. Supp. 1998).

37. *See id.* § 18.2-152.4(A)(6) (Cum. Supp. 1998).

38. *See id.* § 18.2-152.4(A) (Cum. Supp. 1998).

39. *See id.*

40. REPORT OF THE JOINT COMMISSION ON TECHNOLOGY AND SCIENCE, H. Doc. No. 89, at 22 (1999).

ers, computer data, computer networks, computer operations, computer programs, computer services, or computer software."⁴¹

B. *Electronic Threats*

House Bill 651⁴² and Senate Bill 426⁴³ state that threats of death or bodily injury made by any form of communication, which produce a written message, are punishable as a Class 6 felony.⁴⁴ The former law regarding threats only made writing, composing, or sending "any letter or inscribed communication," which contains a threat to kill or do bodily injury to a person, a Class 6 felony.⁴⁵ House Bill 651 and Senate Bill 426 broaden the communication covered by the law to include threats made via "electronically transmitted communication producing a visual or electronic message."⁴⁶

C. *Offenses Involving Telecommunication Devices*

Senate Bill 199⁴⁷ makes possession or sale of an unlawful telecommunication device a Class 6 felony.⁴⁸ An unlawful telecommunication device, which includes a tumbler phone or a clone phone, is a telecommunication device that has been "altered, modified, programmed, or reprogrammed" to facilitate "a telecommunication service without the consent of the telecommunication service provider."⁴⁹ Senate Bill 199 provides that it is a felony to possess an unlawful telecommunication device or any "equipment or materials used to manufacture an unlawful telecommunication device" with the intent to manufac-

41. VA. CODE ANN. § 18.2-152.4(B) (Cum. Supp. 1998).

42. H.B. 651, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 687, 1998 Va. Acts 1588).

43. S.B. 426, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 788, 1998 Va. Acts 1900).

44. See VA. CODE ANN. § 18.2-60 (Cum. Supp. 1998).

45. *Id.* § 18.2-60(A) (Repl. Vol. 1996).

46. *Id.* § 18.2-60 (Cum. Supp. 1998).

47. S.B. 199, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 15, 1998, ch. 518, 1998 Va. Acts 1251).

48. See VA. CODE ANN. §§ 18.2-190.1 to -190.4 (Cum. Supp. 1998).

49. *Id.* § 18.2-190.1 (Repl. Vol. 1996 & Cum. Supp. 1998).

ture such a device.⁵⁰ This bill also increases the penalty for possessing or selling unlawful telecommunication devices from a Class 1 misdemeanor to a Class 6 felony.⁵¹

V. EDUCATION AND WORKFORCE TRAINING

A. *Excellence in Public Schools*

The 1997 General Assembly requested "the State Council of Higher Education for Virginia to study the demand for computer scientists, engineers, and other technologically skilled workers in Virginia industry."⁵² In reporting a shortage of technology workers in Virginia, the State Council predicted that "Virginia will need at least 22,000 new technology workers each year over the next five-year period."⁵³ Accordingly, legislation was enacted to promote technological education in the Commonwealth.

House Bill 431⁵⁴ amends various education statutes to increase excellence in Virginia's public schools.⁵⁵ Among other changes, the General Assembly revised the law governing educational opportunity programs to require the Board of Education to "strive to incorporate technological studies within the teaching of all disciplines."⁵⁶

50. *Id.* § 18.2-190.2 (Cum. Supp. 1998).

51. *See id.* §§ 18.2-190.2, -190.3 (Cum. Supp. 1998).

52. S.J. Res. 218, Va. Gen. Assembly (Reg. Sess. 1997); H.J. Res. 659, Va. Gen. Assembly (Reg. Sess. 1997).

53. REPORT OF THE STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA: STUDY OF THE DEMAND FOR COMPUTER SCIENTISTS, ENGINEERS, AND OTHER TECHNOLOGICALLY SKILLED WORKERS IN VIRGINIA, S. DOC. No. 22, at 4 (1998).

54. H.B. 431, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of May 20, 1998, ch. 902, 1998 Va. Acts 2525).

55. *See* VA. CODE ANN. §§ 22.1-199.1, -199.2, -209.1:4, -253.13:1, -253.13:3, -254.01, -278 (Cum. Supp. 1998).

56. *Id.* § 22.1-199.1(B) (Cum. Supp. 1998).

B. Training and Professional Development of Teachers, Administrators, and Superintendents

House Bill 432⁵⁷ establishes several initiatives supporting professional training and development among public school personnel.⁵⁸ Among other changes, the Board of Education is required to establish guidelines for training programs to support the "Standards of Learning," including "training in . . . English, mathematics, science, and social studies as well as technological studies designed to assist teachers in public elementary and secondary schools."⁵⁹

C. Workforce Training at Community Colleges

House Bill 849⁶⁰ and Senate Bill 384⁶¹ modify the definition of "comprehensive community college" to include the provision of "[n]oncredit training and retraining courses and programs of varying lengths to meet the needs of [Virginia's] business[es] and industr[ies]."⁶² The bills designate the Virginia Community College System as the state agency with "primary responsibility for coordinating workforce training at the postsecondary to the associate degree level," excluding vocational and technical education provided through the public schools.⁶³

57. H.B. 432, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 826, 1998 Va. Acts 2014).

58. See VA. CODE ANN. §§ 22.1-253.13:5, -298 (Cum. Supp. 1998).

59. Act of Apr. 22, 1998, ch. 826, cl. 2, 1998 Va. Acts 2014 (codified as VA. CODE ANN. § 22.1-253.13:5 (Cum. Supp. 1998)).

60. H.B. 849, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 13, 1998, ch. 111, 1998 Va. Acts 190).

61. S.B. 384, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 12, 1998, ch. 396, 1998 Va. Acts 533).

62. VA. CODE ANN. § 23-214 (Cum. Supp. 1998).

63. *Id.* § 23-215 (Cum. Supp. 1998).

D. *Standards of Quality*

House Bill 1200⁶⁴ revises Standard 1⁶⁵ of the six Standards of Quality⁶⁶ to direct school divisions to incorporate within their programs of instruction an emphasis on technological proficiency for kindergarten through twelfth grade.⁶⁷ The Constitution of Virginia requires the Board of Education and the General Assembly to set standards of quality for the Commonwealth's school divisions.⁶⁸

VI. ELECTRONIC FILINGS AND PUBLIC INFORMATION

A. *Election Information on the Internet*

Beginning with the November 1998 general election, House Bill 580⁶⁹ requires the Virginia State Board of Elections to "furnish lists of candidates for all elections in the Commonwealth, and information on proposed constitutional amendments and statewide referenda issues on the Internet."⁷⁰ The State Board currently provides some election information via the Internet.⁷¹

B. *Campaign Finance Disclosure Reports*

Campaign finance information⁷² is also the subject of Internet access legislation. Beginning January 1, 1999, House Bill 588⁷³ requires candidates for governor, lieutenant gover-

64. H.B. 1200, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 13, 1998, ch. 103, 1998 Va. Acts 175).

65. See VA. CODE ANN. § 22.1-253.13:1 (Cum. Supp. 1998).

66. See *id.* §§ 22.1-253.13:1 to -253.13:6 (Cum. Supp. 1998).

67. See *id.* § 22.1-253.13:1 (Cum. Supp. 1998).

68. See VA. CONST. art. VIII, § 2.

69. H.B. 580, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 14, 1998, ch. 478, 1998 Va. Acts 1188).

70. VA. CODE ANN. § 24.2-105.1 (Cum. Supp. 1998).

71. The Uniform Resource Locator ("URL"), also known as the Internet address, for the Virginia State Board of Elections is <http://www.sbe.state.va.us/>.

72. See VA. CODE ANN. § 24.2-914.1 (Cum. Supp. 1998).

73. H.B. 588, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 12, 1998, ch. 416, 1998 Va. Acts 569).

nor, and attorney general to file information on campaign contributions and expenditures "by computer or electronic means in accordance with the standards approved by the [Virginia State Board of Elections]."⁷⁴ Candidates for the General Assembly are not required to file electronically but may do so if they wish.⁷⁵ Once the reports are filed, beginning January 1, 2001, the Virginia State Board of Elections must make the campaign finance filings and reports available to the public through the Internet, whether or not they are filed electronically.⁷⁶

C. Persons Entitled to Vote Absentee and Absentee Ballot Applications

Absentee voting⁷⁷ is the subject of House Bill 591.⁷⁸ House Bill 591 permits a registered voter who cannot go to the polls on election day due to a religious obligation to vote by absentee ballot.⁷⁹ The bill also requires the Virginia State Board of Elections to implement a system that enables voters to request and receive absentee ballot applications through the Internet, beginning with the November 1999 election.⁸⁰

D. Commissioners of Revenue and Treasurers

House Bill 790⁸¹ permits commissioners of revenue and treasurers to provide remote access, by means of the Internet, to public, nonconfidential records maintained by their offices.⁸²

74. VA. CODE ANN. § 24.2-914.1(D) (Cum. Supp. 1998).

75. *See id.*

76. *See id.*

77. *See id.* §§ 24.2-700 to -701 (Cum. Supp. 1998).

78. H.B. 591, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 7, 1998, ch. 254, 1998 Va. Acts 377).

79. *See VA. CODE ANN.* § 24.2-700(8) (Cum. Supp. 1998).

80. *See id.* § 24.2-701(A) (Cum. Supp. 1998).

81. H.B. 790, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 2, 1998, ch. 235, 1998 Va. Acts 361).

82. *See VA. CODE ANN.* §§ 58.1-3122.2, -3172 (Cum. Supp. 1998).

1. Electronic Access to Certain Court Records

House Bill 792⁸³ permits the circuit court clerk to charge a fee for electronic access to nonconfidential court records.⁸⁴ Prior law required the clerks to charge a fee for remote access to such nonconfidential records. House Bill 792 changes "remote access" to "electronic access" and specifies that "electronic access" includes the Internet.⁸⁵ If a clerk charges a fee for electronic access, the fee is to be "established by the clerk or by the agency of the county, city or town providing computer support" and is limited to an amount that covers operational costs, such as maintenance, support, and enhancements of the system.⁸⁶ If a fee is imposed, it is to be charged to each user and paid into a special local nonreverting fund to be used for operating the system.⁸⁷

2. Cover Sheets on Deeds or Other Instruments

House Bill 793⁸⁸ permits the circuit court clerk of Wise County and the City of Norton to request that a cover sheet be filled out on all real estate documents. This cover sheet provides pertinent information to the clerk for indexing purposes.⁸⁹

3. Electronic Filing System

House Bill 794⁹⁰ permits any circuit court clerk to establish a system for electronic filing of documents.⁹¹ Prior law defined electronic filing as filing of electronic data stored on a physical

83. H.B. 792, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 650, 1998 Va. Acts 1504).

84. *See* VA. CODE ANN. § 14.1-118.1 (Cum. Supp. 1998).

85. *See id.*

86. *Id.*

87. *See id.*

88. H.B. 793, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 11, 1998, ch. 378, cl. 1, 1998 Va. Acts 514).

89. *See id.*

90. H.B. 794, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 651, 1998 Va. Acts 1504).

91. *See* VA. CODE ANN. §§ 17-83.1:1 to -83.1:4 (Cum. Supp. 1998).

electronic storage device such as "microfilm, magnetic tape, optical disks, or CD ROM."⁹² The bill expands electronic filing to include the transmission of electronic data over the Internet.⁹³

If a clerk decides to implement an electronic filing system, he must submit an implementation plan to the Council on Information Management or use a system authorized by the Supreme Court of Virginia.⁹⁴ The supreme court may permit electronic filing of any papers in civil or criminal cases.⁹⁵ These provisions of the Virginia Code expire July 1, 2004.⁹⁶

4. Task Force on Land Records Management Continued

For the purpose of implementing strategic and tactical plans consistent with the Final Report of the Land Records Management Task Force (the "Task Force"),⁹⁷ House Bill 1141⁹⁸ continues operation of the Task Force through June 30, 1999.⁹⁹ The 1997 General Assembly created the Task Force to "develop a plan to modernize land records in individual circuit court clerk's offices and provide remote access to land records throughout the Commonwealth."¹⁰⁰

The plan identifies the following four goals: (i) "[u]niform standardized indexing and automation procedures that support statewide electronic remote access to those land record indexes maintained by Clerks of Court";¹⁰¹ (ii) "[e]nhanced electronic remote access to land records maintained by Circuit Court

92. *Id.* § 17-83.1:1 (Repl. Vol. 1996).

93. *See id.* § 17-83.1:1 (Cum. Supp. 1998).

94. *See id.* § 17-83.1:2 (Cum. Supp. 1998).

95. *See id.*

96. *See Act of Apr. 16, 1998, ch. 651, cl. 2, 1998 Va. Acts 1504.*

97. *See LAND RECORDS MANAGEMENT TASK FORCE, FINAL REPORT: MODERNIZING LAND RECORDS IN VIRGINIA* (Jan. 1, 1998) [hereinafter *LAND RECORDS MANAGEMENT TASK FORCE*]. The Final Report is also available at the Task Force's web site. *See LAND RECORDS MANAGEMENT TASK FORCE* (last modified Jan. 7, 1998) <<http://www.cim.state.va.us/LandRecords/Index.htm>>.

98. H.B. 1141, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 8, 1998, ch. 14, 1998 Va. Acts 13).

99. *See Act of Apr. 16, 1998, ch. 651, 1998 Va. Acts 1504.*

100. Act of Mar. 21, 1997, ch. 675, cl. 3, 1997 Va. Acts 1618.

101. *LAND RECORDS MANAGEMENT TASK FORCE* at 4.

Clerks and the departments of local government”;¹⁰² (iii) “[f]orge consensus between the Circuit Court Clerks and the users of their land records information . . . to ensure automation efforts in the Circuit Court Clerk offices are mutually beneficial”;¹⁰³ and (iv) “[u]niform content and format of land records that promotes their usefulness in integrated local government information systems, eliminates duplication of information, and promotes data sharing and electronic access.”¹⁰⁴ Some circuit courts in Virginia, such as the Wise County Circuit Court, currently allow some title searching over the Internet.¹⁰⁵

E. *Electronic Filing of Information*

Senate Bill 152¹⁰⁶ permits state agencies, which are responsible to Virginia’s executive secretariats, to “(i) accept the electronic filing of any information required or permitted to be filed with such agency and (ii) prescribe the methods of executing, recording, reproducing, and certifying” such filing.¹⁰⁷ The bill, which excludes the Virginia Public Procurement Act,¹⁰⁸ is modeled after a Virginia Code section which authorizes the State Corporation Commission to accept electronic filings under the Virginia Stock Corporation Act.¹⁰⁹

102. *Id.* at 5.

103. *Id.*

104. *Id.* at 6.

105. See Paul Hayes, *Wise County Circuit Court-Wise County, Virginia* (last modified Sept. 3, 1998) <<http://www.courtbar.org/>>.

106. S.B. 152, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 636, Va. Acts 1485).

107. VA. CODE ANN. § 2.1-7.4 (Cum. Supp. 1998).

108. See *id.*; see also *id.* §§ 11-35 to -80 (Repl. Vol. 1993 & Cum. Supp. 1998) (codifying Virginia Public Procurement Act).

109. See *id.* § 13.1-604 (Cum. Supp. 1998).

F. *Electronic Signatures*

Senate Bill 153¹¹⁰ updates existing Virginia law¹¹¹ on electronic signatures.¹¹² The bill terminates the authority of the Council on Information Management to promulgate regulations to implement state agencies' and localities' use of digital signatures in favor of setting out criteria in the bill.¹¹³ The bill also changes the term "digital signature" to "electronic signature," which encompasses signatures created by any electronic method.¹¹⁴ Additionally, the bill defines "signing" as affixing "an electronic signature to a record with the present intention to be bound by such signature."¹¹⁵ Further, the bill sets out the criteria that a trier of fact must assess to determine the evidentiary weight to be given a particular electronic signature.¹¹⁶ Finally, the bill requires the state agencies and localities to follow the same criteria that a trier of fact must assess.¹¹⁷

110. S.B. 153, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 13, 1998, ch. 127, 1998 Va. Acts 218).

111. *See, e.g.*, VA. CODE ANN. § 2.1-563.31 (Cum. Supp. 1998) (addressing in part information technology resources for the Council on Information Management); *id.* §§ 59.1-467 to -469 (Repl. Vol. 1998) (addressing electronic signatures in trade and commerce).

112. For a more complete analysis of electronic signatures, see REPORT OF THE JOINT COMMISSION ON TECHNOLOGY AND SCIENCE, H. Doc. No. 89, at 18-20 (1999) and FINAL REPORT OF THE JOINT SUBCOMMITTEE STUDYING SCIENCE AND TECHNOLOGY, H. Doc. No. 81, at 29-31 (1997). Both reports are available on JCOT's web site. *See Joint Commission on Technology & Science* (visited Sept. 3, 1998) <<http://legis.state.va.-us/jcots/jcots.htm>>.

113. *See* Act of Mar. 13, 1998, ch. 127, cl. 1, 1998 Va. Acts 218 (codified at VA. CODE ANN. § 2.1-563.31 (Cum. Supp. 1998)).

114. *See* VA. CODE ANN. §§ 59.1-467 to -469 (Repl. Vol. 1998).

115. *Id.* § 59.1-468 (Repl. Vol. 1998).

116. *See id.* The criteria are whether the electronic signature is:

- (i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and (v) created by a method appropriately reliable for the purpose for which the electronic signature was used.

Id.

117. *See id.* § 59.1-469 (Repl. Vol. 1998).

VII. TAX

A. *Exemption From Retail Sales and Use Tax for Certain Electronic Communication Services*

House Bill 278¹¹⁸ codifies two recent decisions by the Virginia Tax Commissioner.¹¹⁹ The Commissioner ruled that sales of software via the Internet are exempt from retail sales and use tax¹²⁰ and that charges for Internet access services and other electronic communication services also are exempt from retail sales and use tax.¹²¹ The decisions were based on state tax law and regulations of the Virginia Department of Taxation, which generally provide that charges for services are exempt from the retail sales and use tax unless the services are rendered in connection with the sale of tangible personal property.¹²²

B. *License and Franchise Taxes*

House Bill 553¹²³ revises the definition of gross receipts for purposes of the minimum tax and the special tax by deleting the deduction for the first \$500,000 of billing and collecting revenue.¹²⁴ A deduction will be made from the company's taxable gross receipts for revenues received from the following: (i) unbundled network facilities; (ii) completion, origination, or interconnection of telephone calls with the taxpayer's network; (iii) transport of phone calls over the taxpayer's network; and (iv) the taxpayer's phone services for resale.¹²⁵ The bill clarifies that the State Corporation Commission will eventually

118. H.B. 278, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 14, 1998, ch. 481, 1998 Va. Acts 1190).

119. See VA. CODE ANN. § 58.1-609.5 (Cum. Supp. 1998).

120. See VIRGINIA DEPT TAXATION, PUB. DOC. 97-405 (Oct. 3, 1997).

121. See VIRGINIA DEPT TAXATION, PUB. DOC. 97-425 (Oct. 21, 1997).

122. See, e.g., VA. CODE ANN. § 58.1-604 (Repl. Vol. 1997); VIRGINIA DEPT TAXATION, PUB. DOC. 97-405 (Oct. 3, 1997); VIRGINIA DEPT TAXATION, PUB. DOC. 97-425 (Oct. 2, 1997).

123. H.B. 553, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of May 20, 1998, ch. 897, 1998 Va. Acts 2513).

124. See VA. CODE ANN. § 58.1-400.1 (Cum. Supp. 1998).

125. See *id.* § 58.1-2662.1 (Cum. Supp. 1998).

assess voice services such as cellular and broadband.¹²⁶ The bill becomes effective for tax years beginning on or after January 1, 1999.¹²⁷

VIII. TELECOMMUNICATION

A. *Organization of Local Government*

House Bill 335¹²⁸ clarifies Virginia Code section 15.2-1500, which gives localities authority to organize their departments by expanding such authority to offices, boards, commissions, agencies, and their organizational structure.¹²⁹ The bill also provides that, notwithstanding any other provision of law, general or special, no locality shall establish any governmental entity which has authority to offer telecommunications equipment, infrastructure or services.¹³⁰ Exceptions are provided for certain intragovernmental uses and for the Town of Abingdon, which is described by proximity to Interstate 81.¹³¹ Localities are permitted to sell their existing telecommunications infrastructure and equipment.¹³² The bill expires July 1, 2000.¹³³

B. *Local Planning Commissions*

House Bill 568¹³⁴ requires local planning commissions' determinations concerning proposed telecommunications facilities to comply with the requirements of the Federal Telecommunications Act of 1996.¹³⁵ The bill further stipulates that a telecommunications facility application shall be deemed approved if a commission fails to act on it within ninety days of its submission, unless the governing body or the applicant has authorized

126. See *id.* § 58.1-400.1 (Cum. Supp. 1998).

127. See Act of May 20, 1998, ch. 897, cl. 2, 1998 Va. Acts 2513.

128. H.B. 335, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of May 22, 1998, ch. 906, 1998 Va. Acts 2540).

129. See VA. CODE ANN. § 15.2-1500 (Cum. Supp. 1998).

130. See *id.*

131. See *id.*

132. See *id.*

133. See Act of May 22, 1998, ch. 906, cl. 2, 1998 Va. Acts 2540.

134. H.B. 568, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 683, 1998 Va. Acts 1575).

135. See VA. CODE ANN. § 15.2-2232(F) (Cum. Supp. 1998).

an extension of time.¹³⁶ A governing body may not grant an extension that is longer than sixty days; furthermore, if the commission has not acted on the application by the end of the extension, the application is deemed approved.¹³⁷

C. Public Rights-of-Way—Mileage-Based Fees—Costs of Relocating Telecommunications Facilities in Public Rights-of-Way

House Bill 957¹³⁸ and Senate Bill 577¹³⁹ establish the Public Rights-of-Way Use Fee that is collected from certificated providers of local exchange telecommunications service for the use of public rights-of-way.¹⁴⁰ The fee “replace[s] any and all fees of general application” for the use of public rights-of-way by localities whose public streets and roads are maintained by the Virginia Department of Transportation (“VDOT”).¹⁴¹

Localities that maintain their own roads may impose the fee by ordinance.¹⁴² Localities imposing the fee and the Commonwealth Transportation Board will collect, in an equal amount each month, an annual amount calculated by charging an established amount for the number of miles of public highway and the number of feet of new installations in existing public rights-of-way.¹⁴³ The fee is determined by dividing the sum of the total amount of highway mileage and new installations by the total number of access lines in participating localities.¹⁴⁴ The bill also establishes a schedule for the reimbursement to telecommunications service providers for expenses related to the relocation of existing facilities when the expense is incurred at the direction of the locality or VDOT.¹⁴⁵ The bill is not applicable to Henrico County.¹⁴⁶

136. *See id.*

137. *See id.*

138. H.B. 957, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 758, 1998 Va. Acts 1823).

139. S.B. 577, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 742, 1998 Va. Acts 1794).

140. *See* VA. CODE ANN. §§ 56-458, -462, -468.1 to -468.2 (Cum. Supp. 1998).

141. *Id.* § 56-468.1(B) (Cum. Supp. 1998).

142. *See id.*

143. *See id.* § 56-468.1(D) (Cum. Supp. 1998).

144. *See id.*

145. *See id.* § 56-468.2 (Cum. Supp. 1998).

146. *See* Act of Apr. 16, 1998, ch. 758, cl. 2, 1998 Va. Acts 1823.

D. *Local Governments*

House Bill 1079¹⁴⁷ and Senate Bill 578¹⁴⁸ permit localities to regulate open video systems to the maximum extent authorized by federal law.¹⁴⁹ In addition, House Bill 1237¹⁵⁰ provides that local laws relating to buildings, monuments, and lands control the acquisition of telecommunications facilities for the operation of wireless enhanced public safety telephone service systems.¹⁵¹

E. *Wireless Enhanced Public Safety Telephone Service Act*

House Bill 1331¹⁵² requires Virginia's cellular telephone and personal communication system providers to collect a monthly billing surcharge of seventy-five cents upon each commercial mobile radio service number¹⁵³ assigned by a provider to their customers.¹⁵⁴ The surcharges, collected for the purpose of establishing and maintaining a federally mandated emergency 911 ("E-911") system, are paid into a wireless E-911 fund. The funds are then distributed to counties and municipalities that operate public safety answering points and to service providers to defray capital costs and operating expenses incurred in providing service to wireless E-911 calls.¹⁵⁵ The bill also establishes an advisory board to assist in the administration of the wireless E-911 fund and to oversee the distribution of

147. H.B. 1079, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 652, 1998 Va. Acts 1505).

148. S.B. 578, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 643, 1998 Va. Acts 1489).

149. See VA. CODE ANN. § 15.2-2108.1 (Cum. Supp. 1998).

150. H.B. 1237, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 696, 1998 Va. Acts 1614).

151. See VA. CODE ANN. § 15.2-1800 (Cum. Supp. 1998).

152. H.B. 1331, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Mar. 16, 1998, ch. 165, 1998 Va. Acts 281).

153. Mobile service includes cellular telephone service and personal communication service. See VA. CODE ANN. § 56-484.8 (Cum. Supp. 1998).

154. See *id.* §§ 56-484.8, -484.10 (Cum. Supp. 1998).

155. See *id.* § 56-484.11 (Cum. Supp. 1998).

funds.¹⁵⁶ By December 1, 2001, the advisory board must advise the General Assembly on the adequacy of the fund to make qualifying payments.¹⁵⁷ The bill expires July 1, 2002.¹⁵⁸

F. *Placement of Amateur Radio Antennas*

Senate Bill 480¹⁵⁹ requires that local ordinances regarding the placement, screening, or height of antennas reasonably accommodate amateur radio antennas and impose the minimum regulation necessary to accomplish the locality's legitimate purpose.¹⁶⁰ Local ordinances cannot restrict amateur radio antenna height to less than 200 feet above ground level in less densely populated localities, or less than seventy-five feet above ground level, in more densely populated localities, as permitted by the Federal Communications Commission.¹⁶¹ In addition, local ordinances cannot restrict the number of support structures.¹⁶² Localities may continue to regulate amateur radio antennas with regard to certain screening, setback, placement, and health and safety requirements.¹⁶³

IX. TRANSPORTATION

A. *Radar Jamming Devices Prohibited*

House Bill 445¹⁶⁴ prohibits use of devices or mechanisms that "interfere with or diminish the measurement capabilities" of "law enforcement personnel to measure the speed of motor vehicles."¹⁶⁵ Although House Bill 445 prohibits use of these devices, commonly known as radar jammers, use of radar detec-

156. *See id.* § 56-484.9 (Cum. Supp. 1998).

157. *See id.* § 56-844.10(D) (Cum. Supp. 1998).

158. *See* Act of Mar. 16, 1998, ch. 165, cl. 2, 1998 Va. Acts 281.

159. S.B. 480, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 642, 1998 Va. Acts 1489).

160. *See* VA. CODE ANN. § 15.2-2293.1 (Cum. Supp. 1998).

161. *See id.*

162. *See id.*

163. *See id.*

164. H.B. 445, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 8, 1998, ch. 300, 1998 Va. Acts 423).

165. VA. CODE ANN. § 46.2-1079 (Repl. Vol. 1998).

tors was already illegal prior to the enactment of this bill.¹⁶⁶ On the other hand, House Bill 735¹⁶⁷ permits Prince William County to use laser speed detecting devices.¹⁶⁸

B. *Photo-Enforcement of Toll Payments Authorized*

Senate Bill 588¹⁶⁹ permits photo-monitoring equipment to be used to enforce payments at toll facilities.¹⁷⁰ Photo-monitoring operates by "(i) photographing the license plates of vehicles that use toll facilities without payment of the toll and (ii) recovering the unpaid toll and/or a penalty from the registered owner of the vehicle."¹⁷¹ The registered owner of the vehicle, identified as a violator by the photo-monitoring system, is presumed to have been the driver of the vehicle and is liable for fines.¹⁷² If, however, the registered owner was not the individual who actually drove the vehicle and violated the toll, the owner can have the charges dismissed by submitting an affidavit.¹⁷³

X. VIRGINIA STATE GOVERNMENT

A. *Procurement: Year 2000 Remediation*

House Bill 276¹⁷⁴ encourages public bodies to solicit goods and nonprofessional services from responsible bidders or offerors located in Virginia. The bill encourages the use of Virginia-based providers of such goods and services to be used to

166. *See id.*

167. H.B. 735, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 12, 1998, ch. 423, 1998 Va. Acts 576).

168. *See* VA. CODE ANN. § 46.2-882 (Repl. Vol. 1998).

169. S.B. 588, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 802, 1998 Va. Acts 1924).

170. *See* VA. CODE ANN. §§ 46.2-208, -819, -819.1 (Repl. Vol. 1998).

171. REPORT OF THE JOINT SUBCOMMITTEE STUDYING PHOTO ENFORCEMENT OF TOLL COLLECTIONS, H. DOC. No. 84, pt. II (1998).

172. *See* VA. CODE ANN. § 46.2-819.1 (Repl. Vol. 1998).

173. *See id.*

174. H.B. 276, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 7, 1998, ch. 250, 1998 Va. Acts 375).

remediate computer problems associated with the Year 2000 date change.¹⁷⁵ The bill expires January 1, 2001.¹⁷⁶

B. *Virginia Information Providers Network (VIPNET) Authority*

House Bill 632¹⁷⁷ requires the VIPNET Authority to ensure in its agreements that personal privacy of individuals is protected.¹⁷⁸ To protect an individual's privacy, the VIPNET Authority is required to prevent the aggregation of information to reveal the identity of individuals, a practice known as "data mining."¹⁷⁹

C. *Virginia Freedom of Information Act*

House Bill 659¹⁸⁰ and Senate Bill 252¹⁸¹ permit UVA's Board of Visitors to conduct meetings through audio/video communication.¹⁸² To conduct an electronic communication meeting, at least two-thirds of the board's membership must be physically assembled at its regular meeting place, and the customary requirements of public notice, voting, and recordation of the meetings must be met.¹⁸³ Further, "[n]o more than twenty-five percent of all meetings held annually . . . may be held by telephonic or video means."¹⁸⁴ The bill expires July 1, 2000.¹⁸⁵

175. See VA. CODE ANN. § 11-41.4 (Cum. Supp. 1998).

176. See Act of Apr. 7, 1998, ch. 250, cl. 2, 1998 Va. Acts 375.

177. H.B. 632, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 16, 1998, ch. 715, 1998 Va. Acts 1698).

178. See VA. CODE ANN. § 9-365 (Repl. Vol. 1998).

179. See *id.*

180. H.B. 659, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 839, 1998 Va. Acts 2049).

181. S.B. 252, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 777, 1998 Va. Acts 1859).

182. See VA. CODE ANN. § 2.1-343.1:1 (Cum. Supp. 1998).

183. See *id.*

184. *Id.*

185. See Act of Apr. 22, 1998, ch. 777, cl. 2, 1998 Va. Acts 1859.

D. *Virginia Information Providers Network (VIPNET) Authority*

House Bill 703¹⁸⁶ requires the VIPNET Authority to establish and maintain an Internet-based resource site¹⁸⁷ to assist students and employers in exchanging information about intern-ship and employment opportunities.¹⁸⁸

E. *Division of Purchases and Supply in the Department of General Services*

House Bill 1009¹⁸⁹ provides that any government agency or institution purchasing computer equipment shall establish "performance-based specifications for the selection of equipment."¹⁹⁰ Performance-based specifications include, but are not limited to, certain vendor and equipment characteristics.¹⁹¹

XI. CONCLUSION

Legislation proposing to revise existing law to keep pace with current and changing technology raises varied and complex issues. Nonetheless, the Virginia General Assembly can be reasonably expected to consider an increasing number of bills related to technology in future legislative sessions. As indicated by the 1998 Session, the General Assembly will give significant attention to public policy and public input before passing such legislation, regardless of who studies an issue or proposes a bill. The legislature's goal for basic law dealing with issues such as technology, computer crimes, electronic transactions, commercial relationships, record creation, and public access is to better serve the people of the Commonwealth through the next century.

186. H.B. 703, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 22, 1998, ch. 842, 1998 Va. Acts 2062).

187. VIPNET's web site can be found at <<http://www.vipnet.org/>>.

188. See VA. CODE ANN. § 9-365.1 (Repl. Vol. 1998).

189. H.B. 1009, Va. Gen. Assembly (Reg. Sess. 1998) (enacted as Act of Apr. 15, 1998, ch. 536, 1998 Va. Acts 1280).

190. VA. CODE ANN. § 2.1-440.1 (Cum. Supp. 1998).

191. See *id.*