

SMALL BUSINESS COMMISSION
Monday, July 19, 2010, 10:00 a.m.
Senate Room A, General Assembly Building
Richmond, Virginia

Summary

Members Present.

Senator W. Roscoe Reynolds, Senator R. Creigh Deeds, Delegate Lee Ware, Delegate G. Glenn Oder, Delegate Algie T. Howell, Jr., Carlos Del Toro, Robert A. Archer, Lana McG Ingram, Marilyn H. West.

Overview.

The Small Business Commission ("Commission") met in Richmond, Virginia, on July 19, 2010. Senator Reynolds, the Commission's sitting co-chairman, called the meeting to order. The Commission elected Senator Reynolds and Delegate Oder as co-chairmen. Members of the Commission provided brief introductions. Presentations made to the Commission can be found on the Commission's website at <http://dls.state.va.us/business.htm>.

Presentations.

I. Recommendations of the Virginia Chamber of Commerce's Small Business Committee.

The Commission first heard recommendations of the Small Business Committee of the Virginia Chamber of Commerce, delivered by Mr. Archer. Mr. Archer noted that 55 percent of the membership of the Virginia Chamber of Commerce is classified as small business owners, approximately 97 percent of all firms in Virginia employ 99 or fewer employees, and small companies create between 65 and 75 percent of all new jobs in the Commonwealth.

After a year of developing the structure, purpose, and function of the Small Business Committee, and a year of polling small businesses as to their needs, the Small Business Committee has identified three major recommendations for the Commission and established working groups to fully develop these recommendations. The recommendations include (i) restructuring state-funded small business programs to best address the needs of small businesses, (ii) developing a series of "access to working capital" seminars to be held around the Commonwealth, and (iii) considering a small business risk pool for health insurance. The Virginia Chamber of Commerce has continued to improve its ability to provide information to its members through its website and other social media tools and to establish meaningful contact with members of the new administration.

II. Overview of the Virginia Department of Business Assistance.

Peter S. Su, Director of the Virginia Department of Business Assistance (VDBA) and Assistant Secretary of Commerce and Trade, reported on the activities and identified

the current needs of the VDBA. The VDBA has three business program categories: (i) financing, in the form of the Virginia Small Business Financing Authority; (ii) information, in the form of Business Information Services; and (iii) workforce development, in the form of the Virginia Jobs Investment Program. Mr. Su highlighted the success of the VDBA's Virginia Business Information Center and the Business One Stop portal as well as new initiatives such as regionally focused seminars and Adventure Tourism seminars. For fiscal year 2010, the VDBA has provided financing to 80 companies and technical assistance to 1,420 companies and assisted with the creation or retention of 3,784 jobs in the Commonwealth.

Mr. Su identified funding cuts and a lack of flexibility in the use of funds, staffing reductions that impair client support, lack of a marketing budget, and concern about the outcome of the Governor's Commission on Government Reform and Restructuring as factors having a negative impact on the VDBA. Mr. Su called special attention to the \$700,000 balance in the Direct Loan Program and the need for further funds and the need for wider participation in Business One Stop by state agencies.

In response to Delegate Howell's questions relating to the Virginia Registered Apprenticeship Program, Mr. Su explained that the VDBA gives clients direct referrals and brings the apprenticeship program to the attention of clients. Delegate Howell questioned Mr. Su and asked staff to research specific laws or regulations relating to barbershop apprentices.

In response to Mr. Del Toro's questions relating to the VDBA's top three concerns relating to outreach, Mr. Su clarified that the needs vary by region and industry.

In response to questions relating to small business capital, Mr. Su responded that loans are under-sourced and that the use of funds is restricted. Small businesses need both startup and working capital.

In response to questions from Delegate Oder, Mr. Su and Scott Parsons, Executive Director of the Virginia Small Business Financing Authority, explained that the VDBA funding cuts were the result of direct line item cuts to the agency. Mr. Su confirmed that the VDBA will work to create partnerships with groups such as the Virginia Chamber of Commerce and stated that the VDBA's highest priorities were providing businesses with access to capital and to information.

III. House Bill 309: Summary Judgment; documents that can serve as basis for motion. House Bill 310: Offers of Judgment; costs.

Delegate John M. O'Bannon and Tyler Craddock, Director of Government Affairs for the Virginia Chamber of Commerce, presented House Bill 309, related to the use of depositions and other documents as the basis of a motion for summary judgment, and House Bill 310, related to the assignment of court costs based on settlement offer and verdict amounts. The Virginia Chamber of Commerce supports both bills.

Jayne Pemberton, an attorney with Sands Anderson and a member of the Virginia Association of Defense Attorneys (VADA), spoke at Delegate O'Bannon's invitation in favor of both House Bill 309 and House Bill 310. In response to questions from Delegate Oder and Senator Deeds about House Bill 310, Ms. Pemberton gave examples of cases where facts admitted during a party deposition that would be sufficient to grant summary judgment would be later denied and the case would continue unnecessarily to trial. Mr. Archer and Senator Deeds discussed with Ms. Pemberton that Virginia was the only state

not to have a similar law allowing the use of deposition for motions of summary judgment, and that Virginia was consistently ranked as having conservative, business-friendly torts. Ms. Pemberton explained that House Bill 310 mirrors federal rules of civil procedure and allows a defendant to make a settlement offer to a plaintiff up to 10 days before trial. If the plaintiff refuses the offer and receives a lower verdict than the settlement offer, the plaintiff must pay all court costs accrued from the time of the offer. Senator Deeds questioned what other rules of civil procedure states with this law had adopted.

Richard Samet, an attorney with Florance Gordon Brown and a member of VADA, spoke in favor of House Bill 310. Mr. Samet and Senator Deeds discussed the fact that Virginia civil procedure does not mirror the federal system while other states do. Senator Deeds pointed out that Virginia has adopted comparative fault, considered to be the bedrock of tort reform. In response to questions by Senator Reynolds, Mr. Samet explained that adopting HB 310 would add a currently unavailable element to aid in evaluating the value and reducing the risk in a case.

Joe Owen, an attorney with Owens and Owens representing the Chesterfield County Chamber of Commerce, spoke in favor of House Bill 309, asserting that layers of cost could be avoided if depositions were allowed in support of summary judgment.

Steve Pearson from the Virginia Trial Lawyers Association spoke in opposition to House Bill 309 and House Bill 310, reporting that only three percent of cases result in trials in Virginia. For House Bill 309, Mr. Pearson stressed the importance of depositions as a discovery tool and predicted that allowing the use of depositions and other documents as the basis for summary judgment would lead to a more aggressive posture in defending depositions. In response to questions from Delegate Ware, Mr. Pearson stated that the question of House Bill 309 could be seen as evaluating a reduced risk of going to trial with the additional time a judge would take to make an early decision.

In response to questions from Senator Deeds about House Bill 310, Mr. Pearson raised the point that a defendant only makes a settlement offer after admitting liability and conjectured that defendant's attorneys will engage in gamesmanship. In conclusion, Mr. Pearson pointed out to the Commission that small businesses were often the plaintiffs in cases with big businesses and that House Bill 309 and House Bill 310 could affect their access to a fair trial as well.

Member Discussion and Work Plan.

At the conclusion of presentations and following a period allowing for public comment, the Commission decided to form a working group to further deliberate the merits of House Bill 309 and House Bill 310. Senator Deeds, Delegate Oder, Mr. Del Toro, and Ms. West expressed interest in serving on the working group.

Mr. Del Toro announced his appointment to the Governor's Commission on Government Reform and Restructuring

Future Meetings.

The Commission plans to hold several meetings prior to the start of the 2011 Session of the General Assembly.