

Commission on Unemployment Compensation
July 19, 2004
Richmond, Virginia

The Honorable John C. Watkins, Chairman, Commission on Unemployment Compensation ("Commission") convened a meeting of the Commission on July 19, 2004, in Senate Room B in the General Assembly Building, Richmond, Virginia.

Status of the Unemployment Trust Fund and Federal Update

James N. Ellenberger, Deputy Commissioner, Virginia Employment Commission (VEC), briefed the Commission on the status of the unemployment trust fund. His testimony is linked to the Commission's website at <http://dls.state.va.us/SB889.htm>. Virginia has the third lowest tax rate in the country; the average duration of benefit receipt in Virginia in May 2004 was 14.1 weeks, compared to a national average of 16.7 weeks; final payments are down 28 percent from last year; and total initial claims are down nearly 31 percent from last year. Virginia, unlike six other states, has no outstanding balances on loans from the federal account.

The trust fund's solvency rate is projected to be 34.3 percent as of June 30, 2004. The fund builder tax was activated January 1, 2004 and is expected to continue into 2005. Interest revenue is predicted to decline given the overall decline in the fund levels. Importantly, however, the projected solvency rate is higher than that projected for June 2004 last year, in part due to fewer claims and lower benefit payment levels.

In response to Senator Wagner's question regarding Reed Act monies, Mr. Ellenberger stated that the National Association of State Workforce Agencies is seeking \$9 billion in additional Reed Act funds, to be distributed proportionally among the states. The proposed legislation has not yet been introduced given its expense, and the Bush administration opposes any such legislation.

In response to Delegate Purkey, Don Lillywhite, VEC, noted that the majority of jobs are being added in the general services sector in Northern Virginia. In response to Delegate Ware, VEC Commissioner Delores A. Esser stated that nine to 10 weeks is the usual duration for benefit payments; the average duration calculated for May 2004 of 14.1 weeks is relatively high for Virginia. That higher duration rate indicates that jobs are not readily available. Job seekers require more time to find work and more frequently are exhausting their unemployment benefits.

Delegate Purkey asked why some states required federal loans for their programs while Virginia did not. Mr. Ellenberger noted that the six states requiring loans had to borrow because the recession affected them more severely given the types of industry in those states. The reasons necessitating the loans were not limited to departure of industry due to an onerous tax burden.

Mr. Ellenberger also briefed the Commission on the status of federal legislation. On July 15, 2004, the House Appropriations Committee approved appropriations for the Wagner-Peyser Act. Funding has been flat for the last decade, but the current appropriations bill would actually cut job service funding by approximately \$91 million. The VEC estimates the impact on Virginia's program as ranging from \$1.8 million to \$2.4 million, which may force staff layoff and office closings.

The full House passed a bill addressing SUTA (state unemployment tax) dumping. SUTA dumping is an attempt by employers to fraudulently assume a new experience rating (by purchasing a new shell for their business) in order to lower their unemployment insurance tax rate. There is good reason to believe that this is a problem in Virginia. The bill has strong bipartisan support, and will require all states to enact legislation addressing SUTA dumping.

Senator Watkins asked that the VEC prepare a white paper on SUTA dumping for presentation to the Commission at the November. The paper will describe the extent of the problem in Virginia, and will offer models for approaches to address SUTA dumping. Senator Wagner requested that VEC examine the extent to which the taxes of law-abiding employers are increased as a result of SUTA dumping.

Reauthorization of the Workforce Investment Act is stalled in Congress. The House and Senate versions of the bill differ, and a conference committee has not yet been appointed. The Act is funded at prior year levels. Other federal issues include an unemployment insurance reform measure being floated by the Bush Administration, and a possible Reed Act distribution.

Virginia Statutes Enacted in 2004

Mr. Ellenberger briefly reviewed legislation passed in the 2004 session, noting that the VEC does not expect that House Bill 288 (defining benefit disqualifying misconduct) or Senate Bill 665 (requiring that bills enhancing benefit payments must contain estimates of potential revenue losses) will significantly affect the program. Senate Bill 130 (Sen. Watkins), increases the penalty assessed against employers for filing a late report from \$30 to \$75. The percentage of late-filing employers has increased from 12 percent to 18 percent (in the first quarter of 2004) in the last two years. VEC expects this bill will have a significant impact in encouraging compliance with the deadline for report submission. In response to a question from Senator Watkins, Otis Dowdy, VEC's Director for Taxation, noted that it would be difficult to calculate the exact percentage of administrative funds dedicated to enforcement but that field staff had been increased by 20 percent.

Three other bills made needed technical corrections: Senate Bill 3 abolished the Workforce Development Training Fund, among other dormant programs; Senate Bill 9 eliminated a redundant workforce plan requirement; and Senate Bill 363 transfers the Migrant and Seasonal Farmworkers Board from the Department of Labor and Industry to the Virginia Employment Commission, which has federal funding available to support staffing the Board. Labor and Industry personnel now support the

Board without dedicated funding or staff. Senate Bill 363 also transfers the Interagency Migrant Worker Policy Committee from Labor and Industry to the Virginia Employment Commission.

Benefits Charging

Lyn Coughlin, a senior planner with the VEC, provided an overview of the regulations governing benefits charging. There are two primary ways that benefit charges can be assessed. One is on a proportional basis, under which every taxable employer in the applicable wage period is charged for benefits in proportion to the salary paid an employee. Approximately 36 states use this approach. The other approach charges only the last taxable employer for benefits. This is the approach that Virginia and five other states use. Another approach is inverse proportional charging, under which the most recent taxable employers pay more than other employers in the claimant's base period. Commission members expressed concern over the fact that under a proportional approach, an employer that was not responsible for discharging an employee would be charged for unemployment benefits, and that proportional charging would be more expensive to administer. Mr. Dowdy confirmed that a proportional system would be more expensive to administer. Federal law requires that *reimbursable* employers be charged benefits for any claimant employed by them during the claimant's base period.

Virginia Workforce Council

Commissioner Esser gave the Commission an update on the Virginia Workforce Council. Senator Brandon Bell will replace Senator Charles Hawkins on the Council. At the Council's last meeting in 2003, it focused on the effective performance of workforce training programs. "Demand plans," which structure individualized workforce training in accordance with the needs of local employers, will be developed and implemented in Roanoke and Smyth County. The local workforce investment boards (WIBs) must demonstrate that any training they propose to provide is needed by local employers.

In June 2004, Governor Warner approved three marketing pilots for the WIBs to improve "one-stop shopping" by establishing coordinated economic relief centers. These are more intensive approaches that go beyond what the WIA requires to help communities recover from economic hardship. Commissioner Esser also noted that Virginia's unemployment compensation program has a strong work search component that accounts in part for the program's relatively low costs and resilient trust fund.

Carryover Legislation

House Bill 1288 would have authorized payment of unemployment compensation to individuals who became unemployed when they followed their spouse to a new military posting. Any benefits paid would have been charged against the pool. The bill passed the House but was carried over in the Senate. Senator Watkins noted that the Commission must examine this issue very closely. The costs associated with

implementing the change to the program must be considered in light of the potential benefits.

Mr. Ellenberger summarized the results of a VEC survey of 16 states with large military populations: of the nine responding states, three (SC, KY, MD) do not pay benefits to trailing spouses. Of the six that do, four were able to detail the methodology they use to estimate the costs associated with paying benefits to trailing spouses. Applying those methodologies to Virginia results in estimates for adding this benefit to Virginia's program that range from a low of \$253,000 (using Oklahoma's methodology) to a high of \$14.1 million (using Florida's methodology). Of the four states whose methodology Virginia applied, only Oklahoma's program was actually in operation; the other three states' methodologies came from recently-passed legislation. Mr. Ellenberger also noted that many states, while not specifically authorizing payments to trailing spouses, do not disqualify them from receiving benefits.

VEC staff advised the Commission that a technical amendment is needed to Senate Bill 179, passed in the 2004 General Assembly Session, which provides that unemployment benefits paid because of temporary work closures due to natural disasters will be charged against the pool rather than against the employer. The problem is in the reference to the "temporary" work closure. Having to track whether a business reopened subsequent to the natural disaster would impose an enormous administrative burden on the VEC. A technical amendment will be prepared for consideration in the 2005 General Assembly Session.

Delegate Purkey questioned the VEC regarding the issue of seniors returning to the work force. Mr. Ellenberger noted that such returns often are motivated by economic necessity. Under current law, if a senior employee is laid off and receives unemployment compensation, those benefits may be reduced by up to 50 percent of any Social Security or Railroad Retirement benefits the senior employee may be receiving. Prior to 2003, benefits were offset by 100 percent. The 2003 legislation lowered the offset to 50 percent on the basis that employee contributions made up a portion of those benefits, and accordingly should not be offset. Mr. Ellenberger noted that in accordance with that rationale, there should be no offset for unemployment benefits paid by an employer who made no contributions to the senior employee's retirement benefits.

Other Business

The Commission heard public statements from Madge Bush, AARP Virginia and Steven L. Myers, Virginia Poverty Law Center. Their statements are available on the Commission's website. The Commission requested that staff send the work plan out for approval by Commission members.

The Honorable John C. Watkins, Chairman
The Honorable Harry R. Purkey, Vice Chairman
Ellen Bowyer, Staff Attorney, Division of Legislative Services