

**Commission on Unemployment Compensation
December 15, 2004
Richmond, Virginia**

The Honorable John C. Watkins, Chairman, Commission on Unemployment Compensation ("Commission") convened a meeting of the Commission on December 15, 2004, at 2:00 p.m., 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>.

In response to questions from the Chairman, Delegate Purkey and Senator Wagner, Mr. Ellenberger noted that the Fund is earning 5.4 percent on its investments, that there will be a .1 percent increase in the fund builder tax, but that notwithstanding that, Virginia's employer tax is the next lowest in the United States. The Chairman noted projections show that in 2005, the fund will approach, but will not reach, 50 percent (at which point the fund builder tax would be removed).

SUTA Dumping

Mr. Ellenberger reported that the VEC is working on model legislation to address a federal mandate to enact 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. The proposed legislation would be a minimalist approach that would meet federal requirements. The VEC is working with the stakeholders to craft legislation. The VEC wants to ensure that legitimate economic development transfers among businesses are not penalized.

The Chairman noted that the provisions for "safe harbor" assessments of proposed transfers by the VEC was a good idea, and that the legislation should include the definition of a rate year. Delegate Nixon expressed concerns about enforcement impeding legitimate transfers. Mr. Ellenberger noted that the VEC is cognizant of the limitations of enforcement and is seeking to fashion legislation that will fit within the existing framework of Virginia law. Use of the existing, known structures, plus the safe harbor provisions, will help avoid improper implementation. Given that the legislation still is in draft form, the Commission will reconvene to consider the bill in January prior to the start of the 2005 Regular Session.

Review of Carryover/Failed Legislation

Mr. Ellenberger reviewed carryover and failed legislation. HB 505, increasing the permissible earnings offset, could have beneficial impacts. If adjusted for inflation, the offset would be \$45 rather than \$25. Claimants who report earnings while unemployed spend 1.5 fewer weeks on unemployment compensation. Any higher earnings offset accordingly would be balanced by fewer unemployment compensation payments.

SB621, increasing the minimum qualifying earnings to \$3,100, would have affected 6,600 claimants, representing 33 percent of new claimants, who are disproportionately African-American, female, low-wage employees. The reduction in eligibility would have saved approximately \$5 million annually, but would not have affected trust fund solvency and would have exacerbated the low first payment rate. The reduction would have decreased employer taxes by \$1.46 per employee, per year.

Commissioner Delores Esser commented briefly, on behalf of Delegate Tata, on HB 1288, providing benefits for trailing military spouses. Delegate Tata already has introduced new legislation in this area, and he plans to have the bill make benefits available only where the spouse moves to a state that also permits trailing military spouses to receive benefits. A total of 17 states (AK, CA, FL, HI, IN, KS, ME, NV, NY, NC, OK, OR, PA, PR, RI, TX) have a similar provision. Senator Wagner asked how Virginia would track work search requirements when the employee moves to another state and Commissioner Esser clarified current requirements that claimants call the VEC to verify job searches. The Chairman noted that it should be confirmed that the military assignment in question was not an unaccompanied assignment and Senator Wagner noted that it would be important to have documentation reflecting a permanent change of orders.

Thomas A. Hinton, DoD - State Liaison Office in Support of Military Families and Kathleen Moakler, Deputy Director, Govt. Relations Department, National Military Family Association also addressed the issue of military trailing spouse benefits. Sen. Wagner asked whether the estimates of potential eligible spouses were accurate. Mr. Hinton noted that the transfer of an entire carrier out of state had not been calculated, and that about 54 percent of military spouses are in the work force.

The Chairman queried Mr. Hinton about the basis for distinguishing between military transfer orders and those emanating from the Pentagon, Central Intelligence Agency, or Federal Bureau of Investigation. Mr. Hinton noted that military members are forced to move every two years; John Sternlicht, Deputy Secretary of Commerce and Trade noted that active military do not have the option to quit the military in order to avoid the move. Ms. Moakler stated that she agreed with the sunset provisions, and noted the difficulty of losing a spouse's income just as the order to move is received. The Chairman noted that additional data is needed: there is a huge federal presence in the state and accurate counts must be prepared.

Virginia Statutes Enacted in 2004

Lyn Hammond, a senior planner with the VEC, briefly reviewed legislation passed in the 2004 session. VEC prepared the procedures to implement the revenue impact statement required at Va. Code Ann. §30-19.03:1.2 with the assistance of the Department of Planning and Budget and the Department of Taxation. An overview of the approach is available on the Commission's website at <http://dls.state.va.us/SB889.htm>. Both Departments have approved the approach.

Senator Wagner asked about the accuracy of the figures, specifically whether only six percent of all Virginia businesses pay corporate or individual business taxes. Senator Wagner asked that John Layman address the Commission at its January meeting. The Chairman noted that an increase in benefits affects businesses' bottom lines. Danny LeBlanc, AFL-CIO, noted that there is another part of the equation, which is the revenue the Commonwealth gains from the expenditure of unemployment compensation benefits by recipients.

Delegate Nixon queried whether having a revenue loss statement on a bill would require that the bill be sent to Appropriations. The Chairman noted both his concern in that respect and the difficulty in coming up with accurate data to determine revenue losses.

Other Business

Senator Wagner asked the Commission to recognize Eric Brown, an employer in his area who operates a courier service. Mr. Brown expressed the difficulties faced by a rapidly growing company that has fired one employee for cause, which employee subsequently qualified for unemployment compensation benefits. Mr. Ellenberger noted in response to questions from Senator Wagner that there have been national studies examining the issue of structuring the unemployment compensation system in the fairest manner so that taxes are assessed on the most responsible employer. Mr. Ellenberger also noted that the payments made under unemployment compensation are put back into the economy via purchases made by unemployed persons.

The Chairman asked that the VEC prepare a report sketching out a comparison of Virginia with the surrounding states in the Fourth Circuit. Mr. Ellenberger noted that VEC would use the data analysis system VELMA to prepare such an analysis.

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