

SJR 64: Joint Subcommittee Studying Manufacturing Needs
and the Future of Manufacturing in Virginia -- SJR 64
January 11, 2005, Richmond

The Joint Subcommittee Studying Manufacturing Needs and the Future of Manufacturing in Virginia held its third meeting on the eve of the 2005 General Assembly Session. The meeting was called to finalize the joint subcommittee's legislative recommendations. Members considered five proposals.

Continuation of Study

The joint subcommittee was able to schedule only two meetings in 2004, and the complexity of the issues facing Virginia's manufacturing sector made it impossible to complete the group's work in one year. Moreover, the analysis of the comparative tax burden on Virginia manufacturers, which Ernst & Young is conducting with assistance from the Virginia Manufacturers Association, will not be completed until later in 2005. The joint subcommittee unanimously agreed that its existence should be extended for a second year. It endorsed a measure, introduced as Senate Joint Resolution 361, to continue the joint subcommittee for a second year. The resolution directs the joint subcommittee to (i) determine how the manufacturing sector's needs may be addressed quickly, efficiently, and cost-effectively and (ii) consider what role state and local governments should have in this endeavor.

Burden of Regulatory Compliance

Virginia's manufacturers expressed concerns during the course of the study that the burden of complying with environmental, health and safety and other regulations fell disproportionately on the manufacturing sector, as compared to other sectors of the economy. The aggregate costs to Virginia's manufacturers of complying with regulations imposed by the federal and state governments have not been quantified. Moreover, some raised the issue of whether the burden on Virginia's manufacturing sector was more onerous than that facing manufacturers in states where the Commonwealth competes for jobs and investments, thus putting Virginia's manufacturers at a disadvantage. The Joint Legislative Audit and Review Commission (JLARC) was identified as having the capability to conduct such a complex analysis.

The joint subcommittee unanimously endorsed legislation directing JLARC to evaluate (i) the total cost of compliance by Virginia manufacturers with state and federal environmental, economic, workplace, and tax regulations; (ii) how the cost of regulatory compliance borne by Virginia manufacturers compares to the regulatory compliance costs borne by firms in other major sectors of Virginia's economy, in the aggregate, on a per-employee basis, based on the sectors' contributions to gross state product, and other relevant bases; and (iii) how the cost of regulatory compliance borne by Virginia manufacturers compares to the regulatory compliance costs borne by manufacturers in other mid-Atlantic and Southern states, in the aggregate, on a per-employee basis, based on the sectors' contributions to gross state product, and other relevant bases. The measure was introduced as Senate Joint Resolution 360.

Small Business Regulatory Flexibility

The joint subcommittee was briefed at its November 17 meeting on federal laws and legislation in other states that address the burden of regulations affecting small businesses. Members expressed interest in the model state legislation developed by the U.S. Small Business Administration's Office of Advocacy, which has been adopted in at least six states and was introduced in 13 other states in 2004. The model legislation seeks to compel regulatory agencies to consider small businesses when regulations are developed and particularly consider the disproportionate impact those regulations might have. Major elements of the model state legislation include a definition of "small business" that includes firms that have either fewer than 500 employees or gross annual sales of less than \$6 million, a requirement that state agencies perform an economic impact analysis before they regulate, a requirement that state agencies consider less burdensome alternatives that still meet regulatory goals, and a provision for state government to periodically review all its regulations. The model act also entitles any small business to seek judicial review of agency action to determine if the act's procedures were followed.

The joint subcommittee unanimously endorsed proposed legislation that incorporates the five major elements of the SBA's model state legislation into existing provisions of Virginia's Administrative Process Act. Delegate Saxman had already introduced House Bill 1948, which included most of the elements of the model act. Deputy Attorney General Judith W. Jagdmann advised the joint subcommittee that the Attorney General's Office was pursuing a similar initiative and offered to work with members to conform the versions of the legislation.

Exploration of Potential Natural Gas Reserves

The joint subcommittee was advised at its prior meeting of the potential of the existence of substantial reserves of natural gas several miles off the mid-Atlantic coast. The ability to determine whether commercially recoverable amounts of gas are off Virginia's coast is prohibited by a presidential moratorium that blocks all new off-shore oil and gas exploratory and recovery activity prior to 2012. Members were also advised of the importance to the manufacturing sector of reliable and affordable supplies of natural gas, which is critical both as a low-polluting energy source and as the raw material in major chemical manufacturing processes.

Members agreed that the federal government should be sent a clear message that the Commonwealth favors lifting the moratorium in order to allow surveying of potential natural gas deposits in areas that are within the jurisdiction of the federal government. In previous years, the standard mechanism for such expressions has been a joint resolution expressing the sentiment of the General Assembly. However, such resolutions have proved ineffective in swaying opinion in Washington, and passage of such resolutions has become more difficult. As a result, the joint subcommittee endorsed escalating the likelihood that the federal government would pay heed to the will of the Commonwealth's legislature. The vehicle adopted by the joint subcommittee was a bill, introduced as Senate Bill 1054, requiring the Virginia Liaison Office to work with the Congressional delegation and executive agencies to ease the moratorium that currently prohibits off-shore exploration of potential natural gas reserves. The imposition of this charge on the

Virginia Liaison Office was viewed as consistent with the existing statutory requirement that the Office's Director be responsible for tasks assigned to the Office by law.

Ownership of Intellectual Property

Technology transfer and the commercialization of intellectual property developed at state universities have been recognized as important contributors to economic vitality. Representatives of Virginia manufacturers informed joint subcommittee members of their dissatisfaction with current rules regarding the ownership of intellectual property that is developed at state universities through research sponsored by private firms. At its November 17 meeting, members were briefed on aspects of this complex issue. The critical concern voiced by manufacturers is the fact that Virginia statutes impede the commercialization of intellectual property by allowing firms that sponsor research at state universities to obtain licenses to use, but not ownership of, the patents or other intellectual property developed through the research. While universities assert that exclusive long-term license agreements are the functional equivalent of assignments of the intellectual property, businesses counter that ownership of the intellectual property may be critical to a start-up firm's ability to raise capital, that license fees are unreasonable, and that the process that sponsors of research must go through is difficult and frustrating.

Members were advised that this is an issue that has been previously studied and that the applicable statutes were amended in the 2003 Session to provide that the Governor's approval is not required to transfer patents or copyrights to a private entity if (i) the interest was developed without the use of federal funds, (ii) such entity makes a clear and convincing case to the relevant board that its ownership of the interest is critical to its ability to commercialize that interest, and (iii) the institution receives, at a minimum, compensation equal to the anticipated revenue stream of licensing the interest. This bill enacted a recommendation of the Virginia Research and Technology Advisory Commission's Intellectual Property Committee in House Document 25 (2003) that university boards of visitors be authorized to assign title to university-owned inventions to industrial firms under limited circumstances. However, the joint subcommittee was advised that no board of visitors had ever sought the Governor's permission to transfer intellectual property to a private firm.

Staff was asked to prepare legislation that would address the concerns raised by manufacturers that object to the current rules. The joint subcommittee considered the legislation that would amend the current system in several major ways:

- A university will not assert ownership of interest in intellectual property developed through externally-sponsored research (unless provided in written contract) unless the research involves the significant use of institution's resources, which would be defined as 50 percent of the cost of identifiable resources.
- If the research did involve a significant use of institution's resources, the University shall transfer the externally-sponsored research to its sponsor, upon request, if the research did not involve federal funds, the sponsor makes a clear and convincing case that it is needed for commercialization, the sponsor reimburses the university for the amount it invested,

and the university retains the right to use the intellectual property in research and education.

- If the research did involve a significant use of institution's resources, but all of the other criteria under which the university would be required to assign the intellectual property to its sponsor are not satisfied, the institution nevertheless has the discretion to assign it to the sponsor without any requirement for the Governor's approval.

The joint subcommittee endorsed legislation that incorporates these revisions to the rules regarding the ownership of intellectual property developed at state universities through privately-sponsored research. Senator Watkins voiced concerns about the scope of the proposal. The measure was introduced as Senate Bill 1053.

At the close of the meeting, the chairman approved the executive summary of the joint subcommittee's first year, and deferred the preparation of a formal report on the group's work until completion of the study's second year.