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For more information, visit study and commission websites. DLS staff members maintain comprehensive study and commission websites that contain complete summaries of meetings and links to additional information, handouts, and resources.

Manufacturing Development Commission

August 4, 2011

The Manufacturing Development Commission continues to carry out its charge, pursuant to House Joint Resolution 735 of the 2011 Session, to develop a plan for repatriating manufacturing jobs and evaluating possible tax incentives. The Commission's second meeting of the 2011-2012 interim also focused on the costs of compliance with wastewater treatment requirements of the Chesapeake Bay cleanup program.

Manufacturing Repatriation - Federal Developments

House Joint Resolution 735 directs the Commission, in developing the manufacturing repatriation plan, to consider the proposed Bring Jobs Back to America Act (Act) that was introduced by Representative Frank Wolf. The House of Representatives has taken no action on the bill since it was referred to the House Financial Services Committee's International Monetary Policy and Trade Subcommittee on March 23, 2011.

Since the Commission was briefed on the Act at its May meeting, Representative Wolf inserted six provisions relating to manufacturing repatriation in the report of the House Appropriations' Subcommittee on Commerce, Justice, Science, and Related Agencies (Subcommittee) for the fiscal year ending September 30, 2012. These provisions:

- Provide \$5 million in grants to facilitate the relocation, to economically distressed regions of the U.S., of services, manufacturing, or research and development activities.
- Authorize \$5 million in loan guarantees to small and medium-sized manufacturers for

the use or production of innovative technologies.

- Encourage the National Institute of Standards and Technology, through the Manufacturing Extension Partnership, to focus efforts on re-shoring manufacturing.
- Direct the Secretary of Commerce to establish a Repatriation Task Force.
- Direct the Secretary of Commerce to launch a job repatriation initiative.
- Encourage the National Science Foundation's planned activities related to the Advanced Manufacturing Initiative.

The prospects that these six provisions will become law are good. As chair of the Subcommittee, Representative Wolf will be at the conference with the Senate and the Senate is not expected to object to the inclusion of these in the omnibus FY 2012 appropriations package.

Another major development at the federal level was the announcement on June 10, 2011, of the formation of a bipartisan partnership between Representative Wolf and Senator Mark Warner to create manufacturing and technology jobs. David Hallock, now Senator Warner's State Director, briefed members on their proposal, labeled the America Recruits Act of 2011.

One feature of the America Recruits Act, called the Inbound Investment Program (Program), is intended to help states lure manufacturers back from overseas. Under this Program, states may compete for \$100 million in grants. States that receive the grants will use the funds to offer eligible employers a \$5,000 loan for every new high-value job they establish at a new facility employing at least 50 people in rural or economically distressed areas. The loans would not have to be repaid if the jobs continue for at least five years.

Members questioned Mr. Hallock on a variety of matters and many asked him to take messages back to Washington, and the chair observed that Congress would do better by creating a fertile field in which jobs could be created by the private sector rather than trying to create jobs directly.

Manufacturing Repatriation - State Efforts

Paul Grossman, Virginia Economic Development Partnership

The Virginia Economic Development Partnership (VEDP) gave an overview of state efforts and strategies to have firms relocate to the Commonwealth. Mr. Grossman distinguished foreign direct investment in the U.S., which refers to the investment by a foreign company in this country, from repatriation (also known as re-shoring, onshoring, or in-sourcing), which refers to the return of financial assets from a foreign country to the country of origin.

The level of U.S. direct investment abroad has more than doubled over the past decade from \$142.6 billion in 2000 to almost \$329 billion in 2010. The trend was interrupted in 2005-2006 as the result of the tax holiday on the return to this country of foreign earnings of U.S. companies. Contrary to some common perceptions, 70 percent of U.S. direct investment abroad is concentrated in high-income, developed countries and, according to a Congressional Research Service report from earlier this year, such investment does not lead to fewer jobs or lower incomes overall for Americans.

Mr. Grossman observed that there is evidence of the beginning of a shift toward the repatriation of manufacturing operations to the U.S. This trend has been attributed in part to rising labor costs in China. While repatriation decisions are motivated by net profit concerns, foreign direct investment in the U.S. is more likely to be driven by firms seeking to grow U.S. market share. Such foreign investment often leads to the development of new supply chain connections. Many of the factors that drive decisions to re-shore or make new foreign investment are beyond the Commonwealth's control.

VEDP traditionally has focused its efforts on foreign direct investment rather than repatriation, in part because the trend toward repatriation is new. The global economy is a major factor in the Commonwealth, providing \$67.8 billion in investment and 445,497 jobs. Over the past 20 years, investments by foreign firms created 159,700 jobs and \$18.5 billion in investment. Virginia ranks 22nd among states in the amount of foreign direct investment and 13th in terms of employment at foreign firms in the United States.

Sandra McNinch, Virginia Economic Development Partnership

Workforce Development

Ms. McNinch mentioned several issues relating to the Commonwealth's attractiveness to foreign investment. Chief among these issues is the ability to deliver the right workforce. Measures to improve Virginia's workforce include establishing a seamless and effective delivery system, increasing funding for noncredit instruction through community colleges, and increasing support for career coaching at the high school level in order to promote manufacturing as a viable career choice.

Taxation

Another area where the Commonwealth could improve its attractiveness relates to taxation. The effectiveness of tax credits and other incentive programs is being studied by the Joint Legislative Audit and Review Commission pursuant to Senate Joint Resolution 329 (2011). Ms. McNinch observed the need for balanced local tax policies that acknowledge the impact of the machinery and tools tax and the business, professional and occupational license (BPOL) tax while recognizing the need for reasonable alternative sources of local revenue. The stability of tax structures and rates remains an important factor. In response to a question regarding the ability of firms to negotiate with localities over tax rates, the chair observed that while localities cannot discriminate among similarly situated taxpayers, localities have the option not to levy such taxes and flexibility regarding the rates at which local taxes are levied.

Infrastructure

A third area affecting Virginia's attractiveness to foreign investment is its infrastructure. Investments could leverage the Commonwealth's strategic location and expand access to strategic assets. Members were urged to support investments in prepared site development for major rural and urban projects. Ms. McNinch closed with a video presentation lauding the effectiveness of the Commonwealth Center for Advanced Manufacturing (CCAM).

Mr. Grossman concluded VEDP's presentation with a summary of how the agency targets companies and identifies opportunities, including its supply chain strategy. He also provided an overview of VEDP's resources and work flow. The chair invited VEDP to attend the Commission's next meeting to present specific proposals to make Virginia more attractive to manufacturers.

Over the past 20 years, investments by foreign firms created 159,700 jobs and \$18.5 billion in investment in the Commonwealth.

Manufacturing Repatriation - Recommendations Offered for Consideration

Brett Vassey, Virginia Manufacturers Association

Mr. Vassey posited that the development of a successful plan to repatriate jobs and foreign income to the Commonwealth will necessitate adoption of the ideas posed in VEDP's Manufacturing Impact and Economic Diversification Plan from 2007.

Mr. Vassey urged Virginia to conduct a comprehensive risk assessment of its existing industry base (which he characterized as the most globally volatile sector in the state's economy) and dependent communities. In addition, the Commonwealth was urged to map its strengths, weaknesses, opportunities, and threats (SWOT). He cited declines in employment levels in the computer and electronics manufacturing, paper manufacturing, and chemical industry sectors. Despite these employment declines, the manufacturing sector's economic output, cost of regulatory compliance, slowing quality and volume of technically skilled workers, cost of manufacturing technology, absence of a national strategic plan to level the global costs for technology-intensive manufacturers, competition from countries that have engineered their economies to grow technology-intensive manufacturing, and state and local tax dependency on the manufacturing sector have not changed.

The development of a risk assessment and SWOT analysis could complement federal legislation to repatriate jobs and foreign income. Mr. Vassey suggested several ideas that could be adopted as part of a repatriation plan, including:

- Requiring a state assessment of the economic impact of any environmental regulation or energy regulation on the manufacturing sector prior to enactment of legislation or regulation.
- Reducing the cost of environmental permitting.
- Reforming the corporate income tax apportionment elective for manufacturers; the machinery and tools tax; and federal and state workforce training programs.

In closing, Mr. Vassey noted that hundreds of solid proposals exist that the legislature and Congress could pursue in order to reduce the cost of domestic manufacturing, improve the productivity of domestic manufacturing, and create incentives that make Virginia the premiere location for U.S. technology-intensive manufacturing. The federal government should

formulate a national strategy, and the Commonwealth should implement "game-changing" policies to be part of the next global manufacturing renaissance. In closing, he asserted that developing a comprehensive and coordinated repatriation program is well worth the effort.

Mark George, MeadWestvaco Corporation

Mr. George noted that manufacturers move operations offshore primarily because of regulatory and tax policies. While the costs and quality of labor are frequently cited as the primary reason for offshoring manufacturing, he disputed this assertion. He offered several suggestions for steps to encourage the repatriation of manufacturing.

Tax Policy Recommendations

Some tax policy recommendations included:

- Exemption of new investments from the local machinery and tools tax.
- Reduction of other state taxes to offset local machinery and tools taxes paid.
- Exemption of assets that are more than 20 years old from machinery and tools taxation.
- Improvement of the definition of exempt machinery and equipment in the sales and use tax law.
- Decrease of the corporate income tax rate from six percent to five percent.
- Allowing the single sales factor election to be fully used in 2010.

Energy Policy Recommendations

Energy policy recommendations directed at ensuring that Virginia's energy rates remain affordable and produce reliable energy included:

- Institution of a requirement to produce an economic rate impact report on all proposed legislative mandates on energy producers and providers prior to legislative voting on such measures.
- Not pitting utilities against private sector companies in competition for fuel materials through a renewable portfolio standard mandate.
- Encouragement of combined heat and power projects for high energy users.

Workforce Development Recommendations

Workforce development recommendations focused on science, technology, engineering, and mathematics (STEM) programs.

Chesapeake Bay Cleanup Costs

Manufacturers have expressed concerns that new U.S. Environmental Protection Agency (EPA) regulations implemented to reduce

Reasons for manufacturers moving operations offshore include regulatory and tax policies as well as costs and quality of labor.

nutrient and sediment loads in the Chesapeake Bay will result in higher wastewater treatment costs.

David Paylor, Director, Department of Environmental Quality

Mr. Paylor provided the Commission with an overview of the EPA's Chesapeake Bay Program, which requires states to develop a watershed improvement plan (WIP). In December 2010 the EPA issued a total maximum daily load (TMDL) finding that is intended to cap the amount of nutrients and sediments entering the Bay's watershed.

To meet the TMDL requirements, Virginia's WIP includes waste load allocations for wastewater treatment facilities and upgrades to treatment plants in the James River basin to meet dissolved oxygen and chlorophyll standards. The nutrient caps for this basin are much lower than what Virginia had expected when the EPA approved the chlorophyll standard in 2005. Upgrading wastewater systems in the James River basin to meet these limits is expected to add between \$1 and \$2 billion to nutrient reduction costs for wastewater treatment.

Mr. Paylor observed that the amount of grant commitments for municipal wastewater facilities under the Water Quality Improvement Fund (Fund), based on signed agreements, exceeds the available balance of bonding authority by \$103 million. The potential shortfall grows to \$304.3 million if projects in the application pipeline are included.

The cost of meeting the TMDL in Virginia for all sectors, including agriculture, municipal, stormwater, and industrial, has been estimated at \$7 billion. Governors of states in the Bay region have asked the EPA to work with the states in developing watershedwide cost estimates for the TMDL. Mr. Paylor closed by reporting that the EPA has said that it will conduct a study of the issue.

Christopher Pomeroy, Virginia Association of Municipal Wastewater Authorities (VAMWA)

Mr. Pomeroy provided members with information on wastewater rate trends and the impact of the TMDL. In Virginia, average monthly residential wastewater rates have increased from \$18.63 in 2001 to \$31.03 in 2010. Virginia's wastewater utilities have already invested between \$1.5 and \$2 billion in Chesapeake Bay upgrades, and utilities have reported significant rate increases to construct, operate, and maintain these facilities.

Mr. Pomeroy noted that the Fund has helped maintain lower, more competitive sewer rates. Shortfalls in the Fund cause wastewater system owners to incur more debt, and the costs of servicing the debt is passed on to users. With regard to the costs of complying with the TMDL, he reported that the EPA unilaterally changed its computer model and reduced the 2005 nutrient limits, which had previously been approved for meeting the 2005 site-specific James River chlorophyll standard. VAMWA has been advised that the public would not get a tangible water quality benefit for the additional expenditures required to meet the new standards, which were cited as an example of the law of diminishing returns.

Members were asked to consider two cost control measures emerging in other states.

- First, several states prohibit state water quality regulations that are more stringent than federal requirements. Virginia law currently permits more stringent regulations if the State Water Control Board discloses that fact and explains the need for the more stringent regulation to relevant committees of the General Assembly.
- Second, Kentucky, Ohio, and Missouri require state agencies to evaluate the affordability and economic impact on users when issuing regulations or permits.

The chair expressed an interest in pursuing the "no more stringent than federal" provision.

Next Meeting

The chair indicated that the next meeting may include more information on CCAM, proposals for legislative and budgetary actions that VEDP would like to see promoted, and a proposed legislative agenda from VMA. The chair noted that the Commission may meet in advance of the early December deadline for submitting pre-filing-eligible bill draft requests, in order that it may act on proposed legislative elements of a manufacturing repatriation plan.

Copies of presentation materials are available on the Commission's website.

MANUFACTURING DEVELOPMENT COMMISSION

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The estimated cost of meeting the EPA's TMDL in the Commonwealth is \$7 billion.

Virginia Disability Commission

August 17, 2011

The third meeting of the Virginia Disability Commission for the 2011 interim was held in Richmond. Following introductions and opening remarks, the Disability Commission received reports from the work groups, which had met earlier that day.

Work Group #1 - Housing and Transportation

Senator Linda T. Puller reported that Work Group #1, the Housing and Transportation Work Group, had met to receive and discuss information related to options for increasing access to housing and transportation for people with physical and sensory disabilities in the Commonwealth. Senator Puller noted that Work Group #1 heard presentations from Jane Hardin, Coordinator of Senior Transit Programs, Community Transportation Association of America; Robert Werth, President of Diamond Transportation; Neil Sherman, Specialized Transportation Program Manager, Virginia Department of Rail and Public Transportation; and Lee Price, Director of Developmental Services, Virginia Department of Behavioral Health and Developmental Services. Senator Puller stated that Work Group #1 had decided to postpone recommendations related to housing, as additional work was needed on those topics. Ms. Hardin, Mr. Werth, and Mr. Sherman provided brief statements regarding options for increasing access to transportation for persons with physical disabilities to the full Commission.

Jane Hardin, Community Transportation Association of America

Ms. Hardin noted the need to support accessible transit options including feeder transportation systems and bike/walk trails, and the need for increased information sharing and coordination of information and activities among transportation providers. She recommended information clearing houses as one way that the Commonwealth could increase access to transportation for persons with physical and sensory disabilities. Ms. Hardin also noted the need for additional funding for transportation options.

Robert Werth, Diamond Transportation

Mr. Werth spoke about the need to coordinate and maximize transportation services, utilizing both public and private/for-profit service providers. He noted the need to make information about existing services available to the public, and the potential benefits that could result from better coordination, including better route and service planning and consolidation. Mr. Werth also stated that a dedicated source of funding for transportation services was needed.

Neil Sherman, Virginia Department of Rail and Public Transportation

Mr. Sherman briefly described some of the services that the Virginia Department of Rail and Public Transportation (Department) is involved with, including programs to purchase vehicles and extend transportation services for persons with disabilities. He said that 21 local transportation coordination plans, covering every region of the Commonwealth, were available through the Department's website, and that the Department was working with localities to update plans, identify service needs and gaps in services, and develop strategies for addressing those needs and filling those gaps. Mr. Sherman also stated that the Department continued to work with both public/nonprofit and private/for-profit providers to maximize available transportation options. Among other things, the Department is working on developing a "how-to" on increasing volunteer participation in transportation programs, reducing barriers to transportation, and increasing access. The Department is also in the process of competing for a federal grant that would provide transportation services for military veterans and their families. Mr. Sherman noted that if the grant was received, the program would fill another service gap.

Following statements from Ms. Hardin, Mr. Werth and Mr. Sherman, the chair requested that the Disability Commission receive information about LogistiCare®, the Medicaid transportation coordinator. He also requested information about requirements for public transportation providers imposed by the Americans with Disabilities Act.

Work Group #1 will meet at least once more during the 2011 interim, prior to the September meeting of the Disability Commission, to finalize recommendations related to increasing access to housing and transportation services for persons with physical and sensory disabilities in the Commonwealth.

The Virginia Department of Rail and Public Transportation lists 21 local transportation coordination plans covering every region of the Commonwealth on its website.

Work Group #2 - Education and Employment

Delegate Brenda Pogge reported that Work Group #2 had met and adopted several recommendations related to education and employment services for people with physical and sensory disabilities.

The Virginia Disability Commission's Education and Employment Work Group provided recommendations regarding assistive technology and federal matching requirements.

TRANSFER OF ASSISTIVE TECHNOLOGY

The Disability Commission should request that legislation be prepared to authorize local school divisions to transfer assistive technology that has been customized for students with disabilities to those students, their families, or other school divisions when the student graduates, ages out of public education, or transfers to another school division. The legislation should be modeled on the Texas assistive technology transfer statute. **The Disability Commission voted to adopt this recommendation.**

FEDERAL MATCHING REQUIREMENTS

The Disability Commission should support inclusion of language in the appropriation act making an additional \$10.1 million available to the Department of Rehabilitative Services (Department) to ensure that the Department is able to meet federal matching requirements for the vocational rehabilitation program, eliminating the current waiting list for services. If the Governor does not include funding for the Department of Rehabilitative Services to meet federal matching requirements for the vocational rehabilitation program, the Disability Commission should request an amendment to the appropriation act to make such funding available to the Department. **The Disability Commission voted to adopt this recommendation.**

Delegate Pogge noted that Work Group #2 had also received information about the impact of including special education teachers for students who are blind or vision impaired in the Standards of Quality funding structure, the impact of recent changes in requirements for interpreters for the deaf and hard of hearing in public schools, and the rules governing education of students in nursing homes. Delegate Pogge stated that Work Group #2 was considering a recommendation related to including special education teachers for students who are blind or vision impaired in the Standards of Quality funding structure, but had not yet made a final decision.

Work Group #3 - Publicly Funded Services

Delegate David Toscano reported that Work Group #3 had met to receive information and consider recommendations related to publicly funded services for people with physical and sensory disabilities.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

The Disability Commission should support inclusion of language in the appropriation act providing funding to the Virginia Office for Protection and Advocacy (approximately \$200,000 to \$250,000) to add 2.5 FTEs for the Office's ombudsman program established pursuant to § 51.5-39.7 of the *Code of Virginia*. Such language should make clear that the Virginia Office for Protection and Advocacy must provide ombudsman services to the extent allowed by available funding, but that once appropriated resources have been exhausted, the Office is not obligated to operate the ombudsman service. The language should also include a requirement that the Office collect information about the number and type of cases handled, and the sufficiency or insufficiency of funding appropriated to meet the need for services. **The Disability Commission voted to adopt this recommendation.**

BRAIN INJURY MEDICAID SERVICES WAIVER

The Disability Commission should request legislation directing the Department of Medical Assistance Services to complete the process necessary to request approval for a Brain Injury Medicaid Services Waiver. **The Disability Commission decided to request an update on the status of the Department of Medical Assistance Services' actions related to a request for approval to establish a Brain Injury Services Medicaid Waiver at its next meeting. At that time, the Disability Commission will determine whether legislation is necessary.**

BRAIN INJURY SERVICES

The Disability Commission should support inclusion of language in the appropriation act providing funding to stabilize brain injury core services to ensure ongoing service provision, and providing funding to expand brain injury core services to include community support and residential services. **After much discussion, the Disability Commission decided to ask**

Work Group #3 to develop additional information on the need to stabilize the current service system and the potential impact of expanding brain injury core services, and to present that information at the next Disability Commission meeting.

DEPARTMENT OF REHABILITATIVE SERVICES

The Disability Commission should support inclusion of language in the appropriation act restoring funding to and eliminating waiting lists for services provided by the Department of Rehabilitative Services including (i) community rehabilitation case management services, (ii) personal assistance services program, and (iii) services provided by the brain injury service coordination unit. **The Disability Commission decided to ask Work Group #3 to determine the amount of funding that would be required to meet service needs and eliminate waiting lists for these programs, and to present amounts at the next Disability Commission meeting, so that the Commission could finalize recommendations related to funding for services provided through those programs.**

CONSUMER SERVICES FUND

The Disability Commission should support inclusion of language in the appropriation act providing funding to reestablish the Consumer Services Fund, the fund of last resort for people with disabilities in need of financial assistance with securing assistive technology and related services. **The Disability Commission voted to adopt this recommendation. The Disability Commission will send a letter to the Governor stating the Disability Commission's support for inclusion of such funding in the appropriation act and, if such funding is not included in the 2012 Appropriation Act, will request an amendment to the appropriation act making such funding available.**

CENTERS FOR INDEPENDENT LIVING

The Disability Commission should support inclusion of language in the appropriation act restoring funding for independent living services provided by centers for independent living, providing funding to establish two new centers for independent living in Petersburg and the New River Valley, and providing funding to maintain two existing satellite centers for independent living offices in Loudoun County and the Middle Peninsula. **The Disability**

Commission requested that Work Group #3 provide information about the amount of funding that would be necessary to restore funding for independent living services provided by centers for independent living at the next Disability Commission meeting so that the Commission could finalize recommendations related to funding for centers for independent living.

Next Meeting

Delegate Robert Orrock announced that the Disability Commission will next meet on September 20. Work groups will meet at least once prior to the September meeting of the Disability Commission to finalize recommendations.

VIRGINIA DISABILITY COMMISSION

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The Virginia Disability Commission's Publicly Funded Services Work Group gave recommendations regarding publicly funded services for people with physical and sensory disabilities.

Members of the House of Delegates and Senate of Virginia requesting multiple copies of the *Virginia Legislative Record* should contact the Division of Legislative Services.

Did You Know?

“*Did You Know?*” appears in each issue of the *Virginia Legislative Record*. The article features important topics or interesting facts relevant to the Virginia legislature. For general questions or topic suggestions, please contact the Division at (804)786-3591 or email mtanner@dls.virginia.gov.

Virginia’s Revenue Estimating Process

Virginia’s process of estimating revenues has been largely unchanged for many years. Although the Governor of Virginia is required to submit a Budget Bill by December 20th, one of the first steps in the process begins months earlier when the process of formulating the official revenue estimates begins. The specific steps in the process are governed by § 2.2-1503 of the *Code of Virginia*.

Joint Advisory Board of Economists

The first step in the process is when the Joint Advisory Board of Economists, which consists of the Secretary of Finance, the Staff Directors of the House Appropriations and Senate Finance Committees, 12 members appointed by the Governor, and three members appointed by the Joint Rules Committee, convenes to present its view of economic conditions and the economic outlook for the upcoming budgetary period. The Board of Economists also evaluates recent revenue collections with the most recent official forecast to determine if the econometric models need to be refined or adjusted. The Department of Taxation serves as staff to the Board of Economists. The Board of Economists has access to the state’s economic forecasting service—Global Insight. The staffs of the Division of Legislative Services, House Appropriations, and Senate Finance Committee are invited to hear and participate in the discussions of the Board of Economists. Once a consensus forecast for economic activity is determined, the Department of Taxation plugs these estimates into the econometric models to determine the preliminary revenue estimates.

Governor’s Advisory Council on Revenue Estimates

The next step in the revenue estimating process is when the Governor’s Advisory Council on Revenue Estimates reviews the economic forecast of the Board of Economists, as well as the preliminary revenue estimates. The Council is comprised of business leaders throughout the Commonwealth selected by the Governor. The Council also includes the Speaker and Majority Leader of the House of Delegates, the President pro tempore and

Majority Leader of the Senate, the chairmen of the money committees of both the House and Senate, two members of the House of Delegates appointed by the Speaker, and two members of the Senate appointed by the chairman of the Senate Committee on Finance. The members of the Council review the economic outlook based on their knowledge of Virginia and the specific sectors in which they are involved. As with the Board of Economists, the meeting is held in Executive Session so that both business leaders and legislative members can speak freely regarding their views on the economy, the revenue estimates, and their own confidential proprietary information regarding the economy.

Governor’s Budget Bill

The last step in the process is when the Governor and his administration take all the consensus forecasts and views of the economic outlook and formulate the official estimates that will serve as the basis of the Governor’s Budget Bill.

John Garka, Manager, DLS Finance and Taxation Section

Commission on Unemployment Compensation

August 19, 2011

The Commission on Unemployment Compensation's first meeting of the 2011-2012 interim focused on the status of the Unemployment Trust Fund and related legislation introduced in the 2011 Session of the General Assembly.

EMPLOYMENT DATA

John Broadway, Commissioner,
Virginia Employment Commission

Commissioner Broadway provided Commission members with just-released preliminary data:

- The Commonwealth's seasonally adjusted unemployment rate for July 2011 increased 0.1 percent, to 6.1 percent, from the previous month.
- However, July's unadjusted rate of 6.2 percent is 0.1 percent lower than the rate for June.
- July's unemployment rate is 0.7 percent lower than the rate for July 2010.
- Virginia's unemployment rate (tied for eighth lowest in the nation) continues to be lower than the national rate of 9.1 percent.
- In July, Virginia's labor force declined by 3,395, and the number of Virginians receiving regular unemployment benefits increased by 173 to 55,195; a year earlier, 72,493 were receiving regular unemployment benefits.

Overall, the data presented by Mr. Broadway shows an employment situation that is improving but not robust. In 2011, Virginia's unemployment rate has averaged about 12 percent lower than rates for the same months in 2010. The Commonwealth's unemployment rate peaked in January 2010 at 7.8 percent, the highest rate since February 1983's rate of 8.1 percent.

The number of initial claims for unemployment benefits for the first six months of this year is 169,089; the corresponding figure for the first six months of last year was 204,320. This figure is 17.2 percent fewer than for the same period last year, and 37.7 percent fewer than for the first six months of 2009. This year's decline was attributed to fewer layoffs in the manufacturing, construction, wholesale trade, and mining sectors.

First payments of unemployment insurance benefits from January through June 2011 are down 15.5 percent from the corresponding period in 2010 and down 39.7 percent from the corresponding period in 2009. The average duration for receipt of unemployment benefits was 14.8 weeks in June 2011; for the same month of 2010, the average duration was 16.7 weeks. Final payments of benefits in the first six months of 2011 are down 26.5 percent from the same period in 2010 and down 23 percent from the same period in 2009. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use up all of the weeks of regular unemployment benefits for which they are eligible, was 45.7 percent in June 2010; in the same month of 2009 it was 51.8 percent.

Virginia's maximum weekly unemployment benefit is \$378; the national average is \$407. The maximum weekly benefit reflects a weekly benefit replacement rate of 41 percent of the state's average weekly wage. In 2010, the same maximum weekly unemployment benefit amount provided a weekly benefit replacement rate of 42.6 percent.

UNEMPLOYMENT TRUST FUND

The Unemployment Trust Fund is funded by state unemployment taxes, which are paid by employers at a rate that varies depending on the solvency level of the Trust Fund and each employer's claims experience.

Year	Unemployment Trust Fund Balance
1/1/09	\$546.7 million
1/1/10	(\$122.4) million
1/1/11	(\$347.5) million
6/30/11	(\$101) million
12/31/11	(\$266.6) million (estimated)

The amount of unemployment compensation benefits paid in 2010 was \$755.2 million; it is projected to fall to around \$611 million this year. State unemployment tax revenue is projected to rise from \$530.6 million in 2010 to \$692 million this year.

The solvency level of the Trust Fund is calculated by dividing its balance on June 30 by an amount, determined in accordance with a statutory formula, that represents an adequate balance.

The number of initial claims for unemployment benefits for the first six months of 2011 is 169,089, compared to 204,320 in 2010.

Virginia is expected to borrow an additional \$251 million.

States that borrow from the federal government are required to pay interest on the loans. Virginia is required to make interest payments totaling \$20.2 million in September 2011 and 2012. Interest payments cannot be paid from the Trust Fund or federal grants, and are expected to be made from general fund appropriations and the VEC's Penalty and Interest Fund.

Failing to repay the borrowed federal funds within two years has triggered the loss of 0.3 percent of the 5.4 percent credit against an employer's FUTA liability. Coupled with the expiration earlier this year of a 0.2 percent FUTA surtax on employers that was first levied in 1976, the automatic reduction in the FUTA credit will raise the employers' rate from 0.6 percent to 0.9 percent of the first \$7,000 of each employee's wages. This rate change will increase an employer's annual FUTA liability for each employee by \$21, from \$56 to \$77. The \$82 million generated from the partial loss of the credit will be applied to Virginia's loan balance.

Virginia has repaid over \$400 million in 2011 on its federal loans. The FUTA credit reduction will reduce the loan balance by an additional \$82 million next February. In May 2012, the VEC expects to repay the outstanding balance of \$300 million, and that no further borrowing will occur in 2012. However, Virginia is expected to resume borrowing for the first four months of 2013. In May 2013, these funds will be repaid by a final \$70 million payment.

2011 LEGISLATION

Staff provided the Commission with an overview of legislation pertaining to unemployment compensation that was introduced during the 2011 Session. Each of the measures that passed was endorsed last year by the Commission.

House Bill 2357 and Senate Bill 1113 eliminate the requirement that unemployment compensation benefits be reduced by 50 percent of the amount of the claimant's Social Security Act or Railroad Retirement Act retirement benefits in years when the solvency level of the Unemployment Trust Fund is less than 50 percent. The "Social Security offset" was not required in years when the solvency level of the Trust Fund exceeded 50 percent.

Senate Bill 790 requires that bills enhancing unemployment compensation benefits payable

Year	Trust Fund Solvency Level
6/30/09	24.4 percent
6/30/10	(8.1) percent
6/30/11	(8.2) percent
6/30/12	10 percent (estimated)
6/30/13	30 percent (estimated)
6/30/14	51 percent (estimated)

The Commonwealth is required to make interest payments totaling \$20.2 million in September 2011 and 2012 to the federal government for funds borrowed to offset shortfalls in the Unemployment Trust Fund.

Reaching a solvency level of 50 percent in 2014, starting the next calendar year, will suspend imposition of the fund builder tax of 0.2 percent of the first \$8,000 of each employee's wages.

The low level of solvency of the Trust Fund automatically increases the state unemployment tax (SUTA) rate assessed on employers. The program's counter-cyclical funding formula links higher tax rates to low Trust Fund solvency rates. At the Trust Fund's current level, employers are taxed under the highest of the 15 existing tax tables.

Year	Average Annual State Unemployment Tax Per Employee (SUTA) in Virginia (exclusive of federal unemployment tax assessment (FUTA))
2009	\$103
2010	\$166
2011	\$207
2012	\$229 (estimated)
2013	\$225 (estimated)
2014	\$205 (estimated)
2015	\$157 (estimated)
National average	\$350

A factor contributing to rising SUTA assessments is the increasing number of business failures, which has increased the number of unemployment benefit payments charged to the pool rather than to an active employer's account. The average pool tax assessment per employee is expected to increase from \$22.40 in 2010 to \$37.60 in 2011 and to \$46.40 in 2012.

Title XII of the federal Social Security Act provides a mechanism by which states may borrow funds to offset shortfalls in their unemployment trust funds. In order to meet its obligations to pay unemployment benefits, the Commonwealth began borrowing from the federal government in October 2009. As of July 1, 2011, the loan balance owed is \$347 million. Between September 2011 and April 2013,

to a claimant contain a statement reflecting the projected impact on the solvency level of the unemployment trust fund and the average increase in state unemployment tax liability of employers. Such bills had been required to contain an estimate of potential revenue losses of state tax revenues.

Senate Bill 791 clarifies the expiration of provisions that expanded the criteria for a state “on” indicator. The legislation repeals an enactment clause added in 2009 that made alternative versions effective upon contingencies that could result from Congressional action.

Senate Bill 1010 postpones the scheduled increase, from \$2,700 to \$3,000, in the minimum amount of wages an employee must have earned in the two highest earnings quarters of his base period in order to be eligible for unemployment benefits. The increase will apply to claims filed on or after July 1, 2012; it was scheduled to apply to claims filed on or after July 3, 2011. This bill is similar to legislation enacted in the three preceding Sessions.

The **appropriation act** included provisions that address the payment to the federal government of the interest on the funds borrowed to make benefits payments. The Comptroller is directed to reserve \$8,900,000 in general funds and additional nongeneral funds for interest repayments due by September 30, 2011. The measure also provides that it is the intent that sufficient general fund and nongeneral fund appropriation be provided in fiscal year 2013 for an anticipated interest payment due September 30, 2012, to the federal government.

Five bills related to unemployment programs failed in the 2011 Session. Two identical measures (**House Bill 1914 and Senate Bill 789**) would have required the VEC to use the E-Verify program for each individual the Virginia Employment Commission refers to an employer to perform work within the Commonwealth. The House bill was referred to the Immigration subcommittee of the House Courts Committee, where it was tabled. The Senate bill was passed by in the Senate Commerce and Labor Committee with a letter asking the VEC to report on issues raised by the proposal. The VEC’s report is due November 1, 2011.

Senate Bill 1401 passed the Senate 25-15 but failed in the House Commerce and Labor Subcommittee #1. The bill, which would have made Virginia eligible for \$125.5 million in federal funds, would have expanded eligibility for unemployment benefits in two ways. First,

certain individuals who have exhausted eligibility for unemployment benefits and who are enrolled in approved training programs would be eligible for up to 26 weeks of additional benefits. Second, an individual who voluntarily separates from employment as the result of a compelling family reason would not be disqualified from receiving unemployment compensation benefits.

The two other unsuccessful bills from the 2011 Session, **Senate Bills 1460 and 1474**, were referred by standing committees to this Commission for further study. Though the Commission received information about these bills, the patrons were unable to appear and no action was taken on the proposals.

SENATE BILL 1460 - WORKFORCE SKILLS ENHANCEMENT TRAINING

Senate Bill 1460 passed the Senate unanimously after it was amended to provide that it would become effective only if funds for its implementation are appropriated by the General Assembly. The House Appropriations Committee passed the bill by with a letter asking this Commission to examine it.

The bill would have established a program whereby unemployed workers may continue to receive unemployment compensation benefits while participating in workforce skills enhancement training from a potential employer. The bill provides that an individual’s participation in the training program does not disqualify him from unemployment benefits, and exempts him from requirements that he be available for work and accept an offer of employment. Workers may participate in the program for a maximum of 24 hours per week for a maximum of six weeks. When the program is complete, workers are assessed for possible employment. Participating workers do not receive any compensation from the potential employer providing the training, but are eligible for a Commonwealth-funded training stipend averaging \$100 per week (for up to six weeks for a maximum of \$600) to cover costs of child care, transportation, and other training-related costs. The Commonwealth will also be required to reimburse the potential employer for the incremental additional cost of its workers’ compensation insurance coverage. Funding for the workers’ stipends and the reimbursement for workers’ compensation insurance costs is subject to appropriation.

*The Commission on
Unemployment
Compensation heard a
recap of legislation
introduced during the
2011 Session.*

*The Commission on
Unemployment
Compensation heard
information regarding
SB 1460 (2011),
which dealt with
workforce skills
enhancement training.*

The proposal is based on the “Georgia Work\$” program. At least two other states (New Hampshire and Missouri) adopted similar programs. Georgia Work\$ provides employers the opportunity to train and appraise candidates at no cost and with no obligation to hire any given trainee. Through Georgia Work\$, more than 4,000 trainees have been hired upon completion of training and about 60 percent of participants have found jobs.

In Pennsylvania, lawmakers proposed “Keystone Works” but federal regulators said the draft bill failed to comply with unemployment laws and the Fair Labor Standards Act (FLSA). On January 29, 2010, the U.S. Department of Labor issued Advisory Guidance Letter 12-09 to provide guidance to states that may be considering implementation of subsidized work-based training initiatives for unemployed workers. The guidance stresses that unemployment compensation (UC) funds may only be paid to individuals with respect to their unemployment and may not be paid as a subsidy or stipend, or to an employer to encourage hiring. While trainees may be eligible for benefits, employees are not.

Trainees may receive unemployment benefits, notwithstanding the requirement that they be able and available for work, as long as they are available for work during some portion of the week. Employees may not. The guidance letter adopts the FLSA tests for whether an individual is an employee or a trainee. The test is whether a person, without any compensation agreement, works for his own advantage on the premises of another, and is further dependent on application of the facts and circumstances to six factors.

The Department of Planning and Budget’s fiscal impact statement (FIS) estimated that the bill would require appropriations of \$984,400 for each of fiscal years 2011 through 2017. Based on Georgia’s program, it is estimated that 1,424 Virginians will be eligible for the training programs. Of the annual estimated cost, \$130,000 is the amount estimated to cover the employers’ incremental increase in costs of workers’ compensation insurance.

The FIS states that the estimate may result in reduced unemployment benefit payments, reduced employer taxes, and a possible increase in general fund revenues, if the program increases the likelihood of unemployed persons receiving work. While the Georgia program has been estimated to contribute to an average reduction in payment of unemployment benefits over a seven-year period, the exact

source of the Georgia savings is not certain enough to predict a similar outcome for Virginia.

The FIS also states that the bill has the potential to result in an additional cost to the state and to employers. The FIS estimates that the VEC would incur additional administrative costs of \$103,960 in its first year and \$94,538 in years thereafter, to come out of federal employment service grants, thereby displacing other workforce training responsibilities.

SENATE BILL 1474 - SHARED WORK PROGRAM

Senate Bill 1474 was passed by in the Senate Commerce and Labor Committee with a letter asking this Commission to examine the issues. The bill would have established a shared work program whereby employers would have the option to reduce the hours worked by employees, while permitting the employees whose hours are reduced to receive partial compensation for lost wages. Program participation requires Virginia Employment Commission (VEC) approval of a plan, which must provide that the reduction in hours of work is in lieu of a layoff of an equivalent percentage of employees, and that employees’ fringe benefits cannot be reduced or eliminated during the plan.

The bill is substantially the same as House Bill 2559 (2003 Session). House Bill 2559 tracks largely with model language provided by the U.S. Department of Labor. The concept behind work sharing legislation is that it may be preferable to reduce the hours and earnings to all employees (who will get prorated unemployment benefits), than to lay off some employees (who will get full unemployment benefits). The bill establishes the procedure whereby an employing unit that wishes to institute a work share program may apply to the VEC for approval of a plan.

The FIS’s estimated costs are based on a weighted average of the 0.75 percent increase in the number of weeks of benefits paid that was attributable to the work share programs in 18 states with such programs. The FIS estimates that, in the years between 2012 and 2017, the legislation will:

- Cost the unemployment trust fund between \$3.1 and \$4.4 million each year.
- Increase unemployment tax revenues between \$1.5 and \$12.6 million each year.

- Reduce general fund revenue by an annual average of \$13,688.
- Require the VEC to incur administrative and management costs of \$179,451 in the first year and \$155,897 each year thereafter, which can be paid from the federal unemployment insurance grant, without any increase in the grant.
- Require the VEC to borrow additional moneys from the federal government to make benefit payments, which borrowings are anticipated to result in an additional \$300,000 in interest payments (which must be made from VEC special funds, a general fund appropriation, or increased taxes on employers).

The question was raised as to why the measure would increase the amount of unemployment benefit payments. The VEC agreed to appear at the Commission's next meeting to explain the assumptions that generated the estimate, quantify the amount of any favorable impact resulting from the implementation of such a program, and explain what changes to the legislation would be required in order to neutralize its impact on the Trust Fund.

Next Meeting

The Commission is expected to convene prior to the 2012 Session to receive updated information regarding the Trust Fund's solvency level and unemployment data. The VEC may report on its study of Senate Bill 789 and on the impact statement for Senate Bill 1474.

COMMISSION ON UNEMPLOYMENT COMPENSATION

SENATOR JOHN WATKINS, CHAIR
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The Commission on Unemployment Compensation also heard information regarding SB 1474 (2011), which would have established a shared work program.

Meeting Calendar for October–November 2011

MLK Commission Brenda Edwards	10:30 a.m., October 3, 2011—Lancaster Hall, Longwood University, Farmville
Special Subcommittee Commemorating Public School Closings/Prince Edward Co. Town Hall Event Brenda Edwards	3:00 p.m., October 3, 2011—Prince Edward County High School, Farmville
Virginia Code Commission Jane Chaffin	10:00 a.m., October 3, 2011—6th Floor Speaker's Conference Room, GAB
Virginia Housing Commission Common Interest Communities Work Group Elizabeth Palen	1:00 p.m., October 5, 2011—House Room C, GAB
JCOTS Intelligent Transportation Systems Adv. Committee Wenzel Cummings	10:00 a.m., October 18, 2011—6th Floor Speaker's Conference Room, GAB
Freedom of Information Advisory Council Maria Everett/Alan Gernhardt	1:30 p.m., November 14, 2011—House Room C, GAB
Virginia Housing Commission Elizabeth Palen	1:00 p.m., November 16, 2011—Hampton Roads Convention Center, Hampton Roads
Virginia Code Commission Jane Chaffin	10:00 a.m., November 21, 2011—6th Floor Speaker's Conference Room, GAB
JCOTS Electronic Privacy Advisory Committee Wenzel Cummings	1:00 p.m., November 21, 2011—House Room 1, The Capitol

Meetings may be added at any time, so please check the General Assembly and DLS websites for updates.

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

The Regulatory Alert is intended to assist General Assembly members as they keep up with the myriad regulations being proposed by agencies in the Commonwealth. The goal of this project is to provide a timely, simple, and accurate summary of the rules that are being proposed by agencies, boards, and commissions. Highlighting regulations when they are published as “proposed regulations” gives General Assembly members notice that the critical public participation phase of the rulemaking process is well underway. It is during the public participation process that the questions of an Assembly member or constituent may be most effectively communicated to the agency and examined by the individuals crafting the regulatory proposal.

The Regulatory Alert is not intended to be a substitute for the comprehensive information on agency rulemaking activity that is currently published biweekly in the *Virginia Register of Regulations* or the notification services offered by the Regulatory Town Hall website maintained by the Department of Planning and Budget. It is hoped that the *Virginia Legislative Record* will assist all members as they monitor the development, modification, and repeal of administrative rules in the Commonwealth. Access the *Virginia Register of Regulations* online at <http://register.dls.virginia.gov> or contact epalen@dls.virginia.gov or the Code Commission staff at (804) 786-3591 for further information.

TITLE 1. ADMINISTRATION STATE BOARD OF ELECTIONS

REGISTRAR’S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

1VAC20-70. Absentee Voting (adding 1VAC20-70-20).

A public hearing will be scheduled on October 17, 2011, at 3 p.m. at the State Capitol, House Room 2, Richmond, Virginia. Written public comments may be submitted until October 12, 2011.

Background:

On December 20, 2010 (27:8 VA.R. 733-734), the State Board of Elections published a regulation defining material omissions from absentee ballots with an effective date contingent upon preclearance approval by the U.S. Attorney General. This regulation did not become effective and a Notice of Withdrawal of that action was published in Volume 27, Issue 24 of the Virginia Register of Regulations on August 1, 2011. On July 6, 2011, the board approved proposing for public comment different language for a regulation defining material omissions from absentee ballots to replace board policy 2008-006, Substantial Compliance, which was also published in Volume 27, Issue 24 of the Virginia Register of Regulations on August 1, 2011. On August 16, 2011, the board received additional

public comment and directed that a further public comment period be provided.

Summary:

This regulation details standards to assist local election officials in determining whether an absentee ballot may be counted by distinguishing what errors or omissions are always material and render the ballot invalid from those that are not material.

For more information, please contact Justin Riemer, State Board of Elections, Richmond, VA, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

TITLE 12. HEALTH DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

12VAC30-120. Waivered Services (adding 12VAC30-120-1000, 12VAC30-120-1005, 12VAC30-120-1010, 12VAC30-120-1020, 12VAC30-120-1040, 12VAC30-120-1060, 12VAC30-120-1070, 12VAC30-120-1080, 12VAC30-120-1088, 12VAC30-120-1090; repealing 12VAC30-120-211 through 12VAC30-120-249).

Written public comments may be submitted until December 9, 2011.

Summary:

The proposed amendments (i) require the use of a statewide Supports Intensity Scale form, an assessment instrument, to comprehensively assess individuals’ needs for supports and services

received through the waiver every three years; (ii) require case managers to conduct an annual risk assessment of individuals enrolled in waiver programs; (iii) require persons whose services do not start within 30 days to be referred back to the local departments of social services for redetermination of eligibility; (iv) make the utilization of a service facilitator by the recipient optional under the consumer-directed model; (v) allow involuntary disenrollment from the consumer-directed model if consumer-directed services are not working well for a recipient; (vi) modify the process currently used to fill waiver slots to ensure the uniformity of the statewide process; (vii) include provisions for electronic information exchange between the local departments of social services, the Department of Medical Assistance Services, and enrolled service providers for determination of the patient pay requirement for waiver services; (viii) reorganize the existing requirements, incorporate new terminology, and update name changes and definitions; (ix) pursuant to Item 297 YYY, Chapter 874 of the 2010 Acts of Assembly, reduce the annual limit an individual can receive for environmental modifications and assistive technology from \$5,000 to \$3,000; and (x) revise the prior authorization of respite services from once a year up to 720 hours to once every six months up to 360 hours.

For more information, please contact Sam Pinero, Long Term Care Division, Department of Medical Assistance Services, Richmond, VA, telephone (804) 786-2149, FAX (804) 786-1680, or email sam.pinero@dmas.virginia.gov.

TITLE 22. SOCIAL SERVICES DEPARTMENT OF SOCIAL SERVICES

22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).

22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).

Written public comments may be submitted until October 11, 2011.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the State Board of Social Services is suspending 22VAC40-131, Standards for Licensed Private Child Placing Agencies, published in 27:25 VA.R. 2675-2717 August 15, 2011, and soliciting additional comments on changes made to the regulations between

publication of the proposed regulations and publication of the final regulations. These changes are shown in brackets in the final version of the regulations as published in the Virginia Register of Regulations. The State Board of Social Services is also suspending the effective date of the repeal of 22VAC40-130, Minimum Standards for Licensed Private Child Placing Agencies.

The effective date of this regulatory action is suspended until the State Board of Social Services readopts the regulations after the close of the additional comment period and publishes additional changes, if any, and the new effective date of the final regulations and the repealed regulations in the Virginia Register of Regulations.

Written comment regarding the changes made between publication of the proposed regulations and publication of the final regulations may be submitted to the agency contact listed below or through the Virginia Regulatory Town Hall website at <http://www.townhall.virginia.gov>.

For more information, please contact Joni S. Baldwin, Division of Licensing Programs, Department of Social Services, Richmond, VA, telephone (804) 726-7162, FAX (804) 726-7132, or email joni.baldwin@dss.virginia.gov.



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