



## July 2017 Issue

### *Activities of Virginia Legislative Study Commissions and Joint Subcommittees During the Legislative Interim*



Virginia Division of Legislative Services

# Virginia Legislative Record

Volume 27 Issue 1

The *Virginia Legislative Record* is a report of the activities of Virginia legislative study commissions and joint subcommittees, reflecting the ongoing deliberations and recommendations of interim legislative studies. Meeting summaries were prepared by the staff of the Division of Legislative Services. More information concerning the individual commissions and committees is available on the DLS website ([dls.virginia.gov](http://dls.virginia.gov)) or by calling 804-698-1810. Follow DLS on Twitter @dls\_virginia.

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## DLS Move to Pocahontas Building

As of July 1, 2017, the Division of Legislative Services is located on Floors 8 through 11 of the west tower of the Pocahontas Building, with reception on the 8th Floor. The new main number is 804-698-1810. See the DLS website staff directory for individual direct dial numbers. The new address is 900 E. Main Street, 8th Floor, Richmond, VA 23219. For updates, follow DLS on Twitter @dls\_virginia.

## Virginia Law Portal Updated on July 1

The Virginia Law Portal was updated on July 1, 2017, to reflect changes to Virginia law enacted during the 2017 Session of the General Assembly. Visit the Virginia Law Portal ([law.lis.virginia.gov](http://law.lis.virginia.gov)) for publications that constitute Virginia law, including the Code of Virginia, the Virginia Administrative Code, the Constitution of Virginia, Compacts, Charters, Authorities, and Uncodified Acts of Assembly. For updates, follow Virginia Laws on Twitter @VA\_Laws.

## Regulation Information

The *Virginia Register of Regulations* is Virginia's official publication of proposed, final, and emergency regulations. All regulations must be filed with the Registrar of Regulations to become law. The *Virginia Register*, published every other Monday, provides a snapshot of all regulatory activity in Virginia. The current *Register* issue, as well as prior issues and additional information about the regulatory process in Virginia, is available at <http://register.dls.virginia.gov>. Contact the Division of Legislative Services at 804-698-1883, 804-698-1884, or 804-698-1885 and follow the *Virginia Register* on Twitter @varegs for more information.

## Virginia Code Commission

*April 4, 2017*

The Virginia Code Commission (the Commission) met on April 4, 2017, in Richmond, with Senator John Edwards, chair, presiding.

### Title 16.1 and 17.1 Sections to Be Included in the Code of Virginia

*David Cotter, Senior Attorney, Division of Legislative Services*

Mr. Cotter explained that at the time of the 1998 recodification of Title 17, the title contained a number of sections designated as “not set out.” The issue is whether the act of assembly enacting the recodification (Chapter 872 of the 1998 Acts) repealed all 10 of the sections not set out in Title 17 or only the two specifically included in the eleventh enactment clause of the act. Mr. Cotter researched this issue and concluded that the plain language of the title revision bill, as reflected in the tenth and eleventh enactment clauses, establishes that only two of the “not set out” sections, §§ 17-117.1 and 17-118.1, were repealed. He indicated that the Commission's recodification report supports the conclusion that the General Assembly did not intend to make substantive changes to the law and that §§ 17-125, 17-126, 17-126.1, 17-126.2, 17-126.3, 17-126.4, 17-126.5, and 17-126.6 were not repealed. These remaining eight sections have not been otherwise amended or repealed since 1998 and remain valid provisions of Virginia law. Mr. Cotter stated that it is within the discretion of the Commission to set out the text of the sections in the Code.

Mr. Cotter suggested that in addition to deciding whether to set out the above-mentioned sections in Title 17.1, the Commission may want to determine if the text of any of the 13 sections currently in Title 16.1 as “not set out” should be placed into the Code. The sections in Title 16.1 that are currently “not set out” are §§ 16.1-69.2, 16.1-69.3, 16.1-69.4, 16.1-69.7:1, 16.1-69.13, 16.1-69.35:1, 16.1-70, 16.1-70.1, 16.1-71, 16.1-72, 16.1-73, 16.1-74, and 16.1-75.

Mr. Cotter reviewed his recommendation for each of the sections in both titles. In response to a question from Delegate Greg Habeeb, the Commission discussed adding a generic provision to the Code to address the issue of venue for the prosecution of a crime committed in the courthouse of one locality where such courthouse is physically located in another jurisdiction. Mr. Cotter suggested establishing concurrent jurisdiction for both localities over such prosecutions. He further explained that Virginia law requires that the courts be in the “county seat,” and the county seat is where the courthouse is located. The Commission supported a generic provision in the Code to address this issue instead of the locality-by-locality approach currently in the Code.

The Commission decided that the full text of the sections that are not obsolete should be set out in the Code. Those sections to be set out in full are §§ 16.1-69.2, 16.1-69.3, 16.1-69.4, 16.1-69.7:1, 16.1-69.35:1, 17-125, 17-126.2, 17-126.3, 17-126.4, 17-126.5, 17-126.6.

The Commission asked Mr. Cotter to prepare (i) a bill to add a generic section to the Code of Virginia as discussed and (ii) an obsolete laws bill to repeal the sections and provisions reported by Mr. Cotter as obsolete (§§ 17-126 and 17-126.1, paragraph 1 of § 17-126.2 (pertaining to Henry County), and §§ 16.1-69.13, 16.1-70, 16.1-70.1, 16.1-71, 16.1-72, 16.1-73, 16.1-74, and 16.1-75).

### **Request from House Committee for Courts of Justice to Modify Catchlines of §§ 18.2-479.1 and 18.2-460 of the Code of Virginia**

*David Cotter, Senior Attorney, Division of Legislative Services*

Mr. Cotter stated that the House Committee for Courts of Justice considered and tabled Senate Bill 1474 to amend § 18.2-479.1 of the Code of Virginia. The committee requested that the Commission review the catchlines for §§ 18.2-479.1 and 18.2-460 of the Code for accuracy and consider removing “resisting arrest” from § 18.2-479.1 and adding it to § 18.2-460. Mr. Cotter noted that in 2011, the Commission reviewed a similar request from the Henry County Commonwealth’s Attorney. At that time, the Commission added “fleeing from a law-enforcement officer” to the catchline of § 18.2-479.1 but retained “resisting arrest.”

The Commission discussed changing the section catchline of § 18.2-479.1 to more clearly describe the content of the section. The language of § 18.2-479.1, which states that it is unlawful for a person to flee from a law-enforcement officer to avoid an arrest, is often overlooked by police and magistrates who instead focus only on the section catchline. Defendants are often erroneously charged with § 18.2-479.1 when the appropriate charge would be § 18.2-460, which prohibits obstruction of a law-enforcement officer in the performance of his duties.

Commission member Tom Moncure commented that § 1-217 of the Code of Virginia provides that headlines of sections are intended as mere catchwords to describe the content of a section but are not considered part of the act of the General Assembly. Section 30-149 gives the Code Commission some discretion in making certain minor changes to the Code of Virginia, including changes to section catchlines.

The Commission voted to (i) delete “resisting arrest” from the catchline of § 18.2-479.1 and (ii) add those words to the catchline of § 18.2-460 after “justice.” A letter will be drafted advising Delegate David Albo that (a) the catchlines will be changed, (b) the consensus of the Commission is that the section text of § 18.2-479.1 needs to be reviewed and rewritten, and (c) the House Committee for Courts of Justice might consider referring the section to the Crime Commission for further review and recommendation.



## Issues Pertaining to the Code of Virginia on the Virginia Law Portal

*Mark Vucci, Director, Division of Legislative Services*

Mr. Vucci reviewed the Code Commission's authority in § 30-146, which charges the Commission with publishing and maintaining the Code of Virginia. Section 30-34.10:1 requires the Division of Legislative Automated Systems (DLAS) to establish and maintain a legislative electronic information system, and § 30-34.10:2 provides that the text of the Code of Virginia shall be a part of the system subject to conditions and restrictions established by the Virginia Code Commission. DLAS makes the Code of Virginia available online through the Virginia Law Portal.

Mr. Vucci expressed his concerns with the Law Portal, including the search and live chat features, and stated that he would like to work with DLAS to improve the portal. He pointed out that although the targeted audience is the general public, the portal should be developed to be more useful to attorneys, such as by replacing the Google search with a Boolean search or something comparable.

The chair recognized Jeff Palmore, representing the Virginia Bar Association. Mr. Palmore stated that the Law Portal is a citizen's primary resource for researching Virginia law, and he asked the Commission to keep in mind, while it is seeking ways to improve the Law Portal's usability for attorneys, that the Law Portal is a citizen resource and that attorneys have other resources at their disposal.

After discussion, Mr. Vucci indicated that he would meet with Preston Warren, Interim Director of DLAS, and discuss his concerns.

## Bills Referred to the Code Commission from the 2017 Legislative Session

The Senate Committee for Courts of Justice referred Senate Bill 782 (Ebbin) and Senate Bill 832 (DeSteph), and the Senate Committee on Privileges and Elections referred Senate Joint Resolution 216 (Ebbin) to the Commission for study.

Senator Edwards stated that SB 782 repeals §§ 20-45.2 and 20-45.3, the statutory prohibitions on same-sex marriages and civil unions, as the statutes are no longer valid due to the United States Supreme Court decision in *Obergefell v. Hodges*. The Commission discussed whether to recommend to the General Assembly repeal of these sections as part of an obsolete laws bill and decided to defer action on the Committee's request pending receipt of historical information requested by Senator Ryan McDougle as to how the General Assembly has acted in other circumstances where Virginia law or the Virginia Constitution has been deemed invalid due to a Supreme Court of Virginia or a United States Supreme Court decision and what the Commission's role has been.

Senate Joint Resolution 216 proposed the repeal of the constitutional amendment dealing with marriage that was approved by referendum in November 2006 because the provisions are no longer valid due to *Obergefell v. Hodges*. By consensus, the Commission agreed to defer action pending receipt of the historical information as previously voted on.

Senate Bill 832 amends § 54.1-4201.1 by replacing the Latin term "mutatis mutandis" with an English translation. Mr. Vucci advised that the term "mutatis mutandis" is used over 100 times in the Code of Virginia and that changing the term in only one section of the Code could set up interpretation problems and cause confusion. As part of the discussion, it was noted that the translation of "mutatis mutandis" in Senate Bill 832 was not a proper translation.

By consensus, the Commission decided to send a letter to the Senate Committee for Courts of Justice advising that the Commission has declined to recommend legislation to translate the term "mutatis

mutandis” into English, but noting that if the Senate Committee for Courts of Justice believes that it should be done, the term should be defined in Title 1 so that it applies to the entire Code of Virginia and the definition should be properly translated.

### **Status of 2017 Legislation Recommended by the Commission and Other Legislation Affecting Commission Duties**

*Jane Chaffin, Code Commission staff and Registrar of Regulations, Division of Legislative Services*

Ms. Chaffin stated that all of the bills recommended by the Commission for the 2017 Session of the General Assembly had passed: House Bill 1538 (corrections to revision and recodification of Title 23), Senate Bill 1272 (codification of the Nonresident Violator Compact of 1977), Senate Bill 912 (reorganization of additions, subtractions, and deductions for Virginia residents taxable income), Senate Bill 916 (guidance documents), and Senate Bill 1270 (obsolete law regarding the Ohio River Basin Commission).

Delegate Habeeb addressed House Bill 1653 regarding changes to the Commission’s codification authority, which he introduced in the 2017 Session. The bill passed unanimously in the House, and a scheduling conflict prevented the Senate Rules Committee from taking up the bill. He stated that the issue still needs to be addressed in Commission policy or statute.

### **Follow-up Related to Codification Authority Discussion: New and Updated Web Pages**

*Jane Chaffin, Code Commission staff and Registrar of Regulations, Division of Legislative Services*

Ms. Chaffin advised that in response to the Commission’s request, a new page titled “Editing Responsibilities in Publishing the Code of Virginia” has been added to the Commission’s website to explain the Commission’s codification practices. In addition, the Frequently Asked Questions page has been updated.

*May 15, 2017*

The Virginia Code Commission (the Commission) met on May 15, 2017, in Richmond, with Senator John Edwards, chair, presiding.

### **Administrative Law Advisory Committee Legislative Update, Appointments, and Work Plan**

*Tom Lisk, Chair, Administrative Law Advisory Committee (ALAC)*

Mr. Lisk addressed the Commission on behalf of ALAC. He stated that Senate Bill 916, which was recommended by ALAC, passed the General Assembly, was signed by the Governor, and is Chapter 488 of the 2017 Acts of Assembly. The bill consolidates the provisions relating to guidance documents in the Virginia Register Act and requires agencies that do not have regulatory authority to file guidance documents.

The Commission agreed to Mr. Lisk’s request that Mike Quinan, an attorney with Christian and Barton, be reappointed to ALAC and that Paul Kugelman, Jr., of the Office of the Attorney General be appointed to serve on ALAC.

Mr. Lisk presented the ALAC proposed work plan, containing the following items, for the Commission’s consideration and approval:



1. Continue an examination of the executive review process with a goal of shortening the time frame for completing the regulatory process.
2. Review agencies' guidance document update processes and the timeliness of filing.
3. Review the Department of Taxation process for issuing guidelines. Concerns have been expressed that, in some cases, regulations may have been replaced with guidance documents.
4. Consider the suggestion of establishing standard rules of procedure for administrative hearings. Judge Lilley asked that ALAC consider looking at the statutory provisions regarding the court review of the agency decision.
5. Revisit draft legislation related to protective orders and closed hearings.

In response to a question about a constitutional amendment introduced at the 2017 Session that would allow the Virginia General Assembly to nullify a regulation, Mr. Lisk stated that ALAC will be conducting a 50-state survey to see what other states are doing in this regard.

### **Report on Historical Treatment by the Commission and General Assembly of Changes to Statutory or Constitutional Language Deemed Invalid by a Court Decision**

*Mark Vucci, Director, Division of Legislative Services*

Mr. Vucci stated that at the last meeting the Commission requested that staff research the question of the Commission's role when a state law or constitutional provision has been deemed invalid by a court. Mr. Vucci reviewed the research report, which was prepared by David Cotter of DLS, before the Commission. To summarize the report, historically the Commission has determined that it has the authority to recommend legislative action to address laws that have been held to be unconstitutional; however, the Commission does not make such recommendations lightly but exhibits great deference to the actions of the General Assembly.

Mr. Vucci explained that the research showed that if it is likely that a member of the General Assembly will introduce a bill or will act on an obsolete provision, then the Commission does not make a recommendation. If the Commission does not anticipate action by the General Assembly, then it will review the situation and consider making a recommendation.

### **Referral of Senate Bill 782 and Senate Joint Resolution 216 from the 2017 Session of the General Assembly**

Senator Adam Ebbin reminded the Commission that it was asked by the Senate to review Senate Bill 782, which repeals statutory prohibitions on same-sex marriages and other civil unions, and Senate Joint Resolution 216, which repeals the constitutional amendment dealing with marriage that was approved by referendum at the November 2006 election. He requested that the Commission advise the Senate that the Commission supports the repeal of the statutory provisions and the repeal of the 2006 constitutional amendment to align Virginia with the decision of the United States Supreme Court.

Delegate Greg Habeeb noted that the United States Supreme Court decision did not specifically address a Virginia law and asked if there has been an analysis or comparison of the law at issue in the case versus the Virginia law. No one indicated that he or she was aware of a comparison. Delegate Habeeb stated that it was appropriate for the Commission to act on an obsolete law, but only with a proper foundation. After a brief discussion, the Commission agreed to request an opinion from the Attorney General as to whether the decision in *Obergefell v. Hodges* renders §§ 20-45.2 and 20-45.3 of the Code of Virginia and Article 1, Section 15-A of the Constitution of Virginia obsolete. Once the Commission

receives a formal opinion, DLS attorneys will review the opinion, after which the Code Commission will decide what action to take.

### **Recodification of Title 55, Property and Conveyances**

*Amigo Wade, Kristen Walsh, and Brittany Olwine, Attorneys, Division of Legislative Services*

Mr. Wade provided a recap of the recodification project. Subtitle III is complete and staff will begin today's presentation of Subtitle IV, Common Interest Communities, by reviewing the chapters pertaining to the Horizontal Property Act, the Subdivided Land Sales Act, and the Common Interest Community Management Information Fund. Three additional chapters of Subtitle IV—Virginia Property Owners' Association Act, Virginia Condominium Act, and Virginia Real Estate Cooperative Act—currently are under review by the DLS editing office for presentation at the Commission's next meeting. After completion of Subtitle IV, staff will present Subtitle I, Real Estate Conveyances, followed by Subtitle II, Real Estate Settlements and Recordation, and Subtitle V, Miscellaneous, which will complete the recodification.

Mr. Wade presented proposed Chapters 3 (Horizontal Property) and 6 (Subdivided Land Sales Act) of Title 55.1. He also presented existing Chapter 29 of Title 55, related to the Common Interest Community Management Information Fund, the Common Interest Community Ombudsman, and the Common Interest Community Management Recovery Fund, which staff recommends be relocated to Chapter 23.3 of Title 54.1 of the Code of Virginia.

Staff advised that completion of the recodification is expected in time for the 2019 Session of the General Assembly.

### **Proposed Work Plan for the Commission**

Jane Chaffin presented the 2017 Code Commission work plan. Continuing studies include the recodification of Title 55, Property and Conveyances; the study of the use of gender-specific terms throughout the Code of Virginia and review of the Code of Virginia for needed changes in light of the U.S. Supreme Court Decision in *Obergefell v. Hodges*; and the combination of the obsolete laws project conducted under § 30-151 and the review of sections in the Code of Virginia labeled as "not set out." Ms. Chaffin explained that Title 15.2 contains 65 "not set out" sections and suggested that DLS staff identify any of the 65 sections deemed to be obsolete. A similar exercise has been conducted with Titles 16.1 and 17.1 and was presented to the Commission at its April meeting.

In addition, Ms. Chaffin reviewed the expiration dates of contracts pertaining to publishing the Code of Virginia, the Virginia Administrative Code, and the *Virginia Register of Regulations*. The Commission determined to adopt the plan with the following revisions: (i) add Senate Bill 782 and Senate Joint Resolution 216 from the 2017 Session of the General Assembly and (ii) include the Commission's decision at the April meeting regarding a bill to add a generic section to the Code of Virginia to establish concurrent jurisdiction for both localities for the prosecution of a crime committed in the courthouse of one locality where such courthouse is physically located in another locality and to repeal the sections and provisions reported as obsolete in Titles 16.1 and 17.

### **Virginia Code Commission**

#### **Senator John S. Edwards, Chair**

Jane Chaffin, Code Commission staff and Registrar of Regulations, DLS

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[codecommission.dls.virginia.gov/](http://codecommission.dls.virginia.gov/)



## Virginia Conflict of Interest and Ethics Advisory Council

*April 24, 2017*

The Virginia Conflict of Interest and Ethics Advisory Council (the Council) met on April 24, 2017, in Richmond, with Judge Patricia West, chair, presiding.

The Council approved the 2016 Annual Report of the Council as presented by Executive Director Stewart Petoe.

The Council approved staff-proposed changes to the Council's Formal Advisory Opinion Procedures as presented by Mr. Petoe.

The Council approved Formal Advisory Opinion 2017-F-001, Savings clause for quorums § 2.2-3112, as presented by Mr. Petoe.

Mr. Petoe gave a presentation to the Council on the \$100 gift cap and political action committees (PACs). The Council considered a motion to request that the legislature adopt a change to the law making the \$100 gift cap apply to PACs. The motion did not pass.

The Council approved a proposed change to the Lobbyist Disclosure Form as presented by Council attorney Rebekah Stefanski.

### Virginia Conflict of Interest and Ethics Advisory Council

**The Honorable Patricia L. West, Chair**

Stewart Petoe, Executive Director

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[ethics.dls.virginia.gov/](http://ethics.dls.virginia.gov/)

## Commission on Economic Opportunity for Virginians in Aspiring and Diverse Communities

*May 24, 2017*

The Commission on Economic Opportunity for Virginians in Aspiring and Diverse Communities (the Commission) met on May 24, 2017, in Richmond. Opening remarks were made by Delegate Jason Miyares, Chairman of the Commission.

### **Presentation: Work, Family, and Evidence-Based Policy: The Keys to Reducing Poverty in Diverse Communities**

*Robert Doar, Morgridge Fellow in Poverty Studies, American Enterprise Institute*

Mr. Doar, who spent seven years as the social services commissioner for Mayor Michael Bloomberg in New York City, focused his presentation on three particular factors that were important in expanding opportunity in NYC:

- Work-focused government assistance programs that expected and supported work from low-income New Yorkers;



- A willingness to talk honestly about the impact of nonmarital childbearing and to promote parental responsibility; and
- A commitment to evidence-based responsibility.

Mr. Doar encouraged adoption of a model similar to that implemented in NYC that strengthened work expectations in public benefit programs and provided generous work supports. He stated that work expectations should be strengthened by taking up state options to encourage work in the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and public housing and pointed to Governor Scott Walker's plan in Wisconsin as a useful template. Mr. Doar also emphasized that state policymakers should put more effort into ensuring that poor mothers who leave welfare for work can obtain affordable child care and that child care subsidies have manageable benefit cliffs that do not excessively penalize moving up the economic ladder.

Mr. Doar spoke about the "success sequence" and NYC's use of posters to promote this "sequence." The "success sequence" is the concept that individuals who graduate from high school, get a job, get married, and have children, in that order, are rarely in poverty. He spoke of public policies that can make progress in reducing family breakdown, including minimizing marriage penalties in benefit programs and policies to improve low-skilled men's labor market position to help them become more "marriageable."

On the topic of evidence-based policymaking, Mr. Doar encouraged Virginia policymakers and nonprofits to push for testing a wide array of pilot programs and argued that the pilot program process can be made much easier by using state agency administrative data that can enable low-cost randomized control trials. He also pointed to the use of performance-based contracting and pay-for-success models as alternative approaches to testing policies and programs.

### **Presentation: The Poverty of Opportunity: A Civil Society Approach to Change the Poverty Narrative for Virginia Families and Children**

*Gerard Robinson, Resident Fellow, American Enterprise Institute*

Mr. Robinson previously served as the Virginia Secretary of Education under Governor Bob McDonnell, as the Florida Commissioner of Education, and as president of the Black Alliance for Educational Options. His presentation focused on prison reentry, education, and the role of nongovernmental actors. Mr. Robinson highlighted the work being done in Georgia to overhaul much of the state's criminal justice system, including reforms that emphasize workforce preparation and in-prison education programming. For example, in Georgia, the work experience a prisoner gains in a particular trade while imprisoned counts toward his technical certification upon his release. Many of the efforts being made in Georgia, Mr. Robinson emphasized, were made possible through public-private partnerships.

### **Presentation: Creating Economic Opportunities through Housing Policy**

*Christie Marra, Esq., Virginia Poverty Law Center; Director, Advocates for Credit, Employment and Shelter (ACES), Virginia Legal Aid Community*

Ms. Marra's presentation focused on how to link low-income persons with opportunity through living-wage jobs and safe and quality housing. She pointed to multiple studies—in particular, of a federal housing mobility program in the 1990s—that have shown links between neighborhood characteristics and positive outcomes for children living in poverty. Ms. Marra described policies that provide opportunities for low-income families with children under the age of 13 to live in high-opportunity,



low-poverty neighborhoods as the most likely to yield long-term results and interrupt generational poverty. Such policies include mobility counseling programs, mandatory inclusionary zoning laws, and prohibitions on source of income discrimination.

### **Public Comment and Next Meeting**

Chairman Miyares opened up the meeting to public comment; there being none, the Chairman discussed the potential for a meeting to be held later in the fall, focusing on workforce development.

The date and location of the next Commission meeting is to be determined and will be posted on the Commission's webpage: [dls.virginia.gov/commissions/eov.htm](http://dls.virginia.gov/commissions/eov.htm).

## **Commission on Economic Opportunity for Virginians in Aspiring and Diverse Communities**

**Delegate Jason Miyares, Chair**

Meg Lamb, DLS Attorney

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[dls.virginia.gov/commissions/eov.htm](http://dls.virginia.gov/commissions/eov.htm)

## **Virginia Freedom of Information Advisory Council**

*March 7, 2017*

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of the 2017 interim on March 7, 2017, in Richmond. The meeting was held to hear an update on legislation passed by the 2017 Session of the General Assembly, to consider bills referred by the 2017 Session of the General Assembly to the Council for further study, to review issues carried over from 2016 for further study this year and develop a study plan for the study of those issues, and to discuss other issues of interest to the Council. After being called to order and introducing the members present, the Council welcomed its newest member, Cullen Seltzer, Esq., appointed by the Governor for a term of four years.

### **Recap of FOIA and Related Access Bills from the 2017 Session of the General Assembly**

Staff informed the Council that the 2017 Session of the General Assembly passed a total of 22 bills amending the Freedom of Information Act (FOIA). The Council in 2016 completed the third year of the three-year study of FOIA directed by House Joint Resolution (HJR) No. 96 (2014), and as a result of that study the Council recommended two pieces of omnibus legislation to the 2017 Session of the General Assembly incorporating all of its recommended changes. Both omnibus bills, HB 1539, the records omnibus bill, and HB 1540, the meetings omnibus bill, passed the General Assembly and were enacted into law. Two additional bills passed the General Assembly that were recommended by the FOIA Council: HB 1734, which requires guidance documents of the Virginia Parole Board to be available as public records under FOIA, and HB 1876, which excludes from mandatory disclosure library records that can be used to identify any library patron under the age of 18 years.

Five bills add three new records exemptions in FOIA as follows: SB 1226, amending § 2.2-3705.6, adds a new records exemption for certain proprietary information included in solar services agreements between a private business and a public body. SB 1561 and HB 2209, identical bills amending § 2.2-

3705.5, add a new records exemption for records of and information held by the Emergency Department Care Coordination Program [*SB 1561 and HB 2209, creating the Emergency Department Care Coordination Program, do not become effective unless and until the Commonwealth receives federal Health Information Technology for Economic and Clinical Health (HITECH) Act funds to implement its provisions*]. SB 1006 and HB 1551, identical bills amending § 2.2-3705.5, add a new records exemption for data and information provided by the Office of the Executive Secretary of the Supreme Court of Virginia to the Department of Behavioral Health and Development Services pursuant to § 37.2-308.1 pertaining to commitment hearings for juveniles and adults.

Two bills add two new meetings exemptions in FOIA as follows: SB 1574, amending § 2.2-3711, adds a new meetings exemption for meetings of a subcommittee of the Board of the Virginia Economic Development Partnership Authority created to consider information provided by the Virginia Employment Commission in order to verify employment and wage claims of businesses that have received incentive awards. HB 1971, amending §§ 2.2-3705.7 and 2.2-3711, adds a new meetings exemption for discussion or consideration of (i) individual sexual assault cases by a sexual assault response team established pursuant to § 15.2-1627.4 and (ii) individual child abuse or neglect cases or sex offenses involving a child by a multidisciplinary child abuse team established pursuant to § 15.2-1627.5, and also excludes records of such multidisciplinary child abuse teams from mandatory disclosure.

The remaining 14 bills amend existing provisions of FOIA. Of note, HB 2144, among other provisions, increases the Virginia Freedom of Information Advisory Council from 12 members to 14 members by adding one additional member from the House of Delegates and one additional member from the Senate.

Staff noted that while the *Legislative Update* document is complete, it is not finalized because the Governor has not yet taken action on some of the bills and has until March 27, 2017, to do so. The General Assembly will meet on April 5, 2017, for the Reconvened Session to act on any amendments or vetoes by the Governor. The final version of the 2017 *Legislative Update* will be posted on the Council's website after final action has been taken on all of the bills.

### **Bills Referred to Council for Study by the 2017 Session of the General Assembly**

Staff advised the Council that the General Assembly had referred three bills to the Council for study this year and provided an overview of each bill.

HB 2316 (Marshall, D.) pertains to meetings of the Tobacco Region Revitalization Commission and seeks to provide that the remote locations from which additional members of the Commission participate in a Commission meeting that is conducted through electronic communication means shall not be required to be open to the public.

SB 972 (DeSteph) would require all departments, agencies, and institutions of the Commonwealth and staff and employees thereof to respond to a request for information made by a member of the General Assembly. The bill further provides that notwithstanding the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), a response to a request for information made by a member of the General Assembly shall not be subject to redaction.

HB 2223 (Kory) would require every public body to afford an opportunity for public comment during any open meeting and would require that the public comment periods be noticed on the public body's agenda. The bill permits the public body to have discretion in where it places the public comment period on its agenda and permits the public body to adopt reasonable rules governing the public comment portion of the meeting, including imposing reasonable restrictions on time, place, and manner. The bill



requires that for meetings of all public bodies, not just those state public bodies on which there is at least one member appointed by the Governor as in current law, the notice provided for any such meeting include a statement as to approximately at what point during the meeting public comment will be received.

### **Issues Continued from 2016 for Further Study**

Staff next provided an overview of each of the five issues carried over from 2016 for further study in 2017.

#### *Proprietary Records and Trade Secrets*

In 2014 the Virginia Press Association submitted a white paper suggesting the creation of one or more general exemptions for proprietary records and trade secrets, as opposed to the many specific exemptions in current law that are limited to particular agencies and particular types of records. This proposal, along with a review of current exemptions addressing proprietary records and trade secrets, was studied in depth by the FOIA Council, the Records Subcommittee, and the Proprietary Records Work Group over the course of the three-year study. Various issues were identified, including the lack of a statutory definition of “proprietary,” various usages of the same terms in different exemptions that may be subject to differing interpretations, the proliferation of new exemptions using very similar language adding to the length and complexity of FOIA, concerns over the process of designating what records are proprietary or trade secrets, different types of records that might be exempted, and concerns over liability if a public body had to defend a designation made by a private entity. Draft proposals were presented at every level of review, and agency representatives testified regarding current exemptions, but no consensus was reached on a recommendation moving forward.

#### *Personnel Records*

Personnel records were studied by the Records Subcommittee, the Personnel Records Work Group, the DHRM Records Work Group, and the full Council from 2014 through 2016. Amendments to clarify the existing personnel records exemption and to eliminate a redundant exemption passed the 2017 Session of the General Assembly as part of the omnibus legislation recommended by the Council (HB 1539). Additional issues were identified but not resolved concerning differing treatment of letters of recommendation in different contexts, the lack of a definition of “personnel records,” and the interaction of provisions concerning personnel records with administrative investigations.

#### *Law-Enforcement Records*

The next issue that was carried over for further study is that of access to law-enforcement records, particularly criminal investigative records. Staff provided a brief overview highlighting the prior instances in which the Council has studied the issue. Staff noted that the Council formed a Criminal Investigative Records subcommittee in 2010 to study SB 711 (2010), which sought to require law-enforcement agencies to disclose criminal investigative records once a criminal investigation or prosecution was final or was otherwise terminated, with certain limited exceptions. The subcommittee met three times over the 2010 interim but, ultimately, after considering arguments both in favor of and in opposition to the bill, could not find common ground for substantive change on the issue. The subcommittee did, however, recommend a draft that sought to rewrite Va. Code § 2.2-3706, the statute governing access to criminal investigative records, in an effort to make the section easier to read and understand without introducing any substantive changes. The Council voted to recommend the draft, but

for several reasons it was decided that introduction of the draft be delayed until the 2012 Session of the General Assembly.

Staff explained that the Criminal Investigative Records subcommittee was continued in 2011 to study HB 1467 and a separate proposal offered by the Virginia Press Association concerning access to criminal and other law-enforcement records. HB 1467 was substantially the same as SB 711 (the bill that was studied the prior year), and after considerable discussion, which substantially echoed those comments offered both in support of and in opposition to SB 711 the prior year, the subcommittee recommended that no further action be taken on HB 1467. The subcommittee also recommended, however, that the issue of access to criminal investigative files and other law-enforcement records be continued for further study due to the significant amount of interest expressed by stakeholders. The subcommittee directed staff to meet with the interested parties to see if consensus could be reached about making any changes to the existing law. Staff met with interested stakeholders, including the Virginia Press Association, law-enforcement representatives, and other interested parties, three times over the remainder of the 2011 interim. The work group was not able to reach agreement on a legislative proposal, but intended to continue its work during the 2012 interim.

Staff noted that the subcommittee met three times during the 2012 interim, and used a position paper drafted by the Virginia Press Association outlining its concerns with the then-existing version of Va. Code § 2.2-3706 to frame its discussions. At its last meeting, the subcommittee voted to recommend a draft that was intended to simply reorganize and clarify the existing law. The Council voted to recommend the draft to the 2013 Session of the General Assembly. That draft, in the form of SB 1264, passed and amended § 2.2-3706 into essentially the version of the statute that exists today.

The issue of access to law-enforcement records was raised again in 2016, but only studied in cursory fashion due to time constraints. As a result, the issue was carried over for continued study during the 2017 interim. Staff told the Council that the above information was provided by way of background and was in no way an attempt to restrict further examination of § 2.2-3706.

### *Technology Issues*

During the course of the three-year study several issues were raised, but not resolved, concerning the effects of technology regarding access to both records and meetings:

- FOIA policy statement. At the beginning of the HJR No. 96 study, staff suggested that FOIA be amended to include a policy statement to the effect that “Any public body procuring any computer system, equipment or software, shall ensure that the proposed system, equipment or software is capable of producing public records in accordance with this chapter.” (Language from § 2.2-1111, applicable to the Department of General Services.)
- “Vendor proprietary software” (§ 2.2-3705.1(6)) and “Computer software developed by or for [a public body]” (2.2-3705.1(7)).
- Website posting of notice and minutes (§§ 2.2-3707 and 2.2-3707.1).
- Texting among members during public meetings.
- Technical terminology and definitions.
- Access to databases; the Supreme Court of Virginia is scheduled to hear a case concerning access to and custody of databases this year, so the Council decided to wait until the Court has rendered its decision before studying this issue further.



*Reorganization of FOIA*

HJR No. 96 had directed the Council to examine the organizational structure of FOIA and make recommendations to improve readability and clarity. A draft was presented for consideration that would organize FOIA into articles for further clarity, but no consensus was reached.

**Future Meetings**

The Council set the following meeting dates for 2017:

Monday, May 15, 2017, at 1:30 p.m. in House Room 1 in the Capitol

Monday, August 14, 2017, at 1:30 p.m. in House Room 1 in the Capitol

Monday, November 20, 2017, at 1:30 p.m. in House Room 1 in the Capitol

*May 15, 2017*

The Virginia Freedom of Information Advisory Council (the Council) held its second meeting of the 2017 interim on May 15, 2017, in Richmond. The meeting was held to consider bills referred by the 2017 Session of the General Assembly to the Council for further study, to receive a progress report from the Proprietary Records and Trade Secrets Subcommittee, to review draft legislation recommended by the Subcommittee, and to discuss other issues of interest to the Council.

**Review of Bills Referred by the 2017 Session of the General Assembly**

Senator Bill DeSteph, patron of SB 972, [*Bill Summary: Requires all departments, agencies, and institutions of the Commonwealth and staff and employees thereof to respond to a request for information made by a member of the General Assembly. The bill further provides that notwithstanding the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), a response to a request for information made by a member of the General Assembly shall not be subject to redaction.*] appeared before the Council to discuss his bill and the reason for its introduction. He explained that he introduced the bill because he had made several FOIA requests to public bodies for certain records and that when he received the records they had been redacted. He stated that after receiving the redacted records, he and his staff went online and were able to find the records online in unredacted form. He explained that the bill seeks to prevent public bodies from making “baseless” redactions in responses to FOIA requests made by members of the General Assembly, who need the information they have requested in order to fulfill their legislative duties.

Staff then explained the bill line-by-line. Staff stated that the bill requires state agencies to provide unredacted records, notwithstanding the provisions of the Virginia Freedom of Information Act, in response to a request for information made by a member of the General Assembly acting in the performance of such member’s official legislative duties. Staff stated that the bill provides exceptions that allow the state agency to redact (i) records or portions of records the disclosure of which is prohibited by law and (ii) records that are excluded under § 2.2-3705.2 (public safety), subdivision 2 of § 2.2-3705.7 (working papers), and § 2.2-3706 (certain criminal/law-enforcement records). Staff also explained that the bill prohibits, with certain limited exceptions, the member of the General Assembly from further disclosing such information. Staff emphasized that the right of access granted to members of the General Assembly by this bill is outside of and separate from the provisions of FOIA and that General Assembly members have no special status under FOIA.

William Coleburn expressed concern that the bill gives elected officials a greater right of access to information than the citizens of Virginia. Kathleen Dooley commented that the bill limits the application of the law to “a member of the General Assembly acting in the performance of such member’s official legislative duties” and questioned how that is to be interpreted. Senator DeSteph deferred to staff, who responded that the term “official legislative duty” is not defined but that the intent in including that qualification was to limit the application of the law to legislators acting in their official capacity as opposed to their role as a citizen. Sandra Treadway then asked if a legislator would have to explain why he or she needs the requested information as part of his or her official duties. Senator DeSteph responded affirmatively and stated that legislators know their role as a legislator versus their role as a citizen. Shawri King-Casey asked Senator DeSteph whether the FOIA redaction law was in effect at the time the examples he cited occurred, in which he received records from a public body in response to a FOIA request that were redacted and in which he subsequently went online and found unredacted versions of the records. Such law would have required the public body to cite the specific Code section that permits the redaction. Ms. King-Casey commented that she was just trying to see if this was a bigger issue relating to noncompliance with FOIA. Senator DeSteph responded that the issue is that the public body redacted the records when they provided them to him, but that they had clearly been released publicly in unredacted form. He stated that he did not know whether this was due to educational issues, arrogance, or perhaps whether he had phrased the question improperly.

The Council then heard public comment on the bill. Megan Rhyne with the Virginia Coalition for Open Government commented that she understands why members of the General Assembly want this information but stated that she is very troubled by what the bill sets forth in that it grants a general right to information for members of the General Assembly that is not granted to citizens or local officials. She stated that there are noble reasons why citizens want this information also. She emphasized that FOIA provides the remedy for all persons, and such remedy is to file suit to obtain the information.

After asking the other members of the Council for their thoughts on the bill, Chairman Jim LeMunyon told Senator DeSteph that the Council did not appear ready to make a decision on the bill at the current time and that the Council would like some additional time to think about it.

The Council then moved on to consider HB 2316 [*Bill Summary: Provides that the remote locations from which additional members of the Commission participate in a Commission meeting that is conducted through electronic communication means shall not be required to be open to the public.*], another bill referred to the Council by the 2017 Session of the General Assembly. Evan Feinman, Executive Director of the Tobacco Region Revitalization Commission, appeared on behalf of the bill’s patron, Delegate Danny Marshall, to discuss the bill with the Council. Mr. Feinman stated that many public bodies are not served as well as they could be by FOIA because technology has advanced faster than the law. He stated that the Tobacco Region Revitalization Commission’s membership is spread broadly across the state and that the bill seeks to eliminate the requirement that when a member of the Commission participates in a meeting of the Commission through electronic communication means, the remote location must be open to the public. Mr. Feinman stated that both he and Delegate Marshall feel as though § 2.2-3708 in FOIA should be amended to remove that requirement for all public bodies instead of simply amending the Commission’s statute to remove the requirement just for members of the Commission, as the bill currently does.

Mr. Coleburn expressed concern that the bill as written is picking and choosing a specific public body to release from the requirement that the remote location be open to the public. He also stated that he feels as though having the requirement that the remote location be open to the public incentivizes members of the public body to go to the physical meeting location of the full public body.



Megan Rhyne with the Virginia Coalition for Open Government stated that if the Council is going to look into this issue, her suggestion is that all public bodies be released from the requirement. She suggested further study of the issue, as she expressed uncertainty as to whether technology has improved enough to dispose of the requirement that the remote location be open to the public.

Chairman LeMunyon directed staff to create a draft bill amending § 2.2-3708 that would remove the requirement that the remote location be open to the public for all public bodies. He also asked staff to provide, at the next meeting of the Council, some background information as to what the Code currently requires.

### **Proprietary Records and Trade Secrets Subcommittee Report**

Staff reported that the Proprietary Records and Trade Secrets Subcommittee (the Subcommittee) met twice, on April 4, 2017 and May 1, 2017, and that a work group of the Subcommittee met on April 25, 2017.

Staff stated that at the April 4, 2017 meeting of the Subcommittee, staff reviewed work to date on the topic of proprietary records and trade secrets under HJR No. 96 (2014–2016). During the review, staff emphasized that there had been 23 meetings on the topic at the Council, Subcommittee, and Work Group levels, with no resolution of the issues. Staff presented two drafts to the Subcommittee for its consideration on the topic of trade secrets—one based upon a proposal previously put forth in a white paper by the Virginia Press Association and one prepared by staff. After considering the drafts and receiving public comment, the Subcommittee directed staff to create a new draft and to meet with interested parties as a work group to consider the new draft. Staff reported that the Subcommittee raised the issue of the definition of the word “proprietary” and that a draft on the topic had been prepared on the topic by staff for the Subcommittee’s consideration; however, there was no discussion of or action taken on the draft and the issue was deferred to the next Subcommittee meeting.

Staff reported that the Subcommittee work group met on April 25, 2017, and considered a new draft of legislation that would create a general exclusion for trade secrets submitted to a public body. Staff related that no members were appointed to the Work Group; however, all interested parties had been invited to join the discussion. Staff explained that after public comment on the draft, staff went through the draft line-by-line with the interested parties to identify areas of consensus. Staff related that at the conclusion of the Work Group meeting and after considerable discussion, the interested parties recommended amendments to the draft to be incorporated into a new draft for presentation to the Proprietary Records and Trade Secrets Subcommittee at its meeting on May 1, 2017.

At its second meeting on May 1, 2017, staff reported that the Proprietary Records and Trade Secrets Subcommittee considered the trade secrets draft that was recommended to it by the work group. After discussion and hearing public comment on the draft, the Subcommittee recommended the draft with amendments to the FOIA Council; however, the Subcommittee decided to leave the issue of payment of costs and attorney fees on the table for further discussion at the next FOIA Council meeting.

Staff also reported that the Subcommittee considered the issue of proprietary records and reviewed a draft that had been prepared by staff defining proprietary records and creating a general exclusion from mandatory disclosure for proprietary records. Staff explained that after reviewing the draft and listening to public comment, the Subcommittee rejected the definition of “proprietary” set forth in the staff draft and instead directed staff to create a new draft using and defining the words “confidential information.” Staff noted that the Subcommittee asked staff to model the definition on the applicable language in the exclusion set forth in subdivision 11 of Va. Code § 2.2-3705.6. *[Subdivision 11 provides protection for*



(i) *trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);*  
 (ii) *financial information of the private entity, including balance sheets and financial statements, that is not generally available to the public through regulatory disclosure or otherwise; and (iii) other information submitted by the private entity where if such information was made public, the financial interest or bargaining position of the public or private entity would be adversely affected.*] Staff reported that the Subcommittee also asked staff to include in the new draft language stating that the public body may determine whether the requested exclusion from disclosure is necessary to protect the confidential information of the submitting entity, as well as the apportionment language from the trade secrets draft. Staff reported that they had this new draft available for the Council to review during the current meeting.

### **Review of Trade Secrets Draft Recommended by the Proprietary Records and Trade Secrets Subcommittee**

Staff then presented the newest version of the trade secrets draft (Trade Secrets Draft #5) (LD#18100022D), which included the amendments requested by the Proprietary Records and Trade Secrets Subcommittee at its meeting on May 1, 2017. (The full text of Trade Secrets Draft #5 is available on the FOIA Council's website.) Staff emphasized that Trade Secrets Draft #5 made the following changes to Trade Secrets Draft #4:

1. On line 13, changed the word “chapter” to “subdivision” (thereby avoiding making trade secrets exclusions that are outside of Va. Code § 2.2-3705.6, such as those of VRS and the Virginia College Savings Plan, subject to the provisions of the general trade secrets exclusion created in Draft #4);
2. On line 20, changed the word “shall” to “may” (thereby making the joinder provision optional as opposed to mandatory);
3. On line 22, changed the language “improperly designated as a trade secret” to “improperly withheld pursuant to this subdivision as a trade secret”; and
4. Added a cross-reference in § 2.2-3713(D) stating, “The court may apportion any [such] award of reasonable costs and attorney fees in accordance with the provisions of subdivision 1 of § 2.2-3705.6.”

Staff noted that the Subcommittee recommended the draft with amendments to the full FOIA Council; however, the Subcommittee had decided to leave the issue of payment of costs and attorney fees on the table for further discussion at the next FOIA Council meeting.

Mark Vucci, referencing lines 18–19 of the draft, which state “The public body may determine whether the requested exclusion from disclosure is necessary to protect the trade secrets of the submitting entity under [the general trade secrets exclusion],” drew the Council's attention to the fact that the threshold question should simply be whether or not the submitted information qualifies as a trade secret of the submitting entity as defined in the Uniform Trade Secrets Act, and therefore there need not be any further discretion on the part of the public body as to whether the submitted information should receive protection under the general trade secrets exclusion. Cullen Seltzer stated that he agrees and that he wishes to see lines 18–19 deleted from the draft.



## Public Comment

The Council then heard public comment on Trade Secrets Draft #5. Phil Abraham with the Vectre Corporation, who represents a number of construction clients, stated that he is comfortable with the bulk of the draft, but that he has some concerns about the provisions relating to apportionment of attorney fees. He stated that the language in the bill relating to apportionment of attorney fees represents a major change and stressed that this is the first instance in which a private entity can be held liable with regard to a public body's decision to withhold records. He drew the Council's attention to the fact that it could very easily be a competitor of the submitting entity that is suing to obtain the submitting entity's trade secrets. He stated that at the last meeting of the Proprietary Records and Trade Secrets Subcommittee a compromise was suggested that would have given the court the authority to require the requestor to pay reasonable costs and attorney fees in the event that the requestor did not prevail in court, thereby making the responsibility for payment of reasonable costs and attorney fees a two-way street; however, he noted that that compromise idea was strongly rejected. As a result, he requested that the Council maintain the status quo with regard to payment of reasonable costs and attorney fees (which would require the Council to remove the language in the draft permitting the court to require the submitting entity to pay the requestor's reasonable costs and attorney fees). He reminded the Council that in the end, the public body is not required to withhold the records and can at any point decide to release the requested records and avoid being sued. Ryan Fierst with the Virginia Chamber of Commerce echoed Mr. Abraham's comments and stated that she wants to see the law on attorney fees remain the same.

Roger Wiley, representing the Virginia Association of Counties (and filling in for Phyllis Errico), commented that he wanted to explain the other side's (the public body's) perspective in wanting the submitting entity to be held responsible for paying the requester's reasonable costs and attorney fees. He stated that public bodies often receive boilerplate form contracts from entities with which they are contracting and that those contracts frequently state that everything that the entity submits to the public body is confidential trade secrets and that if the public body reveals any of that information the contract will be voided. Mr. Wiley stated that often it is a competitor of the submitting entity that is requesting the information. He stated that the public body must make a decision as to whether it wants to defend the submitting entity's trade secrets and run the risk of paying the requester's attorney fees if the requester prevails in court or whether it wants to release the information and therefore allow the submitting entity to void the contract. Mr. Wiley suggested that the court should be able to look at the equities and decide who (whether the public body or the submitting entity) should be responsible for paying the requester's attorney fees. He stated that to require the public body to bear all of the risk in that situation does not make sense, and he would like for there to be some way for the responsibility for the decisions to be shared by the public body and the submitting entity.

Rob Bohannon, representing the Northern Virginia Technology Council, echoed Mr. Abraham's comments and pointed out that the earmarking provisions in lines 12–17 of the draft do not permit the submitting entity to make a blanket statement that all of the information that it has submitted to the public body is trade secrets and should therefore be withheld from public disclosure. The earmarking provisions require the submitting entity to identify with specificity the trade secret information for which protection is sought.

The Council then proceeded to discuss the draft. Mr. Seltzer stated that on the issue of attorney fees, his inclination is to ensure that the submitting entity that seeks the exclusion bear the cost of defending the exclusion. He requested that the Council add language requiring the submitting entity to submit to service in a court of competent jurisdiction in the event of a FOIA challenge. He stressed that it is easy for you (the submitting entity) to say that everything is a trade secret until you (the submitting entity)

know that you will have to defend it in court. He stated that with that amendment, he supports the draft. In response, Chairman LeMunyon asked if submitting entities could be deterred from bidding for government contracts if there is a possibility that they may be faced with having to pay a requestor's attorney fees in the event that a requester challenges a denial of a FOIA request for the submitting entity's trade secret information in court. Mr. Seltzer answered that this may indeed be a deterrent, but it is a hazard of doing business.

Ms. Dooley stated that she supports the proposal to strike lines 18–19 of the draft. She stated that in her experience, public bodies are not good at figuring out what is a trade secret and that they normally are not experts in proprietary information. Referring to line 21 of the draft, she made the observation that the draft gives the *requester* the authority to name the submitting entity or its successor in interest as an additional defendant in the action; however, the draft does not give the *public body* the same authority to name the submitting entity or its successor in interest as an additional defendant. She stressed that if the public body is sued for the submitting entity's trade secret information and the public body has to defend the withholding of the information, the public body has no idea how to defend the information. She stated that it seems as though the submitting entity is a necessary party, as it is the submitting entity's rights that the public body is seeking to protect. Moving on to the issue of attorney fees, Ms. Dooley stated that she feels that requiring the public body to pay the requester's attorney fees in this circumstance would be unjust. She stated that she does, however, like the idea of giving the court the authority to apportion any award of attorney fees to the requester between the public body and the submitting entity as the court sees appropriate.

After further discussion, the Council agreed to move lines 20–26 of the draft to Va. Code § 2.2-3713, the remedies section of FOIA. Ms. Dooley stressed that the provisions in those lines are really something special about the enforcement of the general trade secrets exclusion and that the Council should keep the remedies with the remedies section of FOIA, rather than in the exclusion.

Lastly, staff drew the Council's attention to lines 23–24, which state, "If, as a result of the action, the court requires the public body to produce such information because it was *improperly withheld* pursuant to this subdivision as a trade secret ..." (emphasis added). Staff noted that the threshold question that the judge is deciding is whether the information was improperly withheld because it is not a trade secret as defined in the Uniform Trade Secrets Act, not whether the information was improperly withheld under the general trade secrets exclusion. Staff requested to make this technical amendment, and the Council agreed.

Chairman LeMunyon directed staff to create a new draft incorporating the amendments agreed upon by the Council and to have it available for presentation and discussion at the next FOIA Council meeting.

### **Review of Proprietary Records Draft**

Staff explained that at the last meeting of the Proprietary Records and Trade Secrets Subcommittee, the Subcommittee directed staff to create a definition, but to define the terms "confidential information" instead of "proprietary." Staff then briefly went through the draft line-by-line with the Council, though in the interests of time and efficiency, staff recommended that the Council send the draft back to the Subcommittee for further refinement. Staff explained that lines 9–13 of the draft define "confidential information" to mean financial information, including balance sheets and financial statements, or other information of a submitting entity that is not (i) generally available to the public through regulatory disclosure or otherwise or (ii) trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), where if such information was made public, the financial interest or competitive position of the



submitting entity would be adversely affected. Staff then explained that lines 68–74 create an exclusion from the mandatory disclosure provisions of FOIA for “confidential information” and provide an earmarking process for invoking the exclusion. Lastly, staff explained that lines 75–81 contain the same permissive joinder and apportionment of attorney fees provisions as were included in Trade Secrets Draft #5. Staff reminded the Council that there is a two-part process involved in attempting to resolve the issue of proprietary records—the first step being to decide upon a definition (either “proprietary,” “confidential,” or something else) and the second step being to conform each of the individual exclusions in Va. Code § 2.2-3705.6 to the terminology and definition adopted by the Subcommittee. As such, staff explained that this draft focuses solely on the definitional issue and does not attempt to strike or amend any of the existing exclusions in Va. Code § 2.2-3705.6.

### Public Comment

The Council then heard public comment on the definition created in the draft. Megan Rhyne with the Virginia Coalition for Open Government expressed concern with the phrase “financial information, including,” stating that she feels as though it implies that more financial information than simply that information enumerated in the definition could be withheld. She requested that information related to the financing of projects remain open, as sources of money for public projects would not be something that we would want to hide from the public. Such information could reveal relationships with banks, conflicts with members of boards, etc. She requested that the Council tighten up the definition to avoid making it overly broad.

Kay Heidbreder, representing Virginia Tech, Karah Gunther, representing Virginia Commonwealth University and the Virginia Commonwealth University Health System Authority, and Kara Hart, representing the Virginia Economic Development Partnership Authority, each asked for more time to review the draft and look for areas of concern.

Chairman LeMunyon then asked the Council for any thoughts they may have on the draft. Mr. Seltzer commented that he looked at the specific exclusions in Va. Code § 2.2-3705.6 and, in his opinion, the words “confidential” and “proprietary” do not really have any meaning in the context of the specific exclusions. He stated that in most cases the specific exclusions either cross-reference another statute or they limit their own scope through additional words contained in the exclusion. As such, because the words “confidential” and “proprietary” do not add anything to the statute and simply serve to confuse, Mr. Seltzer recommended simply deleting them from the statute.

Chairman LeMunyon recommended sending the draft back to the Subcommittee for further consideration. He directed staff to poll for dates on which to schedule the next Subcommittee meeting.

### Other Business

The Council then revisited Del. Massie’s HB 1971 [*Bill Summary: Excludes the records of a multidisciplinary team as they relate to individual child abuse or neglect cases or sex offenses involving a child from mandatory disclosure under the Virginia Freedom of Information Act. The bill also provides an exemption from open meeting requirements to such teams and sexual assault response teams.*], which it had previously considered at its March 7, 2017, meeting. Staff explained that the bill does two things. First, it creates a *records* exclusion for information reflecting the substance of meetings in which individual child abuse or neglect cases or sex offenses involving a child are discussed by multidisciplinary child abuse teams (MDTs) (established pursuant to § 15.2-1627.5). Second, it creates two *meetings* exclusions for discussion or consideration of (i) individual sexual assault cases by a sexual assault response team (SARTs) (established pursuant to § 15.2-1627.4) [A records exclusion previously

existed for SARTs, so the meetings exclusion was added by the bill] and (ii) individual child abuse or neglect cases or sex offenses involving a child discussed by a multidisciplinary child abuse team (established pursuant to § 15.2-1627.5).

Staff explained that Del. Massie's bill passed the General Assembly this year; however, a question arose during committee proceedings as to whether SARTs and MDTs are more akin to Family Assessment and Planning Teams (FAPTs), which are exempt from all provisions of FOIA. Staff stated that as they currently stand, even though SARTs and MDTs now have meetings exclusions that cover the vast majority of what is discussed during their meetings, they still must comply with all of FOIA's meetings requirements, including giving notice of their meetings and first convening an open meeting and then immediately certifying and entering into closed session. Staff emphasized that therefore the question before the Council is whether SARTs and MDTs should be categorized like FAPTs for the purposes of FOIA and exempted from all provisions of FOIA.

Staff reminded the Council that at its March 7, 2017, meeting Mike Doucette, the Commonwealth's Attorney for the City of Lynchburg, spoke with the Council about this issue. Staff introduced Nancy Oglesby, the Deputy Commonwealth's Attorney for Fluvanna County, who was present at the current meeting on behalf of Del. Massie to speak with the Council about the bill. Staff explained that Ms. Oglesby is an expert on these issues and can provide the Council with terrific insight into the issues.

Ms. Oglesby told the Council that she has been a prosecutor in Virginia for 20 years. She stated that SARTs and MDTs are similar, but different in subject matter. She explained that both types of meetings are convened by the local attorney for the Commonwealth and that during both types of meetings most of the meeting time is spent discussing specific cases. She stated that MDTs focus on child abuse cases and that SARTs focus on sexual assault cases. She stated that many of the players on both types of teams are the same. She stated that MDT meetings are often driven by child advocacy centers and that one of the goals of the meeting is to ensure that the players are not duplicating the services provided to the child victim (i.e., not conducting multiple interviews, etc.). She stated that the cases discussed by MDTs often originate from Child Protective Services. She further explained that one of the goals of SART meetings is to ensure that victims are receiving comprehensive services on a systemic level. She stated that the cases that are discussed during SART meetings generally originate from criminal investigations and hospitals.

Mr. Seltzer commented that, in his opinion, anything referring to a specific case, such as records or discussion concerning a specific complaint, investigation, prosecution, victim, etc., should clearly be excluded from the mandatory disclosure provisions of FOIA; however, he stated that he was curious about any systemic policy questions that may be addressed in the meetings. He stated that the public might be interested in those discussions. Ms. Oglesby responded that there is a difference in the nature of the two types of meetings. She stated that during MDT meetings systemic policy issues are never discussed and that such meetings are entirely case-driven. She stated that during SART meetings, however, there are two levels of discussion, one systemic and one case-driven. Ms. Oglesby further explained that the systemic discussion is driven entirely by discussion of individual cases.

Staff summarized that the issue is whether SARTs and MDTs should be subject to FOIA at all, given that most of what they discuss is already excluded from FOIA; however, staff noted that there is a clear concern that perhaps the public should be privy to any systemic policy discussions that occur during the meetings. Ms. Oglesby stated that the concern of attorneys for the Commonwealth is that they must give notice of the meeting and publicize that it is going to occur, but once the meeting begins they then immediately go into closed session, shutting out the public.



Ms. Dooley expressed a concern that FOIA may unfairly limit the discussion of the team due to the requirement that at the conclusion of the closed meeting the public body holding the meeting must immediately reconvene in an open meeting and certify that it only discussed matters exempted from the open meeting requirements. She stressed that it is most likely very hard for the members of the team to stay on topic and to discuss individual cases without diverging into discussing changes to policy. She stated that in her opinion it might be better to exempt these teams from FOIA altogether.

Marisa Porto commented that she understands and agrees with providing exemptions for discussions of individual cases, but she stated that she is concerned about discussions regarding systemic policy and procedure and that she thinks the public should be allowed to hear those discussions.

Ms. Oglesby further clarified that any decision to change policy or procedure would not be made at the SART meeting. She explained that each agency that is involved in the meeting is independent and that the team does not have the power or authority to make a *joint* change for any of the agencies. She reiterated that any discussion of systemic policy issues that takes place is very specific to the intricacies of the individual cases being discussed at the meeting. She stated that each of the agencies would have to later make the decision on its own whether to implement any of the suggestions for changes to policy or procedure that were discussed at the meeting.

Mr. Coleburn commented that he thinks it is always good policy to err on the side of requiring notice of meetings, even if almost the entirety of the meeting will take place in closed session.

Staff suggested drafting a compromise bill that would exempt MDTs and SARTs from FOIA but would still require SARTs to release any information related to policy discussions. The Council asked staff to prepare such a draft and have it available for consideration at the next FOIA Council meeting.

Staff then briefly discussed with the Council the implementation of HB 2143, Chairman LeMunyon's bill that passed the 2017 Session of the General Assembly, which provides, among other things, that training through an online course offered by the Council shall satisfy the annual training requirement for FOIA officers. Staff reminded the Council that a free online training program for FOIA Officers has been made available through the Commonwealth of Virginia Learning Center website maintained by the Department of Human Resource Management; however, staff shared with the Council that the process of making the online training operational has been problematic and frustrating for both users and staff.

Staff next asked the Council for guidance in issuing formal advisory opinions in circumstances in which the Council has been contacted by two parties asking for an opinion on the same issue, but wherein each party has provided different, conflicting facts. The Council advised staff that since the Council is not a fact-finder and has no subpoena power or other investigative tools, in such situations staff should issue one advisory opinion that outlines the law on point and then gives two different conclusions based upon the two different sets of facts that were presented.

Finally, in anticipation of her upcoming retirement, the Council commended and thanked Maria J.K. Everett, the Council's Executive Director since the Council's inception in 2000, on her dedicated service to the Council.

## **Virginia Freedom of Information Advisory Council**

### **Delegate James M. LeMunyon, Chair**

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## Health Insurance Reform Commission

*January 5, 2017*

The Health Insurance Reform Commission (HIRC) held its fourth and final meeting of the 2016 interim on January 5, 2017, in Richmond, with Delegate Kathy J. Byron, chair, presiding.

### Update from the Bureau of Insurance

*Jacqueline K. Cunningham, Commissioner of Insurance*

At the request of Delegate Byron, Commissioner Cunningham gave an update from the Bureau of Insurance (BOI). She stated that in regard to health care reform on the federal level and promises to repeal the Affordable Care Act (Act), there is not much to report at this time and it is premature to speculate. The BOI will be monitoring any changes very closely and working with the National Association of Insurance Commissioners. The BOI is conducting a deep analysis of the Code of Virginia and the changes that were made to implement the Act to see how these statutes would be impacted by changes on the federal level. The BOI will keep the HIRC updated on any changes.

The Centers for Medicare and Medicaid Services reported that in the Commonwealth, enrollment in the Health Insurance Marketplace was 399,106 as of December 6, 2016. People can still enroll, but the coverage will have a February effective date.

The BOI is proposing changes to the State Corporation Commission's (SCC) Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Providers. The first change is that the SCC's report will be biennial rather than annual but the carriers will still report to the SCC annually. The second change is that the carriers required to report to the SCC will be based on the number of covered lives rather than the number of premiums written. The proposal has gone out for comment, which will be considered, and the SCC will then choose whether or not to adopt the changes.

Delegate Byron asked how many people applied for insurance this year as opposed to last year or over the last several years. Commissioner Cunningham said that she would look into it and get the information to the HIRC.

In response to a question from Delegate Byron, Commissioner Cunningham explained that even if the Act is amended or repealed, the BOI will still have the authority to approve forms but that changes in federal law might change what BOI is looking for during the approval process. The current essential health benefits are based on a benchmark plan that reflects items already mandated in state law, so changes in federal law should not overly influence the process.

### Costs of Health Care Presentation from Virginia Health Information

*Michael T. Lundberg, Executive Director of Virginia Health Information (VHI)  
Kyle Russell, All-Payer Claims Database (APCD) Program Manager at VHI*

Director Lundberg explained that VHI works collaboratively with all health care stakeholders. Health pricing information is just one thing that VHI does, and it is all available online. Director Lundberg introduced Kyle Russell to continue the presentation.

Mr. Russell reported that the presentation he gave on September 27, 2016, used data from 2012 and did not use information from the APCD because it had not been collected yet. The updated presentation is from the 2015 report. This report shows geographical differences and is designed to give consumers information on pricing as well as information on the medical procedure and risks thereof.



Mr. Russell stated that on the VHI website, <http://www.vhi.org/>, one can find general information and pricing information for 31 procedures. The consumer can look at pricing information by geographical region or by service provider. The user can also get a detailed breakdown that shows what is driving the pricing information (facility costs, physician costs, drug costs, etc.). Mr. Russell walked through multiple examples of the pricing information available for various services. This demonstrated that pricing differences are sometimes regionally driven and sometimes driven by the type of provider.

In response to a question from Delegate Lee Ware about why the facility costs varied so much between services and regions, Mr. Russell explained that there is no one-size-fits-all rule and there is not one location or service provider that is always more or less expensive.

Delegate Ware and Senator Rosalyn Dance asked if VHI could explain what factors influence the price differentials. Mr. Russell explained that the data they gather is meant to be informational for the consumer and VHI does not analyze why the numbers are the way they are. Senator Ryan McDougle noted that it would be helpful to see the volume of services as well as cost, because that information is important to put the data in context. Mr. Russell responded that that information is coming in the future.

Delegate Byron asked what type of utilization the VHI website has. Mr. Russell stated that this information is not yet available because the updated report was just released in December but this is something they are looking into. Mr. Russell also explained, in response to a question from Delegate Ware, that the costs on the website are what is allowed by the health insurance company and the website explains what is paid by both insurance and the patient.

#### **Presentation: Certificate of Public Need (COPN)**

*John B. Syer, RVP of Provider Solutions for Anthem*

*Dr. John Bowman, Chief Medical Officer for OrthoVirginia*

Mr. Syer works primarily with provider contracting and therefore works with providers in all types of care. He testified that health care insurers depend on competition. COPN impacts costs because consolidation of services allows for higher reimbursement. Self-insurance is particularly influenced when providers raise their costs.

Anthem, which accounts for about 35% of the insurance carrier market share in the Commonwealth, supports COPN deregulation proposed in Delegate John O'Bannon's HB 193 from the 2016 Session. Mr. Syer testified that enabling competition would lead to more affordable care because existing providers would have to compete with lower-cost alternatives. Many services are much cheaper in ambulatory or freestanding providers than in hospitals, and the hospitals would have more of an incentive to compete.

In response to a question from Delegate Byron, Mr. Syer testified that other providers are not able to raise their prices to match those of hospitals or other high-price providers because professional providers do not have individual contracts and have more of a uniform policy, whereas hospital contracts are negotiated individually.

Dr. Bowman introduced himself as a physician who knows firsthand how patients need reform. He testified that the existing COPN program is outdated. It was created at a time when medical necessity guidelines were not in place. Many providers do not provide certain services because it is very expensive to even go through the COPN process. Dr. Bowman testified that his most recent application cost about \$300,000 in legal fees and used 100,000 staff hours. Hospitals also have those costs, which must be recovered from patient care fees.



Dr. Bowman told a personal story about when he needed hand surgery and it cost him \$22,000 out of pocket because he had a high deductible plan. Currently many people have high deductible plans, so they are shopping around to find providers with low prices. This is causing backlogs for cheaper providers.

Physicians have to do charity care through COPN, and Dr. Bowman stated that he would have no problem with still requiring charity care without COPN. He testified that reforming COPN would lead to improved choice, would help people shop for service providers, and would reduce out-of-pocket costs. Under the current COPN structure, many people have high deductible plans because that is all they can afford, so the providers have more write-offs and unpaid costs. Some people are even opting not to have care rather than paying the high out-of-pocket costs.

### **Direct Primary Care**

*Dr. Jay Keese, Executive Director of the Direct Primary Care Coalition*

Dr. Keese introduced direct primary care (DPC) as the practice of having a contract between provider and patient or patient employer. Dr. Keese testified that DPC decreases the administrative burden, provides a significant improvement in preventative care, and leads to better outcomes and lower costs. Bills like HB 685 (Landes) and SB 627 (Stanley) from the 2016 Session have been passed in 17 states. Such legislation clarifies that DPC is not insurance and provides patient protections. The proposed legislation is important even though nothing in the current law prohibits DPC, because it is hard for employers to make DPC agreements without clarity. There are currently DPC practices in 48 states.

Dr. Keese introduced Dr. Garrison Bliss, Chairman of the Direct Primary Care Coalition. Dr. Keese is a physician with a DPC practice in Washington. He testified that the quality of health care in the nation is declining and the price is getting higher. The burden of health care is on the patients and the providers. He argued that service providers are forgetting that they work for the patient, not the insurance provider. Insurance carriers are encouraging service providers to work in certain ways, but those ways are not the always the best for the patient. As the importance of primary care is declining, the incentives to become a primary care doctor are going away. Physicians are afraid to participate in DPC agreements because they worry that the insurance commissioner will target them and they do not know if the business model will work. He stated that the dangers of DPC have been overrated and such providers have led to a 20–30% reduction in the costs of health care.

In response to a question from Delegate Eileen Filler-Corn, Dr. Keese explained that acute events are what insurance is for. Patients still need insurance, but DPC allows patients to have another choice to get better care that is not structured around the insurance company.

Dr. Maura McLaughlin, Blue Ridge Family Practice, owns a DPC practice in Charlottesville. She testified that she began that practice because she wants to care for patients regardless of ability to pay. She found that patients are not getting basic care because they cannot afford their deductible. In a traditional practice, they would be paying hundreds of dollars for labs and appointments. She had one patient that she billed \$38 for four tests, and the same tests cost him \$1,300 last year with insurance. DPC can also help encourage primary care and preventative care. Dr. McLaughlin stated that small business owners are interested in offering direct primary care to their employees.

Jed Constantz, Chief Operating Officer of Employer Advantage Health Care Solutions in Lynchburg, represents large self-funded employers who see DPC as a way to offer a better relationship with primary care. People are not going to a primary care provider; they are more likely to get fragmented care from emergency rooms and emergency clinics. The advocacy power of doctors in DPC practices is great



because the care is personalized to the patient, which increases health literacy and education of the patient. Otherwise, individuals are more likely to waste money trying to figure out the health care system. Mr. Constantz stated that the employer community would love to have clarity in the law that would allow them to pursue DPC more aggressively.

In a discussion following these presentations, the speakers clarified that DPC is not right for every doctor or every patient but it can be a good option for those who choose it. Patients still need insurance for unexpected costly emergency events, but DPC is about saving costs on the primary care side, and if the patient does not need emergency care, it is very helpful. With DPC, the provider does not have administrative costs and there are lower health care costs, so it saves costs for the patient and the physician.

Commissioner Cunningham asked if the DPC providers had any criteria for patients. Dr. McLaughlin said that she does not but there are some things that she cannot do at her practice, so she advises her patients of those limitations. Dr. Bliss stated that people who most want DPC are those who need the most involved care. Doctors who work in DPC practices seek people who need their help rather than healthy people whose insurance they can milk. Therefore, doctors are encouraged to provide excellent care and treat patients with serious medical needs.

Dr. Thomas Epps testified that DPC is a great way for businesses to collaborate with physician groups. DPC practices have saved costs and made people healthier. The state of Washington has a way to administer DPC through Medicaid, so that might be something to look into in Virginia.

Doug Gray, Executive Director of the Virginia Association of Health Plans, stated his opposition to the proposed legislation. He argued that he does not have a problem with DPC medicine but there is not a need for the bill. He testified that the proposed legislation ensures that the consumer will have no recourse or place to complain that functions like the SCC does for insurance companies. The Washington Code has more restrictions on the provider than this proposed legislation.

Mr. Gray testified that this is unfair to the consumer because the only recourse to an issue with the DPC practice is filing a lawsuit. Other states establish mechanisms for filing complaints against the providers in their statutes. DPC is also problematic because preventative services are paid for through the patient's insurance and these will be duplicated in DPC. A patient cannot just have a catastrophic insurance plan unless he meets certain rare qualifications. In a discussion led by Senator McDougle, stakeholders indicated that some concerns could be addressed by inserting consumer protections.

Delegate Byron thanked the speakers for their testimony and adjourned the meeting.

*May 9, 2017*

The Health Insurance Reform Commission (HIRC) held its first meeting of the 2017 interim on May 9, 2017, in Richmond, with Delegate Kathy J. Byron, chair, presiding.

### **Development of Work Plan**

At the request of Delegate Byron, the staff listed the bills that were referred to the HIRC during the 2017 Session of the General Assembly. The bills are:

- SB 1513, which was introduced by Senator Frank Wagner and relates to the assignment of benefits;

- SB 1408, which was introduced by Senator Bill DeSteph and relates to step therapy protocols;
- SB 1166, which was introduced by Senator Bryce Reeves and relates to abuse-deterrent opioids;
- SB 2400, which was introduced by Delegate Chris Head and relates to drug pricing benchmark values; and
- SB 2233, which was introduced by Delegate Ben Cline and relates to health benefit plans offered by foreign health insurers.

Staff noted that the HIRC studied bills related to step therapy and abuse-deterrent opioids last year. Staff explained that, after consultation with the Bureau of Insurance (BOI), a determination was made that none of the bills referred to the HIRC would be considered a mandate for the purposes of the Affordable Care Act (ACA). Therefore, the HIRC is not required to follow the two-step analysis process for reviewing mandates that is codified in § 30-343. Delegate Byron stated that she would contact the patrons of the referred bills to determine whether the bills will be given future consideration.

### **Presentation: Preliminary Information on 2018 Rate Filings**

*Toni Janoski, Supervisor in the Health Rates, Life, and Annuity Forms Section of the BOI*

Ms. Janoski stated that the 2018 Virginia ACA rate filings were received on May 3, 2017. The initial review process is ongoing. The rates may be amended by the health insurance companies, and they still need to go through the approval process.

For the Individual on Exchange filings, the average overall proposed rate change is 27.6%.

For the Small Business Health Options Program (SHOP) filings, the average overall proposed rate change is 2.2%.

For the OFF SHOP filings, the average overall proposed rate change is 7.52%.

Ms. Janoski stated that the BOI has received notice from one carrier, UnitedHealthcare of the Mid-Atlantic, Inc., that it is exiting the individual market for 2018. Several other carriers did not submit proposed rates but have not withdrawn from the market at this time. Aetna Health, Inc., Innovation Health Insurance Company, Freedom Life Insurance Company of America, and Golden Rule Insurance Company did not file rates to continue participating in the individual market. Piedmont Community Health Care, Inc., did not file rates to continue participating in the individual or small group markets.

Delegate Byron asked if this rate of carriers not submitting proposed rates is normal. Ms. Janoski answered that carriers have entered and dropped from the market each year but that this year there are more carriers dropping from the individual on the Exchange market than in previous years.

Members of the HIRC asked where Anthem's rates are listed on the BOI reference document. Ms. Janoski explained that Anthem is filing for OFF SHOP and Anthem's individual market is written through HealthKeepers, Inc., which is Anthem's HMO.

Delegate Lee Ware requested more information regarding the market share and coverage numbers for each of the service providers. Insurance Commissioner Jacqueline Cunningham noted that the BOI can provide that information based on 2017 enrollment numbers. Delegate Ware noted that these are staggering increases. Delegate Byron requested that the BOI provide the cost increases in dollar amounts in addition to the percentage increases.



**Explanation of Current Mandatory Benefits in Virginia**

*Julie Blauvelt, Deputy Commissioner in the Life and Health Section of the BOI*

Ms. Blauvelt explained that the survey provided in the materials provided for the meeting was from 2009. Some of the benefits listed are mandated offered benefits but not mandated provided benefits. The materials list the mandated benefits in Virginia compared with those of other states and a summary of the mandated offers and mandated benefits in Virginia.

The BOI sends a report on mandated benefits to the General Assembly every year, and that report includes cost analysis data. The last available report is from 2016 and is based on 2015 information. The next report will be available in October 2018 and will be based on 2017 information. Delegate Byron explained that the HIRC may be reviewing cost analysis data in future meetings.

**Presentation: Update on State and Federal Health Insurance Markets**

*Kris Hathaway, Executive Director of America's Health Insurance Plans (AHIP)*

Ms. Hathaway explained that AHIP is a national organization whose members are providers of insurance coverage for health care and related services. She provided a summary of the number of people covered by each individual health insurance market: 64 million are covered by Medicaid, 18 million are covered by the individual market and exchanges, 155 million are covered by employer-sponsored insurance, 8.4 million (children) are covered by the Children's Health Insurance Program (CHIP), 9.4 million are covered by TRICARE, and 55 million are covered by Medicare.

Ms. Hathaway explained that the current federal health care landscape is dominated by the effort to repeal and replace the ACA. The House of Representatives recently passed the American Health Care Act of 2017 (AHCA), and the legislation is being considered by the Senate. AHIP anticipates that the Senate will make a decision on the legislation by the end of May. AHIP is monitoring various aspects of the AHCA that would change the health insurance landscape. The AHCA removes the individual employer mandates, a change that creates concerns about how to keep those people affected in coverage. The AHCA requires that a person have continuous coverage and if his coverage lapses for 63 consecutive days, he will have to pay an increased rate for his policy once he becomes insured again. This continuous coverage requirement replaces the fee that uninsured persons were required to pay under the ACA. The AHCA would allocate \$100 billion in stability funds to help stabilize state health insurance markets. The AHCA would cut \$880 billion from Medicaid, which is very concerning for AHIP and its members.

Cost Sharing Reductions (CSRs) subsidies create a sliding scale system that allows for qualifying persons to pay lower deductibles, copayments, and coinsurance. The carrier is required to grant CSRs regardless of whether the government reimburses the carrier for the cost. Carriers want to be sure that they are going to be reimbursed through the transition period. If the government does not help pay for the CSR subsidies, then the insurers will have to increase the premiums to pay for them. In Virginia, it is estimated there will be an additional 17% premium increase to compensate for the loss of CSR payments. Additionally, premiums could increase because there is over \$8 billion owed to carriers from 2016 reinsurance payments.

Ms. Hathaway testified that AHIP is committed to making sure that there are incentives for healthy people to stay covered. Costs go up when there are fewer people in the pool, especially when there are fewer healthy people in the pool.

Ms. Hathaway stated that some carriers' rate filings do not include CSRs, so there may be additional increases to the rates that have already been filed. Because the carriers do not know what will be

happening in the federal government regarding health insurance, that uncertainty has to be taken into consideration when they submit their rate filings.

Commissioner Cunningham asked if Ms. Hathaway has seen carriers including CSRs in their rate filings. Ms. Hathaway said that the choice to include or not include CSRs would be individual by state and carrier. Kyle Shreve of the Virginia Association of Health Plans testified that, anecdotally, the carriers have been citing per unit costs and rising health care costs as the reasons for raising rates and very few have mentioned if they are assuming CSRs in their filings.

The rate filings are still very preliminary. August 1, 2017, is the target date for the Centers for Medicare & Medicaid Services (CMS) to make rate filing information public and for states to post proposed rate increases for single risk pool coverage. September 27, 2017, is the date by which insurers must submit signed Qualified Health Plan Agreements and final plan lists to CMS. October 1, 2017, is the approximate date when issuers will send 90-day discontinuation notices to enrollees.

Ms. Hathaway testified that there are five major factors affecting health insurance premiums. The first is prescription drug prices. Specialty and brand name medication prices continue to soar and drive up premiums. The second is the population covered by the plans. There needs to be a balance between people who are older or sicker and use more medical care and those who have insurance just in case they get sick or injured. Instead, most carriers end up with a pool of older people who need more services. The third is which care providers participate. If there are more providers in the network, the costs will be lower. The fourth is value-based systems. These systems reward quality service rather than quantity of services provided. This brings better care and lowers costs. The fifth is taxes and fees. Health insurance taxes and marketplace user fees increase premiums.

The materials provided by Ms. Hathaway included a graph demonstrating how the consumer's premium dollar is distributed to various costs. Ms. Hathaway explained the figures to the HIRC.

Ms. Hathaway testified that specialty drugs are cost drivers and they are going to become even more expensive. Recent reports have projected drug spending in the United States to grow to \$560 billion to \$590 billion by 2020, up from \$337 billion in 2015. While specialty drugs account for less than 2% of all prescriptions, they make up roughly 30% of spending on all prescription drugs. Almost half, 47.8%, of the specialty drugs included in this analysis cost more than \$100,000 per patient per year.

Ms. Hathaway testified that drug companies generally defend price increases as necessary for research and development of future drugs. However, nine of the top 10 drug makers spend more on sales and marketing than on research and development.

Ms. Hathaway explained that these high costs could lead to ethical dilemmas and tough conversations. For example, there is a new drug that can prevent blindness for certain children but only if it is taken during a small window. Insurers will have a difficult time keeping such a medication available at a reasonable price because, despite the incredible benefits of the drug, the demand will be relatively low and it may not be cost effective to mass produce the drug.

At the request of Delegate Ware, Ms. Hathaway clarified that the biggest concerns for premium increases are CSRs and increasing drug costs.

## **Future Topics**

Prior to adjourning the meeting, Delegate Byron invited the members to list information or topics that they would like to hear more about. The members requested:



- Updates on the federal health care landscape;
- Updates on rate filings by carriers in Virginia;
- Information about the causes of the rate increases;
- Information about the type and quality of health care that is being provided, with a focus on the effect of consolidation between physician groups and hospital groups; and
- Updates on how CSRs influenced rate filings.

Commissioner Cunningham said that carriers will make presentations at the end of July and the BOI should have more solid information around early August.

All materials provided by presenters and referenced in this summary can be found on the HIRC website at <http://dls.virginia.gov/commissions/hir.htm?x=mtg>.

## Health Insurance Reform Commission

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## Virginia Housing Commission

*April 18, 2017*

The Virginia Housing Commission (the Commission) held its first meeting of the 2017 interim on April 18, 2017, in Richmond, with Delegate Danny Marshall, chair, presiding. Presenters gave information on economic policy and housing statistics, the effects of legislation and funding, and a follow-up from a previous meeting on the status of the Richmond Redevelopment and Housing Authority (RRHA) projects. The interim topics to be studied and workgroup divisions were also discussed.

### Presentation: National and State Housing Markets

*Sonya Waddell, Regional Economist, The Federal Reserve Bank of Richmond*

Ms. Waddell spoke first to the Commission about national housing markets and then, more particularly, about Virginia's housing market. Nationally, a 9.6% growth rate occurred in the second and third quarters of 2016–2017 in regard to housing sales. The numbers have not yet met the 1990s average on housing statistics and permits, and there is an anticipated slowdown of demand in the future, but there is a slow and steady improvement in the amount of housing being built nationally.

An interesting dynamic to watch will be the housing decisions millennials make and to watch how they will determine the future of housing in Virginia.

Despite improvements in indicators such as house prices and home sales in Virginia, there are constraints on the supply side, including not enough buildable lots and a lack of skilled laborers.

During the recession, multi-family homes continued to be built, but that market is now flattening. The number of foreclosures in Virginia is back down to a normal level, .02%. Virginia has a lower

foreclosure rate than the nation as a whole, and its foreclosure inventory rate is low. Ms. Waddell stated, “Delinquency rates for mortgages more than 90 days past due remain somewhat elevated. And Virginia labor markets are tightening, though at a slower rate than that of the U.S.” She added that there is good year over year growth in the economy.

Legislators questioned how many projects are now rezoned because of the loss of the cash proffer system. Ms. Waddell will report back to the group at the end of the interim with current statistics and numbers. The graphs illustrating her talk are titled “The Virginia Housing Market” and can be found under the *Meetings/Materials* tabs on the Commission website.

### **Presentation: Update on Housing Funding and Programs in Virginia**

*Bill Shelton, Director, Department of Housing and Community Development (DHCD)*

Director Shelton gave an update on housing funding and programs in Virginia; he spoke on behalf of both the DHCD and the Virginia Housing and Development Authority (VHDA).

The Housing and Economic Impact study including the four-university research consortium continues. A final report will be completed by midsummer to late summer and will be presented to the Commission next fall.

Links between housing and education and health coordination of housing and special needs populations are evident. Greater housing needs exist after the closing of training centers for those with intellectual and other disabilities and has caused an increased need for housing for those populations. Good progress producing this type of housing is being made; this housing intersects with services and rent supports and community services. Of this special needs population, about 10% can live independently, which necessitates the need to coordinate housing with wrap-around services for approximately 2,000 individuals.

Concerning DHCD’s portion of this year’s state budget, the Deeds Commission recommended specific budget language regarding housing for individuals with severe mental health issues. VHDA has hired a national consultant to coordinate providing the housing, and a workgroup is being formed to provide expertise and recommendations concerning this housing and needed services. Persons with a severe mental health diagnoses comprise a larger portion of the overall population than the aforementioned special needs population, and providing this type of housing has its own complexities. A report will be completed in January concerning a better way to house those in the community with severe mental illness. The goal is for housing for this population not to be concentrated but, instead, to be dispersed throughout the community, with wrap-around services provided to ensure independent living in the community.

The study will have a broad stakeholder group and will gather specific recommendations regarding housing for those persons with severe mental illness.

DHCD will continue its funding of programs at the same level as the previous year, and the Housing Trust Fund will continue to provide \$5.5 million yearly to the budget. Appreciation for the support of the General Assembly was expressed by Mr. Shelton. However, there remains an \$8.3 million gap in the budget between resources and expenses after rolling together all state and federal resources, including those of CDBG (Community Development Block Grants) and the U.S. Department of Housing and Urban Development (HUD) HOME Investor Partnership Program funds.

Proposals put forth by the Trump administration eliminating federal support moneys for the HOME program, the weatherization program, and many others will cause a great financial stress on the current



funding system if the eliminations occur. No one wants to lose funding in the middle of a development project, and the reduction of federal dollars will negatively impact affordable housing, such as housing using Federal Low-income Housing Tax credits. Equity out projects will need to allocate more money, as a proposed drop in taxes could cause \$1.10 on the dollar to be added as pricing on equity. This especially affects the building of multi-family housing, but historic tax credits for all types of housing will also be affected.

Beginning in 2010, there has been a concerted effort to reduce homelessness in the Commonwealth. Virginia is doing better than many other states in working to combat homelessness, and the effort has resulted in an over 30% reduction of homelessness in the state. The emphasis on housing first models has been the key to the decline in homelessness; it has been held up as a national model and has been adopted by all housing partners across Virginia. Veterans' homelessness, using a coordinated effort, has been virtually solved in Virginia, although chronic homelessness still exists. The goal is reduction of chronic homelessness in the Commonwealth by 40% by January 2018.

Building and fire codes are past the halfway point for the next bundle of codes being amended and adopted in Virginia. Meetings discussing the codes are being conducted, and it has been an open-ended process that will soon conclude, as a new Statewide Uniform Building Code will be adopted in 2018.

There are several controversial issues remaining from the 2015 International Code that will be solved in this cycle. Delegate Marshall requested that a report on the major changes, after they are adopted this upcoming autumn, be added to the Commission's meeting agenda.

The Virginia Initiative for Growth and Opportunity in Each Region (GO Virginia) incentivizes "growing back" the economy. Virginia's economic growth is still at a slower rate than that of the rest of the country; there is a need to look at which job sectors have replaced those higher-wage jobs in manufacturing and defense contractor jobs. Where there are lost jobs, particularly in the key sector of manufacturing, standards for strategies and best opportunities to replace them are established through GO Virginia.

Utilizing regional councils, GO Virginia has divided the state into nine regions, and all but one region has had an initial meeting to discuss the best opportunities to bring back higher-wage jobs. Membership for the State Board and regional boards are set, and DHCD has developed a 28-person advisory council to serve as GO Virginia's supervisory board.

GO Virginia has strong connections with higher education, including a statutory requirement that each regional council have representation by institutions of higher education; collectively, the councils comprise representatives from community colleges, regional universities, and private colleges. DHCD will coordinate with the councils to utilize the general and commercialization research strengths of the Commonwealth's universities.

### **Presentation: Current Plans and Challenges RRHA Faces**

*Marcia Davis, Chief Real Estate Officer, Richmond Redevelopment and Housing Authority (RRHA)*

Ms. Davis gave an overview of the current plans and challenges RRHA faces. RRHA is both manager and owner of public housing in the City of Richmond, with 4,000 units of public housing under its auspices. There are 3,500 Section 8 vouchers in the City of Richmond and adjoining counties.

The goal of the agency is deconstruction of poverty; currently there are six housing project developments within a couple of miles of each other.



Redevelopment of Frederic A. Fay Towers, which provides housing for seniors, is under construction, and 400-plus units in two public housing projects are part of a redevelopment effort near Creighton Court.

In subsidies and capital funds, RRHA has \$6 million in operating funds (approximately \$750 per unit), but there is a \$150 million need in the city. There is a \$20 million need to improve dilapidated infrastructure in Richmond; nationwide there is a billion-dollar backlog of dilapidated housing needing redevelopment.

Regarding the plans for Richmond's East End, which the Commission discussed last year, a partnership was formed with Community Builders, and capital grant and building funds from the federal Choice Neighborhood Initiative (a bigger version of HOPE 6) to redevelop public housing using public and private dollars were applied for from HUD. Transforming the neighborhood would have entailed an initial \$30 million and a \$200 million total effort; unfortunately, the City of Richmond was not selected for the neighborhood transformation moneys.

There are, however, plans for adding housing within the City of Richmond, including building 77 new units in Highland Park and the renovation of the historic Baker School into 51 senior units; the goal is to have the development take place in phases.

In Jackson Ward, RRHA is working to reconnect neighborhoods by adding 72 units of senior housing and 122 market-rate units, each using Low Income Housing Tax Credits (LIHTC) for a subsidy for the land. Currently, there is also a concept to develop a boutique hotel in Jackson Ward during the next phase. This project and other such projects of RRHA will try not to rely on funding from HUD for the projects. Pictures of the Jackson Ward and Baker School development projects can be found in the document titled "Public Housing Transformation: Jackson Ward and Baker School Redevelopment" under the *Meetings/Materials* tabs on the Commission's website.

On a positive note, a neighborhood center is being built in Church Hill through a private/public partnership. The Markel family donated funds to alleviate the food desert by initiating a grocery store development project, and J. Sargeant Reynolds Community College is establishing a culinary school in the neighborhood. Overall, the neighborhood has received an infusion of \$25 million in private equity.

### **Work Plan for 2017 Interim**

*Elizabeth Palen, Director of the Commission*

Ms. Palen discussed the work plan and introduced the topics to be covered during the interim. She explained that some topics were assigned by the legislature during the 2017 Session of the General Assembly for the Commission to study and other topics were sent by letter of request to the Commission. The list of topics is posted on the Commission website as "2017 Referred Legislation and Requested Studies" under the *Meetings/Materials* tabs. Ms. Palen explained that the list is not exclusive and that topics will be added to be studied by the Commission, this interim, as needed. She also noted that each topic has been assigned to a workgroup composed of legislators and stakeholders, where each will be thoroughly vetted.

## **Virginia Housing Commission**

**Delegate Daniel W. Marshall, III, Chair**

Elizabeth Palen, Executive Director

804-698-1875

[dls.virginia.gov/commissions/vhc.htm](https://dls.virginia.gov/commissions/vhc.htm)



## Joint Commission on Technology and Science

*April 4, 2017*

The Joint Commission on Technology and Science (JCOTS) held its first meeting of the 2017 interim on April 4, 2017, in Richmond, with Delegate Rich Anderson, chair, presiding.

### **HB 2459: Prohibition on Sale of Certain Wireless Telecommunications Devices to Minors**

The meeting began with a teleconference presentation by Delegate Bob Marshall regarding HB 2459, which was tabled and referred to JCOTS by the House Committee for Courts of Justice during the 2017 Session. The bill prevents the sale to a minor of a cellular or wireless telecommunications device that can capture photos. Delegate Marshall stated that the intent of the bill is to remove just one avenue by which minors can obtain picture-taking and messaging devices that connect to the Internet without the use of Wi-Fi. Delegate Marshall related three stories of minors who were victims of cyberbullying or sexual harassment as a result of obtaining cell phones without parental consent. He cited Pew Research Center findings from 2009 that suggest that some 70% of minors with phones obtained without parental consent engage in sexting or are victims of cyberbullying but that that number falls sharply when the phone is obtained with parental consent.

Following the presentation, JCOTS members voiced general questions and concerns about the bill. Discussion focused on the prevalence of Internet capacity in modern electronics, the difficulty of keeping pace with modern technology, and the unintended harm that this legislation would have on emancipated minors. Delegate Marshall and JCOTS members agreed that a staff-led meeting with relevant stakeholders, including cell phone providers and retailers, JCOTS members, and other interested parties, is the best path forward to understanding and addressing the problem.

### **2017 Work Plan**

Staff presented a proposed JCOTS work plan for the 2017 interim. There are four main proposed topics. The first is Delegate Marshall's bill, which staff proposed convening a work group of stakeholders to discuss. The second is a study of collaboration among Virginia research institutions and the private sector to coordinate cutting-edge technology research and development with funding and assistance from research institutions. Members pointed out that there is a need to include workforce development in the study and that the study group should learn from the obstacles faced by the cybersecurity subcommittee. Members noted that the Virginia Research Investment Committee was studying a similar topic and staff should connect with them to avoid duplicative efforts and explore collaboration.

The third and fourth study topics focus on aerospace development in the Commonwealth. The third study topic will look at Denbigh High School's aviation academy. Staff proposed a staff-led work group to focus on how to use the school's aviation academy as a statewide model. The fourth study topic is an in-depth review of the Commonwealth's interpretation of federal laws and regulations that affect the aerospace repair and maintenance industry. Because the regulatory process is so burdensome and airplane repair taxes are so high in Virginia, there are few available options for owners seeking maintenance work on their airplanes. Some airplane owners even report it being cheaper to fly to Illinois to obtain repairs rather than staying in Virginia. The proposed subcommittee will analyze why Virginia's system is less accessible than those in some other states and how to promote the industry.

Following the staff report, a member asked about authentication of electronic government documents, which had been considered by SB 531 (2016). Members expressed interest in studying the topic and avoiding duplicative efforts being taken by the Department of Health Professions.

## **HJ 97/SJ 97 (2016): Virginia Aviation and Aerospace Industry**

*Lisa Wallmeyer, Senior Attorney, Division of Legislative Services*

Ms. Wallmeyer reported on HJ 97/SJ 97 (2016), which directed JCOTS to create a report entitled “A Blueprint for Growth of the Virginia Aviation and Aerospace Industry.” She gave an overview of the findings in the report, along with print copies. Multiple members noted that the report was excellent, was thorough, and represented an important first step for the Commonwealth’s aerospace industry. The next step is to bring the report to House and Senate leadership to create legislation to act on the report’s findings, with a primary focus on creating a centralized, high-level position related to all things aerospace. Chairman Anderson stated that he would work with staff and Senator John Cosgrove to bring the recommendations from the report to leadership. Delegate Kenneth Plum expressed interest in continuing the aerospace study group, and Senator Cosgrove stated that JCOTS would meet with the study group to decide on the possibility of further study.

### **Public Comment**

In public comment, Bob Matthias from the City of Virginia Beach spoke about the transatlantic fiber-optic and dark fiber cables that are being connected to Virginia Beach from Bilbao, Spain, and Fortaleza, Brazil. Members affirmed their commitment to removing any barriers as needed for Virginia Beach to continue the project in the future.

## **Joint Commission on Technology and Science**

**Delegate Richard L. Anderson, Chair**

David Barry, Executive Director and DLS Attorney

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[dls.virginia.gov/commission/jcots.htm](http://dls.virginia.gov/commission/jcots.htm)

## **Joint Commission on Transportation Accountability**

*April 4, 2017*

The Joint Commission on Transportation Accountability (the Commission) met in Richmond on April 4, 2017, with Delegate Tim Hugo, chair, presiding.

### **Congestion Mitigation and Tolling on the Express Lanes in Northern Virginia**

*Jennifer Aument, Group General Manager, Express Lanes Manager-Operator, Transurban*

Ms. Aument updated the Commission on the status and effectiveness of the Express Lanes in Northern Virginia. Ms. Aument explained that over half of DC area drivers have used the Express Lanes and that the Express Lanes have benefited both commuters and the Commonwealth. Commuters in these routes are experiencing time savings of up to 3.5 hours per day. Ms. Aument gave examples of time savings totals for commuters on I-495 and I-95. The minimum average speeds on the Express Lanes are 55-65 mph. These time savings can lead to user delay costs saved. Ms. Aument gave the example of a parent trying to get home from work to pick up a child from daycare before the daycare closes. The parent would incur late fees if he was unable to pick up the child in time, so he chose to pay the additional fee for the Express Lanes to avoid the higher late fee, which was an overall cost savings for the parent. Express Lanes are most likely to be used when a trip involves children.



Ms. Aument explained that the Commonwealth has seen cost savings from the Express Lanes as well. For example, the Commonwealth's return on investment is 29 times its investment on the I-495 project and 110 times its investment in the I-95 corridor. The Express Lanes have generated \$63 billion in economic activity, and Transurban has awarded \$750,000 in grant money to organizations in Northern Virginia. The prices of the tolls on the Express Lanes vary during different times of day based on a variety of factors. The average toll on I-495 is \$4.37 and on I-95 is \$6.65. The maximum toll is \$31.30 on I-495 and \$35.95 on I-95. Ms. Aument explained that these prices make the tolls accessible and a realistic option for many commuters. Ninety-seven percent of trips on the Express Lanes are paid at the time of travel. Eight of 10 customers settle unpaid trips upon receipt of first notice of nonpayment. The percentage of Express Lanes trips that end up in court is 0.075 percent; 90 percent of such cases have been settled at reduced cost to the commuter.

According to Ms. Aument, Express Lanes have led to an increase in carpooling. There are more than 100,000 carpoolers per weekday on the Express Lanes. In 2015–2016 on I-495, tolling trips increased five percent while non-paying carpool trips increased 40 percent. Traffic generally grew 8 percent on that corridor in the same time period. Ms. Aument explained that the Express Lanes are safer than standard lanes, with fewer accidents and higher travel speeds, and gave examples of Transurban's commitment to customer service and safety. For instance, Transurban created a technology app that shows real-time speeds and tolling information. Additionally, Transurban has dedicated safety assist vehicles with six-minute response times on the Express Lanes. Finally, Transurban launched the Phones Down Touchdown initiative to bring awareness to the perils of distracted driving.

### **Toll Relief Program; Elizabeth River Tunnels**

*Aubrey L. Layne, Jr., Secretary of Transportation*

Secretary Layne presented an update on the Elizabeth River Tunnels Toll Relief Program. The Elizabeth River Tunnels, managed by Elizabeth River Crossings, are fixed toll facilities; i.e., all vehicles pay the same amount, unlike the HOT lanes in Northern Virginia, the charges for which are based on throughput or occupancy. In Northern Virginia, drivers have a choice to use the toll lanes or drive in the toll-free standard lanes. In Hampton Roads, drivers do not have such a choice. As such, Secretary Layne explained that the MLK Expressway toll was removed because it was disproportionately tolling Portsmouth residents.

Secretary Layne then addressed the specifics of the Toll Relief Program. Elizabeth River Crossings has instituted a cap on the fees accumulated from not paying the tolls. The cap is \$2,200, and only applies to first-time offenders. If a person makes \$30,000 or less, the fee cap is \$1,100. Additionally, Elizabeth River Crossings is issuing refunds to any customers who settled for more than those amounts. Elizabeth River Crossings made a contribution of \$500,000 to the Toll Relief Program. The Macquarie-Skanska partnership is behind the company known as Elizabeth River Crossings.

The Department of Transportation is working to devise a way to ensure that those who use the access roads only, and not the tunnels, are not subject to the same tolls. Secretary Layne discussed the future of Hampton Roads and the plan for HOT lanes for an eight-mile stretch around the naval base and on either side of the Hampton Roads Tunnel.

### **I-81 Corridor Update**

*Nick Donohue, Deputy Secretary of Transportation*

Deputy Secretary Donohue presented to the Commission regarding the I-81 corridor generally, the traffic conditions of the corridor, and possible improvements to ensure more reliable travel times on the

corridor. I-81 is the longest corridor in the Commonwealth and one of the busiest as well, with nearly twice as much truck traffic as I-95. Forty-two percent of all truck traffic in the Commonwealth takes place on I-81. Because I-81 is such an important route for trucks, the truck traffic is dense throughout the corridor. In fact, truck traffic makes up 20–30 percent of traffic volume in certain sections of I-81. I-81 is only two lanes each direction for its entirety, so any crash can slow traffic down significantly. There are on average 2,000 crashes per year, and with each crash 65 percent of the capacity of the highway is lost. In addition to being the longest corridor in the Commonwealth, I-81 also spans some of the most mountainous terrain in the Commonwealth. Trucks take up even more lane space at a steeper grade, as the truck is forced to slow to climb a hill.

Deputy Secretary Donohue reviewed HB 2022 (Villanueva, 2017), which he referred to as the VDOT Omnibus. He stated that the bill requires drivers who are capable of safely doing so to move a movable vehicle off the roadway when an emergency, breakdown, or accident involves no injuries and allows VDOT and contractor vehicles to use median crossovers, which allows them to push vehicles out of travel lanes in the hope of reducing traffic congestion. Deputy Secretary Donohue reviewed the Commonwealth's \$128 million submission for the FASTLANE II Grant, which was submitted prior to President Trump's taking office. At the time of his presentation, the grant money was still under review by the Trump administration. The grant money would fund pragmatic, implementable projects on I-81 identified through objective data. FASTLANE grant money would fund approximately 25 percent of the total \$128 million program cost. The I-81 Corridor Improvement Program, funded by potential FASTLANE money, would improve safety by reducing friction points, improve detection of incidents, and improve the speed of accident clearance without jeopardizing safety.

Senator Charles Carrico suggested utilizing a program similar to a South Carolina program in which retired state troopers work accidents, which frees up valuable time to active law enforcement. VDOT currently contracts wrecker service and is piloting various quick clearance measures, such as emergency towing and incentive tow programs. Project funding of \$150 million is going to the I-81 corridor as a result of Smart Scale. In response to a question from the Commission, Deputy Secretary Donohue advised that the cost to widen I-81 to eight lanes would be \$12 billion.

### **I-95 ReVAmp**

*Rob Cary, PE, L.S., Richmond District Engineer*

Mr. Cary presented to the Commission an overview of small-scale transportation projects that have a large impact in terms of reducing congestion and maximizing space and resources. Mr. Cary encouraged localities to “think small” in terms of Smart Scale projects that can give a locality the most “bang for the buck.” Smaller projects are more likely to get funded, and some smaller projects can have just as large an impact as a more expensive project. Mr. Cary lauded the success of Smart Scale and the way it has encouraged engineers to think differently and save money.

### **2017 Commission Work Plan**

Chairman Hugo asked the members of the Commission for ideas and topics of interest for future meetings. The following items were suggested:

- SB 1070 (Deeds, 2017) and SB 1510 (Carrico, 2017), which were referred to the Commission during the 2017 Regular Session, regarding photo speed monitoring devices.
- Continued monitoring of development of I-66; how do the three different variable priced tolling operators communicate and work together?



- Newport News Airport; growth of new airlines; possible consolidation of airports.
- Washington Metropolitan Area Transit Authority and Metro Rail System; liabilities.
- Federal funding update by VDOT; regional funding in Northern Virginia put in place in 2013.
- Hampton Roads Transportation Accountability Commission; funding.
- Meeting in the Roanoke area to experience the I-81 corridor; I-73 Coalfield Expressway update.
- Autonomous vehicle legislation.

## **Joint Commission on Transportation Accountability**

### **Delegate Timothy Hugo, Chair**

Beth Jamerson, DLS Attorney

Chrissy Noonan, DLS Attorney

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[dls.virginia.gov/commissions/cta.htm](http://dls.virginia.gov/commissions/cta.htm)

## **Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century**

*April 5, 2017*

The first meeting for 2017 of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century (the Joint Subcommittee) was scheduled for Wednesday, April 5, 2017, at the General Assembly Building in Richmond. Due to the need for some members to attend meetings scheduled at the same time as the Joint Subcommittee's, a quorum of the Joint Subcommittee was not present and the meeting was not convened. However, the chair of the Joint Subcommittee, Senator R. Creigh Deeds, announced that the Mental Health Crisis and Emergency Services work group would be incorporated into the Service System Structure and Financing work group and that the Housing work group would be incorporated into the Criminal Justice Diversion work group. Senator Deeds stated that the two work groups would likely meet at least four times during 2017. Senator Deeds noted that the House Courts of Justice Committee referred five bills introduced during the 2017 Session to the Joint Subcommittee for study and that each bill will be assigned to the appropriate work group. Finally, Senator Deeds noted that the Joint Subcommittee had been appropriated funds in the 2017–2018 budget that will enable the engagement of a consultant to assist the work of the Joint Subcommittee, if necessary.

### **Materials**

Presentations and materials from the meeting can be found on the website of the Joint Subcommittee at [http://dls.virginia.gov/interim\\_studies\\_MHS.html](http://dls.virginia.gov/interim_studies_MHS.html).

## **Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century**

### **Senator R. Creigh Deeds, Chair**

David Cotter, DLS Senior Attorney

Charles Quagliato, DLS Attorney

Sarah Stanton, DLS Senior Attorney

Tom Stevens, DLS Attorney

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[dls.virginia.gov/interim\\_studies\\_MHS.html](http://dls.virginia.gov/interim_studies_MHS.html)

## **Commission on Unemployment Compensation**

*January 5, 2017*

The Commission on Unemployment Compensation (UC Commission) held its second meeting during the 2016 interim on January 5, 2017.

### **Status of Virginia's Unemployment Trust Fund (Trust Fund) and Related Matters**

*Ellen Marie Hess, Commissioner, Virginia Employment Commission (VEC)*

#### *Status of the Trust Fund*

The Trust Fund's December 31, 2016, balance was expected to be \$938.7 million; one year earlier, the balance was \$749.7 million. The increase in the balance has increased the solvency level from 57 percent on June 30, 2015, to 68.5 percent on June 30, 2016. This increase to a solvency level triggers the suspension of the fund builder tax, which is assessed at the rate of two-tenths percent of the first \$8,000 of each employee's wages (or \$16). The fund builder tax is automatically suspended for years when the solvency level exceeds 50 percent.

Commissioner Hess reported that the U.S. Department of Labor had not provided the VEC with information required to prepare forecasts of Trust Fund solvency and balance levels and per-employee state unemployment taxes for this meeting. She said that the VEC would provide updated forecasts to members of the UC Commission when the data became available.

As a consequence of the counter-cyclical funding of the Trust Fund, increases in the solvency level of the Trust Fund are expected to occur at the same time that state unemployment tax revenue is declining. In 2016, state unemployment tax revenue is expected to be \$565.9 million. In the preceding year, such revenue was \$678.2 million. Part of the decline is due to the shift in the distribution of employers' tax rates. The percentage of employers charged the lowest state unemployment tax rate of 0.10 percent (excluding the pool tax) increased from 59.3 percent in 2015 to 60.4 percent in 2016 and is projected to reach 64.5 percent in 2017. The percentage of employers for whom the tax rates are computed, rather than assigned, at the highest state unemployment tax rate of 6.2 percent decreased from 7.3 percent in 2015 to 6.0 percent in 2016 and is expected to be 5.2 percent in 2017.

#### *Claims, Unemployment, and Payment Data*

Commissioner Hess reported that total initial claims for unemployment benefits for 2016 were projected to be 183,000; in 2015, total initial claims were 186,887. Virginia's unemployment rate (not seasonally



adjusted) for November 2016 was 4.0 percent. One year previously, Virginia's not seasonally adjusted unemployment rate was 3.9 percent.

The seasonally adjusted unemployment rate for November 2016 placed Virginia as the 17th lowest ranking among the states. Virginia's corresponding ranking for October 2015 was 15th lowest. The national seasonally adjusted unemployment rate for November 2016 was 4.6 percent. The state with the lowest seasonally adjusted unemployment rate in November 2016 was New Hampshire (2.7 percent), and the state with the highest rate was Alaska (6.8 percent).

The number of final payments, which reflects those claimants who received benefits for the maximum number of weeks for which they were entitled (and thus did not return to work while eligible to receive unemployment benefits) in November 2016 was approximately 2,300. Final payments of benefits in the first 11 months of 2016 were down 9.9 percent from the same period in 2015 and down 30.4 percent from the same period in 2014. 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 38.9 percent in November 2016; in the same month of the previous year, the exhaustion rate was 41.6 percent.

Virginia's maximum weekly unemployment benefit is \$378. The national average maximum weekly unemployment benefit in 2016 was \$436. Virginia's maximum weekly unemployment benefit is third-highest among the six jurisdictions composing the area within the Fourth Circuit Court of Appeals. In 2016, Virginia's weekly benefit replacement rate was 38 percent of the state's average weekly wage; in 2015, the corresponding rate was 39 percent. The national average weekly benefit replacement rate for 2016 was 43 percent. One of these six jurisdictions (the District of Columbia) had an average weekly benefit replacement rate in 2016 that was lower than Virginia's rate. The average state unemployment tax per employee in Virginia of \$162 for the year ending March 31, 2016, was the lowest of these six jurisdictions. The national average for the same period was \$346, and the highest among the six jurisdictions was the \$448 assessed in North Carolina.

## **Commission on Unemployment Compensation**

### **Delegate R. Lee Ware, Chair**

Frank Munyan, DLS Senior Attorney

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[dls.virginia.gov/commissions/ucc.htm](http://dls.virginia.gov/commissions/ucc.htm)

## **State Water Commission**

*April 4, 2017*

The State Water Commission (the Commission) met in Richmond on April 4, 2017, with Delegate Thomas Wright, chair, presiding.



## **Overview of the Hampton Roads Sanitation District's Project SWIFT: The Sustainable Water Initiative for Tomorrow**

*Ted Henifin, General Manager of the Hampton Roads Sanitation District (HRSD)*

Mr. Henifin provided the Commission with an overview of HRSD's Project SWIFT: the Sustainable Water Initiative for Tomorrow. Project SWIFT will take wastewater that would otherwise be discharged into a local river, treat it, and put it into the Potomac Aquifer.

Mr. Henifin covered a variety of topics related to the project, including efforts at outreach and the selection of a carbon filtering process for the treatment of the wastewater after comparison testing against a reverse osmosis process. The U.S. Geological Survey recently installed a new extensometer to measure subsidence, and Mr. Henifin noted the signing of trading agreements that will allow Project SWIFT to remove nutrients and sediment from the water on behalf of the City of Hampton, saving the city the cost of retrofit work that the city otherwise would be required to undertake. Mr. Henifin also expressed his hope that federal agencies will grant permission to modify an existing consent decree related to wet weather overflows. The expenses required for HRSD to comply with the decree are already built into a rate plan, and the modification that HRSD seeks would allow those rate increases to pay for Project SWIFT first before addressing the overflow problems that led to the decree.

Members addressed a number of questions and comments to Mr. Henifin. In answer to a question from Delegate Wright, Mr. Henifin stated that the 120 million gallons per day (mgd) that HRSD ultimately planned to treat and inject were expected to support the natural recharge of the aquifer and halt its decline. In response to questions from Delegate Danny Marshall, Mr. Henifin stated that HRSD hoped to bring the seven plants into service gradually between 2022 and 2030 and that the injection would occur at numerous levels of the aquifer, from near the surface to a depth of 1,200 feet. Rather than adding water in one place so that it can be withdrawn from another place, the project will add pressure to the aquifer, increasing the ability of withdrawers to take water from various parts of the aquifer. Delegate Scott Garrett asked about the possibility of a wastewater pipeline to a large industrial user such as a paper plant, and Mr. Henifin explained that the project will use the aquifer itself as infrastructure, making the water available to anyone at any future date. Delegate John O'Bannon asked for other examples of such injection, and Mr. Henifin referred to Orange County, California. Finally, Delegate Barry Knight pointed out that land subsidence accounts for about half of sea level rise in the Tidewater region and noted the role of a state budget amendment in the installation of the extensometer; Mr. Henifin stated that the extensometer is independent of Project SWIFT and that the data it provides would be needed regardless.

## **Update on Hydraulic Fracturing (Fracking) in Virginia**

*Angela Navarro, Deputy Secretary of Natural Resources*

Ms. Navarro spoke on the basics of fracking, the relevant geology of Virginia, the regulatory process, and special considerations in the Tidewater region.

Ms. Navarro began with an overview of the fracking process, explaining that liquids or gases are pumped into a well under pressure in order to fracture rock formations containing oil or gas. Fracking is used in three main areas in the state: Southwest Virginia, where coalbed methane is the hydrocarbon typically extracted; the Marcellus Shale, or Marcellus Formation; and the Taylorsville Basin. She also explained the legal structure that governs fracking, including the U.S. Safe Drinking Water Act and the Virginia Gas and Oil Act (§ 45.1-361.1 et seq.) and its regulations. Ms. Navarro also noted that in Tidewater, § 62.1-195.1 of the Code of Virginia and attendant regulations apply. Because most of the



Taylorsville Basin is located in Tidewater, and any drilling there is likely to pass through the Potomac Aquifer, an extra environmental impact assessment is required by state regulations.

Delegate Wright asked whether the state has the proper regulations in place to protect water resources. Ms. Navarro stated that the Virginia Department of Mines, Minerals and Energy (DMME) had recently conducted a review of its regulations and is making significant modifications to groundwater monitoring. She added that local governments also have authority on fracking, especially on the coastal plain, and they have taken a hard look at the process. Delegate Marshall asked about the extent of such local authority, and Ms. Navarro noted that localities can already zone for natural resources extraction and that an Attorney General's opinion on the topic provides more information.

Delegate Garrett asked about the possibility of combining fracking with the HRSD injection project in a single pipe, but Ms. Navarro explained that such a combination would not be possible. Delegate O'Bannon asked whether it is common in the United States to conduct fracking through an aquifer; Ms. Navarro answered that wells are drilled through water sources in different parts of the country but that a request for more detailed information should be directed to the Department of Environmental Quality.

### **New Virginia Flood Risk Information System (VFRIS)**

*Marcia Berman, Virginia Institute of Marine Science (VIMS)*

*Gina DiCicco, Department of Conservation and Recreation (DCR)*

Ms. Berman and Ms. DiCicco spoke on the new Virginia Flood Risk Information System (VFRIS), an online tool designed to help users discern the flood risk of any individual property in the state.

Ms. Berman provided a background on the partnership between the Center for Coastal Resources Management at VIMS and the Division of Dam Safety and Floodplain Management of DCR. Ms. DiCicco then demonstrated the VFRIS web interface, which pulls information from the Federal Emergency Management Agency (FEMA). Selecting a particular location in Richmond brought up Flood Insurance Rate Map panels and Flood Hazard Zone information. Selecting a location in Eastern Virginia brought up Coastal Barrier Resources System information. For coastal Virginia, VFRIS also has an information element that FEMA lacks: a hundred-year flood depth grid, showing how deep the flooding will be during such an event. The agencies are planning to incorporate more features into VFRIS in the future.

Questions from members followed. In response to a question from Senator Bill Stanley, Ms. DiCicco stated that DCR is marketing VFRIS to professionals involved in land use, as well as citizens, and that VFRIS is one of the most popular parts of the DCR website.

### **Next Meeting**

The next meeting of the Commission is scheduled for August 25, 2017.

### **State Water Commission**

**Delegate Thomas C. Wright, Jr., Chair**

Scott Meacham, DLS Attorney

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[dls.virginia.gov/commissions/swc.htm](https://dls.virginia.gov/commissions/swc.htm)

## Virginia World War I and World War II Commemoration Commission

March 28, 2017

The Virginia World War I and World War II Commemoration Commission (the Commission) met in Richmond on March 28, 2017, with Delegate M. Kirkland Cox, chair, presiding.

### Staff Report and Program Updates

Cheryl Jackson, Executive Director

Lily Jones, Research Associate

Ms. Jackson provided updates on a number of programs:

#### *WWI and WWII Tourism Marketing Grant Program*

The second round of grants yielded eight applications. The following were presented with recommendation to approve:

1. Lead partner: Fauquier Historical Society/Fauquier History Museum at Old Jail

**Project name:** *Honor our vets...Lest we forget: Preserving World War Legacies in the Piedmont*

**Award amount:** \$992; Amount of match from recipient and partners: \$997

**Summary:** The project will spotlight local men and women who played a part in both of the world wars in Fauquier and Orange Counties. Partnership includes the Fauquier History Museum, the Cold War Museum, and the James Madison Museum, whose combined ability to advertise each element of the overarching program (Lest We Forget) will draw visitors to different locations and showcase the beauty and diversity of the area.

2. Lead partner: Alleghany Highlands Chamber of Commerce and Tourism

**Project name:** *Marketing the Profiles of Honor Mobile Tour*

**Award amount:** \$750; Amount of match from recipient and partners: \$750

**Summary:** The grant will bring awareness to WWI and WWII by funding advertising for the Profiles of Honor Mobile Tour that will be in Clifton Forge at the Stars and Stripes Celebration on July 3 and July 4, 2017.

3. Lead partner: Historic Smithfield

**Project name:** *Swinging to the 40s and Veterans Salute with Profiles of Honor*

**Award amount:** \$984; Amount of match from recipient and partners: \$984

**Summary:** Historic Smithfield, the Montgomery County WWI/WWII Commemoration Committee, the Montgomery County Tourism Office, and supporting partners request marketing funds to advertise a special educational event entitled “Swinging to the 40s Big Band Concert and Veterans Salute” with the Profiles of Honor exhibit on September 24, 2017.

4. Lead partner: National D-Day Memorial Foundation

**Project name:** *73rd Anniversary of D-Day Commemoration*

**Award amount:** \$3,150; Amount of match from recipient and partners: \$3,150



**Summary:** Funds will be used for marketing the 73rd commemoration of the D-Day Invasion, with a ceremony honoring the surviving veterans and those who made the ultimate sacrifice. Speaker will be Jerry Yellin, the pilot who flew the final combat mission of WWII. [Conditions apply]

5. Lead partner: South Boston-Halifax County Museum of Arts and History

**Project name:** *Halifax County in a World at War*

**Award amount:** \$1,500; Amount of match from recipient and partners: \$2,000

**Summary:** The intended outcome is to promote the initial phase of an exhibit series hosted at the South Boston-Halifax County Museum of Fine Arts and History related to the historic impact of WWI and WWII. [Conditions apply]

6. Lead partner: Virginia Arts Festival

**Project name:** *Virginia International Tattoo Commemorates World War I Centennial*

**Award amount:** \$5,000; Amount of match from recipient and partners: \$209,579

**Summary:** The Virginia International Tattoo is partnering with the United States WWI Centennial Commission to present a special edition of the annual Virginia International Tattoo in 2017 that commemorated the WWI centennial. Performers from countries that participated in WWI will be featured, including Australia, Canada, France, New Zealand, the United Kingdom, and the United States. WWI-era music will be featured in the Tattoo.

7. Lead partner: Vint Hill Entertainment

**Project name:** *Inn at Vint Hill Website Redevelopment and Marketing Plan*

**Award amount:** \$5,000; Amount of match from recipient and partners: \$5,000

**Summary:** The Vint Hill Tourism Marketing Project would apply commission funds to the development of a new website for the Inn at Vint Hill, which will begin offering overnight accommodations in the fall, and online advertisement purchases to market the Inn and its historical connection to WWII during the 75th anniversary year. The U.S. Army purchased Vint Hill Farms in 1942 and turned the property into a military listening station used to intercept and decode radio transmissions from Europe and the Pacific theater.

Another application was presented but not recommended for approval. The Commission unanimously accepted the recommendations as presented.

To date, 16 grants have been awarded, totaling \$57,456, which has been matched by \$274,227 from 68 partners. It is anticipated that there will be three additional rounds of grants in 2017. The next round opens in early April.

#### *Logo requests*

Commission staff recommended approval of seven requests, out of six applications received since the last meeting, for use of the Commission's logos in promoting local WWI and WWII initiatives. The Commission reiterated its policy that the logo not be used in connection with a commercial endeavor.

The Commission unanimously approved use of the logos by the specified requesters.

*Profiles of Honor Mobile Tour*

Ms. Jackson updated the Commission on the Profiles of Honor Mobile Tour, which began its statewide tour in earnest on March 4. In its first few weeks, it has participated in seven events across six localities and served as the centerpiece for several commemorative ceremonies for WWII veterans. Altogether, 1,454 visitors have toured the exhibit. More than 50 events are scheduled for 2017.

*Events marking the 100th anniversary of the U.S. entry into WWI*

Ms. Jackson provided an update on the Commission's events taking place to commemorate the 100th anniversary of the U.S. entry into WWI. On April 6, 2017, there will be a commemorative program at the Richmond Carillon with keynote speaker Dr. Lynn Rainville, marking the 100th anniversary of the U.S. entry into WWI. In addition, the Commission is partnering with the Virginia National Guard (VNG) to present the WWI Speaker Series, with dates and locations proposed for Bedford in March, Richmond in April, Newport News in May, and Farmville in June. The VNG will also present the Military Ball of Virginia on April 29, 2017, in partnership with the Commission, and will mark the occasion.

*Battle of Midway 75th anniversary symposium and Navy events*

Plans continue to develop for "The Tide Turns," a Battle of Midway 75th anniversary symposium taking place on June 2, 2017, from 9 a.m. to 4 p.m., in partnership with the MacArthur Memorial and the Hampton Roads Naval Museum. The symposium will be free and open to the public and will feature speakers Elliot Carlson, Anthony Tully, Ronald Russell, and Timothy Orr. An invitation-only evening reception will follow for members of the U.S. military, board members from the Hampton Roads Naval Museum and MacArthur Memorial, Commission members, NATO representatives, local and state representatives, and representatives of the Cities of Norfolk and Virginia Beach.

On Monday, June 4, Commander, Naval Air Force U.S. Atlantic Fleet will host a commemoration of the Battle of Midway at the Virginia Beach oceanfront, in partnership with the Hampton Roads Naval Museum, the Virginia Beach Convention and Visitors' Bureau, and other organizations. The event will include a flyover by F/A-18 Super Hornets, weather permitting. Commission members are invited to attend both events.

*WWI and WWII statewide teacher symposium*

Ms. Jones provided an update on the 2017 WWI and WWII teacher symposium. Programs will take place on June 27 at the Edith Bolling Wilson Museum and Birthplace in Wytheville; on June 28 at the Historic Masonic Theatre in Clifton Forge; on July 11 at the MacArthur Memorial in Norfolk; on July 12 at the Virginia Historical Society in Richmond; on July 18 at Bedford Elementary School, near the D-Day Memorial in Bedford; on July 19 at Longwood University in Farmville; on July 25 at the Museum of the Shenandoah Valley in Winchester; and on July 26 at the Fredericksburg Area Museum in Fredericksburg.

Each program will include a WWI morning overview and WWI breakout sessions, a WWII afternoon overview and WWII breakout sessions, and a tour of a local museum. Museums from around the state will present education programs at each event, and information will be available on the Commission's *Profiles of Honor Mobile Tour*.

Online teacher resources for WWI have been added to the Commission's website, and WWII web resources are in development. Online registration is open and sessions are filling quickly.



**Virginia International Tattoo, Virginia Arts Festival**

*Scott Jackson, Producer/Director of the Virginia International Tattoo*

Mr. Jackson invited members to attend the 2017 Virginia International Tattoo and displayed a video presentation on the event. This year's event focuses on commemorating WWI and takes place from April 27 to April 30 in Norfolk.

**Next Meeting**

The next meeting of the Commission will be held on July 13, 2017, at 10:00 a.m. in House Room 1 of the State Capitol.

**Virginia World War I and World War II Commemoration Commission**

**Delegate M. Kirkland Cox, Chair**

Cheryl Jackson, Executive Director

804-698-1888

*[dls.virginia.gov/ww2.html](http://dls.virginia.gov/ww2.html)*

## Legislative Meeting Calendar for August 2017

August 1	10 a.m.	Virginia Freedom of Information Advisory Council Proprietary Records and Trade Secrets Subcommittee	House Room 2, The Capitol
August 2	10 a.m.	Commission on Electric Utility Regulation	Senate Room 3, The Capitol
August 9	10 a.m.	Joint Commission on Technology and Science	House Room 1, The Capitol
	noon	Administrative Law Advisory Committee	House Room 2, The Capitol
August 14	10 a.m.	Virginia Code Commission	House Room 1, The Capitol
	1:30 p.m.	Virginia Freedom of Information Advisory Council	House Room 1, The Capitol
August 16	6 p.m.	Dr. Martin Luther King, Jr. Memorial Commission Virginians on the Monument Work Group: Public Hearing	Piedmont Virginia Community College, 501 College Drive, Main Building, Charlottesville
August 17	10 a.m.	Children's Services Act - State Executive Council Executive Committee	1604 Santa Rosa Road, Richmond
	10 a.m.	Commission on Civic Education	House Room 1, The Capitol
	6 p.m.	Dr. Martin Luther King, Jr. Memorial Commission Virginians on the Monument Work Group: Public Hearing	Norfolk State University, Nursing and General Education Building, Suite 101, Norfolk
August 21	9:30 a.m.	Joint Meeting of Senate Committee on Finance and House Committees on Appropriations and Finance	Shared Committee Room, Ground Floor, Room E007, Pocahontas Building, 900 East Main Street, Richmond
	11:30 a.m.	Major Employment and Investment (MEI) Projects Approval Commission	Senate Room 2, The Capitol
	1 p.m.	Special Joint Subcommittee on Local Government Fiscal Stress	Senate Room 3, The Capitol
	3 p.m.	Joint Subcommittee for Health and Human Resources Oversight	House Committee Room, Ground Floor, Room W011, Pocahontas Building, 900 East Main Street, Richmond



August 21	6 p.m.	Dr. Martin Luther King, Jr. Memorial Commission Virginians on the Monument Work Group: Public Hearing	Danville Community College, Wyatt Building, Room 203, Danville
August 22	10 a.m.	Joint Commission on Health Care	Senate Room 3, The Capitol
	1 p.m.	Joint Commission on Health Care Healthy Living/Health Services Subcommittee	Senate Room 3, The Capitol
	1:30 p.m.	Commission on Unemployment Compensation	House Room 1, The Capitol
August 25	10 a.m.	State Water Commission	House Room 1, The Capitol
August 30	10 a.m.	Virginia Housing Commission Common Interest Communities Work Group	House Room 1, The Capitol
	1 p.m.	Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century Criminal Justice Diversion Work Group	Senate Room 3, The Capitol

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



## 2017 New Legislative Studies Staffed by DLS and New Responsibilities for DLS

Bill No.	Description	Study Entity	DLS Staff
HB 1500, Item 274(D)	Sales tax workgroup	Department of Taxation; additional staff support by DLS, upon request	Lisa Wallmeyer David Rosenberg Connor Garstka
HB 1500, Item 1, #12c	Joint Subcommittee on Local Government Fiscal Stress	DLS, House Committee on Appropriations, Senate Committee on Finance, Commission on Local Government	Lisa Wallmeyer David Rosenberg Connor Garstka
HB 1731	Review of exemptions from the Administrative Process Act	Joint Commission on Administrative Rules	Karen Perrine

## 2017 Continued Legislative Studies Staffed by DLS

Bill No.	Description	Study Entity	DLS Staff
SJ 47 (2014); HB 1500	Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century (fourth year of now six-year study; study extended to December 1, 2019)		David Cotter Charles Quagliato Sarah Stanton Tom Stevens
HJ 69 (2016)	Joint Subcommittee to Study the Use of Driver's License Suspension as a Collection Method for Unpaid Court Fines and Costs		David Cotter Emma Buck
HJ 84/ SJ 58 (2016)	Joint Subcommittee on Coastal Flooding (formerly Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding); second year of additional two-year study		Jeff Sharp Scott Meacham
HJ 97/ SJ 97 (2016)	Study Commonwealth's aerospace industry; develop "A Blueprint for Growth of the Virginia Aviation and Aerospace Industry."	Joint Commission on Technology and Science	David Barry
HJ 112/ SJ 85 (2016)	Joint Committee of the House Committee on Education and the Senate Committee on Education and Health to Study the Future of Public Elementary and Secondary Education in the Commonwealth (second year of two-year study)		Ryan Brimmer Tom Stevens
	Virginia Code Commission	Title 55 Recodification (second year of three-year project)	Britt Olwine Amigo Wade Kristen Walsh



Bill No.	Description	Study Entity	DLS Staff
	Virginia Code Commission	Study on Use of Gender-Specific References in the Code of Virginia and Other Discrimination Issues	David Cotter
	House and Senate Committees on Commerce and Labor	Wireless Communications Infrastructure Work Group	Frank Munyan Jeff Sharp

## Ongoing Legislative Commissions and Councils Staffed by DLS

For more information on legislative commissions and councils and their meetings, see the DLS website at <http://dls.virginia.gov/commissions.html>.

## Other Legislative Commissions and Committees

The following legislative commissions and committees are not staffed by DLS. They also hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

### Virginia State Crime Commission

[vscc.virginia.gov/meetings.asp](http://vscc.virginia.gov/meetings.asp)

### Joint Commission on Health Care

[jchc.virginia.gov/meetings.asp](http://jchc.virginia.gov/meetings.asp)

### Joint Legislative Audit and Review Commission (JLARC)

[jlarc.virginia.gov/calendar.asp](http://jlarc.virginia.gov/calendar.asp)

### Virginia Commission on Youth

[vcoy.virginia.gov/meetings.asp](http://vcoy.virginia.gov/meetings.asp)

### House Appropriations Committee

[hac.virginia.gov/](http://hac.virginia.gov/)

### Senate Finance Committee

[sfc.virginia.gov/](http://sfc.virginia.gov/)

Complete information on meetings during the 2017 interim is available on the websites of the Division of Legislative Services (<http://dls.virginia.gov/commissions.html>) and the Legislative Information System (<http://lis.virginia.gov/cgi-bin/legp604.exe?141+oth+MTG>).

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