



## June 2016 Issue

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



Virginia Division of Legislative Services

# Virginia Legislative Record

## Volume 26 Issue 1

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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 (<http://dls.virginia.gov/>) or by calling 804-786-3591.

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### Virginia Law Portal: Updated on July 1, 2016

The Virginia Law Portal was updated on July 1, 2016, to reflect changes to Virginia law enacted during the 2016 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 Law 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 804-786-3591 (ext. 258, 261, or 262) or follow the *Virginia Register* on Twitter @varegs for more information.

## Did You Know?

The Division of Legislative Services, along with the Division of Legislative Automated Systems, developed the first paperless bill drafting and editing system in the United States in 1993. The most recent edition, released in 2009, is the Bill Drafting System, which integrates E-Request and E-Filing systems and enables members of the General Assembly to track their bills and resolutions on individualized web-based Patron Status Reports.

Independent, executive branch, and judicial branch agencies use the Bill Drafting System to submit and track requests for legislation and to transfer completed legislative drafts to

## DLS Bill Drafting System Update

members of the General Assembly for introduction.

The Bill Drafting System also provides a platform for drafting substitutes, Joint Conference Committee reports, and Governor's Summaries and Governor's Amendments and for updating summaries of legislation as a bill or resolution moves through the General Assembly. Recent advances include the integration of a process to electronically file committee substitutes with the Senate Committee clerks.

More information is available on the Division's website: <http://dls.virginia.gov/>.

## Virginia Code Commission

*November 16, 2015*

The Virginia Code Commission (the Commission) met on November 16, 2015, with Senator John Edwards, chair, presiding.

### Administrative Law Advisory Committee (ALAC) Report

*Tom Lisk, Chair of ALAC*

Mr. Lisk presented ALAC's 2015 annual report. The report's first item is the completion of ALAC's review of the Model State Administrative Procedure Act. On the basis of this review, ALAC recommends two bills for the 2016 Session of the General Assembly regarding matters currently not addressed in Virginia's Administrative Process Act: ex parte communication and reconsideration of an agency final decision.

The proposed bill on ex parte communication prohibits communication between a hearing officer and any person during the pendency of the hearing without notice and opportunity for all parties to participate, provides a cure if an ex parte communication does occur, and provides an exemption for certain communications. The proposed bill applies only to formal hearings.

The proposed bill on reconsideration of an agency final decision provides a process for a party to petition for reconsideration and for a board to consider the request. The failure to file a petition does not constitute a failure to exhaust all administrative remedies.

Delegate Greg Habeeb requested that the summary for the ALAC bills specify that the bill is the result of ALAC's recommendation to the Code Commission. The Commission voted to present both bills to the 2016 Session of the General Assembly.

Mr. Lisk reported on ALAC's remaining work plan items. He stated that the Governor's office is examining its process for review of agency regulations; therefore, the executive review process workgroup has postponed further study pending a report from the Governor's office. In addition, ALAC reviewed the amendment to subdivision A 4 a of § 2.2-4006 enacted by Chapter 464 of the 2011 Acts of Assembly pertaining to the timeframe for implementing regulatory changes that are nondiscretionary and necessary to conform to a change in law. The amendment requires agencies to file such updated regulations with the Registrar of Regulations within 90 days of the law's effective date. Although ALAC concluded that no legislative action is needed at this time, the committee will continue to monitor the issue.

### **Staff Report on Status of Legislation Regarding Use of Gender-Specific References in Code of Virginia**

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

Mr. Cotter reported that, as requested by the Code Commission, he contacted affected parties and agencies regarding the use of gender-specific terms throughout the Code of Virginia. The responses from the stakeholders identified many nuances and complicated issues, such as those raised in the pending Virginia Supreme Court case of *Luttrell v. Cucco* regarding cohabitation and spousal support. Mr. Cotter explained that the issues are complex and involve more than merely substituting "spouse" for "husband" or "wife." Meetings of a workgroup are expected to begin after the 2016 Reconvened Session.

Delegate Habeeb advised that Senator Adam Ebbin and Delegate Marcus Simon understand that the Code Commission will not take action in time for the 2016 Session of the General Assembly.

### **Proposed Legislation to Update Code of Virginia References to the Former City of Bedford to Reflect Current Town Status**

*Mary Felch, Senior Research Associate, Division of Legislative Services*

Ms. Felch stated that the City of Bedford reverted to town status in 2013, and most references to the City of Bedford in the Code of Virginia were addressed at that time. She presented a draft bill to remove references to the former City of Bedford in certain sections of the Code of Virginia that should have been included in the 2013 Act of Assembly. Ms. Felch explained that the amendments do not affect any district boundary lines but do affect judicial districts. Ms. Felch stated that she spoke with Bedford officials, who have no objections to the draft bill.

Delegate Habeeb stated that he spoke to Delegate Terry Austin, who received concurrence in and support of this bill from Bedford officials. Delegate Austin has agreed to carry the bill.



**Recodification of Title 23, Educational Institutions**

*Ryan Brimmer and Tom Stevens, Attorneys, Division of Legislative Services*

Mr. Brimmer presented the final report for the recodification of Title 23, Educational Institutions, including the final organization outline, the comparative table, the letter to the Governor and General Assembly, the executive summary, and the proposed enactment clauses.

Mr. Brimmer reviewed each section of the executive summary. He explained the basis for the repeal of each Code of Virginia section in the list of repealed provisions and noted that §§ 23-277 and 23-286.2 and Chapter 27, consisting of §§ 23-300 through 23-303, will be removed from the list.

Tom Stevens presented the final matters regarding the recodification of Title 23 for resolution by the Code Commission. The first concerns the Miller School. Mr. Stevens stated that he spoke with Rick France, Headmaster and President of the Miller School, who had no concerns regarding repealing the provisions pertaining to the Miller School. Mr. Stevens provided copies of Chapter 306 of the 1986 Acts of Assembly and Chapter 195 of the 2007 Acts of Assembly and stated that with the passage of these acts, §§ 23-51, 23-52, and 23-53 of the Code of Virginia regarding the Miller School became obsolete. He noted that Chapter 306 was amended by Chapter 319 of the 2002 Acts of Assembly and Chapter 148 of the 2004 Acts of Assembly. The question before the Code Commission is whether to repeal these four Acts of Assembly. Mr. Stevens stated that the 1986 Act severed the school's ties with Virginia and perhaps should be retained. After full discussion, the Commission voted to repeal (i) §§ 23-51, 23-52, and 23-53 of the Code of Virginia and Chapter 306 of the 1986 Acts of Assembly, Chapter 319 of the 2002 Acts of Assembly, Chapter 148 of the 2004 Acts of Assembly, and Chapter 195 of the 2007 Acts of Assembly; (ii) add an enactment clause to the recodification bill indicating that all of the relevant and necessary provisions regarding the governance of the Miller School of Albemarle are included in the school's Articles of Incorporation filed with the State Corporation Commission; and (iii) add this matter to the "Substantive Changes Proposed in Title 23.1" section of the executive summary.

Mr. Stevens advised that the title of Article 4 of Chapter 6 uses the term "two-year college," although that term is not used in new Title 23.1, to retain the common and widely known name for the program. He noted that staff recommends restoring the title of Chapter 7 to "Virginia College Savings Plan and ABLE Savings Trust Accounts."

The final matter is the involuntary commitment notification requirement in proposed § 23.1-802 (§ 23-9.2:08) and the overlay of state and federal laws regarding patient privacy. At the October 5, 2015, meeting, the Commission requested that staff review this section and report back at this meeting after considering the information presented by Allyson Tysinger, Section Chief, Health Services Section, Office of the Attorney General. Mr. Stevens stated that staff had reviewed the section and have two options for consideration by the Commission. The first option is the clarifying text currently proposed in the recodification bill; the second option is proposed as a separate bill because it is considered a significant change in mental health policy. Representatives of the University of Virginia and The College of William & Mary stated that option 1 is acceptable as it only clarifies existing law, but option 2 is substantive and requires more scrutiny and consideration. The Commission agreed to proceed with the current text, without change, as shown in option 1, and suggested that the Office of the Attorney General might wish to proceed with a separate bill. Delegate James LeMunyon and Senator Edwards offered to carry the separate bill.

The Code Commission unanimously approved the final report to the Governor and the General Assembly for the revision of Title 23, including the transmittal letter, executive summary, enactment clauses, and text, as amended at this meeting.

## Forest Fire Protection Compacts

*Nicole Brenner, Attorney, Division of Legislative Services*

At its November 18, 2014, meeting, the Code Commission decided to set out the full text of all compacts in the Code of Virginia. At its May 4, 2015, meeting, the Code Commission agreed to proceed with a bill to amend §§ 10.1-1149 and 10.1-1150 of the Code of Virginia, which incorporate by reference the two forest fire compacts, by striking the existing language and setting out the full text of the compacts in the Code. At the Commission's September 9, 2015, meeting, DLS Attorney Nicole Brenner presented a draft bill and noted that the bill includes technical changes and a more substantive change regarding gubernatorial appointments. After discussion of the changes regarding appointments, the matter was deferred to this meeting to provide an opportunity to obtain input from the Governor's office.

Ms. Brenner distributed a revised bill drafted by Scott Meacham to amend §§ 10.1-1149 and 10.1-1150 and to repeal § 3 of Chapter 63 of the 1956 Acts of Assembly, relating to forest fire protection compacts. She distributed and reviewed a document outlining the changes to the compacts if the bill is enacted. The main change is to remove a Virginia-specific Advisory Committee provision, which is obsolete.

Sam Towell, Deputy Secretary of Agriculture and Forestry, stated that the compact dates back to the 1950s. The Advisory Committee has not functioned for a number of years. He stated that the Secretary of Agriculture and Forestry and the State Forester agree that the Advisory Committee is unnecessary. The Commission approved the proposed bill draft.

## Review of Comments and Adoption of Final Code Commission Regulations for Filing and Publishing Agency Regulations

*Karen Perrine, Staff Attorney, Virginia Code Commission*

At its August 19, 2015, meeting, the Commission approved proposed revisions to the Regulations of the Virginia Code Commission for Implementing the Virginia Register Act. The proposed regulations with drafting notes and a summary of the proposed changes were sent to state agency regulatory coordinators and interested parties for comment and posted on the Commission website. Several comments were received and are in the meeting materials.

Ms. Perrine stated that this matter is before the Commission to approve the final regulations, which will be titled "Regulations for Filing and Publishing Agency Regulations." Ms. Perrine reviewed the final regulations, which were modified since the proposed regulations largely on the basis of the comments received and a request by a Commission member. Ms. Perrine also reviewed the proposed responses to public comment.

The Commission approved (i) the final regulations as amended by the Code Commission, (ii) the response to public comment, and (iii) placement of the regulations in the Virginia Administrative Code.

## Next Meeting

The Commission met on Monday, May 16, 2016.

*May 16, 2016*

The Virginia Code Commission (the Commission) met on May 16, 2016, with Senator John Edwards, chair, presiding.



## Membership Changes

Senator Edwards welcomed new member Mark Vucci, who serves on the Code Commission in an ex officio capacity as Acting Director of the Division of Legislative Services. Senator Edwards also advised the members of Judge Baskervill's resignation from the Commission effective April 30, 2016. The Speaker has been notified of the vacancy and the need to appoint an active or retired circuit court judge to fill the remainder of Judge Baskervill's term, which expires June 30, 2018.

## Administrative Law Advisory Committee (ALAC) Report

*Tom Lisk, Chair of ALAC*

Mr. Lisk advised the members that two bills introduced in the 2016 legislative session resulting from ALAC's recommendations to the Commission passed:

- Chapter 478 (SB 206) on ex parte communication prohibits communication between a hearing officer and any person during the pendency of the hearing without notice and opportunity for all parties to participate, provides a cure if an ex parte communication does occur, and provides an exemption for certain communications. The legislation applies only to formal hearings. Nonsubstantive amendments to the introduced bill were made by the House of Delegates.
- Chapter 694 (SB 207) on reconsideration of an agency final decision provides a process for a party to petition for reconsideration and for a board to consider the request. The failure to file a petition does not constitute a failure to exhaust all administrative remedies. Nonsubstantive amendments to the introduced bill were made by the House of Delegates and Senate.

The Commission approved the reappointment of five ALAC members whose terms expired in 2015 for two-year terms. The reappointed members are Thomas Lisk (Eckert Seamans), Edward Mullen (Reed Smith), Eric Page (Eckert Seamans), Alexander Skirpan (State Corporation Commission), and Brooks Smith (Troutman Sanders).

## Title 23 Recodification Legislative Update

*Ryan Brimmer, Attorney, Division of Legislative Services*

Mr. Brimmer reported that the Title 23 recodification legislation (Chapter 588) passed with 31 amendments in the 2016 Session of the General Assembly. Staff also reported that a number of technical amendments have been identified that will be recommended to the Commission to be included in a cleanup bill for introduction in the 2017 Session. Staff will present a proposed draft bill to the Commission before the end of the year.

## Code of Virginia Organizational Structure

Commission member Tom Moncure asked if the Commission should evaluate the organizational structure of the Code of Virginia to consider making changes or adjustments for future accommodation and flexibility. The Commission briefly discussed the failed attempt to reorganize and renumber the Code of Virginia 10 years ago and the recent attempt to revive the project a couple of years ago. In response to Mr. Moncure's question about whether or when the print product will become obsolete, Brian Kennedy with LexisNexis indicated that given complications of making electronic codes official, he expects the print product to be around for a long time to come.

Mark Vucci advised the Commission that the Division of Legislative Services is preparing to move to another building in the late summer or early fall of 2017, and this move affects staff availability and

resources. Also, DLS currently staffs more than 25 commissions and studies. In terms of resources, DLS does not have the manpower to take on a project of this magnitude as well as deliver expected services to members of the General Assembly.

The chair called on Lilli Hausenfluck, Chief Editor, who said that the Virginia statutory code has an excellent numbering system that was implemented in 1984. In most of the titles that have been recodified since 1984, the chapter number is embedded in the section number.

Senator Edwards indicated that since the Commission recodifies titles of the code individually on an ongoing basis, no action is needed at this time.

### **Bills Referred to Commission by House General Laws and House Courts of Justice Committees**

Delegate Greg Habeeb provided background on bills referred to the Code Commission, beginning with two gender-specific terms bills that were referred to the Commission for study last year. Subsequently, the House and Senate leadership requested the Commission to set up a study to evaluate the Code in light of the U.S. Supreme Court ruling on same-sex marriage. During the 2016 General Assembly Session, numerous bills amending Virginia's laws governing discrimination were referred to the Code Commission.

Delegate Habeeb said that some of these bills might be considered outside the scope of what the Commission generally does, but the underlying issue crosses many subject matter areas. The overall scope of the project is to identify changes that are needed to bring the Code of Virginia into compliance with federal law and recent court cases, which will most likely result in a more typical Commission bill and additional bills making substantive changes introduced by other members of the General Assembly. Delegate Habeeb suggested that the Code Commission review the matter on a macro level and that subject matter work groups be formed to review on a micro level. The work groups will also need to address the implications of the Virginia Attorney General opinion issued on May 10, 2016, addressing Virginia's antidiscrimination statutes. Delegate Habeeb emphasized that the Commission is not the body to make substantive policy changes regarding this matter; however, the Commission is a logical choice to coordinate and provide direction to this project.

Delegate Habeeb volunteered to actively participate in work groups and suggested that it would be beneficial for other Code Commission legislative members to be active participants as well. DLS staff will identify the subject matter areas and propose work groups based on subject matter and individuals to serve on each work group for consideration by the Commission.

After a brief discussion, the chair asked DLS to develop and present a proposed work plan and timeline for completing the project to the Commission at the June meeting.

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

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

Amigo Wade introduced himself, Kristen Walsh, and Brittany Olwine as the staff assigned to the Title 55 recodification project. Mr. Wade staffs the House General Laws Committee, and Ms. Walsh and Ms. Olwine staff the House Courts of Justice Committee and the Senate Courts of Justice Committee, respectively.

Mr. Wade provided background on Title 55, explaining that this title has not been recodified since 1950. He stated that many of the chapters have not been amended since 1919, and other chapters are frequently amended.



Mr. Wade presented a broad, initial topical organization showing the title divided into four areas: Real Estate Conveyances, Rental Conveyances, Common Interest Communities, and Miscellaneous. Subtitles will be proposed after the work group meets in June. A number of chapters will likely be proposed for relocation into other titles of the Code and for repeal.

Staff has identified an initial list of interested parties and developed a list of proposed work group and sub-work group members. Staff proposes a 14-member work group, including six members of the Real Estate Section of the Virginia Bar Association. Specialty sub-work groups will be established for statutes pertaining to (i) common interest communities, (ii) real estate conveyances, and (iii) rental conveyances.

At the June meeting, staff expects to present a more definitive work plan. The objective is to complete a substantial portion of the title recodification this year and finalize the remainder of the title recodification next year in time for legislation to be introduced at the 2018 legislative session.

Delegate Habeeb pointed out that many subject areas in Title 55 will overlap with the gender-specific terms study.

### **Consideration of Restructuring § 58.1-322**

*Mark Vucci, Acting Director, Division of Legislative Services*

Mr. Vucci advised the members that § 58.1-322 of the Code of Virginia, which pertains to Virginia taxable income of residents, is frequently amended. He explained that the section includes tax deductions and subtractions and estimates that approximately 35 legislative bill requests to amend this section were submitted to DLS this past year, 20 of which were introduced and considered by the legislature. The section is quite lengthy and has become unwieldy. Most amendments are single paragraph additions to an isolated part of the section.

Mr. Vucci explained that the section is structured in a way that lends itself to splitting into multiple sections. Subsection B lists additions to income, subsection C lists above line deductions, and subsection D lists subtractions unrelated to income. In terms of efficiency, Mr. Vucci suggested that the Code Commission consider recommending legislation to implement this change. The Department of Taxation may incur costs related to printing new forms.

The Commission briefly discussed Mr. Vucci's suggestion and the consensus was to move forward with drafting legislation to implement Mr. Vucci's recommendation. Mr. Vucci stated that he will reach out to the Department of Taxation for feedback.

### **2016 Code Commission Legislation Update and Other Business**

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

Ms. Chaffin reviewed the chart of legislation approved by the Code Commission for introduction to the General Assembly. All bills introduced and considered by the 2016 Session passed, some with nonsubstantive amendments.

Ms. Chaffin advised the members of a request to correct references throughout the Code of Virginia affected by the elimination of the Appendix to Title 50 of the United States Code. Bill Crammé has passed these updates on to the publishers for incorporation into the 2016 updates.

Ms. Chaffin advised the members that the agreement with LexisNexis to print the biweekly Virginia Register was renewed and noted that there is no cost to the Commonwealth.



**Next Meeting**

The Commission met on Monday, June 20, 2016. The next meeting is scheduled for Monday, August 1, 2016, in Richmond.

**Virginia Code Commission**

**Senator John S. Edwards, Chair**

Jane Chaffin, DLS Staff

804-786-3591 ext. 262

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

**Dr. Martin Luther King, Jr. Memorial Commission**

The Dr. Martin Luther King, Jr. Memorial Commission (the Commission) met jointly with its Emancipation Proclamation and Freedom Monument Subcommittee (the Subcommittee) on December 2, 2015, January 7, 2016, April 19, 2016, and June 7, 2016, to continue deliberations concerning the selection of an artist for and other matters pertaining to the Virginia Emancipation Proclamation and Freedom Monument and to consider other matters coming before the Commission.

*December 2, 2015*

The Commission and Subcommittee discussed the process for (i) the notification of the artist when selected, (ii) questions for the artist, and (iii) requested modifications to the model by members. It was agreed that Commission members would submit their questions and requested modifications to Chairwoman Jennifer McClellan and staff in order that they may be directed to the final artist. It was agreed further that staff would notify the finalist, Thomas Jay Warren of Oregon, of the Commission's preliminary interest in his model provided certain stipulations could be satisfied. Julie Whitlock, Legal and Legislative Director at the Department of General Services, provided an update on matters that should be considered when selecting a design for the monument and Mark Olinger, Director of the Department of Planning and Development Review for the City of Richmond, presented the city's Public Art Commission's Review and Acceptance Policy for Gifts of Works of Art.

The Commission continued its review of a request for collaboration received from the Northside High School Museum Committee in Danville for the completion of phase 2 of its museum. The Commission agreed to partner with the museum if it could be determined that the request did not constitute procurement, which would require the Commission to adhere to the Public Procurement Act, if not exempted therefrom by the Speaker of the House of Delegates. The Commission agreed to ask the Speaker for an exemption; however, subsequently, it was determined that because the museum was contracting with the vendor, the Commission's collaboration was not deemed procurement.

A draft of updated policies governing and clarifying the Commission's partnerships and collaborations in the future was reviewed and action deferred to the next meeting. The Commission agreed to participate in and support various programs and events commemorating the national King Holiday, including the annual Community Leaders Breakfast Program in Richmond, and to send a representative to the King-in-Name (K.I.N.) and King Related Organizations & Entities (K.R.O.E.) conference in Atlanta during spring 2016.



*January 7, 2016*

A review and discussion of the relevant Code of Virginia sections concerning the exemption of legislative agencies and groups from the Public Procurement Act ensued. The request of the Northside High School Museum Committee was deferred to the Commission's next meeting after the 2016 Session when representatives of the Commission can follow up on its request of the Speaker.

King Davis, Ph.D., Research Professor, School of Information at the University of Texas at Austin and former Commissioner of the Virginia Department of Behavioral Health and Developmental Services, presented The Central State Hospital Archives Project, 1866-1940, which seeks to preserve hospital and patient records through a contemporary digital library. Central State Hospital, established in 1867 after the American Civil War, is the first mental health hospital for African Americans in the nation. The project will enable historians, health care providers, researchers, genealogists, African Americans, and others to access patient level data, use longitudinal research data to resolve disparities, compare privacy policies by state, and bring attention to Central State Hospital's history. Dr. Davis appealed to the Commission to support and collaborate with the project and assist it in preparing for the 150th anniversary of Central State Hospital in 2017.

The Commission embarked upon a protracted discussion of the history and ordinances related to the Reconciliation Monument, requested changes and modifications to the Warren model, and discussed the criteria and process by which Virginians would be selected to be engraved on the monument and next steps that may be required by the City of Richmond and the Virginia Department of General Services. Thomas Jay Warren, the finalist, was asked to make modifications to his model and provide a new budget to the Commission in April at its next meeting. Chairwoman McClellan appointed two work groups: Virginians on the Monument and "King in Virginia, 2017-2018."

The Commission adopted updated policies to govern its collaborations and partnerships. It also agreed to support the 38th annual Community Leaders Breakfast at Virginia Union University on January 15, 2016. In addition, a work plan for the 2016 legislative interim was adopted.

*April 19, 2016*

The Commission and Subcommittee reviewed and approved drafts of a letter to the Speaker of the House of Delegates requesting an exemption from the Public Procurement Act with regard to the request by the Northside High School Museum Committee for the Commission's collaboration with their museum project and a letter to Dr. King Davis, indicating support for the Central State Hospital Archives Project.

Thomas Jay Warren presented the changes to his model and responded to questions posed by the Commission in its letter dated February 25, 2016. The Commission and Subcommittee voted to approve the 12-foot life-size model at the cost of \$280,000 to which the modifications had been made. Next, the Commission voted to direct Chairwoman McClellan and Dr. Schroder, Commission member, to negotiate a contract with Mr. Warren pursuant to the February 25, 2016, letter from the Commission and members' requested changes to the model.

Members were asked to review Dr. Schroder's written update on the § 501(c)(3) status of the Martin Luther King, Jr. Memorial Commission Emancipation Proclamation and Freedom Monument, Inc. Board of Directors organization in the meeting packet. Chairwoman McClellan named the members and other nonlegislative citizens appointed to the work groups previously established and directed staff to

notify these persons of their appointments. It was agreed that the criteria for Virginians on the monument and the timeline would be discussed and determined at the Commission's next meeting.

*June 7, 2016*

The Commission and Subcommittee met jointly on June 7, 2016, to continue planning for the Virginia Emancipation Proclamation and Freedom Monument with representatives of the City of Richmond and the Virginia Department of General Services and for the proposed partnership with the Northside High School Museum Committee.

Mark Olinger, Director of the City of Richmond's Department of Planning and Development Review, presented the city's processes for the Emancipation Proclamation statue. He noted that the city owns Brown's Island and has a long-term lease with Venture Richmond, which has rights to the property, prohibiting the city's direct lease of the property to the Commonwealth. However, Venture Richmond may sublease space for the monument to the Commonwealth, if the city concurs. Concurrence will require action by Richmond City Council, a process which may take a minimum of two to three months. A new location needs to be identified for "The Mill," the current artwork situated on Brown's Island at the proposed site for the Emancipation Proclamation and Freedom Monument and the estimated cost for moving the artwork needs to be determined. Under city policies, the Public Art Commission (PAC) and the City Planning Commission (CPC) must review publicly owned property on which artwork will be sited. The Public Art Commission will not opine concerning the artwork but will make a recommendation to the CPC. This process also takes a minimum of two to three months. Mr. Olinger described the process in detail below.

Application must be made to the PAC for review pursuant to the City of Richmond Public Art Commission Review and Acceptance Policy for Gifts of Works of Art. The process includes identifying the new location for the existing artwork, "The Mill," which was donated to the city by MeadWestvaco, now WestRock, that is currently sited at the location proposed for the Emancipation Proclamation and Freedom Monument. It was noted that the Commission's artist and "The Mill's" donor should be included in the process after Venture Richmond and the City of Richmond have decided on the new location for the current artwork. Funding for the artwork's relocation should be provided by the Commission with the artist contracted to oversee its movement. After the new location has been approved, the PAC will make its recommendation to the CPC, which will take action. One year is allotted for planning purposes for this aspect of the process. The Commission voted to direct Chairwoman McClellan and Dr. Schroder, Commission member, to begin negotiations with the City of Richmond in compliance with the city requirements to site the monument on Brown's Island. Mr. Olinger was requested to provide an estimate for the relocation of the existing artwork and a copy of the sublease for space for artwork by Venture Richmond at the Commission's September meeting.

Christopher Beschler, Director of the Department of General Services, stated that whether the monument would be city or state property needs to be determined, and he explained that inspection of the monument may be negotiated with Venture Richmond. Next, Dr. Schroder overviewed the draft of the fiscal sponsorship agreement for the Virginia Emancipation Proclamation and Freedom Monument in lieu of the Martin Luther King, Jr. Memorial Commission Emancipation Proclamation and Freedom Monument, Inc. Board, the § 501(c)(3) organization established by the Commission. The Commission voted to forgo the completion of the nonstock corporation and establish the fiscal sponsorship agreement through the Virginia Foundation for the Humanities and Public Policy, which will facilitate the ease of potential donations and disbursement of funds.



The Commission, Subcommittee, and Advisory Council members reviewed and discussed the criteria for Virginians who will be depicted and the timeline on the monument. The criteria was amended to clarify that only living male and female Virginians would be considered for the monument, and the timeline was corrected to provide for the period before Emancipation (pre-1619-1865), which includes the great African kingdoms and slavery through Emancipation, and the period during the struggle for Freedom (1866-1970), including Reconstruction, Black Codes, Jim Crow, and the Civil Rights Movement. The text of the Emancipation Proclamation of 1863 and the Thirteenth Amendment to the United States Constitution was also reviewed by members.

The request for partnership with the Commission by the Northside High School Museum Committee for Phase 2 of the museum was considered and approved with the following stipulations. The Commission voted to direct Dr. Schroder to draft an agreement providing for a partnership with Northside High School Museum Committee that ensures appropriate rights to the Commission, accuracy of information, licensure of images, a link to the Commission's website, and payment of the \$8,123.72 estimate by Bright Images, Inc., minus \$171.32 in sales tax for a total cost of \$7,952.40.

Delegate Delores McQuinn, who represented the Commission, presented her report on the King-in-Name (K.I.N.) and King Related Organizations and Entities (K.R.O.E.) conference that was held April 27-29, 2016, in Atlanta. The two-day orientation focused on the education and training concerning Dr. King's life, philosophy, perspectives, principles of nonviolence, and leadership in the Civil Rights Movement. Conference attendees toured his birthplace, Ebenezer Baptist Church, and The King Center and participated in a tree dedication and wreath laying ceremony to honor Coretta Scott King's birthday.

Chairwoman McClellan noted that History Makers, based in Chicago, is interested in exploring with the Commission the potential for collaboration regarding mutual interests. Delegate McQuinn commented that the Samuel DeWitt Proctor International Conference, Inc., a national organization of progressive African American faith leaders and churches, will hold its annual conference in Richmond in February 2017 and that the Commission should consider supporting and participating in the conference as appropriate.

Chairwoman McClellan appointed the current Martin Luther King, Jr. Memorial Commission Emancipation Proclamation and Freedom Monument, Inc. Board of Directors as the Martin Luther King, Jr. Fundraising Work Group. She asked that the Commission's work groups meet prior to the next meeting in September.

## **Dr. Martin Luther King, Jr. Memorial Commission**

**Delegate Jennifer L. McClellan, Chairwoman**

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

*May 4, 2016*

The Virginia Freedom of Information Advisory Council (the Council) held its first meeting of the 2016 Interim on May 4, 2016, in Richmond. The meeting was held to hear an update on legislation passed by

the 2016 Session of the General Assembly; to review draft legislation recommended by the Records Subcommittee and the Meetings Subcommittee (the Subcommittees), which were created in 2014 as part of the study of the Virginia Freedom of Information Act (FOIA) in accordance with House Joint Resolution No. 96; to receive progress reports from the Subcommittees; to consider bills referred by the 2016 Session to the Council for further study; and to discuss other issues of interest to the Council. No action was taken by the Council at this meeting because a quorum was not present. However, the members who were present did take up the scheduled agenda items for discussion and public comment.

### **Legislative Update**

Staff informed the Council that the 2016 Session of the General Assembly passed a total of 16 bills amending FOIA. Three of the bills create two new sections in FOIA and amend various existing provisions; two bills add three new records exemptions; two bills add two new meetings exemptions; one bill adds a new records exemption and a new meetings exemption; and eight bills amend existing provisions of FOIA. Staff noted that while the Legislative Update document was complete, it was not finalized because the Governor had not yet taken action on some bills and had until May 20, 2016, to do so. The final version will be posted on the Council's website after final action has been taken on all of the bills.

### **Review of Subcommittee Recommendations**

Maria J.K. Everett, Executive Director of the Council, reviewed the draft legislation that has been recommended to date by both Subcommittees. As a reminder, the Council has previously indicated that rather than introduce individual legislative recommendations as separate bills while the HJR No. 96 study is ongoing, it prefers to introduce omnibus legislation at the conclusion of the study. As this is the third and final year of the study, the Council will hear Subcommittee recommendations throughout this year in an ongoing fashion in order to incorporate those recommendations into the omnibus legislation as the study progresses, rather than trying to consider all Subcommittee recommendations at once in a single meeting at the end of the year.

#### *Meetings Subcommittee Recommendations*

Regarding the draft (LD 0002, amending subdivisions A 9, A 17, A 20, and A 32 of § 2.2-3711) that makes technical changes to several existing meetings exemptions, Delegate James LeMunyon questioned why the closed meeting exemption for discussion of certain security or ownership interests at subdivision A 20 of § 2.2-3711 applies to the University of Virginia (UVA) but not to other public institutions of higher education. Staff indicated that UVA was the only institution that had such investments at the time. Ms. Hamlett observed that based on her experience as former counsel to Virginia Commonwealth University (VCU), VCU has such investments now. Cindy Wilkinson of the Virginia Retirement System (VRS) stated that George Mason University (GMU), Virginia Tech, UVA, and VCU all offer their own optional retirement plans. Delegate LeMunyon asked to flag this issue for further consideration then opened the floor to public comment on the drafts recommended by the Meetings Subcommittee.

Craig Merritt, Esq., representing the Virginia Press Association (VPA), stated that the draft (LD 0276, amending subdivision A 7 of § 2.2-3711), which separates the legal matters exemption into separate exemptions for (1) probable litigation matters and (2) consultation with legal counsel, brings clarity without substantive change. Dave Ress, a reporter with the *Daily Press*, stated that he appreciates the clarity but that the phrase "reasonable basis to believe" seems very broad, and he questioned whether the



phrase “specific legal matters” could also be narrowed. Staff noted that the term “reasonable” is a legal term of art and that there are many prior opinions, including ones from the Supreme Court of Virginia, interpreting this exemption. Megan Rhyne of the Virginia Coalition for Open Government (VCOG) expressed similar concerns regarding the broad use of the exemption to provide legal updates and discuss general legal issues.

Delegate LeMunyon also asked for an example of the exemption for the discussion of certain personal matters not concerning public business (subdivision A 4 of § 2.2-3711). Staff provided an example given by former Council member Mr. Oksman of a member of a public body who wishes to tell the other members of the body that his or her spouse has cancer or another serious illness but prefers not to do so publicly. Delegate LeMunyon also asked about the exemption concerning prospective business or industry, or the expansion of an existing business or industry, where no prior announcement has been made (subdivision A 5 of § 2.2-3711). Staff provided a brief legislative history of the exemption and used the example of a proposed slavery museum to illustrate whether an announcement has been made by someone with the authority to make such an announcement. Delegate LeMunyon also observed that the exemption for the discussion of certain gifts, bequests, and fund-raising activities (subdivision A 8 of § 2.2-3711 (which appears as subdivision A 9 in the draft under discussion)) appears to address records as well as meetings. Staff agreed and offered to prepare a draft moving that language over to the records exemptions section of FOIA. Delegate LeMunyon also directed staff to flag the changes made on line 57 of the technical changes draft (LD 0002) concerning discussion by the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and the Science Museum of Virginia regarding certain gifts, requests, and grants “from private sources” for further consideration (subdivision A 9 of § 2.2-3711). Ms. Porto asked if there were suggestions from interested parties for specific language to use. Delegate LeMunyon invited those interested to bring specific suggestions to the June Council meeting for consideration.

#### *Records Subcommittee Recommendations*

In regard to the recommendation to eliminate the current exemption for certain information in correspondence between an individual and a member of a local public body (LD 1105, striking subdivision 30 of § 2.2-3705.7), Delegate LeMunyon questioned whether a member of the public would presume privacy in contacting a public official. Staff noted that the public generally does not interact with government in a confidential way. Delegate LeMunyon then opened the floor to public comment.

Ms. Rhyne expressed concerns regarding the drafts relating to the personnel records exemption (LD 0326, amending subdivision 1 of § 2.2-3705.1 and subsection A of § 2.2-3705.8) and the working papers exemption (LD 0326, amending subdivision 1 of § 2.2-3705.1 and subsection A of § 2.2-3705.8). She suggested that there should be a definition of “personnel record” and noted that the current exemption has been used to keep confidential things such as the names of police officers, a Governor’s report regarding ABC officers, reports on the death of Jamycheal Mitchell while he was in jail, and body-worn camera footage of officer-involved shootings. Regarding the working papers exemption, she suggested that it be narrowed so it is not used as a catchall for an office. Ms. Rhyne suggested adopting concepts from the executive privilege and deliberative process exemptions in other states, which focus on pre-decisional matters or the adverse effect on government if the records were to be released. Noting that the exemption is applied inconsistently, she further suggested using some form of time limit or an adverse effect test. Delegate LeMunyon asked that Ms. Rhyne send her preferred text, and she agreed to do so.

Mr. Ress expressed similar concerns about the same exemptions, stating that he had encountered widespread abuse of both exemptions. He noted they were used to withhold information about the

actions of public officials, and he suggested adding to the working papers exemption a limitation that working papers be for the “exclusive use” of the designated officials.

Mr. Merritt stated that the language in the personnel records exemption referring to “information concerning identifiable individuals” broadened the traditional understanding beyond what is in an employee’s personnel folder and is now used for anything that identifies an individual. He supported the recommendation to add “name” to the list of items that must be disclosed, stating that it has long been understood that personnel information must be associated with a name as a matter of fundamental public policy. He also expressed that given experience with the \$10,000 threshold for salary or rate of pay in the current exemption, raising that threshold amount would be ripe for abuse by officials using part-time or temporary employees. Regarding the working papers exemption, Mr. Merritt noted that the recommendation tries to contain the worse current aspect of the exemption, that the term “correspondence” is not limited at all now. He suggested that it may be better to further change the definition of “working papers” by changing the phrase “personal or deliberate use” to “personal, deliberative use.” He also noted that there is no explicit language in the current exemption stating that it is for records that are pre-decisional.

Staff related comments received from Craig Fifer regarding the draft amending the exemption for email addresses and other personal information provided in order to receive email from a public body (LD 0327, amending subdivision 10 of § 2.2-3705.1). Mr. Fifer was the original author of the exemption in question and a former FOIA Council member, but he was unable to attend today’s meeting in person. He suggested that the term “personal contact information” should include private business as well as home contact information, as citizens use both work and home contact information when interacting with government.

Delegate LeMunyon asked all those present to send any specific language they would like the Council to consider regarding any of these recommendations by June 1, 2016.

### **Public Comment**

Mr. Merritt noted that the Proprietary Records Work Group has not been successful in drafting a general exemption for trade secrets, but he felt there was still a need to address the issue. He stated that he would submit a summary for further consideration.

### **HJR No. 96 Study Work Plan and Subcommittee Reports**

Staff discussed the work of the Subcommittees to date and the study work plan going forward. The Meetings Subcommittee has finished its study of exemptions and moved on to consider procedural matters. After finishing procedural matters and electronic meetings, the Meetings Subcommittee will move on to more general issues no longer limited to meetings issues, such as definitions, general provisions, remedies, and the legal structure of FOIA. The Records Subcommittee has considered §§ 2.2-3705.1 (exemptions of general application), 2.2-3705.2 (public safety exemptions), 2.2-3705.3 (administrative investigation exemptions), 2.2-3705.4 (exemptions related to education), 2.2-3705.7 (exemptions for specific public bodies and other limited exemptions), and 2.2-3705.8 (limitations on record exclusions). The Records Subcommittee also had the Proprietary Records Work Group consider § 2.2-3705.6 (proprietary records and trade secrets exemptions), but as Mr. Merritt noted, the Work Group returned the subject matter to the Records Subcommittee without a recommendation. Therefore the Records Subcommittee has yet to consider §§ 2.2-3705.5 (health and social services exemptions), 2.2-3705.6 (proprietary records and trade secrets exemptions), and 2.2-3706 (criminal and law-enforcement



records). The Records Subcommittee plans to go through these remaining sections in numerical order, then turn to procedural matters (§§ 2.2-3704 and 2.2-3704.1).

### **Bills Referred by the 2016 Session of the General Assembly**

Delegate LeMunyon deferred consideration of these matters and suggested that some bills might be referred directly to the Subcommittees to be incorporated into the HJR No. 96 study, while others may be taken up by the full Council.

### **Other Business**

Delegate LeMunyon also deferred Other Business to the June meeting of the Council.

### **Future Meetings**

Delegate LeMunyon asked if there was any other business or public comment. There was none. The Council scheduled its meetings for the rest of 2016 to be held at 1:30 PM on the third Monday of each month except August and December (i.e., on June 22, July 18, September 19, October 17, and November 21).

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

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

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## **Health Insurance Reform Commission**

*June 14, 2016*

The Health Insurance Reform Commission (HIRC) held its first meeting of the 2016 interim on June 14, 2016, in Richmond, with Delegate Kathy J. Byron, chair, presiding.

Delegate Byron welcomed the following new members to the HIRC: Delegates R. Lee Ware and David E. Yancey and Senators Richard L. Saslaw and Ryan T. McDougle.

### **Presentation: Major Developments and Trends in Health Insurance**

*Doug Gray, Executive Director, Virginia Association of Health Plans (VAHP)*

Mr. Gray updated the HIRC on major developments and trends in health insurance over the last year.

The major component of the Affordable Care Act (ACA) that drives the trends that the VAHP has noticed in health care is the switch from health underwriting to automatic issue. This means a policy is issued to all purchasers at the same premium rate, with only a few exceptions. Under automatic issue, there is an incentive for insurance carriers to raise rates to make sure that all purchasers can be covered, even those who need a lot of services.

Additionally, high cost, nongeneric drugs are difficult for carriers to cover especially when only one company is producing the drug and competitors have not yet entered the market to bring down prices.



The new specialty drugs and high cost drugs are raising and will continue to raise the amount that is spent on health care. Specialty drugs are high cost but some name brand drugs are also driving up costs because they are prescribed for so many people. Patient assistance programs, in which pharmaceutical companies donate money to nonprofits that use that money to offset or subsidize out-of-pocket costs of medication for individuals who otherwise could not afford their medications, are becoming increasingly common. This allows the pharmaceutical companies to prevent more users of a drug from looking for alternatives and continue to charge the overall pool the higher rate. Additionally, some pharmaceutical companies have been buying the rights to low cost drugs in order to hike up the price.

Balance billing, which is the practice of billing patients for outstanding balances after the insurance company pays the provider a portion of the claim, is another major issue. This usually arises when a patient receives out-of-network care or when an insurance payment is less than the total cost of the care. Balance billing has been particularly problematic with air ambulances because these services are federally regulated and the state does not have as much control. This issue also arises when certain service providers refuse to contract with the health plans but provide services in connection with services provided by a covered service provider. For example, some anesthesiologists are associated with covered medical facilities, but the anesthesiologist is not part of the plan and those services will not be covered, thus leading to balance billing. Situations such as this raise notice issues and are particularly problematic when providing emergency services in which a patient cannot consent to pay for the noncovered care.

Certificates of Public Advantage (COPAs) have become an increasingly important topic in the Commonwealth. The Lee County Hospital closure in Southwest Virginia stimulated discussion about COPAs both within the Commonwealth and with bordering states. This is a very challenging project and it is counter to the trends in the country.

There is a clear national trend toward moving care out of the hospitals and into outpatient facilities because there is more competition, and often lower overhead and facility costs, among outpatient facilities. Some hospitals are buying competing outpatient facilities. Many hospitals are also working with other service providers to make sure that patients are receiving appropriate care and help to avoid readmissions.

Sparked by a question from Senator Frank Wagner, HIRC members discussed a trend in which large private employers are providing primary care for their employees, and there has been positive feedback within this system. Employers have a large incentive to do this because they control costs and it leads to a decrease in missed work time. States are also starting to look at this option, and the Commonwealth has recently opened a clinic for state employees. Some insurance companies also own their own physician practices and clinics. This is not an uncommon model, but the provider needs a large, dense patient population for it to be effective.

Costs are still a major factor for those purchasing health care coverage. Eighty percent of people on the Exchange get subsidies. ACA rate filings are in, but the final numbers are not yet available. The average rate increase for this year is around 15 percent, which is a little higher than expected, in part because some supports for the insurance companies that were available in the first few years of the ACA are coming to an end.

Another major issue over the past year, Mr. Gray reported, is opioid addiction, particularly in Southwest Virginia and major urban areas. Medicaid has created a program to get service providers to provide treatment for opioid abuse and addiction. There have also been changes in the prescription monitoring system to track users who are seeking and filling prescriptions for opioids from multiple providers and



pharmacies. Responses to the problem are still in the early stages, and a continuing conversation will be needed.

### **Process for Reviewing Proposed Mandated Benefits**

The mandated benefits review process is governed by § 30-343 of the Code of Virginia. It was codified in 2015 through HB 2026 (Byron). Development of a formal process was motivated by § 1311(d)(3)(B) of the ACA. Under the ACA, qualified health plans sold in the Exchange or other markets must include essential health benefits (EHBs). EHBs are defined using either a benchmark plan selected by the state or a federal default plan. States are permitted to require that qualified health plans in that state offer benefits that exceed the benchmark plan. However, the state must defray the costs to the individual of any additional state-mandated benefits. In response to the potential financial liability on the state, the mandated benefits review process was created. This process applies when a legislative measure containing a mandated health insurance benefit is proposed that is not substantially similar to a legislative measure previously reviewed by the HIRC within the three-year period immediately prior to the proposal. The three-year limitation ensures that the HIRC is not repeating its review every year.

The process begins when the Chairman of the House or Senate Commerce and Labor Committee requests that the HIRC assess a mandate. Upon such request, the HIRC has 24 months to complete the assessment. The HIRC will then request that the Bureau of Insurance (BOI) conduct a Step One assessment. This assessment focuses on whether the Commonwealth could be financially liable for defraying the costs of the mandate. Specially, this assessment will address the extent to which the mandate is already available in qualified health plans and whether the applicable agency is likely to determine that the mandate goes beyond the scope of an essential health benefit. During the 2016 Session, this portion of the process was amended by HB 87 (Byron) to clarify that the applicable governmental agency will make the determination of whether a mandate goes beyond the scope of an essential health benefit. The statute previously referred to the Exchange as the entity making this determination, but the Exchange is not able to make such determinations.

Once the BOI has completed the Step One assessment, the BOI will provide the HIRC with a memorandum and presentation at a scheduled meeting on the results of the Step One assessment. The memorandum and presentation will address whether the mandate exceeds the scope of the EHBs and whether there will be increased state costs under § 1311(d)(3)(B) of the ACA. The HIRC will then determine if further assessment is warranted. If no further review is warranted, the process is finished and there will be a report of the HIRC's findings. If the HIRC determines that further review is warranted, the HIRC will request that the Joint Legislative Audit and Review Commission (JLARC) and the BOI conduct a Step Two assessment.

If a Step Two assessment is requested JLARC and the BOI will present their findings to the HIRC. JLARC will report on background information on the condition and coverage, the effectiveness of coverage, the current availability of treatment, the financial impact on individuals, and the impact on public health. The BOI will report on the financial impact of the proposed mandate on the state, providers, service, premium costs, administrative costs, and total cost of health care in the Commonwealth. The HIRC will review the Step Two assessments and recommend support or opposition to the proposed mandate. A report summarizing the HIRC's assessment and recommendations will be forwarded to the Chairman of the House or Senate Commerce and Labor Committee that requested the assessment.

Delegate Byron expressed a concern that the current process is redundant because the HIRC must meet and determine that a bill imposes a mandate in order to refer an item to the BOI for a Step One assessment, in which the BOI will confirm that it is a mandate. Following this discussion, the members voted unanimously to refer HB 601 (Murphy), which proposes a mandate related to inborn errors in metabolism, to the BOI for a Step One assessment. The BOI had already completed a Step One assessment and was prepared to present it at this meeting.

**Presentation: Bureau of Insurance (BOI), Analysis of 2016 Legislation Referred to the HIRC**

*From the Policy & Compliance Division of the Bureau of Insurance:*

*Don Beatty, Deputy Commissioner*

*Raquel Pino, Insurance Policy Advisor*

*Van Tompkins, Insurance Policy Advisor*

*Jim Young, Insurance Policy Advisor*

Deputy Commissioner Beatty first presented the following three bills from the 2016 Session that the members of HIRC should be aware of but that were not referred to the HIRC for study:

HB 87 (Byron) clarifies that a governmental entity will make the determination of whether a proposed health insurance benefit exceeds the scope of essential health benefits. The previous language tasked the Exchange with making that determination, but the Exchange is a program and is unable to make such determinations. The default governmental entity to make the determination is the BOI. HB 87 as passed and signed by the Governor becomes effective July 1, 2016.

HB 58 (Byron) restores the definition of small employer as those entities that employ an average of 50 or fewer employees. This reflects a change in federal policy that allows states to continue using the 50 or fewer employee definition. This bill has an emergency clause and was signed on January 26, 2016, and took effect on February 1, 2016. In response to a question from Delegate Byron, the HIRC was assured that the industry has been following this change and reacting accordingly.

SB 627 (Stanley) would have provided that the Commonwealth's insurance laws do not apply to direct primary care services, known as concierge medical services. This bill was continued to 2017, and a bill also on this topic, HB 685 (Landes), was vetoed by the Governor.

Ms. Pino presented two bills related to proton radiation therapy: HB 978 (Yancey) and SB 639 (Alexander). Both of these bills prohibit health insurance plans that provide coverage for cancer therapy from holding proton radiation therapy to a higher standard of clinical evidence for benefit coverage decisions than the standards that are applied to other types of radiation therapy treatments. Proton radiation therapy, which utilizes protons as an alternative radiation method, was approved by the FDA in 1988 as a form of cancer treatment. These bills do not establish a mandated benefit.

Ms. Tompkins presented three bills related to step therapy protocols: HB 362 (Davis), SB 331 (DeSteph), and SB 332 (DeSteph). All three bills require a process for the granting of an override to the step therapy protocol when the treating physician believes it to be necessary. Step therapy protocols establish a sequence by which prescription drugs appropriate for treatment of a medical condition are covered by a health plan. This usually requires a patient to try an alternative medication first without success before the health plan will cover the medication prescribed by the treating physician. HB 362 and SB 332 apply to all prescription drugs and require no protocol for patients who either satisfied the protocol or were granted an override. SB 331 applies to psychiatric medications only. The BOI noted that it receives complaints about step therapy protocols and assists individuals seeking to appeal the application of a protocol to obtain prescribed medication.



Mr. Young presented the BOI's Step One assessment of HB 601 (Murphy), related to inborn errors of metabolism. The BOI's full Step One assessment is available in the materials section of the HIRC website. An inborn error of metabolism is a condition present at birth and treatment requires "medical foods" that are formulated to be consumed and administered under the supervision of a physician. Covered benefits include nutritional and medical assessment, biochemical analysis, medical foods, nutritional supplements, and formulas used in treatment.

The Step One assessment first determines the extent to which coverage in the proposed mandate is currently available under qualified health plans (QHPs). QHPs are required to provide coverage for services in Virginia's benchmark plan, Anthem Premier DirectAccess. This plan has a special provision stating that the plan covers special medical formulas that are the primary source of nutrition for covered persons with inborn errors of amino acid or organic acid metabolism, metabolic abnormality, or severe protein or soy allergies. The formulas must be prescribed by a physician and required to maintain adequate nutritional status. Virginia's benchmark plan's coverage is consistent with that described in HB 601. HB 601 contains cost sharing expenses and durational limits not referenced in the benchmark plan.

Next, the Step One assessment determines the likelihood that the applicable agency will determine that this mandate would exceed the scope of the EHBs. As discussed, coverage for special medical formulas is included in the benchmark plan and therefore must be included in all individual and small group market non-grandfathered health plans. The BOI determined that coverage in the benchmark plan appears to be consistent with the proposed mandate, except for potential application of cost sharing.

Finally, the Step One assessment determines the likely increased state costs of the proposed mandate to Virginia. Because the benchmark plan essentially includes the benefits proposed in the bill, the BOI determined that there will likely be no cost incurred by the Commonwealth from the proposed mandate in HB 601.

Delegate Byron announced that HB 601 will be discussed in greater detail in a subsequent meeting, and the HIRC will be determining whether or not to request a Step Two analysis following the future discussion.

Deputy Commissioner Beatty concluded the BOI's presentation with general updates and comments. There is an issue with huge air transportation costs incurred during medical emergencies. This issue is particularly complicated because federal law and regulations govern these service providers, potentially preempting any state action. Additionally, rates have been filed but they are not final and the companies still need to justify their rates. The final rates will be released later this year. Delegate Byron asked if the BOI could provide an analysis of the changes in rates since the implementation of the ACA. Commissioner Cunningham said that the BOI could put that together for a later meeting.

## Next Meetings

Delegate Byron announced that she will be polling for the next two meetings, which will be held in September and October. The bills that have been referred to the Commission for review will be divided between these two meetings to allow ample time for discussion.

## Health Insurance Reform Commission

### Delegate Kathy J. Byron, Chair

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## Virginia Housing Commission

*April 19, 2016*

The Virginia Housing Commission (the Commission) met on April 19, 2016, in Richmond, with Delegate Danny Marshall, chair, presiding.

### Discussion of Work Plan for 2016 Interim

The Commission discussed the work plan for the 2016 interim.

### 2016 Session Bills Referred to the Housing Commission

*Elizabeth Palen, Executive Director, Virginia Housing Commission*

Bills that committees referred in the 2016 Session to the Housing Commission are assigned to the following work groups:

- Affordable Housing, Real Estate Law, and Mortgages, chaired by Delegate Chris Peace, will look into the issue of pet accommodations; HB 1264, relating to real estate disclosures; and SJ 89, relating to the impact of joint residency on landlords.
- Common Interest Communities, chaired by Delegate David Bulova, will look into SB 228, relating to home-based day care; HB 548 and HB 710, which consider whether property owner associations should conform their fees for disclosure packets and cap those fees similar to the Condominium Act; and SJ 80, which considers the historic properties lock located in a homeowners association; i.e., should there be mandatory disclosure of pertinent information.
- Housing and Environmental Standards will look into SJ 87, relating to recycling programs for multifamily residential dwellings, the building code issue regarding ground cover, and the question of bug infestation in adjoining homes.
- Neighborhood Transitions and Residential Land Use, chaired by Senator Mamie Locke, will look into the issue of clerks not recording deeds and liens on which taxes are owed and the affordable housing aspect of SB 426, which creates the Virginia Community Impact Authority and Fund.

In addition, the Short-Term Rental Work Group will conduct its study.

### Presentation: Virginia Housing Economic Impact and Areas Linked to Housing

*Susan Dewey, Executive Director, Virginia Housing and Development Authority (VHDA)*

Ms. Dewey reported that Executive Order 32 (2014), Advancing Virginia's Housing Policy, was issued in October 2014 and came to the Housing Commission in December 2014. The executive order discussed fostering access to economic opportunity, addressing homelessness, and advancing progress in special needs. This was kicked off with a housing policy advisory council. Economic development should be looked at in the context of housing. She explained that VHDA went to the state universities, representatives of which worked together to study this issue. The first phase is the economic impact assessment. The second phase is looking into other housing-related policies.

The Housing Policy Advisory Council also looks into some of these issues directly, including examining linkages, such as housing and economic opportunity or housing and education.



**Presentation: Housing Trust Fund/Resiliency Grant**

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

Mr. Shelton reported that DHCD has been working diligently to try to make the Virginia Housing Trust Fund more robust. The decision was made to include a competitive loan pool, a grant section, and a comprehensive neighborhood revitalization pilot program in the fund. Demand is very high for these funds.

The Virginia Center for Housing Research at Virginia Tech studied the impact of the 2013-2014 Housing Trust Fund allocation and found it had a major positive impact on the state economy.

Mr. Shelton said that this session DHCD was unsuccessful at passing a dedicated revenue stream for the trust fund. The budget allocates \$5.5 million each year of the biennium. He also said that DHCD is looking at the intersection of homelessness and underperforming schools.

Mr. Shelton reported that the National Housing Trust Fund is estimated at \$3.2 million and is available in summer 2016. It targets affordable housing and permanent supportive housing and can be used to align with the DOJ Settlement Agreement.

The Virginia Disaster Recovery Program received \$125 million from HUD to address recurrent flooding and sea level rise in Norfolk. An additional \$150 million is available from local funding.

**Presentation: Homelessness**

*Pam Kestner, Special Advisor on Families, Children and Poverty, Office of the Virginia Secretary of Health and Human Resources*

Ms. Kestner reported that part of the executive order (EO 32, 2014) is to prioritize the most urgent areas of housing and homeless program needs. Five strategies were identified to address homelessness: (i) increase the number of permanent supportive housing units.; (ii) increase flexibility of funding to support Rapid Re-housing.; (iii) increase statewide data collection and system coordination; (iv) increase access to substance abuse and mental health treatment; and (v) improve discharge policies and procedures for foster care, hospitals, mental health facilities, and correctional facilities.

Delegate Marshall asked whether there is an inventory of housing in the Rapid Re-housing Program. Ms. Kestner replied that there is an inventory and that this relatively new strategy is designed to identify needs and then provide housing as quickly as possible without a transitional stage at a shelter. She indicated that developers provide an inventory that they update as appropriate and that localities across Virginia have implemented this program.

Ms. Kestner said that the last two years the McAuliffe administration has had a laser focus on several areas: ending veteran homelessness, preventing and ending youth homelessness, housing and health care, criminal justice, and a homelessness systems summit. Between 2010 and 2015, Virginia has reduced homelessness by 23%.

**Public Comment**

No public comment was received.

**Next Meeting**

The next meeting of the full Commission is September 21, 2016.

## Virginia Housing Commission

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

Elizabeth Palen, Executive Director

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## Joint Commission on Technology and Science

*June 8, 2016*

The Joint Commission on Technology and Science (JCOTS) held its first meeting of the 2016 Interim on June 8, 2016, in Richmond. Delegate Kenneth R. Plum, senior member of JCOTS, called the meeting to order. He welcomed to JCOTS newly appointed members Delegate Richard L. Anderson, Senator John A. Cosgrove, and Senator Bill DeSteph.

Delegate Anderson was unanimously approved as chairman of JCOTS and Senator Cosgrove was unanimously approved as vice-chair.

### 2016 Session Update

Staff provided a brief update on a few key pieces of technology-related legislation adopted by the 2016 Session of the General Assembly. Relevant legislation includes:

- HB 884 (Hugo)/SB 58 (McDougle), which create a new research and development expenses tax credit for businesses with expenses in excess of \$5 million and modify that existing research and development expenses tax credit;
- HB 930 (Davis)/ SB 150 (Reeves), recommended by JCOTS, which relate to the procurement of information technology goods and services;
- HB 1064 (Jones), which reorganizes and makes technical changes to the duties and responsibilities of the Virginia Information Technologies Agency; and
- HB 1343 (Jones), which creates the Virginia Research Investment Committee and Fund.

### Presentation: CodeRVA

*Dr. Yvonne W. Brandon, project manager for the Richmond Regional School for Innovation - CodeRVA*

Dr. Brandon explained that CodeRVA is a proposed high school that would serve the central Virginia region. Supported by a High School Innovation Planning Grant, CodeRVA seeks to redesign the traditional high school model and help build a 21st-century workforce. A copy of Dr. Brandon's presentation is available on the JCOTS website.

### 2016 Work Plan

Staff presented a proposed JCOTS work plan for the 2016 Interim. The bulk of the focus will center on HJ 97 (Yancey) and SJ 97 (Newman), identical joint resolutions that direct JCOTS to conduct a study of the aerospace and aviation industries and to develop a report entitled "A Blueprint for the Growth of the Virginia Aviation and Aerospace Industry."



Staff proposed that in conducting the study, JCOTS partner with the Virginia Academy of Science, Engineering, and Medicine (the Academy). Dr. Jim Aylor, retired Dean of Engineering at the University of Virginia and a member of the Academy, provided JCOTS with a brief overview of the organization. The Academy is prepared to assemble an aerospace study group chaired by Dr. Tom Young, retired CEO of Lockheed Martin, to assist JCOTS in its efforts. The Virginia Economic Development Partnership would be requested, pursuant to the joint resolution, to provide recommended economic development strategies related to aviation and aerospace. JCOTS staff would conduct staff work groups related to the sales and use tax on aviation parts and labor and the Denbigh High School Aviation Academy. The work of the various groups would be compiled into a final report.

JCOTS approved this work plan for conducting the aviation and aerospace study, and Delegate Anderson appointed Senator Cosgrove, who also serves on the Governor's Aerospace Council, to serve as a liaison between JCOTS and the Academy.

Senate Bill 531 (Surovell), related to authentication of public records, was referred by the 2016 Session of the General Assembly for study and review. Staff proposed conducting a staff work group with relevant stakeholders to begin working on the issues presented by the bill. JCOTS approved this work plan.

### **Public Comment**

Bud Oakey of Advantus Strategies encouraged JCOTS to look closely at the sales and use tax on aviation parts and labor as a part of the aerospace and aviation study. He noted that this is a competitive issue for Virginia, and our taxation of aviation parts is causing business to go elsewhere.

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

### **Delegate Richard L. Anderson, Chair**

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## **Joint Commission on Transportation Accountability**

*January 13, 2016*

The Joint Commission on Transportation Accountability (the Commission) met on January 13, 2016, in Richmond. Opening remarks were made by Chairman Timothy Hugo. The Commission's agenda included presentations by Aubrey Layne, Secretary of Transportation, and Richard Holcomb, Commissioner of the Department of Motor Vehicles (DMV).

### **Presentation: I-66 Project Update, Public-Private Partnership Advisory Committee Update, and Report on Maintenance Payments for Bicycle-Only Lanes Pursuant to HB 1402 (2015)**

*Aubrey Layne, Secretary of Transportation*

Secretary Layne reported on the status of the I-66 project. Secretary Layne began by discussing the statewide transportation revenues from HB 2313 (2013) and, under the current funding levels from HB 1887 (2015), how much money would be going back to the highway construction districts.



The Secretary described the current structure of high-occupancy toll (HOT) lanes in Northern Virginia, also known as express lanes, and noted that the intent is to expand on that structure to build regional express lanes throughout Northern Virginia, based on what is in place on Interstate 95.

There are approximately 35 miles of I-66, and an important goal of the I-66 project is to minimize its impact on adjacent communities. Initial project proposals included the taking of 35 private homes; under the current plan, that number is down to 11. The design-build process may further reduce that number.

The current I-66 project proposal (Transform 66) contemplates widening I-66 both inside and outside the Beltway; the only question is the timeline in doing so. I-66 inside the Beltway has been high-occupancy vehicle (HOV) restricted during rush hour ever since it was constructed and had an HOV-4 requirement in 1982. Not until 1999 was the Secretary of the Commonwealth given the authority to operate, maintain, and construct I-66. Now that the Commonwealth has the ability to widen and reduce restrictions, it is still somewhat constrained in the widening because certain areas of I-66, such as the tunnel in Rosslyn, do not lend themselves to widening.

Transform66 is the first major improvement proposed for I-66 inside the Beltway and is the result of a detailed multiyear study undertaken in 2011–2013 by the McDonnell administration. The proposal includes converting I-66 to dynamic tolling during rush hours in the peak direction, enhancing bus service in the corridor, supporting carpooling and other transportation demand management strategies, and widening I-66 eastbound from the Dulles Connector Road to Ballston.

The I-66 project proposals were scored under both HB 2 (2014) and HB 599 (2012) and scored inside and outside the Beltway separately. Outside the Beltway, it was the top-scoring project, receiving a score of 80.4, and inside the Beltway it scored third highest. The proposal for inside the Beltway is a self-funding project if it is funded as projected and takes no money from the Commonwealth. The tolling component of the plan would allow single-occupant vehicles to use I-66 during peak hours, which they are currently prohibited from doing. The average toll is estimated to be roughly \$6 per trip and would not apply to carpoolers meeting the anticipated HOV-3 requirement, vanpools, transit buses, and motorcycles. Hybrid vehicles must either meet the HOV requirement or pay the toll. Tolls would apply on weekdays during rush hour.

The Commonwealth Transportation Board (the Board) will program funds for multimodal improvements in the corridor selected by the Northern Virginia Transportation Commission that benefit the toll-paying users of I-66 inside the Beltway, demonstrate the ability to move more people through the corridor, serve users of I-66 inside the Beltway who reside both inside and outside the Beltway, and can be implemented within five years of funding.

Any public-private partnership (P3) project in Northern Virginia is required by Code to have a high-occupancy requirement of three people. The Secretary distributed the memorandum of understanding and discussed how widening triggers would be evaluated. The administration is working on scoring and fixing congestion in conjunction with VDOT's recommendation to move forward under a P3 procurement process.

There are 22 miles of interstate outside the Beltway. Currently I-66 has two main lanes and a hard shoulder. Under the proposal, there would be three main lanes and two HOT lanes.

There are three public-private partnership options: toll concession, where the private partner is responsible for the design, build, financing, operation, and maintenance of the project; DBOM, where the private partner is responsible for the design, build, operation, and maintenance of the project; and DB-ATC, where the private partner is responsible for the design and build with alternative technical



concepts. At the last Board meeting, the Commissioner of Highways recommended the toll concession option. Secretary Layne noted that the Board was not relying solely on the Department of Transportation to determine the cost of these options and that there was competition.

Under the current proposal, the high-occupancy requirement on the HOT lanes will be HOV-3, and no hybrids will be allowed on the HOT lanes unless they meet the high-occupancy requirement or pay the toll.

Secretary Layne explained the Board's plan to extend the I-95 and I-395 HOT lanes north eight miles under its partnership agreement with Transurban. Construction is expected to begin next year and finish in 2019. The Board also intends to extend the I-95 HOT lanes south two miles to provide for a better merge of the HOT lanes back into the general purpose lanes on I-95. Construction on these lanes will begin this year and finish in 2018.

The Board is also considering the conversion of HOV lanes on I-64 in south Hampton Roads, as these lanes are being underutilized. There is a study currently being conducted for two options: seven miles of two-lane reversible lanes from I-564 to I-264 and six and one-half miles of dual direction one-lane HOV lanes from I-264 to Battlefield Boulevard. This study should be completed this summer.

Secretary Layne also discussed improving the competitiveness of Dulles International Airport, which has experienced a decline in domestic pass-through travel. A \$50 million budget amendment will provide funding to reduce the cost per customer for airlines flying in and out of the airport and attract more domestic airline travel.

Senator Frank Wagner asked whether toll revenue collected on I-66 used for improvement projects in the corridor may be combined with money allocated pursuant to an HB 2 evaluation. Secretary Layne responded that it cannot be combined unless the project benefits the I-66 corridor because any region that has agreed to pay more should be able to use those funds to the benefit of that region.

Chairman Hugo asked about using bonds or debt capacity. Secretary Layne responded that looking at past P3 concessions agreements, this is the point in a project where things go south if you don't control competition throughout; there would be no debt capacity totally supported by tolling revenue if P3 partners come through. The Secretary is confident that the administration will receive a concession and that revenue generation will be tied to what is proposed inside the Beltway.

Delegate James LeMunyon asked when the Board was going to take into consideration the factors required to be met pursuant to subsection F of § 33.2-501 of the Code of Virginia before the current HOV-2 designation may be changed to HOV-3. Secretary Layne responded that the Board intends to begin holding public hearings in the spring to determine public interest, which is one of the factors required to be taken into consideration.

Delegate Hugo inquired about the reluctance to use tolling in Hampton Roads versus its prevalence in Northern Virginia and about the use of the term "capacity." Secretary Layne answered that the Transform 66 project would allow new capacity because single riders can use it, and that is an additional use. The Secretary explained that capacity includes the number of people moved not just necessarily by widening the road, but also by transit, etc., and that it is not cost-effective to take more homes and be more ambitious inside the Beltway. Secretary Layne also explained that part of the tolls revenues will pay for transit.

Delegate LeMunyon commented that he would like to see more widening, to include two additional lanes outside the Beltway. Secretary Layne responded that this would require the taking of additional homes and that this plan is the most cost-effective way to move more people. The current proposal

would move more people than simply widening I-66 would; moreover, it would cost hundreds of millions of dollars to widen. Transit services for the next 50 years will be paid for as the result of this public-private partnership deal, a net present value of \$350 million.

Secretary Layne provided an update on programs and activities at the Port of Virginia this year and then reported on a formula for the maintenance of bicycle-only lanes as charged by HB 1402 (2015).

The Secretary proposed allowing cities and towns that maintain their own roads to convert not more than the lesser of 50 lane miles or three percent of their lane miles to bicycle-only lanes. In addition, the locality would be required to provide a maintenance of effort for street maintenance and operations.

Secretary Layne noted that there is not much data available on maintenance costs.

**Presentation: Progress Report on Collection of Court Costs by DMV Pursuant to SB 1411 (2015) and Hiring of Hearing Officers Pursuant to SB 1118 (2015)**

*Richard Holcomb, Commissioner of the Department of Motor Vehicles (DMV)*

Commissioner Holcomb reported on the status of the DMV's ability to collect court costs pursuant to SB 1411 (Newman, 2015). The DMV and Office of the Executive Secretary are working together to implement SB 1411 and are slated to begin service this year.

The Commissioner noted a variety of challenges of paying court costs at the court house, including the fact that courts are not open on Saturdays and the different software systems that the two agencies use. The service is slated to begin by the end of 2015.

In 2013, customers that came into a DMV facility owed \$636 million in court costs, and over 200,000 birth certificates were sold at DMV.

The Commissioner reported on the status of hiring of hearing officers pursuant to SB 1118 (Norment, 2015), which requires the DMV to report on the feasibility of hiring hearing officers who have at least five years of experience as a hearing officer in administrative hearings in Virginia, have telephone and email capability, and are active members of the Virginia State Bar.

The Commissioner reported that the qualifications of the three hearing officers assigned to the DMV in the last year exceeded these criteria.

The Commissioner noted that he would update the Commission again in December.

The Commissioner provided a brief update on transportation network companies (TNCs), noting that fatalities related to drunk driving in Virginia are down 23 percent since TNCs began operation. Crashes are down six percent, and the preliminary safety data for 2014 also shows fewer crashes, fewer alcohol-related fatalities, etc. There are current issues, for example, with drivers posting trade dress but no known violations of other rules.

*April 20, 2016*

The Joint Commission on Transportation Accountability (the Commission) met on April 20, 2016, in Richmond. Delegate Ronald Villanueva began the meeting, standing in for Chairman Hugo until his arrival.



**Use of Handheld Personal Communications Devices While Driving; HB 461 (2016)**

Delegate Richard Anderson began the discussion by explaining his bill, HB 461 (2016), which was referred to the Commission during the 2016 Session. He gave a brief history of the legislation. In 2013, Delegate Anderson carried legislation that made texting while driving a primary offense and stiffened the penalties.

Janet Brooking, Executive Director of Drive Smart Virginia, gave a presentation on texting while driving and the safety risks that go along with it. Ms. Brooking spoke about the parallels between texting and driving while intoxicated and about the visual, manual, and cognitive distraction that texting causes.

Heather, an officer with the Manassas City Police Department, spoke about her experience being hit by a car whose driver was texting while driving and Heather's recovery over the last two and a half years.

Delegate Anderson spoke about statistics on how many people die as a result of texting while driving.

A spokesman from the Richmond City Police Department spoke about the behavior of texting while driving. Many drivers have responded to the ban on texting by continuing to text while holding their phone lower, out of view from outside the vehicle, which takes their eyes even farther away from the wheel. Now that law enforcement is not able to confiscate phones, there is a larger enforcement problem, and violations are more blatant.

Delegate Vivian Watts asked whether someone can be arrested for or charged with reckless driving for this behavior. The law-enforcement representative responded that because a danger to life, limb, or property must be present in order to charge with reckless driving, the driver would have to be not maintaining his lane or behaving in some other reckless way. Absent such observable acts, it is difficult to get a conviction for reckless driving. Delegate Watts suggested that the issue be studied with the trial lawyers.

Captain Glick of the Department of State Police spoke about the challenges involved in enforcement of texting-while-driving violations; for example, State Police has to observe the behavior (by driving next to a vehicle and taking pictures of a driver in the act of texting). Capt. Glick said that a handheld ban would be easier to enforce and that is what law enforcement would like to see.

Delegate Villanueva asked how the plans for legislation on texting while driving would coincide with the technology that is becoming available in autonomously driven cars, such as the legislation that was passed during the 2016 Session. Delegate Anderson responded that much of that technology has been taken from the controlled environment of aircraft in flight, but safe use of this technology is more challenging on highways.

Senator David Suetterlein asked if a total ban was the ultimate goal. Delegate Anderson said that the goal was to get people to stop touching a device while driving and to encourage speaking through a bluetooth device.

Delegate Anderson discussed the need for involvement from the Courts Committee since that is the other standing committee to which legislation will be referred. Chairman Hugo asked if Delegate Anderson was interested in a JCTA working group so that proposed recommendations could be discussed, and Delegate Anderson said that he would put together a list of recommended members for Chairman Hugo.

## 2016 Commission Work Planning

The Commission discussed legislation that has been referred to it by the Senate and House Transportation Committees as well as other ideas that have been offered for study. Members whose legislation was referred to the Commission will receive a letter from the chair asking if they would like their bill to be reviewed by the Commission.

### Joint Commission on Transportation Accountability

#### Delegate Timothy Hugo, Chairman

Nicole Brenner, DLS Attorney

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## Joint Subcommittee to Evaluate Tax Preferences

*June 13, 2016*

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee) held its first meeting of the 2016 Interim on June 13, 2016, in Richmond. Delegate Lee Ware called the meeting to order.

Delegate Ware was unanimously approved as chairman. Senator Emmett Hanger asked the Joint Subcommittee to defer the election of a vice-chair until the next meeting, and the Joint Subcommittee agreed.

### Historic Rehabilitation Tax Credit

Joint Subcommittee staff provided a report on the Historic Rehabilitation Tax Credit. The Commonwealth provides the tax credit, codified at § 58.1-339.2 of the Code of Virginia, against income, insurance premiums, and bank franchise taxes for the rehabilitation of a historic structure certified by the Department of Historic Resources. The credit is equal to 25 percent of the rehabilitation expenses, and the expenses must equal at least 50 percent of the assessed value of the building prior to the rehabilitation (or at least 25 percent of this value if the building is owner-occupied). Unused credits may be carried over for a maximum of 10 years. Partnerships and S corporation shareholders may allocate the credits among themselves in any mutually agreed-upon proportion. In Fiscal Year 2015, the revenue impact to the Commonwealth was \$98 million.

Julie V. Langan, Director of the Department of Historic Resources, provided an overview of the historic rehabilitation program followed by the Department in certifying properties and administering the program in the Commonwealth. A copy of her presentation is available on the Joint Subcommittee's website.

The two presentations garnered many questions and generated substantial discussion by the members of the Joint Subcommittee. Questions to be followed up on at future meetings include why the credits are allowed against the insurance premiums and bank franchise taxes, what percentage of how many properties are still owned by the person or entity that received the credit, and what is the economic development impact generated by the use of the tax credits. Other issues of interest included the holding period required by the parallel federal credit, the ability of partnerships to distribute credits to partners



disproportionate to the ownership interest of the partner, and whether the credit should be capped. Delegate Ware suggested that the Joint Subcommittee hold off on making any recommendations regarding the credit until there was an opportunity to gather more information regarding these questions and issues.

### **Land Preservation Tax Credit**

Staff next provided an update on the Land Preservation Tax Credit, codified at Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1. A preference report was completed by the Joint Subcommittee in 2014, at which time the Joint Subcommittee recommended continuing the credit in its current form but suggested that further review may be warranted. Since that time, the General Assembly has adopted changes to the tax credit program. Chapters 235 and 680 of the 2015 Acts of Assembly lowered the aggregate cap from \$100 million to \$75 million, limited the amount of credits that could be claimed by a taxpayer in a single year from \$100,000 to \$20,000 in taxable years 2015 and 2016 and to \$50,000 beginning in taxable year 2017, extended the carryover period from 10 years to 13 years, required that an application for a tax credit be made no later than December 31 in the year following the conveyance, and prohibited the Department of Taxation from issuing unused credits attributable to a prior calendar year. While these changes are recent, and thus no concrete revenue data is yet available, there were 135 applications for a total of \$39.9 million in credits in taxable year 2015, and so far there have been 31 applications for a total of \$15.4 million in credits for taxable year 2016.

Members of the Joint Subcommittee indicated that they would like to continue to review the tax credit for potential modifications. The Joint Subcommittee requested information regarding the number of acres preserved in different areas across the Commonwealth. Future questions to consider will include the prioritization of the type of location of land to be preserved and review of how to best allocate resources.

### **Other Business**

Review of the Neighborhood Assistance Act Tax Credit Program was on the agenda for the June 13 meeting but, due to time limitations, will be considered at a future meeting.

## **Joint Subcommittee to Evaluate Tax Preferences**

### **Delegate Lee Ware, Chair**

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

*April 19, 2016*

The Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century (the Joint Subcommittee) met on April 19, 2016, in Richmond, with Senator Creigh Deeds, chair, presiding.

## **Update on Certified Community Behavioral Health Centers**

*Dr. Jack Barber, Acting Commissioner of the Department for Behavioral Health and Developmental Services (DBHDS)*

Dr. Barber provided an overview of the DBHDS Certified Community Behavioral Health Center initiative. Dr. Barber first described the landscape of behavioral health services, noting national and state trends in spending on behavioral health services and some of the positive results and negative consequences of those trends. Dr. Barber also pointed out some issues affecting the Commonwealth's system of publicly funded behavioral health services, noting that the Commonwealth's behavioral health service system is heavily oriented toward emergency services, that the system of services is still biased toward institutional rather than community-based care, that access to and quality of services varies considerably through the Commonwealth, and that many uninsured Virginians are unable to access or pay for services. To address these issues, DBHDS is adopting the Certified Community Behavioral Health Center model of service delivery.

The Certified Community Behavioral Health Center model is a new mode of behavioral health service delivery described in the federal Excellence in Mental Health Act (the Act). This model of service delivery provides a comprehensive range of mental health and substance use disorder services, prioritizes underserved and special populations, includes quality and performance measures to enhance quality of services, utilizes a prospective payment system, and requires ongoing oversight over service delivery to ensure uniform access to a full range of behavioral health services. The Act establishes a grant program to facilitate adoption of the model by participating states. Currently, Virginia is receiving a planning grant. As part of the grant process, DBHDS is working with eight community services boards to determine what changes may be necessary in the community services boards' existing array of services and operational procedures to comply with the requirements of the Act and to develop plans that comply with those requirements. The next step for the eight community services boards participating in the planning grant process is to apply for the federal demonstration grant. If selected, community services boards receiving the federal demonstration grant would receive an increased Medicaid match of 65 percent federal funds for behavioral health services provided.

Dr. Barber noted that even if the Commonwealth does not receive the demonstration grant, DBHDS will continue to move toward adoption of the Certified Community Behavioral Health Center model of behavioral health services delivery. Further, once the model has been implemented at the eight community services boards currently participating in the program, DBHDS will work with the remaining 32 community services boards to implement the model in those areas as well. Dr. Barber stated that the DBHDS focus on this model will shape final budget requests, operational priorities, alignment of clinical and fiscal incentives, data collection and analysis, and capital expenditures in the coming years.

At the end of the presentation, members of the Joint Subcommittee expressed support for the model, noting the need to focus on community-based services, address differences in local financial contributions to behavioral health services spending, and facilitate coordination of behavioral health and other health care services, including services delivered by and through public schools.

## **Report on the Investigation of the Death of Jamycheal Mitchell**

*June W. Jennings, State Inspector General, and Ms. Priscilla Smith*

Inspector General Jennings and Ms. Smith reported on the Office of the Inspector General's investigation into the death of Jamycheal Mitchell while in the custody of the Hampton Roads Regional Jail. Mr. Mitchell was found dead in his cell at the jail on August 19, 2015. On August 24, 2015, the



Office of the Inspector General received a complaint regarding Mr. Mitchell's death and launched an investigation. Inspector General Jennings stated that the objectives of the investigation were (i) to examine the sequence of events surrounding the death of Mr. Mitchell, the processes in place related to referral and admission of Hampton Roads Regional Jail inmates to Eastern State Hospital, and preparation of the DBHDS Office of Internal Audit Investigation Report, (ii) to identify potential risk points, and (iii) to provide recommendations for systemic improvements to prevent similar events in the future. In conducting the investigation, staff of the Office of the Inspector General reviewed multiple agencies and facilities, including the Hampton Roads Regional Jail; Portsmouth Department of Behavioral Health Services; Eastern State Hospital; Department of Behavioral Health and Developmental Services; Portsmouth General District Court; NaphCare, Inc.; and Bon Secours Maryview Medical Center.

According to findings set out in the report prepared by the Office of the Inspector General, Mr. Mitchell, who had been arrested and charged with petit larceny and trespassing, had been incarcerated in the Hampton Roads Regional Jail since April 22, 2015, and at the time of his death was awaiting transfer to Eastern State Hospital in Williamsburg for services for restoration of competency. Records obtained by the Office of the Inspector General showed that an initial Competency Restoration Order (CRO) requiring that Mr. Mitchell be transferred from the jail to Eastern State Hospital for mental health services was entered by the Portsmouth General District Court on May 21, 2015, after receipt of the results of a court-ordered psychological evaluation of Mr. Mitchell. While documents obtained from the Portsmouth General District Court indicate that copies of the order were faxed and mailed to Eastern State Hospital, no records exist to show that the order was ever received by Eastern State Hospital. Records show that a subsequent order was faxed to and received by Eastern State Hospital on July 31, 2016. However, Mr. Mitchell's name did not appear on any of the weekly Forensic Logs prepared by Eastern State Hospital to track individuals awaiting admission to the hospital between the faxing of the second Competency Restoration Order on July 31 and his death on August 19.

At the conclusion of the investigation, the Office of the Inspector General made five observations:

1. The process for transfers from the Hampton Roads Regional Jail to Eastern State Hospital had multiple decision points, risk points, and opportunities for variation, all of which had the potential to create risks through which unanticipated and egregious outcomes could occur. No evidence existed of any standards, protocols, decision trees, required time frames, or monitoring. In the absence of written and agreed-upon protocols with responsible parties, timelines, and monitoring systems, the root causes of the death of Mr. Mitchell remained at risk of reoccurrence.
2. While Eastern State Hospital is the state facility most significantly affected by the 2014 civil commitment law changes requiring state hospitals to provide a bed of last resort in cases involving emergency custody orders, during the period in which Mr. Mitchell was under a CRO, bed availability was not an issue and a bed was available. While Eastern State Hospital did undertake a revision of policies governing admissions to streamline the process and improve efficiency in August 2015, following Mr. Mitchell's death, the revised plan did not address the completion or updating of the Jail Transfer Waiting List or the development of a monitoring system to ensure that the list remains up-to-date.
3. DBHDS has convened or participated in numerous work groups, committees, and subcommittees in the past several years centering on improving services for individuals with mental illness who are involved with the criminal justice system. All of these bodies, including the DBHDS



Transformation Team for the Justice Involved, have made recommendations for additional funding, ongoing committee work, oversight, training, and system redesign, many of which have not been implemented.

4. While DBHDS did undertake an investigation into Mr. Mitchell's death, its report omitted some information and failed to identify the possible root causes of the event. Failure to identify the root cause results in recommendations that have little chance of achieving the goal of preventing similar events in the future.
5. Records provided by NaphCare, Inc., the organization contracted to provide medical care at the Hampton Roads Regional Jail at the time of Mr. Mitchell's death, to the Office of the Inspector General were incomplete and inconsistent, but did show that little action was taken to address Mr. Mitchell's medical and psychiatric symptoms. This failure to provide care is in conflict with the Hampton Roads Regional Jail's direct responsibility to provide quality medical and mental health care for those in its custody. While the contract with NaphCare has not been renewed, the change in provider offers limited promise of improvement in care or documentation in the absence of a change in oversight practices.

The Office of the Inspector General also provided five recommendations related to these observations:

1. DBHDS should take the lead on development of a regional protocol relevant to the management of individuals in the Hampton Roads Regional Jail with mental illness, working together with the Hampton Roads Regional Jail, local police departments, Eastern State Hospital, the Portsmouth Department of Behavioral Health Services, and the Health Planning Region V Reinvestment Project Office, which should focus on cross systems mapping sequential intercepts, crisis intervention teams, jail diversion, court orders, Eastern State Hospital admissions and discharges, and mental health contact in the Hampton Roads Regional Jail by the Portsmouth Department of Behavioral Health Services and other Health Planning Region V community services boards and Eastern State Hospital staff. The protocol should identify responsible parties, timelines, and process flows and should address gaps and opportunities for improvement. DBHDS should consider the applicability of this protocol to other regions across the state.
2. Eastern State Hospital should revise the process for the development, management, and oversight of the Jail Transfer Waiting List. A system for consistently reviewing the individuals on the list should be created and should include staff from the local court system, community services boards, the Health Planning Region V Reinvestment Project Office through the Facilities Management Committee, and the Hampton Roads Regional Jail.
3. The recommendations of the DBHDS Transformation Team for the Justice Involved were substantive and, had they been implemented prior to August 2016, would have had a significant impact on the handling of cases involving justice-involved individuals with mental illness. This situation should be considered urgent, and implementation plans should be developed immediately.
4. DBHDS's investigation of critical events should be conducted independently by professionals trained and experienced in conducting health care root cause analyses and who have experience working in the behavioral health service systems in question. Reports should include all relevant risk points and analysis of root causes with specific recommendations targeting those root causes.



5. The Hampton Roads Regional Jail should revise the process for overseeing the quality and outcomes of any contract agency that provides medical and mental health care in the jail. This process should ensure regular monitoring, direct oversight, and direct feedback and correction for areas of concern.

Following Inspector General Jennings' report, members of the Joint Subcommittee asked several questions about the findings and recommendations. Delegate Peter Farrell inquired about changes to the admissions process at Eastern State Hospital. Ms. Smith confirmed that despite the fact that the safety net law had been in place for some time, and there had been prior warning of the need to prepare for increased demand for beds, Eastern State officials had not made any changes to admissions practices and did not make changes to the jail admission process even in the wake of Mr. Mitchell's death. Senator Deeds inquired about other cases of individuals not included on the Jail Transfer Waiting List. Ms. Smith stated that there were others who had not been included on the list, but that the Office of the Inspector General had been limited to investigation of the case for which it had received a complaint. Delegate Joseph Yost inquired why recommendations described in observation 3 had not been implemented. Ms. Smith noted that some of the delay was the result of failure of the General Assembly to act, but that other changes could have been undertaken without General Assembly action and were not. Delegate Margaret Ransone asked about inspections, investigations, and oversight of the Hampton Roads Regional Jail and other jails. Inspector General Jennings noted that jails are subject to some inspection and oversight requirements. She also pointed out that due to statutory language, the Office of the Inspector General does not have authority to investigate the jails and that the Office was not able to access the Hampton Roads Regional Jail's internal investigation of Mr. Mitchell's death.

### Discussion of Work Plan

Following presentations, Senator Deeds announced the creation of four work groups and the purpose and membership of each work group:

- **Work Group 1: Service System Structure and Financing:** To evaluate the existing public mental health service system (the system), including the types of services provided, the organization and structure of the system by which such services are provided, and the oversight and control of the system, and to make recommendations for reform of the existing system to ensure consistent delivery of a full array of high-quality mental health prevention, treatment, and recovery support services across the age range in a timely and effective manner throughout the Commonwealth.

Members: Senator Hanger (Chair), Senator Deeds, Delegate Farrell

- **Work Group 2: Criminal Justice Diversion:** To evaluate any existing mechanisms in the Commonwealth for diverting individuals with mental illness who have committed criminal offenses into available mental health services rather than into the criminal justice system and to make recommendations for reform of any existing mechanisms or for the adoption of additional mechanisms for the diversion of such individuals into mental health services that are consistent with the need to address both the mental health needs of such individuals and the safety of the community.

Members: Delegate Bell (Chair), Senator Cosgrove, Delegate Watts

- **Work Group 3: Mental Health Crisis and Emergency Services:** To evaluate the existing crisis response and emergency services system and provide recommendations for reform of such

system to provide high-quality services to individuals experiencing an acute mental health crisis while ensuring the safety of such persons and the community.

Members: Delegate Garrett (Chair), Senator Barker, Delegate Yost

- **Work Group 4: Housing:** To evaluate the existing system for providing access to housing and surrounding services to individuals with serious mental illness who have housing needs and to make recommendations for reform of the existing system to ensure that such individuals receive such access and services and are able to maintain housing stability.

Members: Senator Howell (Chair), Delegate Ransone, Delegate Torrian

Senator Deeds also announced the creation of expert advisory panels to advise and assist the work groups.

### Public Comment

Following the work groups discussion, the Joint Subcommittee received public comment from several family members of individuals with mental illness as well as advocates for individuals in need of mental health services.

### 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 21st Century

**Senator R. Creigh Deeds, Chair**

David Cotter, DLS Senior Attorney

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## Virginia Sesquicentennial of the American Civil War Commission

*May 3, 2016*

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission met on May 3, 2016, in Richmond with Speaker of the House William Howell, chair, presiding.

### Sesquicentennial Commission Wrap-up

*Cheryl Jackson, Executive Director*

Ms. Jackson noted that only two sesquicentennial programs need to be wrapped up: the HistoryMobile tour and publication of *Civil War Echoes*. The HistoryMobile tour will end by early June; the tractor-trailer will then be de-branded, and the vehicle and title will be transferred to the Virginia Museum of



Fine Arts for use as an Art Mobile. Remaining exhibit components and inventory will be disbursed as needed among state agency partners and museums.

Dr. James Robertson has completed the draft of *Civil War Echoes*, which will be published by the end of the summer. The Library of Virginia will market and sell the publication.

Remaining books and DVDs from the Signature Conference program have been offered free of charge to public libraries, schools, and colleges across the state. Members also expressed interest in sending a repository copy of the collection to the Library of Congress and the National Archives. Any remaining merchandise will be donated to museums or partner agencies.

The Virginia Sesquicentennial of the American Civil War Commission (the Sesquicentennial Commission) will sunset on July 1, 2017. It has operated on carried-forward balances since July 1, 2015, when its statutory expiration date was extended to accommodate increased HistoryMobile demand and to provide for publication of final books. The Virginia World War I and World War II Commemoration Commission, a legislative entity established in 2014 whose scope was expanded in 2016, has planned a series of statewide programs and events to mark the 100th anniversary of World War I and the 75th anniversary of World War II, following in the successful model established by the Sesquicentennial Commission. Dr. Bryan noted that it would be smart to use remaining Sesquicentennial Commission funds for a similar historic commemoration in the legislative branch. Staff noted that the World War I and World War II Commemoration Commission does not have appropriations beyond the carried-forward funds that were transferred from the Sesquicentennial Commission. Upon a motion made by Dr. Paul Levengood and seconded by Delegate Mark Keam, members agreed to transfer all remaining Sesquicentennial Commission general fund and special fund balances to the Virginia World War I and World War II Commemoration Commission, upon completion of the work of the Sesquicentennial Commission. Budget language will be necessary to effectuate this transfer.

## **Sesquicentennial of the American Civil War Commission**

**Speaker William J. Howell, Chair**

Cheryl Jackson, Executive Director

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## **Special Joint Subcommittee Studying Certain Alcoholic Beverage Control (ABC) Laws**

*March 8, 2016*

### **Introduction and Opening Remarks**

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the first meeting of the Special Joint Subcommittee of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services Studying Certain Alcoholic Beverage Control (ABC) Laws (the Subcommittee), and the members introduced themselves.

Co-chairmen Cosgrove and Knight explained that during the 2016 Session of the General Assembly, the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services

elected to convene a special joint subcommittee during the 2016 interim to study certain recurring alcoholic beverage control (ABC) issues. The Subcommittee intends to study (i) the food-beverage ratio (minimum food sale requirement) for mixed beverage restaurant licensees and (ii) the feasibility of consolidating certain nonretail “boutique” licenses under § 4.1-206, including licenses for day spas, meal assembly kitchens, and art studios, and the possibility of adding similar privileges for retail cigar shops. The following bills were placed in the study: HB 171 (Albo), HB 219 (Taylor), HB 835 (Greason), HB 904 (Landes), SB 373 (Ebbin), SB 410 (Barker), SB 488 (DeSteph), and SB 489 (DeSteph). Summaries of these bills are available on the Subcommittee’s website: [dls.virginia.gov/interim\\_studies\\_senrss.html](http://dls.virginia.gov/interim_studies_senrss.html).

Co-chairman Knight explained that, year after year, there is legislation creating new ABC license categories in piecemeal fashion. As a result, the retail licensing scheme may need consolidation and other adjustments. Co-chairman Cosgrove explained that the General Assembly has also seen many bills attempting to modify the minimum food sale requirements for mixed beverage restaurant licensees. Co-chairmen Cosgrove and Knight noted that the Subcommittee serves as a great opportunity to address these issues.

## Background Information

*Maria J.K. Everett, Senior Attorney, Division of Legislative Services*

Ms. Everett provided a summary of the issues before the Subcommittee and relevant background information. She explained the various mixed beverage licenses that may be granted by the ABC Board pursuant to § 4.1-210 and provided historical information regarding the progression of ABC in the Commonwealth and recent efforts to modify the system. Ms. Everett explained that it has been more than 40 years since liquor-by-the-drink was legalized in the Commonwealth. Since then, Virginia has worked hard to earn a pro-business reputation. She suggested that in making changes to ABC laws, the Subcommittee consider maintaining the balance between Virginia’s pro-business environment and protecting public health, safety, and welfare.

Regarding the food-beverage ratio, current law requires mixed beverage restaurant licensees’ gross receipts from the sale of food and nonalcoholic beverages to amount to at least 45 percent of their gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages combined. The Commonwealth uses the food sale requirement to limit the intoxication of patrons. The original theory behind this requirement was that by requiring licensed establishments to sell a certain volume of food, a patron would be more likely to have a meal in his stomach and thus less likely to become intoxicated. The food sale requirement was also intended to limit the proliferation of bars and saloons, which were viewed as a contributing factor to several social problems. Ms. Everett noted that a study similar to the work of this Subcommittee was conducted in 2008 on the food-beverage ratio. (Information and materials related to the 2008 study can be found at [http://dls.virginia.gov/interim\\_studies\\_ABC.html](http://dls.virginia.gov/interim_studies_ABC.html).)

Ms. Everett explained that many current mixed beverage restaurant licensees do not have a problem meeting the food-beverage ratio; however, a number of licensees barely meet the ratio and others fall short despite efforts to comply. She explained that a food sale requirement is not unique to the Commonwealth. A majority of states have some form of food requirement for establishments serving mixed beverages. Most of these states simply require that food be available for purchase whenever mixed beverages are served. However, a small number of states only permit “restaurants” to serve mixed beverages. Other states use high licensing fees and seat, table, kitchen, proximity, population, and square footage requirements to limit the number of mixed beverage licenses granted. At least one state requires



that establishments post a bond in order to obtain a mixed beverage license and holds that a violation of any ABC law or regulation by the licensee results in forfeiture of the bond.

### **Public Comment**

A common theme in the testimony of many members of the public was the suggestion that the food-beverage ratio be lowered to allow restaurants to sell a higher percentage of alcohol. Several stakeholders explained that the market has seen a steady rise in the retail price of spirits and a trending interest in top-shelf liquors. These developments mean that establishments serving high-priced drinks and spirits may have increasing difficulty meeting the food-beverage ratio because, as the popularity of high-priced liquors rises, the quantity of food that must be sold rises disproportionately. Some stakeholders suggested that meeting the food-beverage ratio has gradually become so challenging that the food-beverage ratio should be eliminated.

Stakeholders also expressed concern over alleged unfairness between the rules for different licensees. Members of the public noted that current ABC laws and regulations treat establishments differently depending on whether they sell liquor or solely beer and wine. Other stakeholders expressed concern over exceptions that exempt certain establishments from food sale requirements. As a result, many licensees must lower their food prices in an effort to sell a higher volume of food needed to meet the food-beverage ratio, while other establishments are not subject to such constraints. Regarding boutique licenses, and particularly the creation of a new license for retail cigar shops, one member of the public commented that this license was intended to be a very limited exception. Testimony was also presented that the food-beverage ratio causes confusion among many licensees as to what they can and cannot do.

Other members of the public, however, voiced concerns over lowering the food-beverage ratio. Many of these stakeholders were concerned that modification of the food-beverage ratio would lead to a proliferation of bars throughout the Commonwealth. Another stakeholder noted that many restaurants have invested substantial funds to comply with current ABC laws, including the acquisition of sufficient space, staff, and kitchen equipment necessary to meet the food-beverage ratio. This stakeholder commented that lowering the food-beverage ratio after he and many other restaurant owners have already invested such funds substantially lowers startup costs and, consequently, provides an unfair advantage to new establishments. The stakeholder noted that while certain establishments that sell high-end liquors may have difficulty meeting the ratio, they only account for a small portion of the industry. Another stakeholder suggested that, instead of modifying the food-beverage ratio, efforts should be taken to heighten enforcement of its provisions.

In light of these competing views as to whether the food-beverage ratio should be lowered, eliminated, better enforced, or remain the same, Travis Hill, Chief Operating Officer for the Department of Alcoholic Beverage Control (the Department), testified that the food-beverage ratio has led to many complaints among licensees. Mr. Hill explained that many licensees believe that the Commonwealth's ABC laws and the resulting activities of the Department are too invasive. For example, licensees complain that regulatory mandates such as the requirement for and reviewing of detailed records are very time consuming and make it difficult to run a business efficiently. Mr. Hill testified that, conversely, other stakeholders complain that ABC does not make enough effort to enforce the current ABC laws. Mr. Hill testified that regardless of the conclusion ultimately reached by the Subcommittee, the Department simply wants guidance on the food-beverage ratio issue from the General Assembly.

## Discussion

Many Subcommittee members stated that in light of the ongoing issues regarding the food-beverage ratio and the concerns raised during the public comment portion of the meeting, it appears the food-beverage ratio should be modified to some extent. Subcommittee members emphasized, however, that in making such modification, caution must be taken to avoid legislative changes that could result in a proliferation of “bars” throughout the Commonwealth.

Regarding the above-mentioned exceptions that have been created in the Code of Virginia, Senator Charles Carrico suggested that efforts should be taken to ensure that licensees are operating on a level playing field. Delegate David Albo suggested that in the course of analyzing the food-beverage ratio for mixed beverage restaurant licensees, the Subcommittee should also assess the privileges of brewery, winery, and distillery licensees. Other members of the Subcommittee concurred with Delegate Albo’s suggestion.

Senator Bryce Reeves recommended that the Subcommittee also examine the difference between the effect of consumption of “a meal” and the effect of consumption of “food” on a person’s blood alcohol content. Similarly, Senator Bill DeSteph recommended that the Subcommittee explore the difference between the proof of spirits and the alcohol-by-volume of certain craft beers. Senator DeSteph further commented that with a rise in the retail prices of spirits and the trending creation of establishments that serve high-end drinks, our ABC laws related to the food-beverage ratio have fallen behind the private sector marketplace.

The Subcommittee members agreed that in formulating any potential changes to the food-beverage ratio, effort should be taken to gather input from and collaborate with members of the private sector and representatives of the Department.

## Next Meeting

The Subcommittee will host a total of four meetings, the next to be held May 16, 2016.

*May 16, 2016*

Co-chairmen Senator John Cosgrove and Delegate Barry Knight called to order the second meeting of the Special Joint Subcommittee of the House Committee on General Laws and the Senate Committee on Rehabilitation and Social Services Studying Certain Alcoholic Beverage Control (ABC) Laws (the Subcommittee).

## Presentation: History and Progression of Liquor-by-the-Drink in the Commonwealth

*David May, Attorney, Division of Legislative Services*

Mr. May provided an overview of the history and progression of liquor-by-the-drink in the Commonwealth. He explained that in the early 1900s, the Department of Alcoholic Beverage Control (the Department) had not yet been created; however, various licenses were available for a fee that allowed certain types of establishments to serve alcohol. In 1916, three years before national prohibition, Virginia went dry (did not permit the consumption of liquor by the drink) and remained so through prohibition. Congress lifted the national prohibition in 1933 via the enactment of the Twenty-First Amendment to the United States Constitution and repeal of the Eighteenth Amendment. The General Assembly immediately called a special session to legalize 3.2 percent beer. Within the next year, Virginia ratified the Twenty-First Amendment and created the Department.



In 1968, the General Assembly passed the “Whiskey Bill,” which allowed the sale of mixed beverages in restaurants licensed by the Department. However, this legislation required that the voters of each locality approve the issuance of such licenses through local option referendums before liquor-by-the-drink would be available. By fiscal year-end, 345 licenses had been granted. Such licensed restaurants were required to sell more food (full meals) than alcohol (beer, wine, or liquor) and have a table-seating capacity of 50 or more.

In 1980, the requirement that 51 percent of a licensed restaurant’s gross sales be from the sale of food was lowered to 45 percent, creating the 45-55 food-beverage ratio. Additionally, the definition of “food” was expanded to include snacks, sandwiches, appetizers, desserts, and more. The intent of this ratio modification was to bring restaurants in line with “cocktail lounges” managed by hotels.

In 1990, the current food-beverage ratio was created with passage of legislation that excluded beer and wine from the definition of “alcohol” for purposes of the food-beverage ratio. Accordingly, the new ratio would consider only food and spirits. Subsequently, the Department established by regulation a \$4,000 minimum monthly food sale requirement, \$2,000 of which must come from the sale of “meals.” Thereafter, during a regulatory review in 2016, the Department updated its definition of the term “meal” to be more inclusive and reflective of current dining habits. (See 3VAC5-50-110(A)(5)) The new definition includes items such as pizza, meal salads, substantial pasta dishes, and more.

#### **Presentation: Issues of Interest to the Subcommittee**

*Travis Hill, Chief Operating Officer, Department of Alcoholic Beverage Control*

Mr. Hill gave a PowerPoint presentation on certain issues, as requested by the Subcommittee members, which included information regarding dry counties, approaches used in other states to control the balance of food and spirits sales, the Mixed Beverage Annual Review (MBAR) process, and the effects of food on alcohol absorption. Mr. Hill displayed maps showing a pictorial history of dry counties in Virginia from 1968 to present in 20-year increments. The maps indicated that dry counties gradually diminished after the Whiskey Bill passed in 1968 and further diminished with the creation of exceptions to the requirement in § 4.1-124 of the Code of Virginia that localities hold referendums on the issue of whether to allow liquor-by-the-drink.

Next, Mr. Hill explained that, based on National Alcoholic Beverage Control Association (NABCA) research, nine of 18 jurisdictions that directly control the distribution and sale of alcohol, including Virginia, use some form of ratio to regulate the amount of spirits sales in proportion to food sales. Additionally, 12 of 20 open, or non-control, states that reported information to NABCA use a ratio. However, implementation varies across states that utilize a ratio. For example, Utah requires that food sales amount to at least 70 percent of an establishment’s total combined sales, while North Carolina requires that food sales account for 30 percent of total sales. New Hampshire requires that food sales account for at least 50 percent of gross sales unless the licensee’s food sales meet or exceed \$75,000, in which case the licensee is exempt from compliance with the ratio. Pennsylvania, on the other hand, has no food sale requirement but defines a “restaurant” as a reputable place that is principally used for the purpose of providing food to the public.

Mr. Hill then provided clarification on Virginia’s MBAR process. The MBAR process helps to ensure that licensees are in compliance with the food-beverage ratio through an annual self-reporting requirement of mixed beverage and food sales by mixed beverage licensees. The Department devotes approximately 12,480 man hours to MBAR-related issues per year. Of the approximate 4,500 to 4,900 mixed beverage licensees in Virginia, approximately one percent fell below the requirements of the



food-beverage ratio during each of the last four years. At the request of Delegate Dave Albo, Mr. Hill explained that 90 percent of mixed beverage licensees sell \$10,000 or more of food per month, 92 percent sell more than \$8,000, 94 percent sell more than \$6,000, and 96 percent sell more than \$4,000.

Finally, Mr. Hill provided information on the effects of food on alcohol absorption. Substantial research has been conducted on the metabolism, absorption, and distribution of alcohol in the human body, along with factors that impact these processes. Research shows that gender, age, race, food, biological rhythms, exercise, body type, expectations, fatigue, drugs, and medications all impact the body's processing of alcohol. Regarding food consumption, meals that are high in fat, protein, and carbohydrates impact blood alcohol concentration (BAC). Research indicates that the body's process of eliminating alcohol from the blood is shortened by one to two hours when food is consumed. Moreover, the highest absorption rate occurs when the alcohol content of drinks consumed is between 10 and 30 percent.

### **Presentation: Bills Related to the Food-Beverage Ratio; Overview of § 4.1-126**

*Maria J.K. Everett, Senior Attorney, Division of Legislative Services*

Ms. Everett provided an explanation of the bills related to the food-beverage ratio that are included in this study, a summary of ratio bills introduced during recent sessions of the General Assembly, and an overview of the provisions of § 4.1-126. Ms. Everett explained that five ratio bills from the 2016 Session were included in the study: HB 171 (Albo), HB 219 (Taylor), SB 373 (Ebbin), SB 488 (DeSteph), and SB 489 (DeSteph). (Summaries of these bills are available on the Subcommittee's website: [dls.virginia.gov/interim\\_studies\\_senrss.html](http://dls.virginia.gov/interim_studies_senrss.html).) Ms. Everett explained that subsequent to the 2008 study of the food-beverage ratio, no bills related to the food-beverage ratio were introduced during the next five sessions (2009–2013) but four such bills were introduced during the 2014 and 2015 Sessions.

In 2014, SB 502 (Favola and Ebbin), Chapter 633 of the 2014 Acts of Assembly, modified limited mixed beverage restaurant licenses to prohibit such licensees from having sales of wine or liqueur-based drinks, together with the sale of any other alcoholic beverages, exceeding 10 percent of their total annual gross sales of all food and alcoholic beverages. Prior law did not factor into the equation the sale of "other alcoholic beverages" and referred simply to "gross sales" rather than gross sales of all food and alcoholic beverages. Senator Don McEachin also introduced SB 642 during the 2014 Session to modify the sanctions for violations of the food-beverage ratio, but it did not pass.

During the 2015 Session, then-Delegate Bill DeSteph introduced two bills related to the food-beverage ratio. HB 1814 modified the food-beverage ratio to require that sales from food and nonalcoholic beverages meet or exceed 75% of mixed beverage sales, and HB 1815 added as an alternative to the current ratio a minimum monthly food sale requirement of \$4,000. Both bills were passed by indefinitely.

Last, Ms. Everett summarized the provisions of § 4.1-126. In 1972, four years after the Whiskey Bill passed, the General Assembly enacted § 4.1-126, creating the first exception to the requirement in § 4.1-124 that liquor-by-the-drink be permitted only in localities that approved of such practice through a referendum. There are currently 26 exceptions allowing the sale of liquor-by-the-drink at certain establishments within localities in the Commonwealth that have not passed such a referendum.



**Presentation: Possible Alternatives to the Current Food-Beverage Ratio**

*David May, Attorney, Division of Legislative Services*

Mr. May gave a presentation on possible alternatives to the current food-beverage ratio, which requires a mixed beverage restaurant licensee's gross receipts from the sale of food and nonalcoholic beverages to amount to at least 45 percent of its gross receipts from the sale of mixed beverages, food, and nonalcoholic beverages combined. At the Subcommittee's first meeting, members expressed concern that compliance with and enforcement of the current food-beverage ratio was onerous, confusing, and outdated. Members indicated that it may be time to modify the ratio to some extent but emphasized that in making such modification, caution must be taken to avoid legislative changes that could result in a proliferation of "bars" throughout the Commonwealth.

In light of these concerns, Mr. May presented three potential alternatives to the current food-beverage ratio, all of which require licensees to serve food whenever mixed beverages are sold. The first option is to impose a minimum monthly food sale requirement. Per regulations of the Alcoholic Beverage Control Board (the Board), mixed-beverage restaurant licensees are currently required to sell at least \$4,000 of food per month. Though, 90 percent of licensees sell \$10,000 or more in food per month. With those considerations in mind, it was recommended that the minimum monthly food sale requirement be set at \$10,000 or an amount between \$4,000 and \$10,000. Under this approach, the remaining 10 percent of licensees who are unable to meet the minimum food sale requirement would have the option of complying with the current food-beverage ratio.

Similarly, the second and third options also include a minimum monthly food sale requirement but deviate with regard to the options available to the 10 percent of current licensees that are unable to meet the minimum food sale requirement. The second option would allow these licensees to comply with a food-beverage ratio as an alternative to the minimum food sale requirement but would lower the ratio to some degree. Conversely, the third option would impose a tiered minimum food sale requirement, lowering the amount of required sales from \$10,000 to lesser amounts based on the restaurant's capacity as determined by their certificate of occupancy.

After presenting the above alternatives to the current food-beverage ratio, Mr. May explained how these options meet the concerns raised previously by the Subcommittee members. First, imposing a minimum food sale requirement would simplify compliance for licensees by ridding 90 percent of them from the requirements of extensive recordkeeping and detailed calculations. Rather than computing all sales from mixed beverages, food, and nonalcoholic beverages, these licensees would simply tally and report their food sales.

Second, the minimum food sale requirement would simplify and lower the cost of enforcement efforts for the Department by removing 90 percent of licensees from the MBAR's food-beverage ratio audit system, which has proven costly and resource intensive at an estimated 12,480 hours per annum.

Third, the minimum food sale requirement would better match the Commonwealth's rules of compliance with the current marketplace, consumer trends, and higher drink prices. For example, licensees who sell expensive, top-shelf spirits would no longer be tasked with the difficult job of attempting to match their food sales, in price or quantity, with those high-end spirits. Instead, such licensees would be permitted to sell such liquors bound only by the requirement that they sell at least \$10,000 of food per month or \$120,000 per year.

Finally, imposition of a minimum food sale requirement would not result in a proliferation of bars throughout the Commonwealth. Notably, as mentioned above, 90 percent of licensees already sell

\$10,000 or more of food per month. Accordingly, the Commonwealth's existing landscape with regard to the number of establishments serving mixed beverages would remain relatively the same. A minimum food sale requirement would simply ease the process of compliance for licensed establishments that have consistently exceeded our statutory food sale requirements.

### Public Comment

One member of the public proposed the following question: "If a mere one percent of licensees are having difficulty meeting the current [food-beverage] ratio, why are we here?" The gentleman stated that most licensees are in compliance and that the ratio should not be modified to account for the minority who are not. He further commented that the level of math required to complete an MBAR form is relatively simple.

Another citizen suggested that the General Assembly create a "tavern" license that would allow such licensee to sell spirits unbound by any food sale requirement. The gentleman stated that this would allow certain existing establishments that currently operate under the guise of a restaurant to "come out of the dark." The gentlemen explained that any establishment that specializes in high-end spirits is effectively specializing in liquor, not food, and is therefore a bar, rather than a restaurant.

A representative of the Commonwealth's restaurant and lodging industries stated that at some point an establishment should qualify as a "restaurant" on the basis of the amount of its food sales without regard to the quantity of spirits it is also selling. The representative stated that a minimum food sale requirement would serve this purpose and would not give a restaurant any incentive to stop selling food upon meeting such requirement as long as the Code of Virginia requires that food be served whenever alcohol is sold.

Other topics raised by members of the public included (i) a concern that public safety was not a large part of the Subcommittee's discussion of the food-beverage ratio and (ii) a suggestion that regardless of the Subcommittee's ultimate decision, all alcohol—spirits, wine, and beer—should be regulated equally.

Bill Dillon, Owner and Operator of Abbey Road Pub & Restaurant, was not able to attend the meeting but submitted public comment via email. Mr. Dillon raised concern over certain bills passed during the 2016 Session that effectively exempted from the food-beverage ratio two private performing arts facilities. Mr. Dillon suggested that these bills indirectly created a "night club license" for these establishments and inquired as to the reason this legislation did not include all performing arts facilities. Mr. Dillon recommended that, as a matter of fairness, these new laws be amended to include all of Virginia's performing arts facilities. Mr. Dillon also raised concern over the rules governing micro-breweries, stating such breweries are "exploding" throughout the Commonwealth and are not bound by a food sale requirement. Finally, Mr. Dillon recommended that all ABC licenses be treated equally through imposition of a flat monthly food sale requirement, coupled with a requirement that food be served whenever alcohol is sold. Mr. Dillon stated that this rule would not only promote equal treatment of the Commonwealth's various licensees, but also reduce the Department's work load and allow agents to more effectively enforce the provisions of the Code.

### Discussion

Co-chairman Knight and Senator Bill DeSteph expressed interest in the idea of replacing or supplementing the current food-beverage ratio with a minimum food sale requirement, provided a provision is included that requires establishments to serve food whenever alcohol is sold. Co-chairman Knight also stated that while statistics were presented that a mere one percent of licensees fall short of



the food-beverage ratio's requirement, in practice, many more licensees are experiencing problems with the ratio.

Delegate Albo suggested, on the other hand, that it appears most licensees are satisfied and in compliance with the current ratio requirements. Following discussion with Delegate Luke Torian, Delegate Albo suggested that the Subcommittee investigate the possibility of giving the Department discretion to craft solutions for the one percent of licensees who fall short of the ratio's requirements. Specifically, Delegate Albo suggested that, upon petition by the licensee, the Department could conduct a hearing and accept testimony on reasons the licensee is unable to comply with food-beverage ratio despite sincere effort. Delegate Albo further suggested that the Subcommittee formulate a list of all possible alternatives to the current ratio and post it on its website for public comment and feedback.

### **Next Meeting**

The Subcommittee will meet again in August or September.

### **Special Joint Subcommittee Studying Certain Alcoholic Beverage Control (ABC) Laws**

**Senator John Cosgrove and Delegate Barry Knight, Co-chairmen**

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

*April 14, 2016*

The Virginia World War I and World War II Commemoration Commission (the Commission) met in Richmond on April 14, 2016, with Delegate M. Kirkland Cox, chair, presiding.

### **Legislative Update: Virginia World War I and World War II Commemoration Commission**

*Chairman M. Kirkland Cox; Delegate Betsy Carr*

Chairman Cox observed that the 2016 budget bill combines commemoration of World War I and World War II under the Virginia World War I and World War II Commemoration Commission (the Commission), which supercedes the existing World War II 75th Anniversary Commission. There will be two new legislative members of the Commission, one appointed by the Speaker of the House of Delegates and one appointed by the Senate Committee on Rules, who will serve as the chairman and vice-chairman of the Commission's Advisory Council. Chairman Cox noted that, while the Advisory Council serves in a consultative capacity, the Commission is the final arbiter in accepting or rejecting suggestions and will establish the work plan of programs and events. At present, the Commission has available funds of \$997,000, and discussions are underway regarding additional funding.

Delegate Carr reported that in 2014 a committee on the centennial of World War I began meeting. While the group had no funding or statutory authority, it brought together a number of experts and stakeholders to plan and coordinate activities, collaborate with the U.S. World War I Centennial

Commission, and establish a § 501(c)(3) foundation related to the Carillon. Members of the World War I committee will be invited to serve on the Commission's Advisory Council.

Dr. Charles F. Bryan pointed out that the influenza pandemic claimed a vast number of lives during World War I and suggested holding a symposium on the world pandemic, in collaboration with, for example, the VCU Medical Center. Dr. Treadway noted that the Library of Virginia is planning an exhibit on the pandemic and would be delighted to work with the Commission on the topic.

### **Report of the World War II 75th Anniversary Advisory Council**

*Sandra Treadway, Librarian of Virginia*

The World War II 75th Anniversary Advisory Council held a meeting on December 10, 2015. Staff presented an overview of the Commission (which at that time was limited in scope only to World War II). Representatives from the national World War I commission were present to offer guidance on partnering and working together to leverage resources. Participants were invited to respond to a series of seven questions designed to facilitate brainstorming:

1. *What should be the overall vision for the commemoration?* Responses emphasized global context as well as paying tribute to veterans and examining the war's impact on the home front.
2. *What events, programs, or projects would you hope to see for Virginia's observance of the 75th anniversary of World War II?* Most respondents thought that a wide variety of inclusive programs to honor veterans and educate the present generation should be sponsored, making the fullest use of resources Virginia has to offer.
3. *The Commission's first Signature Event will be a tribute to veterans, to be held on December 8, 2016, at the University of Richmond. What is important to include at that event?* The consensus is that veterans should receive a tasteful tribute but also should be involved in the program, though without being worn down by it.
4. *How can the work of the Commission, or the opportunities afforded by the 75th anniversary commemoration, best serve your organization or institution?* Suggestions included providing grant funding opportunities and working together to plan events that would bring more visitors to Virginia and more revenue.
5. *How can your organization or institution support the work of the Commission?* There was general agreement that organizations have resources to make available to the Commission and that the key to most effective support was having a relationship of partnership and collaboration.
6. *How do we ensure that the commemoration appeals to a broad spectrum, including those who are not history buffs or who do not have a personal connection to the war? What perspectives are important to include?* Responses emphasized the personal connection, the personal stories that people have to tell. Individuals should be encouraged to think about how the war affected their family.
7. *What are the most important lessons of World War II?* This question elicited a large variety of responses, many conveying the idea that to understand the world today requires understanding the world of 1945.



## Staff Updates

*Cheryl Jackson, Executive Director*

Ms. Jackson explained the new language in the budget bill, which specifies that the Commission shall plan, develop, and carry out programs and activities appropriate to commemorate the 100th anniversary of World War I and the 75th anniversary of World War II. She presented an organizational structure that includes an Advisory Council as well as staff workgroups established as needed for programs and events, grant review, and website content development. The Commission will also work with affiliated organizations, including the U.S. World War I Centennial Commission, the Virginia World War I Centennial Foundation, the Virginia World War II Heritage Alliance, and the Keep the Spirit of '45 Alive Coalition. Staff has streamlined logos for unified branding and developed distinctive websites combining the two wars and easily enabling the viewer to hop from World War I to World War II. Among other features, the website has a frequently updated Statewide Calendar of Events, a comprehensive listing of locations to visit, and educational resources. Web addresses are [VirginiaWorldWarI.org](http://VirginiaWorldWarI.org) and [VirginiaWorldWarII.org](http://VirginiaWorldWarII.org).

Ms. Jackson presented a proposed slate of Signature Events and Programs, related key dates, and partner support programs that serve the following primary goals of the Commission:

**Honor our veterans:** Honor the service of veterans. By remembering yesterday's veterans, we are communicating to today's service members that they won't be forgotten, either.

**Inspire a desire to learn more:** Provide opportunities for people to explore personal connections and highlight multiple perspectives of Virginia's role in World War I and World War II (battlefront and military support from Virginia; home front and civilian support; Holocaust and stories of survival, and more).

**Connect through travel and tourism:** Make it easy for visitors to connect to museums, memorials, and sites in Virginia related to World War I and World War II.

**Preserve historic sites:** Encourage preservation and interpretation of significant sites in Virginia related to World War I and World War II.

Proposed Signature Events and Programs and key dates, which reflect Commission action and include a date inadvertently omitted from the slate presented at the meeting, and proposed partner support programs include:

1. World War I and World War II Tourism Marketing Grant Program
2. Legacy Project: Virginia Profiles of Honor Tour
  - Mobile tour focused on (i) honoring veterans and engaging visitors with history by exploring their family connection; (ii) scanning images of soldiers and civilians related to WWI/WWII and collecting oral histories as available; and (iii) serving as a mobile tourism welcome center, providing information on museums and destinations in Virginia related to WWI/WWII history
  - Tour will work with hosting location to scan service photos, documents, diaries, journals, etc., and to record oral histories
  - Exhibit space will include hands-on, interactive exhibit

## 3. 2016 Signature Event and Key Date:

December 8, 2016: Pearl Harbor 75th anniversary: Tribute to WWII Veterans (Richmond)

“Dawn of Infamy: America Goes to War”

University of Richmond

Keynote speaker: Rick Atkinson

## 4. 2017 Signature Events and Key Dates:

April 6, 2017: 100th anniversary of U.S. entry into World War I

June 4–6, 2017: 75th Anniversary of the Battle of Midway

75th anniversary of the U.S. naval victory of June 4–6, 1942, near Midway Atoll; U.S. Navy traditionally holds large-scale events to mark the Midway anniversary

Conduct statewide teacher symposium:

- Work with Virginia Department of Education, colleges, and partner institutions across the state to conduct a symposium for middle school and high school teachers, providing resources for teaching WWI and WWII history
- Symposium will go on the road, be held in each of the eight superintendent regions, and be recorded for Internet download by teachers who are unable to attend
- DOE regions: Central Virginia, Tidewater, Northern Neck, Northern Virginia, Valley, Western Virginia, Southwest, Southside

## 5. 2018 Signature Events and Key Dates:

Untold Stories of Service, Support, and Medicine during the World Wars

- Program recognizing the efforts of VCU/MCV and UVA Medical School (both of which formed hospital units), American Red Cross, YMCA, YWCA, Salvation Army, Knights of Columbus, Armenian Relief Society of America, American Library Association, and other support organizations
- Discuss the influenza pandemic of 1918–1919, which killed more people than World War I. An estimated 20–40 million people died, and it is cited as the most devastating epidemic in world history
- Panel suggestions: “Soldier’s War,” “Sailor’s War,” “Doctor’s War,” “Civilian’s War”

100th Anniversary of Armistice Day (Carillon)

November 11, 2018: World War I: 100th anniversary of Armistice Day

- Events may include music, bell ringing, speakers, and dedication of marker for World War I veterans from Virginia

## 6. 2019 Signature Event and Key Date:

75th Anniversary of D-Day (Bedford)

June 6, 2019: Commemoration of 75th anniversary of D-Day (June 6, 1944)

- Events in Bedford at National D-Day Memorial



- Encourage student attendance by making a Statewide Field Trip (simulcast to schools, provide scholarships to send students free of charge)

#### 7. 2020 Finale Event and Key Date:

75th Anniversary of V-J Day (Norfolk)

September 2, 2020: Concluding event of the commemoration to recognize the Allied victory over Japan, which formally surrendered on September 2, 1945, in Tokyo Bay

- Partner with McArthur Memorial, Hampton Roads Naval Museum/ USS *Wisconsin*, Oceana NAS, Mariner's Museum, Military Aviation Museum, and other local partners
- Include the role of Virginia's ships, harbors, and shipbuilding industry as the key to America's might. Involve Huntington Ingalls Industries' Apprentice School (Newport News)

The Commission will support, encourage, and enhance programs conducted by museums, nonprofits, veterans groups, and other partners through (i) a comprehensive web presence that includes a Statewide Calendar of Events, interactive listing of Places to Visit, educational resources, and Profiles of Honor stories; (ii) marketing, branding, and statewide coordination for promotion of events; (iii) overseeing logo use; and (iv) providing a comprehensive web-based list of teacher resources.

During discussion of the proposed plan of events, the Commission agreed that bag lunches should be provided free of charge for all attendees to the December 2016 program, rather than only providing a free lunch for veterans and one guest, as previously discussed. A sufficient number of lunches will be ordered to provide to veterans and their traveling parties, military escorts, distinguished guests, and program attendees (on a first-come, first-served basis).

Members expressed support for the mobile tour, which will provide an opportunity for local communities to build programs and help Virginians tell their stories. Key partners will be the Library of Virginia, Virginia War Memorial, Virginia Tourism Corporation (VTC), and Department of Motor Vehicles. Staff displayed images of a mobile unit at Spevco, Inc., in Winston-Salem, North Carolina, that has been custom built and is currently available to go on tour. It has a glass wall that could contain exciting exhibits that would appeal especially to young people. The estimated cost to design and lease the unit for the Profiles of Honor Tour is \$150,000 per year, and tour operation would entail an annual expenditure of around \$350,000. The estimated cost of digitizing, cataloging, and online access to documents is approximately \$150,000 per year.

During discussion of the statewide teacher symposium in 2017, staff noted that Betsy Barton of the Virginia Department of Education has successfully led similar efforts for legislative commissions and would be a key planning partner. The symposium will go on the road to each of the eight superintendent regions and would be recorded for Internet download by teachers unable to attend. Jon Hatfield observed that the Virginia War Memorial sponsors programs for teachers and urged that it be involved in the development of the symposium so that no duplication of effort will occur.

Delegate John O'Bannon moved to accept and approve the programs proposal, with the changes that were discussed. The motion was seconded by Delegate Richard Anderson and passed unanimously.



## **World War I and World War II Tourism Marketing Grant Program**

*Steve Galyean, Virginia Tourism Corporation*

The goal of the World War I and World War II Tourism Marketing Grant Program is to support the programs of the Commission and provide Tourism Marketing Grants to local partners for the marketing of events related to the commemoration in an effort to ensure that events reach a wide audience. Mr. Galyean reviewed the basic guidelines, elaborated on the eligible expenses and activities covered by the grants as well as what was not eligible, and explained the scoring on application questions. Eligible activities include interpretive markers, marketing of lectures and exhibits, travel-related print materials such as brochures, placement of advertisements promoting the area to visitors and highlighting regional historical connections to World War I or World War II, website development, travel and trade show booths, fulfillment costs, and trade show displays. Activities not eligible include administrative expenses, event start-up costs, the cost of promotional items, directional signage, website maintenance fees, battle reenactments, events deemed celebratory rather than commemorative, and projects that do not contribute to increased visitation.

Ms. Jackson noted that some events that are celebratory might be eligible for a grant; for example, a parade that honors veterans. Instead of categorically excluding all celebratory events, she recommended changing the language to something like “events . . . whose historical accuracy is called into question by the Commission.”

Staff will work to get the word out to museums, libraries, and localities about the Tourism Marketing Grants. Reimbursable grants of up to \$5,000 will be available on a 1:1 matching basis, with at least three partners required. The first round of grants will open by July 1, close two months later by September 1, and be announced in early October. A committee composed of VTC staff and Commission staff will review grant applications and make recommendations to the Commission on approval or rejection. Delegate Cox requested that the executive director of the Virginia War Memorial serve as the Commission’s representative on the grant review committee.

Delegate O’Bannon moved that the celebratory exclusion be removed and that the Commission authorize the transfer of \$100,000 to the VTC for initial funding of the grant program. The motion was seconded by Senator Frank Ruff and passed unanimously.

Delegate O’Bannon asked whether the mobile unit would belong to the Commission. Ms. Jackson expressed the view that it would be better to lease the unit than to purchase it. The mobile unit would need to be pulled by a large passenger truck such as a Ford F450, which may be purchased or leased for the duration of the tour.

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

**Delegate M. Kirkland Cox, Chair**

Cheryl Jackson, Executive Director

804-786-3591 ext. 276

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



## **2016 Acts of Assembly: Changes to State Entities in the Commonwealth**

### **New State Entities**

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Commission on Economic Opportunity for Virginians in Aspiring and Diverse Communities (sunset date July 1, 2019)

Commission on Employee Retirement Security and Pension Reform (sunset date July 1, 2021)

Commonwealth Center for Recurrent Flooding Resiliency

School Readiness Committee

Transit Capital Project Revenue Advisory Board (sunset date July 1, 2018)

Virginia Growth and Opportunity Board and Fund

Virginia International Trade Corporation

Virginia Research Investment Committee and Fund

### **Name Changes of State Entities**

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E-911 Services Board renamed **9-1-1 Services Board**

### **Sunset Dates Extended**

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Sunset provision for the Autism Advisory Council extended from July 1, 2016, to July 1, 2018

### **New Programs and Funds**

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Advanced Shipbuilding Production Facility Grant Program and Fund

Commonwealth Mental Health First Aid Program

Livestock and Poultry Disease Fund

Mixed-Delivery Preschool Fund and Grant Program

New Economy Workforce Credential Grant Program and Fund

Science, Technology, Engineering, and Mathematics Competition Team Grant Program and Fund (expires July 1, 2018)

Virginia Collaborative Economic Development Performance Grant Fund

Virginia Shoreline Resiliency Fund

## Legislative Meeting Calendar for July and August 2016

July 6	1 p.m.	Joint Subcommittee on Coastal Flooding	House Room C, General Assembly Building (GAB)
July 7	noon	Administrative Law Advisory Committee Model State Administrative Procedure Act (MSAPA) Hearing Officer Handbook Work Group	House Room 2, The Capitol
July 11	10 a.m.	Virginia Commission on Civics Education	House Room C, GAB
	10 a.m.	Joint Legislative Audit and Review Commission (JLARC)	Senate Room A, GAB
	noon	Major Employment and Investment (MEI) Project Approval Commission	Location to be determined
	1 p.m.	Commission on Employee Retirement Security and Pension Reform	House Room D, GAB
July 12	1 p.m.	House Commerce and Labor - Wireless Communications Infrastructure	6th Floor Speaker's Conference Room, GAB
July 13	1:30 p.m.	Virginia World War I and World War II Commemoration Commission	6th Floor Speaker's Conference Room, GAB
July 14	10 a.m.	Virginia Housing Commission Affordable Housing, Real Estate Law and Mortgages Work Group	House Room C, GAB
	10 a.m.	Virginia Freedom of Information Advisory Council Records Subcommittee: Personnel Records Work Group	House Redistricting Room, 2nd Floor, GAB
	1:30 p.m.	Virginia Housing Commission Short-Term Rental Work Group	House Room 3, The Capitol
July 18	10:30 a.m.	Virginia Freedom of Information Advisory Council Meetings Subcommittee	House Room C, GAB
	1:30 p.m.	Virginia Freedom of Information Advisory Council	House Room C, GAB
July 19	9 a.m.	Virginia Disability Commission Education and Employment Work Group	House Room C, GAB
	9 a.m.	Virginia Disability Commission Housing and Transportation Work Group	5th Floor East Conference Room, GAB
	9 a.m.	Virginia Disability Commission Publicly Funded Services Work Group	5th Floor West Conference Room, GAB
	10 a.m.	Virginia Disability Commission	House Room C, GAB



July 20	10 a.m.	Small Business Commission	Senate Room A, GAB
	10:30 a.m.	Virginia Freedom of Information Advisory Council Records Subcommittee	House Room C, GAB
July 21	9:30 a.m.	Joint Committee to Study the Future of Public Elementary and Secondary Education in the Commonwealth	House Room D, GAB
	10 a.m.	Virginia Housing Commission Common Interest Communities Work Group	House Room C, GAB
	1 p.m.	Senate Committee on Finance Health and Human Resources Subcommittee	10th Floor Conference Room, GAB
August 1	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
	10 a.m.	Virginia Commission on Youth Temporary Assistance for Needy Families Advisory Group	5th Floor East Conference Room, GAB
August 3	10 a.m.	Joint Commission on Health Care Behavioral Health Care Subcommittee	Senate Room A, GAB
	1 p.m.	Joint Commission on Health Care Healthy Living/Health Services Subcommittee	Senate Room A, GAB
	1 p.m.	Joint Subcommittee on Block Grants	Senate Room B, GAB
August 11	1:30 p.m.	Virginia Freedom of Information Advisory Council Meetings Subcommittee	House Room C, GAB
August 25	9:30 a.m.	Senate Committee on Finance Public Safety Subcommittee	Fluvanna Correctional Center for Women
August 26	9:30 a.m.	Joint Meeting of Senate Committee on Finance and House Committees on Appropriations and Finance	House Room D, GAB
	1:30 p.m.	Joint Subcommittee on Future Competitiveness of Virginia Higher Education	Location to be determined
August 29	1 p.m.	Joint Subcommittee to Evaluate Tax Preferences	House Room D, GAB

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

## 2016 New Legislative Studies Staffed by DLS and New Responsibilities for DLS

Bill No.	Description	Study Entity	DLS Staff
HB 451	Determine the need for and ways to achieve economic opportunities for members of aspiring and diverse communities in Virginia	Commission on Economic Opportunity for Virginians in Aspiring and Diverse Communities (expires July 1, 2019)	Brenda Edwards Meg Burruss
HJ 69	Joint Subcommittee to Study the Use of Driver's License Suspension as a Collection Method for Unpaid Court Fines and Costs		David Cotter Jescey French Emma Buck
HJ 97/ SJ 97	Study Commonwealth's aerospace industry; develop "A Blueprint for Growth of the Virginia Aviation and Aerospace Industry."	Joint Commission on Technology and Science	Lisa Wallmeyer
HJ 112/ SJ 85	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 (two-year study)		Ryan Brimmer Tom Stevens
SJ 80	Study mandatory disclosure of relevant information to purchasers of historic properties without homeowner associations	Virginia Housing Commission	Elizabeth Palen
HB 30 Item 1 S	Review of the Neighborhood Assistance Act tax credit program regarding structure, eligibility requirements, distribution of funding, and overall funding amounts made available for the credit	Joint Subcommittee to Evaluate Tax Preferences	David Rosenberg Lisa Wallmeyer
HB 30	Virginia World War I and World War II Commemoration Commission		Cheryl Jackson
	Virginia Code Commission	Title 55 Recodification	Britt Olwine Amigo Wade Kristen Walsh
	Virginia Code Commission	Study on Use of Gender-Specific References in the Code of Virginia and Other Discrimination Issues	David Cotter



## 2016 Continued Legislative Studies Staffed by DLS

Bill No.	Description	Study Entity	DLS Staff
HJ 45 (2016)	Study of mandating health insurance coverage for abuse deterrent formulations for opioid medications	Health Insurance Reform Commission (continues study pursuant to HJ 630 (2015))	Emma Buck
HJ 84/SJ 58 (2016)	Joint Subcommittee on Coastal Flooding (formerly Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding); first year of additional two-year study		Jeff Sharp Scott Meacham
HJ 96 (2014)	FOIA Exemptions	Freedom of Information Advisory Council	Maria Everett Alan Gernhardt
SJ 47 (2014)	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century (third year of four-year study)		David Cotter Brittany Olwine Sarah Stanton Tom Stevens
SR 32 (2014)	Construction of Proposed Interstate 73	Senate Committees on Local Government and Transportation	Scott Meacham

## 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 2016 interim is available on the website of the Division of Legislative Services (<http://dls.virginia.gov/commissions.html>).

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