

Virginia Legislative Record

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Virginia Disability Commission

August 20, 2013

The Virginia Disability Commission (Commission) held its second meeting of the 2013 interim in Richmond. Following opening remarks and introductions, the Commission received updates and preliminary recommendations from the three work groups that had met earlier in the day. A table of preliminary recommendations from all three work groups can be found on the Commission's website.

Work Group #1: Housing and Transportation

Eric Leabough, Housing Specialist, Department of Behavioral Health and Developmental Services

Mr. Leabough presented information about the housing plan (the Plan) developed by the Department of Behavioral Health and Developmental Services (the Department) in accordance with the U.S. Department of Justice (DOJ) Settlement Agreement. Mr. Leabough provided background information about the DOJ investigation of allegations that the Commonwealth's practices related to institutionalization of individuals with developmental disabilities violated the Civil Rights of Institutionalized Persons Act, the Americans with Disabilities Act, and the U.S. Supreme Court *Olmstead* decision and noted that the Settlement Agreement approved by the U.S. District Court for the Eastern District of Virginia requires the Department to serve individuals with developmental disabilities in the most integrated setting consistent with their informed choice and needs. As part of the Settlement Agreement, the Department was required to work together with a range of other state agencies and stakeholders to develop a housing plan to address the housing needs of individuals transitioning

from institutional care settings to community-based care settings by increasing access to independent living options. Underlying principles of the Plan include an emphasis on the need to decouple housing and services and acknowledgment of the significant need for affordable housing options for individuals with disabilities.

A baseline estimate of the number of individuals who meet the criteria and who may require housing to support community-based care is 2,530 individuals for FY 2014 and FY 2015. Housing-related challenges affecting the ability of the Department to transition these individuals to community-based settings include the extremely low income of many individuals who meet the criteria of the target population and rely on Supplemental Security Income or Social Security Disability Insurance income as their primary source of financial support; high rental prices; and a lack of safe, accessible, and appropriate housing in many areas of the Commonwealth.

Mr. Leabough identified five specific strategies in the Plan to address these challenges and noted five items that would be indicators of the success of the plan. Next steps in achieving these goals include development of a rental demonstration program using \$800,000 set aside for implementation of the Settlement Agreement, which will evaluate potential Medicaid cost savings achieved when individuals transition from congregate to noncongregate settings, and development of interagency memorandums of understanding that establish a framework for collaboration among various state agencies for implementation of the Plan.

Following the presentation, Work Group members noted that the approach implemented as part of the rental demonstration program could be a good model for increasing access to integrated, accessible housing for all individuals with disabilities.

John Mahoney, Human Service
Transportation Project Manager,
Department of Rail and Public
Transportation

Mr. Mahoney provided an update on Department of Rail and Public Transportation (the Department) initiatives related to transportation for individuals with disabilities including federal Human Service Grant programs and New Freedom Initiative programs and services. He also gave an update on changes expected to result from implementation of the Moving Ahead for Progress in the 21st Century (MAP-21) program.

Following Mr. Mahoney's presentation, Work Group members discussed challenges that will result from reduced funding for rural and small urban transportation programs. Work Group members also discussed the relationship between providers providing services through the New Freedom Initiative and Logisticare, the provider of Medicaid transportation services in the Commonwealth. Mr. Mahoney noted that in many cases New Freedom Initiative providers work together with Logisticare to provide transportation, but that services provided through the New Freedom Initiative were intended to augment rather than replace services provided by Medicaid transportation providers. Some members noted that, due to problems with the Medicaid transportation system, some individuals may be using New Freedom Initiative providers rather than Medicaid transportation providers. The Work Group discussed the need to find a way to ensure that individuals who have access to Medicaid transportation services through Logisticare are using those services and that New Freedom Initiative programs are augmenting these services by providing transportation for individuals who may not have access to Medicaid-funded transportation rather than supplanting Medicaid-funded transportation. This may require action to improve the quality of Medicaid-funded transportation and to educate transportation service users regarding the options available.

Discussion of Recommendations

Following the presentations, Work Group members discussed potential recommendations to be presented to the full Disability Commission, including an option carried over from the June 19 meeting related to a study of options for using local comprehensive plan requirements to increase the availability of and access to housing for individuals with disabilities. The Work

Group members concluded that additional discussion of this topic and other items discussed during the first and second Work Group meetings was necessary before any recommendations could be made.

Work Group #2 (Education and Employment)

Kathy Hayfield, Department for Aging and Rehabilitative Services
John Eisenberg, Department of Education

Ms. Hayfield and Mr. Eisenberg delivered a presentation on models to improve access to employment for students with disabilities: the Post-High School Model, ACE-IT (VCU), Start on Success (S.O.S.), and Project Search. S.O.S. is a model in use in other states in which students with a broad range of disabilities participate in half-day paid internships in businesses in the community during high school. The majority of the presentation focused on the successful collaboration between DARS and DOE to create a Project Search program in which youth with the most severe disabilities participate in three, 10- to 12-week internships at local businesses (currently, hospitals) with the ultimate goal of securing competitive employment at the end of the program. The agencies currently fund the program with federal money allocated to the state under the Individuals with Disabilities Education Act (IDEA) and operate the program at 13 hospital sites throughout the Commonwealth. A high percentage of participants secure competitive employment through Project Search, but federal moneys are getting tight. DARS and DOE would like to pilot a rural site for one of these employment models and asked the Work Group to support a recommendation to provide state funds to make that possible. The Work Group members asked the presenters to attend the September 18 Work Group meeting and share a more concrete proposal that approximates just how much a pilot program would cost.

Ed Turner, Virginia Association of
People Supporting Employment First
Dan Reichard, Stand Up, Inc.
Robin Metcalf, Choice Group

Mr. Turner, Mr. Reichard, and Ms. Metcalf presented on "Follow Along" services: the services that job coaches use after the initial job stabilization period of three to six months if the employee begins to have issues and is not stable. The presenters noted that from an

*The Virginia
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information about
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and Public
Transportation
initiatives related to
transportation for
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disabilities.*

individual and economic standpoint, this further stabilization is crucial. Since 2007, the DARS budget for Follow Along services has been cut by at least \$1 million. The Work Group asked the presenters to return for the next meeting to report on the exact funding that would be required to bring it back up to 2007 levels.

Liz Getzel, Rehabilitation Research and Training Center, Virginia Commonwealth University
Dana Yarborough and Jack Brandt, Partnership for People with Disabilities, Virginia Commonwealth University

Ms. Getzel, Ms. Yarborough, and Mr. Brandt reported on the July 24 and August 6 special work group meetings that the Commission held in collaboration with the VCU Partnership for People with Disabilities and the Virginia Collaborative for College (Collaborative) on improving access to postsecondary education for individuals with intellectual and developmental disabilities. The main barrier to access that was identified was placement testing. Ms. Getzel reported that after discussing it with the membership of the Collaborative and receiving a favorable response, the organization would put forth a recommendation to the Work Group to define “underrepresented populations” to include students with intellectual and developmental disabilities as those terms are defined by federal law. The Virginia Community College System expressed several concerns with this proposal, including that this expanded definition would cause a fiscal impact on the system. Currently, the Virginia Community College System’s definition only includes such populations as minorities, older students, first-generation students, and students from particular geographical areas. It was necessary to cut the discussion short because the full Commission meeting was about to begin, but the Work Group expressed a willingness to continue to work through these issues at its next meeting.

Work Group #3 (Publicly Funded Services)

Teri Barker-Morgan, Program Manager, Virginia Board for People with Disabilities

Ms. Barker-Morgan provided information about the Commonwealth’s Auxiliary Grant Program. An auxiliary grant is a supplement to income paid to recipients of Supplemental Security Income (SSI). In Virginia, a person will be eligible for an Auxiliary Grant if he is aged 15

or older; is blind or disabled; has been assessed and determined to need assisted living facility care or adult foster care placement; resides in a licensed assisted living facility or approved adult foster care home; and meets certain income and resource standards. Auxiliary Grant funds awarded to an individual may be used to pay for room, board, maintenance, and care services. In recent years, efforts have been made to expand eligibility for Auxiliary Grants, allowing individuals in settings other than assisted living facilities and adult foster care homes who meet all other program criteria to receive Auxiliary Grant funds. Ms. Barker-Morgan noted that in 2007 the General Assembly asked the Secretary of Health and Human Resources to study the feasibility of restructuring Auxiliary Grants for certain Community Services Boards Case Management Consumers. In 2009 the General Assembly authorized the Department of Social Services, Department of Mental Health, Mental Retardation and Substance Abuse Services (now the Department of Behavioral Health and Developmental Services), community services boards, and local departments of social services to conduct a pilot program for portable Auxiliary Grants to pay for housing of certain individuals receiving an Auxiliary Grant who also received Medicaid-funded case management and support services from a community services board or behavioral health authority. However, in the fall of 2009 the administration concluded that the pilot program could not be implemented due to concerns about Medicaid eligibility and maintenance of effort rules. Following discussion of the rules governing Auxiliary Grants, Work Group members decided to convene a special work group to study portability of Auxiliary Grants and develop recommendations for expanding access to Auxiliary Grants in the future.

Dr. Karen Kimsey, Deputy Director, Complex Care and Services, Department of Medical Assistance Services

Dr. Kimsey presented information about recent problems experienced by individuals who received respite care services through the Elderly or Disabled with Consumer Direction (EDCD) waiver. Dr. Kimsey noted that earlier in the year, a substantial number of care providers missed the deadline for applying for reauthorization and as a result payments were not made. When the issue was discovered, the Department of Medical Assistance Services (DMAS) was able to extend the authorization window for an additional two months to allow providers to apply for

The Department for Aging and Rehabilitation Services Long Term Rehabilitation Case Management program provides services to individuals with a range of disabilities.

The Project Search program allows youth with severe disabilities to participate in three, 10-12 week internships at local businesses.

reauthorization. However, the number of requests for reauthorization that came in during that period, combined with the regular requests for approval for personal care services provided under the EDCD waiver, resulted in higher-than-normal caseloads for the company with which DMAS contracts, which led to delays in approvals. Dr. Kimsey noted that DMAS has authorized additional staff to address the backlog and reduce the wait. At the same time, DMAS is considering options for addressing the underlying problem to avoid a similar situation in the future.

Following Dr. Kimsey's presentation, the Work Group discussed another issue related to approval for payments under the EDCD waiver. Work Group members were concerned that individuals transitioning from institutions to the community could not obtain personal assistance services under the EDCD waiver in a timely manner due to a four-to-six-week delay in approval. The delay means that such individuals must wait four to six weeks after they are discharged to hire and begin training service providers. Work Group members suggested that this problem might be eliminated if authorization and training could be conducted prior to discharge so that the service provider is available at the time of discharge. Mary Margaret Cash, Department for Aging and Rehabilitative Services, noted that it might be possible for the Department for Aging and Rehabilitative Services Personal Assistance Program to provide coverage during the initial discharge period until final approval through DMAS could be obtained. The Work Group decided that additional study of this topic was required.

Mary Margaret Cash, Community Based Services Director, Department for Aging and Rehabilitative Services

Ms. Cash provided information about the Department for Aging and Rehabilitative Services Long Term Rehabilitation Case Management program (LTRCM). She noted that LTRCM provides services to individuals with a range of disabilities and that the cases handled by the program are often very complex. The program's case managers, who work with individuals with disabilities to teach them and their family members how to navigate the service system and to ensure that individuals receive necessary services, are assigned to specific geographic regions, with eight case managers currently serving the Commonwealth. Due to the limited number of case managers available, individual case managers' caseloads are

substantial, and some individuals in need of services are being placed on waiting lists. Following a brief discussion, the Work Group decided to recommend that the Disability Commission request a budget amendment to provide \$150,000 to the Department for Aging and Rehabilitative Services for two full-time case manager positions.

Discussion of Other Recommendations

Following presentations, the Work Group discussed preliminary recommendations made available to the Disability Commission at the prior meeting. Ms. Anne McDonnell, Executive Director, Brain Injury Association of Virginia, provided additional information about needs related to funding for brain injury services. The Work Group decided to amend its recommendation for funding for brain injury services to include \$2,480,000 for brain injury services provided by the Department for Aging and Rehabilitative Services, which should include \$1.5 million for case management services to reduce waiting lists for services and establish services in unserved regions of the Commonwealth; \$880,000 to reduce waiting lists and increase access to clubhouse, day program, and other brain injury services in the Commonwealth; and \$100,000 for Virginia Statewide Trauma Registry coordination outreach and resource coordination services in the Commonwealth. The Work Group also recommended \$2,050,000 to fund brain injury case management, day program, and resource coordination service rate increases in the Commonwealth.

Next Meeting

The Commission met on October 21 and will also meet on December 4.

VIRGINIA DISABILITY COMMISSION

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Virginia Autism Advisory Council

August 21, 2013

The Virginia Autism Advisory Council (Council) held its inaugural meeting in Richmond. The members present unanimously elected Senator Hanger as chair and Delegate Greason as vice chair of the Council.

Sarah Stanton, Senior Attorney, and Ryan Brimmer, Attorney, Division of Legislative Services

Ms. Stanton provided an overview of the Council's statutory grant of authority and duties. Mr. Brimmer provided an overview of legislative efforts relating to autism spectrum disorders (ASDs) over the past four years in the Virginia General Assembly. Of particular note to the Council was Chapter 876 of the 2011 Acts of Assembly, which requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorders (ASDs) and treatment for ASDs in individuals from age two to six, subject to an annual maximum benefit of \$35,000 of coverage for applied behavior analysis. In response to an inquiry as to why mandated coverage ends at age six, it was noted that although some other states have mandated coverage up to age 10, the issue is funding.

Nathalie Molliet-Ribet, Senior Division Chief, Joint Legislative Audit and Review Commission

In 2008, the General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) (HJR 105) to conduct a study to compare services provided to individuals with ASDs in Virginia to services provided in other states, identify best practices and ways to improve delivery of services to Virginians with ASDs, and assess the availability of ASD training for public safety personnel. Ms. Molliet-Ribet provided the Council with an overview of the resulting 2009 JLARC report. She reported that JLARC found that programs serving Virginians with ASDs tended to be poorly coordinated: there was no coordinating entity prior to July 2009 and no centralized and comprehensive source of information about ASDs, and comprehensive case management was not consistently available. JLARC identified the Department of Behavioral Health and Developmental Services (DBHDS) as the

agency to evaluate options for improvement moving forward, such as developing a reliable source of information to educate Virginians about ASDs and available services and either training caregivers or expanding case management services. The vice chair noted that the societal costs of a child growing up with autism are significant and highlighted the need for intensive early intervention services. Another Council member pointed out that there is a shortage of developmental diagnostic pediatricians qualified to make a medical diagnosis of ASDs and that while children wait to be diagnosed, precious time to provide early intervention is ticking away. It was suggested that all pediatricians could be trained in the diagnosis of ASDs. The Council acknowledged that reimbursement would be an issue.

Olivia J. Garland, Ph.D., Deputy Commissioner, Department of Behavioral Health and Developmental Services

Ms. Garland spoke on the agency's implementation of JLARC's recommendations. She reported that the Department of Behavioral Health and Developmental Services published an Action Plan in November 2010 that contains 31 recommendations for improving services to individuals with ASDs. Of the 31 recommendations, 10 have been completed, 10 are in process, and 11 are in need of funding to be completed. Ms. Garland highlighted some of those recommendations, including training 50 new individuals as Positive Behavior Support Facilitators (in progress), establishing a statewide public service campaign regarding early detection and screening for autism (received federal Combating Autism grant for this purpose), and providing autism awareness training for all public safety personnel (in progress; Commonwealth Autism Service and Department of Criminal Justice). Ms. Garland also spoke about DBHDS's Individual and Family Support Program: families who are assisting family members with intellectual disabilities and developmental disabilities can apply for grants of up to \$3,000 to pay for supports, services, and other assistance, such as respite care so that families can go on vacation or participate in other social or recreational activities. Last year, 25 percent of the families served took care of a family member with an ASD. During Ms. Garland's presentation, the Council also received clarification on the credentials necessary to become a Board Certified Behavior Analyst (BCBA): a six-course series,

Chapter 876 (2011) requires coverage for the diagnosis and treatment for ASD in individuals from age two to six.

post-bachelor's degree, and a passing grade on a final exam that results in BCBA certificate.

John Eisenberg, Assistant Superintendent for Special Education and Student Services, Department of Education

The Virginia Department of Education has focused on training, professional development, and parent education in the area of early intervention in ASD.

Mr. Eisenberg spoke to the Council on the Virginia Department of Education's (DOE) effort to implement the education-related recommendations in the 2009 JLARC report. In the area of early intervention, DOE has focused on training, professional development, and parent education. It published two documents, *Guidelines for Educating Students with Autism Spectrum Disorder* and *Models of Best Practice in the Education of Students with Autism Spectrum Disorders*, to improve the provision of Free Appropriate Public Education (FAPE) by school divisions to students with an ASD. DOE has improved Individualized Education Program (IEP) guidance through training and professional development, including webcasts and facilitated online courses. Additionally, DOE has published *Autism Spectrum Disorders and the Transition to Adulthood* (October 2010), developed Project SEARCH programs that specifically target students with ASDs, and developed transition-specific webinars. Finally, DOE has committed to the improvement of service delivery by participating and serving as a leader in the Communities of Learning in Autism and creating the Virginia Applied Behavior Analysis Consortium, an all-virtual program of course work for students at George Mason University, Virginia Commonwealth University, Old Dominion University, and Lynchburg College.

Jaime Hoyle, Senior Staff Attorney, Virginia Joint Commission on Health Care

Mr. Hoyle addressed the Council and notified the membership that she is currently working on a study, at the direction of the General Assembly in SJR 330 (2013), entitled "Needs of Individuals with ASD Transitioning from Secondary Schools." Ms. Hoyle offered to provide the Council with more details once the study is finalized.

Next Meeting

The Council also met on October 9. The next meeting of the Council will be posted on the Council and General Assembly websites as soon as information is available.

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

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Joint Study of Local Tax Structure

September 18, 2013

The Small Business Commission and the Manufacturing Development Commission held its third joint meeting of the 2013 interim in Stafford County. The Commissions and local government representatives have been requested to evaluate tax restructuring plans to eliminate the local license (BPOL), machinery and tools, and merchants' capital taxes. One key objective of any tax restructuring is for the plan to be mutually beneficial to small businesses, the manufacturing sector, local government, and the Commonwealth.

The primary focus of the third meeting was the BPOL tax. In addition, staff provided an overview of the recent tax restructuring enacted in North Carolina.

Local Tax Revenue Replacement

The Honorable Richard D. Brown,
Secretary of Finance

Secretary Brown presented options for replacing local tax revenue that would be lost if the BPOL, machinery and tools, and merchants' capital taxes were eliminated. Secretary Brown began with an overview of the current local reliance on the three taxes, noting that a total of \$898,826,696 is generated across the state annually. This revenue would have to be replaced to keep local budgets balanced. Secretary Brown stated that replacing the three taxes would be equivalent to (i) establishing an additional 0.85 percent local retail sales and use tax, which would raise approximately \$894 million, (ii) instituting a local income tax of 0.5 percent, which would raise an estimated \$844.5 million, or (iii) taking steps to broaden the existing sales tax base. He provided tables comparing the current revenue generated from the three taxes in selected cities and counties with the revenue impact from the 0.85 percent local retail sales and use tax option and the local income tax option. Secretary Brown noted that while the additional revenues from the various options could be used to offset the total revenue loss from the repeal of the three taxes, those revenues may not be realized by individual localities on an equal basis. For instance, if the retail and use sales tax or local income tax options were used with the return being based on the source of the revenue, some

localities would realize more revenue and others less.

Secretary Brown then offered two additional methods for replacing the revenue in a manner that would be more equitable. The first would consist of the state reimbursing the individual localities using a model similar to the process used to provide car tax relief prior to 2006. This option would allow localities to continue to impose the local business taxes and would require the state to reimburse either the taxpayer or the localities. A member asked if the method for the car tax relief that was used before 2006 involved the state picking up the costs on the basis of what the locality would have collected. Secretary Brown responded that the first round of relief involved the state sending the reimbursement directly to the taxpayer. The second round of relief, which began after 2006, consisted of a joint payment system with the state paying a percentage of the bill and the taxpayer paying a percentage. Another member expressed concern about the option, stating that he favored a moratorium on the three taxes with a gradual decline over time to push localities to develop another tax structure that worked better. Secretary Brown stated that such an approach would likely cause localities to be more reliant on real estate taxes.

The second option offered by Secretary Brown would consist of repealing the local business taxes and requiring the state to impose additional revenue measures to reimburse localities based on the historical revenues realized by each locality. He explained that this is the model that is currently used to provide car tax relief and to distribute communications sales and use tax revenues to localities. The amount of the local reimbursement would be fixed with the state raising the money statewide through a variety of means to make up for the percentage of the tax that each locality would have received. Secretary Brown noted that although localities may be made whole under this option, there likely would be some inequality among localities, given the revenue source being replaced and the differing projected growth rates of localities. In addition, consideration should be given to adjusting the distribution of revenues as growth occurs in the individual localities over time. In response to a question about whether a forecasting model using dynamic numbers as opposed to static numbers could be established to allow the inclusion of growth rates, Secretary Brown responded that the Department of Taxation has historically used static models because with dynamic models so many

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important factors must be considered, and leaving out one or more of such factors would destroy the validity of any forecast that would be derived. Another member stated that several speakers had asserted that an increase in economic activity would make up for the loss in tax revenue if the three taxes were repealed. He asked Secretary Brown if he was skeptical of this assertion. Secretary Brown responded that he was skeptical about the extent of the impact of the removal of the taxes. Another member stated that he was leery of using a state tax to cover the loss.

Career and Technical Education Update

Lolita Hall, Director, Office of Career and Technical Education, Department of Education

Ms. Hall updated the Commission members on career and technical education (CTE) progress in Virginia. Ms. Hall emphasized that CTE is critical to ensuring that Virginia is a leader in global competitiveness. She stated that CTE is for all students; for all careers using Career Clusters and Career Pathways developed by the Department; based on employer demand; driven by developments in technology; aligns and supports academics; offers transferable credits; and prepares students for higher education. CTE is currently offered in 309 middle schools, 357 comprehensive high schools, 47 Division-level centers, and 10 regional centers. Gubernatorial initiatives promoting CTE include the creation of 22 Governor's STEM academies, eight Governor's Health Sciences Academies, and the Microsoft IT Academy program.

The Department has developed 16 Career Clusters for CTE. Career Clusters are classifications of related occupations and industries for the purposes of organizing CTE curriculum design and coordinating career counseling. Cluster-level knowledge and skills are correlated with Workplace Readiness Skills for the Commonwealth, which are mandatory components of every CTE course endorsed by the Board of Education. Ms. Hall indicated that the Manufacturing Career Cluster prepares an individual for a career in planning, managing, and performing the transformation of materials into intermediate or final products.

Beginning with the 2013-2014 academic year, all schools are required to develop a personal Academic and Career Plan for each seventh-grade student. The Plan will become part of the student's record and updated if necessary prior

to the student entering the ninth and eleventh grades. Ms. Hall stated that the Plan will incorporate secondary education and postsecondary education elements, lead to an industry-recognized credential or certificate at the postsecondary level or an associate's or bachelor's degree, and include the opportunity for secondary students to participate in dual or concurrent enrollment programs.

Ms. Hall concluded by updating the Commission members on the achievement progress of career and technical education students. In the 2008-2009 academic year 15,873 CTE credentials were earned. This jumped to 39,645 in 2012-2013. In 2008-2009 there were 38,334 CTE completers as compared to 56,226 in 2012-2013. Finally, pass rates on CTE exams improved from 59 percent in 2008-2009 to 68 percent in 2012-2013.

Impact of BPOL on Business

Mary-Huffard Kegley, Retail Merchants Association/Virginia Retail Federation
Nicole Riley, National Federation of Independent Business

Ms. Kegley and Ms. Riley provided background information on the BPOL tax. The tax is a tax on the gross receipts earned by businesses that was originally instituted to pay for the War of 1812. Virginia is one of five states that levy a BPOL tax. Delaware, Ohio, Texas, and Washington also impose some sort of gross receipts tax. Ms. Kegley stated that the original BPOL tax rates were based on the relative profitability margins of different industries and that the tax rates have not been revised in over 30 years. Many localities charge the maximum tax rate allowed by law. All 39 of Virginia's cities and 48 of its 95 counties collect the BPOL tax. BPOL accounts for 6.22 percent of the tax revenue for Virginia's cities and 3.79 percent of the tax revenue for Virginia's counties.

In 2009 the Virginia Retail Federation commissioned Chmura Economics and Analytics to study the BPOL tax. The study found that Virginia retailers pay a higher percentage of their profits in BPOL tax when compared to the industries' average and that there is much variation in BPOL tax rates by industry and locality.

The Virginia retail sector had an effective BPOL tax rate of 1.56 percent of profits, which is higher than the average for all industries. In 83 percent of the localities imposing the tax, retail businesses paid a higher effective BPOL tax rate than the average for all industries.

Ms. Riley concluded the presentation by stating that experts have criticized the BPOL tax because it is levied at every point along the production chain. She mentioned that this results in tax pyramiding. In addition, a tax on gross receipts ignores a business' ability to pay the tax because even a business with no net income is liable for the tax. This constitutes a bias against beginning businesses because they are more likely not to have net income. Ms. Riley remarked that the BPOL tax creates serious equity issues and adds unnecessary complexity to Virginia's tax code.

Jennifer Gardner, Government Relations Manager, Delhaize America - Food Lion, LLC

Ms. Gardner shared Food Lion's experience with the BPOL tax. Food Lion has 308 stores in Virginia, the second largest number in any state. These stores employ 17,203 associates.

Food Lion maintains over 12,000 licenses. More than half of Food Lion's total licensure budget is attributed to BPOL. Food Lion pays over \$4 million annually in BPOL taxes to Virginia localities. BPOL license forms can vary from locality to locality. In Maryland, state business licenses are obtained from the Clerk of the Circuit Court in each county.

James T. Hatcher, III, President, Pleasants Hardware

Mr. Hatcher, president, Pleasants Hardware, provided some background information on Pleasants Hardware and expressed his concern over the BPOL tax. Pleasants Hardware is a privately owned small business with 10 locations in five jurisdictions and over 200 employees. Pleasants Hardware, like many other retailers, is a profit margin sensitive and cost-intensive business with Internet competitors. He noted that even though Pleasants Hardware incurred losses in 2010, 2011, and 2012, it still paid more than \$120,000 in BPOL taxes over the three-year period. He suggested that a better use of the BPOL taxes paid during these years would have been to reinvest those funds into Pleasants Hardware. He stated that the BPOL tax is not a transparent tax. It is a tax levied at the wholesale level.

The Honorable Scott Mayausky, Commissioner of the Revenue, Stafford County

Commissioner Mayausky provided the Commission members with demographic data pertaining to Stafford County and summarized Stafford County's experience with the BPOL tax.

Stafford County is the largest county not to impose the BPOL tax. It has experienced 40 percent population growth in the last 10 years. Commissioner Mayausky stated that the county's median income presently is the 5th highest in Virginia. He also reported that from 2007 to 2012, the County ranked 5th in the Commonwealth in at-place employment job growth.

In 2008 the Stafford County Board of Supervisors enacted a BPOL tax effective January 1, 2010. However, on February 3, 2010, the tax was repealed. According to Commissioner Mayausky, those in favor of a BPOL tax believed that businesses were not paying their fair share. Others believed the county would receive additional revenue from the BPOL tax, making it possible for the county to lower its property taxes.

Commissioner Mayausky also summarized the views of those opposing a BPOL tax. Concern was expressed that the County would lose a competitive advantage in attracting businesses. The belief was held that it was unfair to tax businesses on their gross receipts. Moreover, there was no guarantee that additional revenues from a BPOL tax would result in property tax relief. Finally, it was suggested that the argument that businesses were not paying their fair share was based upon the use of a flawed metric that only took into consideration the real estate tax base. Taking into consideration all taxes imposed by the county, 32.45 percent of all tax revenue collected in 2006 was attributable to businesses. This remained fairly constant at 31.47 percent in 2007, 32.47 percent in 2008, and 32.53 percent in 2009.

In 2000, residential homeowners accounted for 83 percent of real estate taxes in Stafford County and owners of commercial property accounted for 17 percent of real estate taxes. Similarly, in 2012, residential homeowners accounted for 80 percent of real estate taxes in Stafford County and owners of commercial property accounted for 20 percent of real estate taxes. However, between 2004 and 2006, residential homeowners accounted for approximately 88 percent of the real estate tax base. Commissioner Mayausky indicated that this anomaly was the result of the exponential growth in residential home values during the market bubble that preceded the 2007 recession.

Mark Vucci, Senior Attorney, Division of Legislative Services

Mr. Vucci provided an explanation of the 2013 tax restructuring enacted by the North

*The Joint Study of
Local Tax Structure
heard information
about Stafford
County's experience
with the BPOL tax.*

Carolina General Assembly. The objectives/end results of the tax restructuring were the broadening of the corporate and individual income tax bases through the repeal of many income tax preferences, lower corporate and individual income tax rates, the broadening of the retail sales tax base through the extension of the retail sales tax to selected services, a reduction in overall individual income and corporate income taxes paid and an increase in overall retail sales taxes paid, the repeal of the estate tax, and tax simplification.

The North Carolina Fiscal Research Division estimated the net revenue impact of the tax restructuring at (\$2.4) billion for the five-year period between FY 2014 and FY 2018. The state's corporate income tax revenues are expected to decrease by a total of \$1.3 billion over the five-year period while individual income tax revenues are expected to decrease by a total of \$2.2 billion. Finally, North Carolina's revenues from its retail sales tax are expected to increase by a total of \$1.9 billion over the five years.

Mr. Vucci commented that North Carolina's corporate income tax rate would be reduced from its present rate of 6.9 percent to six percent for the 2014 taxable year and five percent for the 2015 taxable year. Further, the corporate income tax rate would be reduced by an additional one percent for the 2016 taxable year if North Carolina's general fund revenues are at least \$20.2 billion in FY 2015. Finally, the corporate income tax rate would be reduced by another one percent beginning with the 2017 taxable year if North Carolina's general fund revenues are at least \$20.975 billion in FY 2016. The totality of these changes means that North Carolina's corporate income tax rate beginning with taxable year 2017 will be a maximum of five percent and a minimum of three percent, depending upon if the rate reduction triggers in FY 2015 and FY 2016 are satisfied.

Many corporate income tax credits were eliminated or allowed to sunset. These included tax credits for producing biodiesel fuel, constructing renewable fuel facilities, producing interactive digital media, rehabilitating historic buildings, producing low-income housing, and undertaking conservation tillage.

In taxable year 2013, North Carolina's individual income tax was imposed at progressive rates of six percent, seven percent, and 7.75 percent. The 2013 tax restructuring replaced these progressive rates with flat rates on individual income of 5.8 percent for taxable year 2014 and 5.75 percent beginning with taxable year 2015.

The individual income tax changes included increasing the standard deduction from \$6,000 to \$15,000 for married filers and from \$3,000 to \$7,500 for single filers and married persons filing separate returns. For persons not claiming the standard deduction, modified federal itemized deductions are made available. Deductions for charitable contributions will be allowed beginning in taxable year 2014 to the same extent as allowed on the individual's federal income tax return. However, the combined amount of mortgage interest and real estate taxes paid by the individual that may be deducted is limited to \$20,000 each taxable year. North Carolina also eliminated the ability of individuals to itemize or deduct personal property taxes, unreimbursed medical costs, and employee expenses.

Along with the standard deduction or modified federal itemized deductions that may be claimed, a deduction for Social Security income is for the most part the only other deduction that may be claimed in computing North Carolina individual income tax. Beginning with taxable year 2014, North Carolina eliminated its personal exemption amount as well as the deduction for contributions made to a 529 savings plan for higher education.

Mr. Vucci noted that the tax restructuring extended North Carolina's retail sales tax to live performances, movies, amusements for which an admission is charged, and service contracts to maintain or repair property, not including labor. In addition, the retail sales tax charged on the sale of manufactured and modular homes was increased to the North Carolina state rate of 4.75 percent. The restructuring repealed existing sales tax exemptions for newspapers and college meal plans as well as back-to-school and energy star sales tax holidays.

Finally, the tax restructuring capped North Carolina's tax on gasoline at \$0.375 per gallon through June 30, 2015.

Amigo Wade, Senior Attorney, Division of Legislative Services

Mr. Wade provided an overview of the 2013 Manufacturing and Logistics National Report (MLN Report). This report is sponsored by Conexus Indiana, a private sector initiative, and developed by the Ball State University Center for Business and Economic Research. The MLN Report is designed to provide a comparative snapshot of how each state ranks among its peers in eight sectors of the economy that typically provide an indication of the level

of success in the manufacturing and logistics industry. The sectors are:

- Industry health-the production of goods and the movement of those goods.
- Human capital-the quality and availability of labor.
- Worker benefit costs-the combination of labor costs.
- Tax climate-the state and local tax rates.
- Expected liability gap-including bonds for infrastructure and pension obligations.
- Global reach-the level of international trade including both export and import.
- Sector diversification-the total economic diversity.
- Productivity and innovation-the availability and access to public and private laboratories, and nonprofit research activities.

The data included in the report is graded like an academic report card, with grades ranging from A to F, and is presented in the form of a table to allow quick reference comparisons among the states. Virginia received grades ranging from an “A” in sector diversification to a “D” in the health of its manufacturing industry. The comparative performance of the state may be traced over the last several years by reviewing MLN Reports from previous years. These reports are found on the Conexa Indiana website: <http://conexus.cberdata.org/>.

Virginia received grades ranging from an “A” in sector diversification to a “D” in the health of its manufacturing industry in the 2013 Manufacturing and Logistics National Report.

Members of the General Assembly requesting multiple copies of Division of Legislative Services publications should email mtanner@dls.virginia.gov.

JOINT STUDY OF LOCAL TAX STRUCTURE

SENATOR FRANK WAGNER, CHAIR
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Virginia Housing Commission

September 18, 2013

Homelessness in Virginia has been declining, with the homeless rate decreasing by 16 percent in the past year and the homeless veteran rate decreasing by 18 percent.

The Virginia Housing Commission (Commission) met in Richmond with Senator Mamie Locke, chair, presiding.

Advancements in Overcoming Homelessness in Virginia

Bob Sledd, Senior Economic Advisor to the Governor

Mr. Sledd provided an update of Virginia's Homeless Outcomes Initiative (Initiative). Mr. Sledd noted that the Initiative came about because there was no plan to address homelessness at the state level. Executive Order #10, issued in April 2010, authorized the establishment of a Housing Policy Framework. This led to the creation of the Homeless Outcomes Advisory Committee led by Mr. Sledd and Virginia Secretary of Health and Human Resources Dr. Bill Hazel. Mr. Sledd noted that Pam Kestner serves as the Homeless Outcomes Coordinator and that Bill Shelton and the Virginia Department of Housing and Community Development have also provided strong leadership. Mr. Sledd reported that after five months of a rigorous meeting schedule, the "Homeless Outcomes Advisory Committee: Report and Recommendations" (Report) was published. Mr. Sledd summarized some of the key findings of the report:

- Homelessness reduced by 16 percent by 2013.
- Family homelessness reduced by 17 percent.
- Chronically homeless rate reduced by 16 percent over past three years.
- Homeless veteran rate decreased by 18 percent in past year.
- Severely mentally ill homeless rate decreased by seven percent.
- Chronic substance abuse homeless rate decreased by 30 percent.
- Homeless Outcomes Coordinating Council established.

Mr. Sledd then discussed the changes in resources that allowed for success in reducing homelessness. He noted that in FY 2013 and FY 2014 the Governor and General Assembly provided additional funds in both Permanent Supportive Housing (\$1 million for permanent supportive housing in FY 2013 and an additional \$500,000 in FY 2014) and Rapid Re-

Housing (\$500,000 in FY 2013 and \$500,000 in FY 2014). The Virginia Department of Housing and Community Development increased the flexibility of funding for homeless services, shifting funds from the traditional approach of funding transitional housing programs to funding rapid re-housing programs. In FY 2012, approximately 300 families were rapidly re-housed; in FY 2013 that number increased to 900. Through the Department of Housing and Community Development, the number of organizations that provide Rapid Re-Housing increased from less than 10 providers in FY 2011 to more than 60 in FY 2013.

Mr. Sledd also stated that through grants from the Freddie Mac Foundation and the National Alliance to End Homelessness the state has developed a process and tool that communities can use, at little or no cost, to share household data about homelessness with the state. The tool allows the state to collect data about how long individuals and families are homeless, how quickly they are housed, and if they return to homelessness, providing important data about which programs work well.

Mr. Sledd then reviewed the Homeless Outcomes Coordinating Council's upcoming plans:

- Increasing the number of Permanent Supportive Housing units.
- Rapidly re-housing individuals and families.
- Strengthening the capacity of service providers to provide rapid re-housing.
- Identifying resources for peer recovery programs.
- Developing a statewide data collection process.

Discussion then ensued that included remarks concerning homelessness among those recently released from prison.

Work Group Reports

Affordability, Real Estate Law and Mortgages Work Group

The Affordability, Real Estate Law and Mortgages Work Group (Work Group) reported that regarding the Service Members Civil Relief Act and the Virginia Residential Landlord and Tenant Act, it had been unable to engage with service groups and decided not to act. It will discuss HB 1973 (2013), which deals with the death or disability of a real estate broker, at a future meeting.

The Work Group also reported on its work regarding the First Time Home Buyer Savings Account (HB 1868 (2013)). It was noted that the Virginia Bankers Association was concerned with policy regarding this bill. Realtors believe that if you do not receive a deduction for the fund and are able to put that money in an investment account it would be a good program for consumers. The Department of Taxation deduced that it would have a nominal fiscal impact, while a deduction would have a massive fiscal impact. The Work Group noted that it would like to have a structure in place for a growth-free account. The bankers and realtors agree on the language, but the bankers would like to continue to develop policy. The Work Group has not made an official recommendation on this.

The Work Group also noted regarding Local Real Property Tax in Certain Service Districts (HB 2131 (2013)) that of the housing developments included in the taxing service district, the residents want just business owners to be taxed, and the businesses want everyone to contribute. There has not yet been a resolution.

The Executive Director then noted that a sub-work group will meet to discuss the addition of a source of income to the Fair Housing Act as proposed by SB 1224 (2013).

Common Interest Communities Work Group

The Common Interest Communities Work Group (Work Group) discussion involved the Supreme Court Ruling to impose a fine by the Common Interest Communities Board. The Work Group noted that HOA declarations require a supermajority to make any changes. The Work Group reported that it was currently fact finding to get a handle on impacts of the issues and that there were no specific fixes presented. The Work Group invited stakeholders to see if anything will be introduced in the session. If nothing, it can look into how to be more proactive. The Work Group also noted that SB 1315 (2013) regarding control period was referred to the Work Group, however, the decision was made not to continue discussion of the issue at this time.

Housing and Environmental Standards Work Group

The Housing and Environmental Standards Work Group reported on the following bills and issues:

- SB 822 (2013). Statewide Fire Prevention Code; Changes Authority from DHCD. The

issue will be discussed for the third time at that day's meeting: the current building codes may adequately address this issue.

- HB 1574/SB 1239 (2013). Uniform Statewide Building Code; if town does not elect to enforce, county shall enforce. Two pieces of legislation have been proposed regarding the town and county endorsements of building codes.
- Generators in High-Rise Apartments. The issue of having generators for those living in high-rise apartments during power outages has been discussed, but a solution has not been found yet.
- Adaptive Flooding. The item will be discussed for the first time at that day's meeting.

Neighborhood Transitions and Residential Land Use Work Group

The Neighborhood Transitions and Residential Land Use Work Group (Work Group) gave information about the following:

- SB 748 (2013). Building Revitalization Grant Fund. The bill encourages the reuse of old buildings to create new businesses. The Work Group discussed how to improve the bill and has a draft on the way.
- HB 2302 (2013). Electronic Security Systems, Registration for Sales. The bill has been discussed and the issue will continue to be worked on.

Public Comment

The Virginia Housing Commission heard public comment before adjourning.

Next Meeting

The Governor's Housing Conference will be held on November 20, 2013, in Norfolk, and the Commission will meet again on December 12, 2013.

*The Virginia
Housing
Commission heard
updates from three of
its work groups.*

VIRGINIA HOUSING COMMISSION

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Virginia Code Commission

September 18, 2013

The Virginia Code Commission (Commission) met in Richmond with Senator John Edwards, chair, presiding.

The Virginia Code Commission continued its work on the recodification of Title 33.1.

Title 3.2 Technical Correction

Marty Farber, Senior Research Associate, Division of Legislative Services

Marty Farber presented draft legislation to correct an error in the Title 3.2 recodification legislation (Chapter 860 of the 2008 Acts of Assembly). Mr. Farber explained that the proposed bill reinserts language in § 3.2-301 of the Code of Virginia (Code) that was inadvertently omitted during the recodification process. The Code Commission approved the recommendation to introduce legislation to reinstate the language at the upcoming legislative session.

Recodification and Drafting Policies

Jane Chaffin, Division of Legislative Services

Ms. Chaffin explained that the list of policies of the Commission for drafting and title recodification is presented for review and comment. The policies do not include style matters as those are addressed in the Division of Legislative Services drafting manual. Ms. Chaffin briefly reviewed each policy.

Ms. Chaffin indicated that the “Not Set Out” policy may need to be revisited in light of the fact that the Code is online. The Commission discussed the need to add the history of the section to direct the reader to the Acts of Assembly and to discourage drafters and legislators from including provisions that will be omitted in the statutes (e.g., policy statements, purpose of the legislation, legislative intent, or provisions that do not have general or permanent application). After discussion, the Commission decided to make no change to the “Not Set Out” policy at this time. The Commission adopted the “Code Commission Policies for Drafting and Title Recodification” as presented in the handout.

Recodification of Title 33.1: Highways, Bridges and Ferries

Nicole Brenner, Attorney, and Alan Wambold, Senior Research Associate, Division of Legislative Services

Nicole Brenner reviewed the organization plan and proposed schedule. Ms. Brenner and Mr. Wambold presented the following chapters, some of which the Commission had previously reviewed:

- Definitions; General Provisions (Subtitle I).
- Transportation Entities (Subtitle I).
- Transportation Funding (Subtitle III).

The Commission discussed or took action on several items related to the chapters that can be viewed in their entirety on the website.

Other Business

Ms. Chaffin provided information regarding the November 2013 Administrative Law Conference, which is cosponsored by the Commission.

Mr. Moncure noted that Volume 1 of the Code, which includes the Foreword, will be replaced in 2014 and suggested that the Foreword include a statement that the Code will be completely revised in 2019. After a brief discussion of the prior attempt to completely revise the Code in 2007 and issues relating to a complete revision, Senator Edwards directed that this item be placed on the November 2013 meeting agenda for general discussion.

Mr. Palmore announced that he has accepted a position with the law firm of Reed Smith, and therefore, this meeting is his last one with the Commission. The chair thanked Mr. Palmore for his contribution to and service on the Commission.

Next Meeting

The Commission also met on October 23, 2013.

VIRGINIA CODE COMMISSION

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Virginia Sesquicentennial of the American Civil War Commission

October 1, 2013

The Executive Committee of the Virginia Sesquicentennial of the American Civil War Commission (Commission) met in Richmond with Speaker William Howell, chair, presiding.

Sesquicentennial Tourism Marketing Grant

Steve Galyean, Virginia Tourism Corporation

Seven applications were received during the Summer 2013 round of grants funded through the Sesquicentennial Tourism Marketing Program. Five were recommended for approval by the staff review committee. Two applications were not recommended for approval, based on scoring. Staff will work with those applicants to strengthen future applications.

Staff Report

Cheryl Jackson, Executive Director
CIVIL WAR 150 HISTORYMOBILE

The HistoryMobile has been to over 110 events since its tour began in July 2011, and seen nearly 90,000 visitors, 45 percent of whom have been students. Visitors in 2013 hailed from every state, as well as other countries, including Belgium, Denmark, England, Germany, Scotland, Australia, and Canada. Merchandising at the HistoryMobile has also been successful, taking in approximately \$15,000 in sales and donations to date.

Rusty Nix, Tour Manager, showed short videos that demonstrate the set-up of the exhibit, as well as a video in which members of the Commission discuss the tourism and educational impact of the HistoryMobile.

Ms. Jackson presented a proposed 2014 HistoryMobile tour schedule. A total of 51 applications were received, of which 44 were recommended. Recommendations were based on the Commission's scheduling priorities: (i) 150th anniversary events, (ii) visiting schools and making the HistoryMobile available to students and teachers, and (iii) maximizing the reach of the HistoryMobile to visitors throughout Virginia and into other states. Ms. Jackson noted that the proposed tour schedule

includes out-of-state visits to Maryland, West Virginia, Georgia, and Mississippi, which is a condition of the National Endowment for the Humanities grant that funded the exhibit. Mr. Nix showed a color-coded map of the state, broken down by county, to illustrate that the tour would cover different parts of the state, including several counties not previously visited.

SIGNATURE CONFERENCE SERIES

Ms. Jackson updated members on the 2014 Signature Conference, *The American Civil War in a Global Context*, which will be held at George Mason University on May 31, 2014. While the program is coming together well overall, one presenter has declined to appear in person, preferring instead to send a paper to be read by the conference chair. After discussion, members agreed that the honorarium is for participation in the conference itself. They further noted that travel costs for presenters cannot be paid in advance and asked Ms. Jackson to work with planners at George Mason University to develop a suitable alternative.

On behalf of conference co-chairs Gary Gallagher and Liz Varon, who had scheduling conflicts and were unable to attend the Executive Committee meeting, Ms. Jackson presented the proposal for the final program in the Signature Conference series, *Causes Won and Lost: The End of the Civil War*, to be held April 18, 2015, at the University of Virginia.

The program will bring together leading historians to discuss the Civil War's dramatic closing scenes, its turbulent aftermath, and its long-term legacy in American life. The first panel will survey the surrenders of the Confederate armies, take up the controversial issues of why the Confederacy succumbed and the Union triumphed, and assess how Lincoln's presidency and his assassination shaped the peace. The second panel will trace the origins of the pro-Confederate "Lost Cause" understanding of the war, examining its reverberations in postwar politics and its potent role in shaping popular memory. The third panel will explore the countervailing understandings of the Union Cause, which represented the dominant meaning of the war among Northern soldiers and civilians, and address the postwar efforts of Northerners to enshrine their vision of a righteous Union in American politics and culture. The fourth panel will consider African American interpretations and memory of the war, elucidating the experiences of emancipated

The Civil War 150 HistoryMobile has had nearly 90,000 visitors since its tour began in July 2011.

slaves, of U.S.C.T. soldiers, and of prominent political leaders such as Frederick Douglass and W.E.B. Du Bois. This wide-ranging conference will serve as an occasion for scholars and the public to join in reflecting on what we have learned collectively during the 150th anniversary of the Civil War.

The 2014 Signature Conference "The American Civil War in a Global Context" will feature a host of speakers.

Scheduled presenters:

- Conference Chairs: Gary W. Gallagher and Elizabeth R. Varon (University of Virginia).
- Edward L. Ayers (University of Richmond).
- David W. Blight (Yale University).
- John M. Coski (Museum of the Confederacy).
- J. Matthew Gallman (University of Florida).
- Barbara A. Gannon (University of Central Florida).
- Thavolia Glymph (Duke University).
- Harold Holzer (Metropolitan Museum of Art).
- Caroline E. Janney (Purdue University).
- Elizabeth D. Leonard (Colby College).
- James M. McPherson (Princeton University).
- John R. Neff (University of Mississippi).
- Joan Waugh (University of California, Los Angeles).

APPROVAL OF LOGO REQUESTS

Ms. Jackson noted that the Commission has received three applications for logo usage since the previous meeting, two of which were given provisional authorization and recommended for approval by the Executive Committee:

- Madison County (Fliers promoting commemoration of the Battle of Jack's Shop).
- Museum of the Confederacy (Fliers for lecture by Caroline Janney).

An application was also received from the Pittsylvania County Sesquicentennial Committee for use of the logo for a project that would reprint letters from 1916 in the local paper, as was done during the Civil War centennial. No action was taken on that logo request, due to questions about provenance and relevance of the letters.

AWARDS AND RECOGNITIONS

Ms. Jackson enumerated the awards recently received by the Commission, which is hailed as a national model for historic commemorations, and shared compliments of the Commission's work from across the country. Members

thanked Ms. Jackson and staff for their leadership and hard work.

- Virginia Historical Society - Distinguished History Service Award.
- National Conference of State Legislatures - Outstanding Achievement Award and Notable Documents Award.
- American Association for State and Local History Leadership in History Awards of Merit - HistoryMobile and Legacy Project: Document Digitization and Access.

Proposed Extension Language for 2014 Appropriation Act

Dick Hickman, Senate Finance Committee

Mr. Hickman presented a draft amendment for the 2014 appropriation act that would continue the Virginia Sesquicentennial of the American Civil War Commission through June 30, 2016, for the purpose of completing the ongoing work of the Commission, and reduces the appropriation for the Commission in the second year to reflect the winding down of the Commission's work. The original enabling legislation provided for the sunset of the Commission on June 30, 2015. The ongoing work of publishing conference proceedings and other activities will not be completed by the original sunset date, but should be completed during FY 2016. The amendment further provides for the transfer of any unexpended funds remaining in the appropriation.



VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

SPEAKER WILLIAM HOWELL, CHAIR
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Joint Subcommittee to Evaluate Tax Preferences

October 8, 2013

The Joint Subcommittee to Evaluate Tax Preferences (Joint Subcommittee) met in Richmond with Senator Jeffrey L. McWaters, chair, calling the meeting to order and directing members' attention to a memo he had sent them proposing a method for how the Joint Subcommittee should proceed with conducting its review of Virginia's numerous tax preferences. He explained that the initial meetings of the Joint Subcommittee had been an opportunity to learn about and understand tax preferences, but now it is time for the group to decide how it really wants to review them.

Washington State Review of Tax Preferences

Mary Welsh and John Woolley,
Washington State's Joint Legislative
Audit and Review Commission

Ms. Welsh and Mr. Woolley joined the meeting via videoconference from Washington State. Washington legislatively mandated the review of tax preferences in 2006 and since that time has emerged as a leader in this evaluative process.

Washington State's Joint Legislative Audit and Review Commission (JLARC) has, in its eight years of review, conducted 180 reviews of tax preferences. Because Washington State has neither an individual nor a corporate income tax, most of the preferences are sales tax exemptions or provide for a preferential rate on the state's gross receipts tax. Ms. Welsh walked the Joint Subcommittee through three specific reviews that they had conducted. She used these examples to illustrate the process that a Washington State auditor goes through to conduct each review. The reviews are designed to be independent, evidence-based performance audits to attempt to determine if a preference does indeed meet its policy goals. The audits do not evaluate the underlying policy or comment on whether policy is "good" or "bad."

The review of the research and development-related preference provided a unique opportunity to conduct a cause and effect analysis. Because of the nature and size of the incentive, the auditors were able to determine that "but for the incentive, jobs would not have been created." However, they

cautioned that this is a relatively unique situation and that most reviews do not lend themselves to this kind of evaluation. They might be able to determine that jobs were created in a particular industry, but cannot often prove that the jobs were created because of the preference.

The auditors at JLARC conduct the initial reviews and make a recommendation. The recommendations then go to a Citizen Review Commission (Commission). The Commission is established by code and includes appointees of the majority and minority parties in the House and Senate and a gubernatorial appointee. The chair of JLARC and the state auditor also serve as nonvoting members. The Commission cannot change the auditor's recommendation, but can receive public comment on the preferences and make comments regarding the recommendation that become a part of the public record. Finally, the report is presented to JLARC, and the legislative members decide whether or not they wish to introduce legislation based on the auditor's report and recommendations.

Mr. Woolley noted that when the review process was first established, statute dictated that the preferences be reviewed in order of adoption. This has since been changed to allow the Commission to group the preferences in "clusters" (by industry, topic area, etc.) and establish a calendar for review. He also noted that the statute exempts certain preferences from review, such as the sales tax exemption for machinery and tools purchased by manufacturers or the sales tax exemption for food. Washington State staff indicated they would provide Virginia staff with a complete list of the exempted preferences. Finally, he noted that Washington State has the capacity to conduct about 22 preference reviews annually.

Work Plan

The Joint Subcommittee then turned to a discussion of the development of its own work plan. Staff indicated that they planned to consult, one-on-one, with experts to assist in developing a review methodology. It was suggested that the preferences be reviewed in order of their estimated value, largest to smallest. He indicated that the review should largely be a fiscal analysis, but that there would likely be a subjective element as well.

*Washington State's
Joint Legislative
Audit and Review
Commission
explained its tax
preference review
system.*

Next Meeting

The Joint Subcommittee indicated that it would like to meet one more time before the beginning of the year.

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

SENATOR JEFF MCWATERS, CHAIR
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Did You Know?

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

2014 Session Prefiling Calendar

- Joint subcommittees on studies should submit an executive summary including findings and recommendations to DLAS by the first day of the General Assembly's Regular Session.
- All requests for drafts of legislation for prefilng to be submitted to DLS by 5:00 p.m. on December 6, 2013.
- All drafts of legislation to be prefled returned by DLS for requester's review by midnight December 27, 2013.
- All requests for drafts, redrafts, and corrections of legislation creating or continuing a study to DLS by 5:00 p.m. on January 3, 2014.
- All requests for redrafts and corrections for legislation to be prefled to DLS by 5:00 p.m. on January 3, 2014.
- Legislation to be prefled available by noon on January 7, 2014.
- Prefiling for the 2014 Session ends at 10:00 a.m. on January 8, 2014.
- The 2014 General Assembly convenes on January 8, 2014, at noon.

Meeting Calendar for November 2013

Joint Legislative Audit and Review Commission	10:00 a.m., Tuesday, November 12, 2013—Senate Room A, GAB
Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act Maria Everett	1:00 p.m., Tuesday, November 12, 2013—House Room C, GAB
Virginia Housing Commission/Affordability, Real Estate Law and Mortgages Work Group Elizabeth Palen	10:00 a.m., Wednesday, November 13, 2013—House Room C, GAB
FOIA Council/Discussion on Geographic Information Systems and the Virginia Freedom of Information Act Maria Everett/Alan Gernhardt	10:00 a.m., Wednesday, November 13, 2013—6th Floor Speaker's Conference Room, GAB
FOIA Council/Discussion on Geographic Information Systems and the Virginia Freedom of Information Act Maria Everett/Alan Gernhardt	1:00 p.m., Wednesday, November 13, 2013—6th Floor Speaker's Conference Room, GAB
Virginia State Crime Commission	11:00 a.m., Thursday, November 14, 2013—Senate Room A, GAB
Small Business Commission/HB 2198 (2013) Work Group Amigo Wade	2:00 p.m., Thursday, November 14, 2013—3rd Floor East Conference Room, GAB
Joint Commission on Health Care	10:00 a.m., Monday, November 18, 2013—Senate Room A, GAB
Joint Commission on Technology and Science/Identity Management Advisory Committee Lisa Wallmeyer	1:00 p.m., Monday, November 18, 2013—3rd Floor East Conference Room, GAB
Virginia Commission on Youth	1:00 p.m., Monday, November 18, 2013—House Room C, GAB
House Appropriations Committee/Committee Retreat	1:00 p.m., Tuesday, November 19, 2013, and 9:00 a.m., Wednesday, November 20, 2013—Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke
Virginia Code Commission Jane Chaffin	10:00 a.m., Wednesday, November 20, 2013—6th Floor Speaker's Conference Room, GAB
Virginia Housing Commission/Governor's Housing Conference Elizabeth Palen	1:00 p.m., Wednesday, November 20, 2013—Waterside Marriott, 235 East Main Street, Norfolk
Senate Finance Committee/Annual Meeting	TBD, Thursday, November 21, 2013 and Friday, November 22, 2013—Williamsburg
Joint Commission on Technology and Science Lisa Wallmeyer	10:00 a.m., Tuesday, November 26, 2013—House Room D, GAB

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

Meeting Calendar for December 2013

Virginia State Crime Commission	10:00 a.m., Monday, December 2, 2013—Senate Room A, GAB
Joint Subcommittee to Evaluate Tax Preferences David Rosenberg/Lisa Wallmeyer	2:00 p.m., Tuesday, December 3, 2013—House Room D, GAB
Virginia Disability Commission Sarah Stanton/Thomas Stevens	10:00 a.m., Wednesday, December 4, 2013—House Room 1, Capitol
Virginia Freedom of Information Advisory Council Maria Everett/Alan Gernhardt	1:30 p.m., Thursday, December 5, 2013—House Room C, GAB
Joint Legislative Audit and Review Commission	10:00 a.m., Monday, December 9, 2013—Senate Room A, GAB
Virginia Housing Commission Elizabeth Palen	10:00 a.m., Thursday, December 12, 2013—House Room C, GAB
Joint Meeting of House Appropriations Committee, House Finance Committee, and Senate Finance Committee	9:30 a.m., Monday, December 16, 2013—House Room D, GAB

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

Other Legislative Commissions and Committees

The following are other legislative commissions and committees that hold regular meetings during the interim. Visit their websites to obtain full information regarding their meeting dates, agendas, and summaries.

Joint Legislative Audit and Review Commission

<http://jlarc.virginia.gov/meetings.shtml>

Virginia State Crime Commission

<http://vscc.virginia.gov/meetings.asp>

Joint Commission on Health Care

<http://jchc.virginia.gov/meetings.asp>

Virginia Commission on Youth

<http://vcoy.virginia.gov/meetings.asp>

House Appropriations Committee

<http://hac.virginia.gov/>

Senate Finance Committee

<http://sfc.virginia.gov/>

Medicaid Innovation and Reform Commission

<http://mirc.virginia.gov/>

REGULATORY ALERT

A CONVENIENT GUIDE TO REGULATORY ACTIVITY IN THE COMMONWEALTH

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

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

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

10VAC5-40. Credit Unions (adding 10VAC5-40-80, 10VAC5-40-90).

A public hearing will be held upon request. Written public comments may be submitted until November 8, 2013.

Summary:

The State Corporation Commission is proposing regulations that would give state-chartered credit unions the authority to (i) purchase loan participation interests to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR 701.22 and (ii) offer employee benefit plans and defined benefit plans on terms and conditions comparable to federal credit unions under 12 CFR 701.19. The proposed regulation also provides state-chartered credit unions the authority to purchase an investment to fund an obligation under an employee benefit plan or defined benefit plan provided that the investment is directly related to the credit union's obligation or potential obligation and the credit union holds the investment only for as long as it has an actual or potential obligation under such plan.

For more information, please contact Werner Paul, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, Richmond, VA 23218, telephone (804) 371-9698, FAX (804) 371-9416, or email werner.paul@scc.virginia.gov.

TITLE 13. HOUSING BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-10, 13VAC5-21-31 through 13VAC5-21-61).

A public hearing will be held on December 16, 2013, at 10 a.m. at the Virginia Housing Center in Glen Allen. Written public comments may be submitted until December 20, 2013.

Summary:

The Board of Housing and Community Development proposes to amend the Virginia Certification Standards to (i) require applicants for certification to have completed qualifying examinations and education not more than six years before submitting their applications; (ii) remove specified building code academy training modules for initial certification and, instead, refer to a required list of training modules maintained by the Department of Housing and Community Development; (iii) specify that the board will consider allowing training alternatives to training requirements listed in these regulations; and (iv) require nongovernmental certificate holders to meet the same continuing education requirements as those set forth in the Uniform Statewide Building Code for governmental certificate holders.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

13VAC5-80. Virginia Standards for Individual and Regional Code Academies (amending 13VAC5-80-10, 13VAC5-80-60, 13VAC5-80-80, 13VAC5-80-90, 13VAC5-80-120, 13VAC5-80-140).

A public hearing will be held on December 16, 2013, at 10 a.m. at the Virginia Housing Center in Glen Allen. Written public comment may be submitted until December 20, 2013.

Summary:

The proposed amendments (i) clarify the existing mandatory requirements for local and regional code academies formed to provide training to enforcement personnel of the state building and fire regulations and (ii) define the requirements for conducting classes for initial accreditation to prepare an individual to pursue an occupation in the inspection profession relating to the enforcement of the Uniform Statewide Building Code, the Statewide Fire Prevention Code, and the Virginia Amusement Device Regulations and for renewal of accreditation to upgrade an individual in the technical phases of these codes.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10, 13VAC5-95-20, 13VAC5-95-30, 13VAC5-95-50, 13VAC5-95-60, 13VAC5-95-80, 13VAC5-95-90, 13VAC5-95-100; repealing 13VAC5-95-40, 13VAC5-95-70).

A public hearing will be held on December 16, 2013, at 10 a.m. at the Virginia Housing Center in Glen Allen. Written public comments may be submitted until December 20, 2013.

Summary:

The proposed amendments (i) incorporate by reference the recent changes and additions to the Federal Construction Standards of the federal Department of Housing and Urban Development (HUD) and specify the new mandated HUD installation standards for manufactured housing; (ii) more thoroughly define installation of manufactured homes; (iii) clarify the role of local building officials by providing more detail

regarding enforcement responsibilities; (iv) provide clarification concerning alterations in new and existing manufactured homes; and (v) clarify the civil penalty and fines resulting from violations of the laws and regulations.

For more information, please contact Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF DENTISTRY**

18VAC60-20. Regulations Governing Dental Practice (amending 18VAC60-20-10, 18VAC60-20-30, 18VAC60-20-107, 18VAC60-20-108, 18VAC60-20-110, 18VAC60-20-120, 18VAC60-20-135; repealing 18VAC60-20-140).

A public hearing will be held on December 6, 2013, at 9 a.m. at the Perimeter Building Conference Center in Henrico. Written public comments may be submitted until December 6, 2013.

Summary:

Pursuant to Chapter 526 of the 2011 Acts of the Assembly, the proposed amendments regulate provision of permits for dentists who provide or administer conscious/moderate sedation or deep sedation/general anesthesia in a dental office. The proposed amendments (i) define words and terms used in sedation and anesthesia regulations; (ii) establish general provisions pertaining to administration of sedation and anesthesia, including recordkeeping, reporting, emergency management, and continuing education requirements; (iii) require dentists who administer deep sedation/general anesthesia and conscious/moderate sedation to obtain permits from the Board of Dentistry; (iv) set out requirements pertaining to the delegation of administration of deep sedation, general anesthesia, and conscious/moderate sedation; (v) set forth the equipment that must be maintained in working order and immediately available to areas where patients will be sedated and treated and where patients will recover; and (vi) establish requirements for the monitoring and discharge of patients.

For more information, please contact Sandra Reen, Executive Director, Board of Dentistry, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

BOARD OF MEDICINE

18VAC85-150. Regulations Governing the Practice of Behavior Analysis (adding 18VAC85-150-10 through 18VAC85-150-200).

A public hearing will be held on October 24, 2013, at 8:45 a.m. at the Perimeter Center in Henrico. Written public comments may be submitted until December 6, 2013.

Summary:

Pursuant to Chapter 3 of the 2012 Acts of the Assembly, the Board of Medicine is required to promulgate regulations to license behavior analysts and assistant behavior analysts. The proposed regulation establishes (i) criteria for licensure, (ii) requirements for fees and applications, (iii) provisions for renewal and reinstatement of licensure, (iv) standards of practice, (v) procedures for the supervision of assistant behavior analysts, and (vi) criteria for supervision of unlicensed individuals who assist in the provision of applied behavior analysis.

For more information, please contact William L. Harp, M.D., Executive Director, Board of Medicine, Richmond, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email wiliam.harp@dhp.virginia.gov.

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Division of Legislative Services

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