



August 2014 Issue

Activities of Virginia Legislative Study Commissions and Joint Subcommittees



Virginia Division of Legislative Services

Virginia Legislative Record

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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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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 or see @varegs on Twitter for more information.

Autism Advisory Council

June 17, 2014

The Autism Advisory Council (the Council) held its first meeting of the 2014 interim on June 17, 2014, in Richmond. Senator Emmett W. Hanger, Jr., called the meeting to order and the Council members introduced themselves. Senator Hanger stated that, due to the lack of a quorum, the Council will elect its chair at the next meeting.

Overview of the Autism Advisory Council

Sarah Stanton and Ryan Brimmer, staff attorneys with the Division of Legislative Services, provided a brief overview of the Council's scope, purpose, membership, and prior activities.

PRESENTATION: Department of Behavioral Health and Developmental Services

Connie Cochran, Assistant Commissioner for Developmental Services, Department of Behavioral Health and Developmental Services (DBHDS)

Mr. Cochran gave a presentation on current programs and efforts designed to assist individuals with autism. He explained that DBHDS provides many services through contracts with community services boards. He spoke about the Commonwealth's intellectual and developmental disability waivers, the extensive waiting list for waivers, and new waiver slots created through the Commonwealth's August 23, 2012, settlement agreement with the U.S. Department of Justice. Mr. Cochran also outlined a recently approved employment program waiver, which better enables individuals with autism to move directly from school to employment through a collaborative effort by DBHDS, the Department for Aging and Rehabilitative Services, and the Department of Education (DOE). Finally, Mr. Cochran noted other efforts under the Early Childhood Intervention Part C Program and crisis services for children, adults, and families.

PRESENTATION: Department of Education

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

Mr. Eisenberg spoke about special education programs in use by the DOE that assist children with autism, including self-paced online programs that have garnered significant participation. Mr. Eisenberg stated that the DOE has been working closely with select school divisions and that significant statistical improvements in performance have been measured in those divisions. Mr. Eisenberg further stated that the number of children diagnosed with autism has grown 245 percent since 2006, totaling approximately 15,859 students in the Commonwealth's school system. Mr. Eisenberg noted that the primary diagnostic tool used to identify autism in children is the Autism Diagnostic Observation Schedule. Finally, Mr. Eisenberg gave positive marks to Project Search, an internship-type program for high school students with autism that is making it easier for these students to secure employment upon graduation.

PRESENTATION: Autism, Dyslexia, and the Issue of Misdiagnosis

Kim Stump, Parent

Ms. Stump spoke about her son's experiences with dyslexia and her family's difficulties in diagnosing her son's condition. Ms. Stump explained that many teachers are unaware of dyslexia and its symptoms, which in her view contributed to delays in diagnosing her son. Ms. Stump further stated that children with dyslexia are often misdiagnosed, as was her son, with, among other conditions, autism, Asperger syndrome, and attention deficit disorder. Ms. Stump stated that the Commonwealth's teachers need more

access to and familiarity with information about dyslexia so that other children and families do not have to suffer misdiagnoses and delayed diagnoses. Ms. Stump recommended that training on dyslexia be included in teachers' undergraduate programs. She explained that her son was taking a long time to complete his homework and was otherwise struggling in school and asserted that because children with dyslexia learn in certain ways, it is important that they are diagnosed early in order to provide them the assistance they need. Ms. Stump suggested that such assistance should be provided in public schools, noting that such services are extremely expensive in a private setting. Ms. Stump also voiced concern that more assistance is being provided to dyslexic children in some school divisions than in others. Ms. Stump noted that dyslexia is much more than simply seeing things backwards; affecting one in five people, dyslexia affects various parts and functions of the brain. She explained that individuals with dyslexia are very intelligent in certain areas and maintained that over 50 percent of NASA employees are dyslexic.

Discussion of 2014 Work Plan

The meeting continued with discussion of the 2014 work plan. The Council plans to formulate potential strategies for lowering the current waiver waiting lists and to evaluate the adequacy of the Commonwealth's current employment support programs and efforts for students with autism. The Council further intends to assess the issue of uniform application of dyslexic and autism support across the Commonwealth. The Council plans to invite parents of children with autism and dyslexia from various regions in the Commonwealth to testify before the Council regarding their satisfaction and experiences with the services being provided in their area. The Council also plans to focus on the issue of proper diagnosis.

Autism Advisory Council

Senator Emmett W. Hanger, Jr., Chair

Ryan Brimmer, DLS Attorney

Sarah Stanton, DLS Senior Attorney

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dls.virginia.gov/commissions/aac.htm

Virginia Freedom of Information Advisory Council

Meetings Subcommittee

July 8, 2014

The Meetings Subcommittee of the FOIA Council (the Subcommittee) held its second meeting of the 2014 interim on July 8, 2014. Subcommittee members George T. Whitehurst (chair), Kathleen Dooley, Forrest M. Landon, and G. Timothy Oksman were present. The purpose of the meeting was to continue the study of meetings exemptions under 2014 House Joint Resolution No. 96 (HJR 96).

FOIA Council Guidance Memo

Staff presented a brief review of the guidance memo sent by the chair and vice-chair of the FOIA Council dated June 10, 2014. Staff quoted from the memo, which suggested using the following measures:



For applicability, review of FOIA exemptions should be from a “zero-based FOIA approach” by assuming that all meetings are open to the public and requiring justification for any exemptions. For appropriateness, give consideration to the following factors:

- *Public good (protection of the public purse or of the public bargaining, negotiating, litigating position) vs. private interest (privacy or proprietary interests);*
- *Attorney/client privilege;*
- *Application of the narrow construction rule found in FOIA at § 2.2-3700;*
- *Updating and clarifying nomenclature;*
- *Impact of court decisions and of opinions of the Attorney General and the FOIA Council;*
- *Legislative history and intent, to the extent available; and*
- *Review of comparable provisions in other states’ FOIA laws.*

Staff presented exemption review worksheets proposed for use in tracking these measures and any additional issues for each exemption. There was no comment on the worksheets.

Presentation

Craig Merritt, Virginia Press Association (VPA)

Mr. Merritt, representing the Virginia Press Association (VPA), presented the VPA’s position paper titled “Virginia Press Association Comments Regarding Principles to be Considered During Study Under HJR 96.” After a brief description of the history of FOIA, Mr. Merritt observed that the paper does not address procedural aspects of FOIA but that the VPA would comment if such matters come up. Instead, the position paper focuses on general principles applicable to any statute in part I, on the scope of FOIA in part II, particularly noting that the definition of “public body” should be broad and include the administrative functions of courts and the State Corporation Commission, and on specific topics and types of exemptions in parts III through IX.

Considerations of Specific Exemptions

The Subcommittee next considered the exemptions in subsection A of § 2.2-3711. Staff presented a brief overview of each exemption and its legislative history as each was brought up for consideration.

Subdivision A 1 of § 2.2-3711 allows closed meetings to be held for the discussion or consideration of certain personnel matters. Staff stated that the exemption is privacy-based and has been interpreted in several opinions of the Office of the Attorney General (OAG) and the FOIA Council. The OAG opinions state that the exemption applies only for consideration of persons over whom the public body has authority or control. Mr. Whitehurst raised three hypothetical examples for comparison: discussion of a local body’s hiring of an administrator or manager who later turned out to be a bad fit with the governing body, versus discussion revealing embarrassing details about a person, versus discussion of gross incompetence. Mr. Landon asked how to clarify the law in situations where a governing body wishes to discuss a lower-level employee who otherwise answers only to the manager of the locality, not to the public body. Roger Wiley, an attorney representing local governments and former FOIA Council member, observed that staff’s recitation of the OAG opinions was accurate, but that most local government attorneys believe the OAG opinions on point to be wrong. As a practical matter, he noted that the OAG opinions did not reflect how local governments actually operate and that managers need to be able to discuss employee matters with the governing bodies. He pointed out that holding such

discussions in public could lead to lawsuits for defamation, discrimination, and other issues. Mr. Oksman noted that such public discussion of employees has in fact led to lawsuits.

Peter Easter, representing the Virginia Association of Broadcasters (VAB), stated that one of the biggest complaints he hears concerns public bodies using the personnel exemption to talk about other things. Mr. Merritt, speaking on behalf of the VPA, stated that Mr. Wiley was on target and noted two concerns: (i) proportionality and (ii) misfeasance, malfeasance, and criminality. Mr. Merritt stated regarding proportionality that at some level the public interest is not worth the problems of disclosure, but for higher-level employees, such as senior administrators with six-figure salaries and large benefits packages, there should be more transparency. On the second issue, Mr. Merritt stated that he was not sure the policy giving confidentiality outweighs the public interest in disclosure.

Mr. Whitehurst expressed his opinion that if one takes any compensation from government, it should be fair game for disclosure. Mr. Oksman voiced his opinion that any performance or personnel evaluation should be performed in private. He also noted that good reporters have other resources for getting information besides FOIA.

Ms. Dooley stated for the record that she felt compelled to disclose that as a city attorney she is directly affected by this exemption as an appointee of the City Council.

Megan Rhyne of the Virginia Coalition for Open Government (VCOG) related that this exemption was the top problem shown in her survey of VCOG members. She noted that from a citizen's perspective, meetings closed for personnel matters often strayed to other policy or personnel issues that did not concern specific individuals.

After further discussion, including consideration of the possibility of requesting a new opinion from the OAG, Mr. Wiley agreed to discuss the matter with other interested parties and staff to create a new draft of this exemption that would reflect current practice rather than the prior OAG opinions for the Subcommittee's consideration at its next meeting.

There were no comments about subdivision A 2 of § 2.2-3711, concerning the discussion of certain matters contained in scholastic records. By consensus the Subcommittee decided to recommend keeping the exemption as it is.

Turning to subdivision A 3 of § 2.2-3711, concerning the acquisition and disposition of real property, the Subcommittee by consensus recommended keeping this exemption as it is.

Regarding subdivision A 4 of § 2.2-3711, concerning "personal matters not related to public business," Mr. Oksman noted an example might be discussing a health condition afflicting a member's spouse. Staff noted that given the exception in subsection G of § 2.2-3707, discussions that do not concern public business are not considered public meetings anyway; Mr. Merritt and Ginger Stanley, both of the VPA, expressed their opinion that this provision is superfluous. However, as it appears to cause no harm and may do some good, the Subcommittee decided to leave it as it is currently written.

The Subcommittee next considered subdivision A 5 of § 2.2-3711, which allows closed meetings "concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community." In the absence of statutory definitions of certain terms, the Subcommittee members and interested parties discussed what constitutes an "announcement" and "the community." After several examples were given of different factual situations, the Subcommittee discussed without deciding whether an "announcement" must be given by a person with some authority, whether the exemption should be rephrased in the active voice, and whether the term "community"



might be replaced with “locality” and “Commonwealth.” Mr. Merritt pointed out that the passive voice works because it does not matter who makes the announcement. Mr. Landon noted that it is not the Subcommittee’s decision to designate who may make an announcement on behalf of another public body. Staff noted that some deals involve regional economic development and multiple localities and public bodies. Mr. Wiley noted that Prince George, Hopewell, and Petersburg had worked together in such a deal to attract Rolls-Royce. After this discussion, the Subcommittee decided to leave this exemption as it is.

Mr. Wiley pointed out that the key aspect of subdivision A 6 of § 2.2-3711, concerning the investment of public funds, is that it concerns investments and not expenditures. As an example, he pointed out that “investing in the community” by building a community center would not be the type of investment covered under this exemption. Again, the Subcommittee decided to leave this exemption as it is.

Regarding subdivision A 7 of § 2.2-3711, concerning probable litigation and consulting legal counsel on specific legal matters, Mr. Merritt pointed out that the problems with this exemption lie more in its application than in its language. Mr. Easter stated that they encountered many problems with the use of this exemption. Various modifications to the existing language were discussed, and the Subcommittee decided to have staff create a new draft that clearly separates the two different parts of this exemption, one addressing discussions of probable litigation and the other addressing consultation with legal counsel on specific legal matters.

Next Meeting

The Subcommittee decided to hold its next meeting at 1:30 p.m. on August 19, 2014.

Records Subcommittee

July 8, 2014

The Records Subcommittee of the FOIA Council (the Subcommittee) held its second meeting of the 2014 interim on July 8, 2014. Subcommittee members Robert L. Tavenner (chair), Stephanie Hamlett, Edward Jones, and G. Timothy Oksman were present. Mr. Christopher Ashby monitored the meeting remotely by telephone but did not participate and was not counted as present. (As of July 1, 2014, § 2.2-3708.1 requires that public bodies adopt a policy on individual participation by electronic means before such participation will be allowed. As of the date of this meeting, the FOIA Council had not yet adopted such a policy.) The purpose of the meeting was to continue the study of records exemptions under 2014 House Joint Resolution No. 96 (HJR 96).

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- *Attorney/client privilege;*

- *Application of the narrow construction rule found in FOIA at § 2.2-3700;*
- *Updating and clarifying nomenclature;*
- *Impact of court decisions and of opinions of the Attorney General and the FOIA Council;*
- *Legislative history and intent, to the extent available; and*
- *Review of comparable provisions in other states' FOIA laws.*

Staff presented exemption review worksheets that would be used to track these measures and any additional issues for each exemption. There was no comment on the worksheets.

Presentation

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Mr. Merritt, representing the Virginia Press Association (VPA), presented the VPA's position paper titled "Virginia Press Association Comments Regarding Principles to be Considered During Study Under HJR 96." After a brief description of the history of FOIA, Mr. Merritt observed that the paper does not address procedural aspects of FOIA but that the VPA would comment if such matters come up. Instead, the position paper focuses on general principles applicable to any statute in part I, on the scope of FOIA in part II, particularly noting that the definition of "public body" should be broad and include the administrative functions of courts and the State Corporation Commission, and on specific topics and types of exemptions in parts III through IX.

Jonathan Williams, speaking on behalf of the Virginia Association of Broadcasters (VAB), commented that public records should be open with few exceptions, and that the VAB would encourage the Subcommittee to favor openness.

Considerations of Specific Exemptions

The Subcommittee reviewed exemptions, starting with § 2.2-3705.1, exemptions of general application to public bodies, and § 2.2-3705.8, limitations on record exclusions. Staff presented a brief overview of each exemption and its legislative history as each was brought up for consideration.

The Subcommittee began its review with the personnel exemption found at subdivision 1 of § 2.2-3705.1 and the exceptions to that exemption found at subsection A of § 2.2-3705.8. Staff suggested that, for clarity, it would be helpful to combine these provisions in one location, since both provisions address the treatment of personnel records. Staff also suggested adding the word "name" to the listed exceptions in clause (ii) of subsection A of § 2.2-3705.8 in order to codify explicitly prior opinions of the Attorney General and FOIA Council that employee names cannot be withheld as personnel records.

There was some discussion about the use of the phrase "shall open such records for inspection and copying" relating to whether the public body would have to make and send copies on request or merely make the records available so a requester could come to the public body's office and make his or her own copies. The Subcommittee agreed to have staff draft a new version that would incorporate both the exemption and the exceptions to it and that would include "name" in the list of exceptions.

Mr. Merritt also suggested that certain records concerning higher-level administrators should be more transparent, such as records of benefits packages and the circumstances of departure when such senior employees leave. The Subcommittee agreed to have Mr. Merritt come up with an appropriate proposal for consideration.



The Subcommittee next considered subdivision 2 of § 2.2-3705.1, which exempts written advice of legal counsel and other records protected by the attorney-client privilege. Peter Easter, representing VAB, stated that this exemption was used too broadly in practice. Mr. Tavenner stated that the exemption itself covers more than just attorney-client privileged records. After some further discussion among the Subcommittee and Mr. Merritt, it was agreed that the attorney-client privilege part of the exemption was fine as it is, but Mr. Jones would draft a proposal to establish clearer boundaries regarding what qualifies as written advice of legal counsel.

Next, the Subcommittee reviewed the exemptions for work-product, subdivision 3 of § 2.2-3705.1, and tests or examinations, subdivision 4 of § 2.2-3705.1. There was no comment regarding these exemptions.

The Subcommittee considered subdivision 5 of § 2.2-3705.1, which exempts records prepared exclusively for use in closed meetings. Megan Rhyne of the Virginia Coalition for Open Government (VCOG) stated that she had received many questions regarding whether this exemption would still apply if materials were distributed to members at closed meetings but were not collected from the members afterward (i.e., the members took the documents with them after the closed meeting ended). The matter was discussed among the Subcommittee members, staff, Roger Wiley (a local government attorney and former FOIA Council member), and Mr. Merritt and Ginger Stanley of the VPA. The consensus was that the key to the exemption was whether the records were still exclusively for use in a closed meeting and that once the records were used for some other purpose, the exemption would no longer apply. No change was recommended.

The Subcommittee reviewed subdivision 6 of § 2.2-3705.1, which exempts certain “vendor proprietary information software.” Mr. Oksman pointed out that the exemption begins by stating it applies to “vendor proprietary information software” but subsequently defines “vendor proprietary software” instead, and the two phrases should be amended to match. Mr. Merritt noted that the Supreme Court of Virginia had recently addressed the meaning of the term “proprietary” in the context of a different exemption, that the Uniform Trade Secrets Act defines the term “trade secret” in § 59.1-336, and that it might be best to consider creating a single comprehensive exemption for all proprietary information and trade secrets.

Eric Link of the Virginia Information Technologies Agency (VITA) pointed out that in addition to commercially purchased software, the exemption could also apply to open-source software, depending on the user agreement and rights. Mark Flynn of the Virginia Municipal League (VML) pointed out that the exemption refers to “processing data” and thus would not apply to operating systems or other software that was not used for data processing. Mr. Tavenner noted that the language used in the exemption is antiquated and needs to be rewritten. The Subcommittee agreed to give this exemption further consideration along with the other exemptions for proprietary records and trade secrets when it considers § 2.2-3705.6 at a later meeting.

There were no comments regarding subdivision 7 of § 2.2-3705.1, which exempts “computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.”

The Subcommittee then discussed subdivision 8 of § 2.2-3705.1, which exempts certain appraisals and cost estimates of real property. Mr. Jones asked what was meant by the word “proposed” in the phrase “subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.” Mr. Wiley observed that government would do an appraisal if it was not considering buying or selling the property, and that eminent domain requires appraisals to be given. Joanne Sherman of the Virginia

College Savings Plan noted there are instances where a building is an investment and is appraised, but not for sale. Mr. Easter noted that in some situations, such as the purchase of property by a relative of a local board member, there is no way for the public to know in time to stop the deal. Others pointed out that such a situation is really a conflict of interest law problem rather than a FOIA issue. Mr. Tavenner questioned the need for the exemption; others responded it was to protect the public purse. The Subcommittee also discussed the difficulties involved in large projects where multiple owners may be involved and noted that a corresponding meetings exemption exists. There were no further comments or proposals for changing the existing exemption.

Subdivision 9 of § 2.2-3705.1 provides an exemption for certain records concerning reserves established in specific claims administered by the Division of Risk Management or a locality and for investigative records of claims or potential claims against a public body's insurance. There were no comments regarding this exemption.

Subdivision 10 of § 2.2-3705.1 provides an exemption for personal information provided to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information (i.e., "opts out"). Staff related that this exemption had been the subject of two prior advisory opinions (Freedom of Information Advisory Opinions 11 (2007) and 07 (2004)) because it had mistakenly been interpreted as an exemption for all "personal information," as it refers to the definition of "personal information" in § 2.2-3801 of the Government Data Collection and Dissemination Practices Act, while the original intent was to protect citizens from unwanted electronic mail ("email spam").

The Subcommittee members and interested parties debated the reasoning behind the exemption. Ms. Rhyné observed that most exemptions to protect the public are for safety reasons, but this exemption was to protect the public from commerce. Phyllis Errico of the Virginia Association of Counties (VACo) observed there could be a chilling effect on communications with government if citizens knew their email addresses would be released. Ms. Hamlett noted that in addition to commercial interests, there could be concerns regarding cyber-bullying or stalkers as well. Mr. Tavenner observed there are competing policies at issue. Mr. Link stated that there was potential for misuse, as well as an administrative burden in keeping a list of who had opted-out. After hearing suggestions from Mr. Merritt, Mr. Wiley, and Mr. Flynn, the Subcommittee agreed to have staff draft an amendment to remove from the exemption the reference to the definition of "personal information" in § 2.2-3801.

Noting that subdivision 11 of § 2.2-3705.1 is merely a cross-reference to an exemption outside of FOIA in § 2.2-4119 of the Virginia Administrative Dispute Resolution Act, the Subcommittee agreed to keep it as is.

There were no comments regarding subdivisions 12 and 13 of § 2.2-3705.1, which provide exemptions for certain records regarding contract negotiations and financial account numbers, respectively.

As the final matter for consideration, the Subcommittee and interested parties observed that subsection B of § 2.2-3705.8, concerning the release of certain consultants' reports, was merely duplicative of existing law. However, out of concern that removing the provision might be misconstrued, the Subcommittee decided to keep the provision as is.

Public Comments

Mr. Tavenner opened the floor to any final comments. Mr. Oksman voiced his concerns regarding the many problems involved in producing email records and expressed his wish that the Subcommittee further study that area.



Virginia Freedom of Information Advisory Council

Senator Richard H. Stuart, Chair

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General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act

Work Group 1: Construction and Design Professionals

June 16, 2014

Work Group 1, Construction and Design Professionals, of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) met Monday, June 16, 2014, in Richmond. After a brief recap of the items from the May 8, 2014, meeting, the work group members reviewed three discussion drafts prepared by staff.

Job Order Contracting Discussion Draft

Initial discussion focused on the definition of “job order contracting” (JOC) included in the discussion draft prepared by staff and disseminated to members of the work group prior to the meeting. Patrick Cushing, Williams Mullen, noted that the term “construction services,” as used in the JOC definition, is itself not defined under the VPPA and recommended striking the word “services” on lines 39 and 196 of the draft. Steve Owens, Senior Assistant Attorney General, added that there is a need to clarify whether “construction” as currently defined in the VPPA includes services. Cecelia Stowe, Purchasing Director for Henrico County, noted that a definition for “construction” may be used by the Department of Professional and Occupational Regulation, which licenses contractors. Bert Jones, Associate Vice Chancellor for Facilities Management Services, Virginia Community College System, stated that JOC was essentially a small design-build contract rather than a design-bid-build contract, citing that JOC agreements are reached using a Request for Proposal and not an Invitation for Bid. Ms. Stowe stated that the public body may not know, and often does not know, in advance whether or to what extent JOC will involve architectural or engineering services. She suggested including language providing that any subsequent architectural or engineering services be limited to a certain percentage of the total project cost. Chris Stone, President, Clark Nexsen Architectural & Engineering, agreed that “services” should be removed from the term “construction services” and suggested further that the language be tightened to specifically exclude architectural and design services.

Ida McPherson, Director, Department of Small Business and Supplier Diversity, asserted that overuse of JOC may lower the number of contracts available for small businesses. Richard Sliwoski, Director, Department of General Services, stated that in his experience large contractors depended upon local subcontractors to fulfill obligations under a JOC agreement. Thomas Julian, Jr., Centennial Contractors Enterprises, Inc., added that over 90 percent of the JOC work taken by his company is subcontracted to small businesses.

The discussion then moved to limitations on the use of JOC. The discussion draft provided that JOC agreements would be limited to a one-year term that would be renewable for four additional one-year terms at the option of the public body. The draft also included a \$400,000 limit for any single task order under a JOC agreement and a limitation on the sum of all projects performed in a one-year contract term to \$2 million.

Mr. Sliwoski stated there is a need to have different limits for state and local entities. He recommended changing the single task order limit to \$500,000 to mirror VPPA provisions for other term contracts. He further offered that there should be either no overall limit on contracts under JOC during a contract term or allow unused limits during a given contract term to roll over to subsequent contract terms. Elizabeth Dooley, Assistant Purchasing Agent, Arlington County, stated that there should be no limitations for localities or state entities. She asserted that such limits would be arbitrary and hard to apply and that each locality had different business needs. Jeff Southard, Executive Vice President, Virginia Transportation Construction Alliance, and Hunter Merrill, Virginia Association of Roofing Professionals, maintained that there should be some monetary caps. Mr. Merrill further noted that JOC should be used only for smaller projects.

Steve Vermillion, Chief Executive Officer, Associated General Contractors of Virginia, expressed concern that JOC without limits would take a large number of construction projects off of the open market making the opportunities unavailable to a wider number of contractors. He suggested caps provided in the way that the VPPA provides caps for other types of term contracts with larger localities having higher limits. Mr. Owens suggested that it would be better to have the limit focus on the type of projects rather than on spending caps. Annette Cyphers, Director of Facilities Planning and Construction, University of Virginia, stated that prohibiting the use of JOC for new capital construction projects may be a feasible option. Mr. Stone asserted that a cap would be better and suggested a cap of between \$3 million and \$5 million. Mr. Sliwoski added that any cap should be per agency and not per contract. Mr. Jones offered a cap of \$20 million with the suggestion that the current limitations for term contracts contained in the VPPA be reviewed to determine the value of the limitations and whether any adjustment is needed. Mr. Stone added that any revision to the discussion draft should prohibit the use of JOC for professional services or for new capital construction projects.

Jeff Gore, Hefty & Wiley PC, recommended that the work group first tighten the definition of JOC and then focus on whether limits are necessary and, if so, at what level the limits should be set. Mr. Merrill continued to assert that there is a need to include overall dollar limitations as well as limitations for localities based on population. Uwe Wiendal, Director of the Frederick County Sanitation Authority, maintained that the draft should follow the model for design services already included in the VPPA. He suggested that the limits be revisited and adjusted to more accurately reflect the reality of current construction costs.

When asked generally what may be acceptable to localities that opposed placing any limits on the use of JOC, Ms. Dooley replied that there may be support for (i) limiting JOC to maintenance and smaller construction projects, (ii) prohibiting JOC for new capital construction projects, and (iii) placing limits on architectural and engineering services based on the equivalent for a total project. Ms. Stowe stated that the key will be in the definitions, including the definitions of "capital project," "renovation," and "repairs." Mr. Gore observed that by definition a contract under JOC is limited to one year and that essentially JOC is a term contract. He asserted that the work group should consider asking contractors what limits they are able to work with. Mr. Cushing added that in his view part of the problem is that JOC does not require competitive negotiation. Mr. Julian noted that a \$2 million cap does not allow for a



public body to perform enough construction or renovation to achieve any benefit. He recommended looking at a \$4 million to \$5 million cap and allowing the cap to go up on an annual basis.

The work group opened the floor to receive public comment on the JOC discussion draft:

Phil Abraham, Old Dominion Highway Contractors Association

Mr. Abraham stated that competitive sealed bidding should continue to be required for highway maintenance and assessment management administered by the Virginia Department of Transportation. He noted that the Public-Private Transportation Act of 1995 requires that procurements for maintenance or asset management services for a transportation facility as defined by the Act must be procured using competitive sealed bidding.

Andrew Sinclair, Virginia Association of Governmental Purchasing

Mr. Sinclair stated that JOC is in fact a competitive process and that competitive sealed bidding should be left as an option for the public body. He further asserted that the references to architectural and engineering services were a red herring. He stated that JOC should not be used for procuring architectural and engineering services or for new construction.

C. Scott Shufflebarger, Hertless Brothers Roofing (Coalition for Procurement Reform)

Mr. Shufflebarger stated that JOC should be limited to repair and maintenance projects and should not be used for capital improvements. A better definition is needed to more clearly define the projects for which the method may be used. Some dollar limits are necessary to prevent abuse, and each agency should be required to have its own JOC agreement. He further stated that the use of JOC going forward would benefit from the establishment of a reporting mechanism to develop a record of how the method was being used.

Term Contract Discussion Draft

The work group then moved to review the term contract discussion draft. The goal of the draft was to remove the term contract provisions from the definitions section without making substantive language changes. Mr. Cushing noted that multiphase contracts are not term contracts and therefore should not be included with the term contract language moved to the new section proposed by the discussion draft. He recommended that the language stricken on lines 105 through 111 of the discussion draft be unstricken and remain in § 2.2-4302.2, which describes the process used to procure professional services that are multiphase in nature. The consensus of the work group was to accept the recommendation.

The work group opened the floor to receive public comment on the term contract discussion draft. No comments were offered.

Cooperative Procurement Discussion Draft

Staff presented the cooperative procurement discussion draft, which prohibits the use of cooperative procurement to procure contracts for architectural and engineering services and construction.

Mr. Sliwoski stated that JOC should be exempted from the prohibition. Mr. Jones added that in his view there should be no restrictions on the use of cooperative procurement. Mr. Owens noted that cooperative contracts can be large and that an entity could conceivably buy all of its procurements using a cooperative contract. Mr. Sliwoski stated that while DGS is the only public body authorized to have statewide contracts, in reality multiple cooperative procurement contracts are available to state and local entities. He further noted that state agencies and localities may share the use of cooperative procurement among themselves.

Mr. Vermillion stated that cooperative procurement should not be used for construction at all. Ms. Stowe recommended limiting the prohibition to new capital construction rather than all construction. Mr. Owens asserted that the definitions of “construction” and “public body” should also be reviewed.

Ms. McPherson stated that cooperative procurement should also be limited in other areas. She recommended that Department of Small Business and Supplier Diversity approval of all cooperative procurement contracts be required.

The work group opened the floor to receive public comment on the cooperative procurement discussion draft:

C. Scott Shufflebarger, Hertless Brothers Roofing (Coalition for Procurement Reform)

Mr. Shufflebarger stated that cooperative procurement should not be used for construction. He also noted that reporting on the use of cooperative procurement should be emphasized going forward.

Reginald M. Jones, Williams Mullen

Mr. Jones asserted that there has always been a natural tension between the ease of procurement and fairness to the vendor community. There is a duty to ensure that there is fairness in procurement, and it is not fair to contractors when they are not given a reasonable opportunity to compete for such contracts. He stated that cooperative procurement should not overemphasize ease of procurement at the expense of fairness to potential vendors.

Sharon Lewis, Purchasing Manager, City of Roanoke

Ms. Lewis stated that her office is bombarded by cooperative contract brokers and that there is a need to scale down the use of this procurement method. She also noted that some cooperative procurement contracts are governed by the laws of jurisdiction where the contract was initially procured and may contain provisions that are not appropriate for Virginia localities and other public bodies.

Work Group Actions

At the conclusion of the review of the three discussion drafts, staff suggested the following as a plan for going forward:

1. The JOC discussion draft will be revised in consideration of the comments made by work group members. As a part of the redrafting process, work group members and interested parties should provide suggestions and/or proposed language for a definition of “JOC” and for the limits or tiering of limits regarding the use of JOC. The revised discussion draft will be reviewed at the next meeting of the work group scheduled for July 23, 2014.
2. Work group members and interested parties should provide suggestions for revisions to definitions of “construction,” “public body,” “and capital project.”
3. All suggestions and proposals should be submitted by 5:00 p.m. on July 3, 2014.

By consensus the work group agreed with the staff suggestions.



Work Group 2: Information Technology, Goods, and Other Professional Services

June 19, 2014

Work Group 2, Information Technology, Goods, and Other Professional Services, of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) met Thursday, June 19, 2014, in Richmond. After a brief recap of the points of consensus reached at the May 8, 2014, meeting, the work group members discussed items previously designated as manageable issues.

Equal Footing for Competitive Negotiation and Competitive Sealed Bidding

The first issue for discussion by the work group concerned the preference in the VPPA for the use of competitive sealed bidding. Kelly Hellams, Legal and Legislative Services, Virginia Information Technologies Agency (VITA), noted that currently a written determination is required when a public body decides to use competitive negotiation rather than competitive sealed bidding. Eugene Anderson, Director, Procurement Management, Norfolk State University, stated that the requirement for a written determination is an additional bureaucratic step that does not improve the process. Tom Kaloupek, Director of Materials Management, Virginia Polytechnic Institute and State University, maintained that advances in the procurement process have made the written determination unnecessary and that it should be eliminated. Joe Damico, Deputy Director, Department of General Services (DGS), indicated that it would be important to hear from the vendor community on the issue. Ida McPherson, Director, Department of Small Business and Supplier Diversity, asserted that competitive sealed bidding no longer provides the best protection for small businesses because such businesses may not be able to compete with larger contractors on the basis of price alone. The larger firm would be able to submit a “lowball” bid and, unless the public body is able to look beyond price and consider best value, the low bid would prevail. Lem Stuart, Executive Vice President, Advantus Strategies, LLC, asserted that competitive negotiation is the standard for IT procurement and that the distinction between the two methods no longer exists.

Mary Helmick, Director of Procurement Services, James Madison University, recommended that both the requirement for the written determination and the statement in the VPPA providing that competitive sealed bidding is the preferred method of procurement should be removed. Eric Denby, Director of Procurement and Supplier Diversity Services, University of Virginia, noted that competitive negotiation necessarily includes consideration of small, women-owned, and minority-owned business (SWaM) programs. Mr. Anderson added that under competitive sealed bidding no negotiation is allowed, which prevents the public body from being able to more thoroughly review a responder’s submission.

Keith Gagnon, Director of Procurement for the Virginia Community College System (VCCS), stated that the determination for using competitive negotiation is self-evident in the public body’s statement of need. The public body would essentially be saying the same thing in its determination that it has already included in the Request for Proposals. John Westrick, Senior Assistant Attorney General, observed that if the determination and the general preference are removed there would be no way for the vendor to dispute or the public body to vindicate the decision. He recommended removing the determination but keeping the general preference.

After additional discussion, the work group reached consensus that both the preference for competitive sealed bidding and the requirement for the written determination be removed.

Publication of Notice; Competitive Negotiation

The work group then moved to discuss the requirement for procurements using competitive negotiation to be published in a local newspaper. Mr. Denby recommended that the decision to publish the notices be left up to the individual agency or institution and that eVA, the state's electronic procurement site, be used to disseminate information. Mr. Kaloupek added that the costs associated with publishing the notices are high and that the value of publishing notices is less when the newspaper is in a small market. Mr. Damico noted that the vendor community may not have equal access to the Internet and that he also recognized the need for citizens to be able to inform themselves about their government in terms of procurement. He recommended that the work group look for a gradual transition away from the publishing requirement to avoid an abrupt change in the status quo. Ms. McPherson stated that because Internet access is not available in all areas of the state, it would not be appropriate to move immediately to an entirely electronic process. She also noted that the smaller newspapers depend on publication revenue and reminded the work group that many newspapers are also small businesses.

Mr. Damico suggested that DGS use eVA as a conduit to disseminate procurement information to newspapers and then allow individual newspapers to determine what to publish. Ms. McPherson suggested that the procurement information also be provided to the Department of Small Business and Supplier Diversity, which has a small business advocacy role. Mr. Gagnon recommended a transition period of one to two years that would include a public notification component alerting readers that procurement information would be available on eVA at the end of the transition period.

Mr. Stuart suggested that instead of requiring the posting in every instance, give public bodies the option to post when it will insure maximum competition. A requirement could be added providing for a public body to make a written determination relative to the value of publishing a notice in the newspaper. Mike Bacile, Purchasing Director for Chesterfield County, stated that he did not think a new determination was warranted or that all public bodies should be required to use eVA. He recommended localities use their own website to disseminate the information. Nicole Riley, Virginia State Director, National Federation of Independent Businesses (NFIB), stated that it is important to develop data on the use of technology by small businesses. She noted that according to member surveys conducted by NFIB about 50 percent are technology-based in terms of their business operations. She stressed that there are still small business owners who perform all of the administrative functions for their business and that those individuals tend to continue practices with which they are familiar.

The work group opened the floor to receive public comment on the publication requirement.

Ginger Stanley, Executive Director, Virginia Press Association

Ms. Stanley stated that the publication requirement continues to have great value to the procurement process and should remain. She asserted that the cost for such notices amounts to one tenth of one percent of a locality's budget. Ms. Stanley further asserted that newspapers are being read more than ever and remain a viable and important way to disseminate information.

Andrew Sinclair, Virginia Association of Governmental Purchasing

Mr. Sinclair asserted that the publication of the notices should be left up to each individual public body.

Sharon Lewis, Purchasing Manager, City of Roanoke

Ms. Lewis maintained that the decision regarding not only whether to publish the notice but also which newspapers to publish in should be left to the discretion of the locality.



Patrick Cushing, Williams Mullen

Mr. Cushing stated that the position of the design professionals that he represents has changed from initial opposition to removal of the publication requirement to the current position supporting the removal with a provision for a transition period.

At the conclusion of the public comment, it was the consensus of the work group to prepare discussion drafts incorporating the options that had been discussed. As a part of the drafting process, work group members and interested parties were asked to provide any suggestions and/or proposed language to staff by 5:00 p.m. on July 3, 2014.

Oversight and Enforcement Options

Staff offered the following options for discussion purposes:

1. Maintain status quo (appeal process remains optional);
2. Require each agency to establish an appeal process;
3. Establish equality among all satellites of public bodies with procurement authority;
4. Provide for an appeal to a Board with authority over all public bodies; or
5. Establish a Procurement Council similar to the existing FOIA Council (located in the legislative branch, advisory in nature).

Ms. McPherson indicated that she favored option 4, emphasizing that the appeal must be made to a neutral body and not remain within the same agency. She noted that two recent disparity studies recommended the establishment of a compliance entity. Robert Gleason, Director, Division of Purchases & Supply, DGS, stated that he believed DGS could craft a process to satisfy an adequate appeal mechanism. Mr. Anderson stated that in light of his experience dealing with appeals processes in both state and local government, it will be important for the appeal entity to be composed of disinterested persons. He recommended option 2, asserting that it would be difficult to have one body overseeing all public bodies. Mr. Westrick noted that the work group must take into account the very limited remedies that the VPPA provides.

Mr. Damico suggested that the work group consider having the Office of the Inspector General (OSIG) investigate claims of abuse related to the procurement process. Ashley Colvin, Legal and Legislative Services, VITA, indicated his support for the suggestion. Ms. McPherson expressed concern, citing the amount of time that such an investigation may take and the possible lack of expertise to investigate procurement-related claims. Mr. Gleason asserted that OSIG had been building expertise in the area and should be able to handle such investigations. Mr. Anderson noted that to be successful adequate resources must accompany the increased responsibility.

It was the consensus of the work group that staff would prepare a wider array of enforcement/oversight options based on the work group's discussion.

Full Joint Subcommittee

July 14, 2014

The General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) met Monday, July 14, 2014, in Richmond to review legislation referred by the General Assembly from the 2014 Regular Session.

Election of Chair and Vice-chair

Delegate C. Todd Gilbert was elected chair and Senator Frank Ruff, Jr., was elected vice-chair.

Progress Report on Work Groups 1 and 2

Maria Everett, Senior Attorney, Division of Legislative Services

Amigo Wade, Senior Attorney, Division of Legislative Services

The Joint Subcommittee received a staff briefing on the status of two work groups established to assist the Joint Subcommittee in its review of the VPPA by developing consensus on recommendations. The work groups comprise representatives from state and local government, higher education, and the vendor community. Work Group 1 is focused on issues related to construction and related design professionals, and Work Group 2 is focused on information technology, goods, other professional services, and nonprofessional services. Each work group has been assigned a scope of work document (SOW) consisting of issues developed during the first year of study. The membership of the work groups and the full schedule of meetings may be found at:

http://dls.virginia.gov/interim_studies_procurement.html.

Review of Legislation Referred by the General Assembly

The Joint Subcommittee reviewed referred legislation, beginning with the bills of patrons who were in attendance.

House Bill 223 (Dance)

House Bill 223 would require the Department of General Services and the Virginia Information Technologies Agency to develop procurement regulations for the utilization of small businesses located in historically underutilized business zones (HUB zones). Under the bill, a HUB zone is defined as an area in Virginia so designated by the U.S. Small Business Administration pursuant to relevant federal law. Delegate Rosalyn C. Dance, patron, stated that the legislation would assist urban, economically depressed areas by encouraging the state to establish procurement relationships with small businesses in those areas. Delegate Dance further stated that she wanted to do additional work on the legislation and bring an amended version to the next meeting of the Joint Subcommittee. After discussion, the Joint Subcommittee voted to defer action on the legislation to its next meeting.

House Bill 1223 (Yancey)

House Bill 1223 consists of two components. The first component would expand the definition of “minority-owned business” to include historically Black colleges and universities (HBCUs). The second component would require small, women-owned, and minority-owned business (SWaM) programs to include a provision for the fair and equitable evaluation of opportunities for small businesses and all businesses owned by women, minorities, or service-disabled veterans. Regarding the first component of the bill, patron Delegate David A. Yancey stated that federal law included HBCUs under its disadvantaged business program. Testimony in favor of the first component of the bill was provided by William Thomas of Hampton University. Mr. Thomas related how a program at the University lost a contract bid to an Oklahoma company to provide parenting skills training even though the Hampton program was the low bid. Also speaking in favor of this component of the legislation was Rodney Thomas of Richmond, Virginia.

Arlene Kleindenst, Esq., spoke in favor of the second component of the bill on behalf of Top Guard Security, a women-owned business based in Virginia. She asserted that while Top Guard Security meets the definition of a women-owned business, because it has over 400 employees it does not meet the



current definition of a small business, which sets a limit of 250 employees. The second component of the bill would allow full participation in SWaM programs for women-owned and minority-owned businesses that did not also meet the current definition of a small business.

After discussion, the Joint Subcommittee voted to defer action on the legislation to its next meeting.

House Bill 793 (Lopez)

House Bill 793 would change the definition of small business to require a qualifying business to have both 250 or fewer employees and average annual gross receipts of \$10 million or less averaged over the previous three years. Under current law, a business must meet either the employee limit or the average gross receipts condition to be classified as a small business. The patron of the legislation, Delegate Alphonso H. Lopez, stated that 95 percent of Virginia businesses fit the current definition and that the change was needed to more directly assist truly small businesses. According to Delegate Lopez, the change would cause 3.6 percent of Virginia firms, or 765 total firms, and 2,228 non-Virginia firms to lose their certification as a small business. Testimony in support of the bill was provided by Bernice Travers, President, Travers Corporation; Lee Brazzell, President of Transformation Consulting LLC; Bruce Williams, Hampton Roads Committee of 200+ Men, Inc.; Gwen Davis, Chair, Equipping Businesses for Success Institute; William Thomas; Marty Jewel; Earl Bradley; and Willie Lee. After some additional discussion, the Joint Subcommittee voted to report the bill favorably to the General Assembly.

House Bill 289 (Albo)

House Bill 289 (HB 289) would prohibit the use of cooperative procurement for construction. Currently the law only prohibits the use of cooperative procurement in the case of construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. Lee Brazzell, President and CEO of Transformation Consulting LLC Brazzell, expressed concern that procuring construction using cooperative procurement would significantly limit the ability of small businesses to compete for the work. Cindy Shelor, owner of John T. Morgan Roofing and Sheet Metal of Roanoke, Virginia, told the Joint Subcommittee that when cooperative procurement was used to re-roof three Roanoke City public schools, her company and other local contractors were not able to participate. She asserted that cooperative procurement should not be used for procuring construction. The Joint Subcommittee voted to refer HB 289 to Work Group 1.

House Bill 290 (Albo)

House Bill 290 would make several technical changes to the job order contracting (JOC) provisions that became effective on July 1, 2014. Legislation passed during the 2013 legislative session with a one-year delayed effective date established a definition for JOC as well as limitations on the total contract and project fee amounts and the length and number of renewable terms such contract arrangement may extend. Staff noted that interested parties had indicated several areas of concern regarding the definition and the limitations and the effect that the new provisions would have on current procurement practices. The Joint Subcommittee voted to refer the legislation to Work Group 1.

House Bill 421 (Minchew) and Senate Bill 174 (Black)

Identical bills HB 421 and SB 174 would increase the term contract limits for architectural and engineering services from \$1 million to \$2.5 million per project for state agencies and from \$5 million to \$10 million per contract term. The Joint Subcommittee voted to refer both bills to Work Group 1.

House Bill 549 (Filler-Corn) and Senate Bill 645 (McEachin)

House Bill 549 and Senate Bill 645 provide that when awarding transportation construction projects, the procuring entity may consider certain specified factors other than price. An additional provision in SB 645 would allow any locality to use design-build or construction management delivery methods for construction, provided the locality had the personnel, expertise, and procedures for engaging in such contracts. Currently, the procurement methods are available to localities with a population in excess of 100,000. Richard Thomas of the Design Build Institute spoke in favor of the bills. He asserted that the bills would authorize state and local governments to use the design-build delivery method while still allowing the use of traditional delivery methods. Mr. Thomas stated that like traditional projects, design-build projects would be competitively bid. He noted that 78 percent of the states have fully authorized local governments to use design-build. According to Mr. Thomas, the delivery method resulted in lower costs, faster construction time, higher quality, and greater owner satisfaction.

Several individuals spoke in opposition to the legislation. Bruce Williams, Hampton Roads Committee of 200+ Men, Inc., expressed concern that design-build construction contracts may not adequately provide for the participation of minority-owned businesses. Myles Louria, Senior Director of Governmental Affairs, Hunton & Williams, stated that injecting subjective criteria would be extremely problematic. Andrew Sinclair, Virginia Association of Governmental Purchasing, expressed concern regarding both of the bills and further noted that he believed public bodies could already do most of what the bills propose to accomplish, with the exception of the removal of the population threshold. Herschel Keller stated that overuse of design-build by public bodies adversely affected small contractors. Reginald Jones, Williams Mullen, noted that as a construction procurement method, design-build is an exception. He further stated that originally a locality had to come to the General Assembly to get authorization to use the method. The 200,000 population threshold, stated Mr. Jones, was put in place as a means to ensure that the locality using the delivery method was large enough to have appropriate staff in place to advise the locality because under the method the design professional would not be responsible to the buyer. Steve Vermillion, Associated General Contractors, stated that the issues encompassed in the bill needed more study.

The Joint Subcommittee voted to table both bills.

House Bill 769 (Hugo)

House Bill 769 provides, under certain conditions, that when engaged in procuring products or services or awarding contracts for construction, manufacture, maintenance, or operation of any state funded project, neither the Commonwealth Transportation Board nor any state transportation agency, may in the bid specifications, project agreements, or other controlling documents, provide an incentive in the scoring of bids that favors entities entering into project labor agreements.

Staff noted that legislation passed by the 2011 legislative session established that state entities may not require adherence to labor agreements nor discriminate based on adherence to such agreements. HB 769 would establish a more restrictive policy for transportation projects. Staff further noted that the need to establish a different, more stringent policy for transportation projects had not been raised as an issue during the first year of the study.

The Joint Subcommittee voted to refer the legislation back to the House of Delegates with no recommendation.



House Bill 1159 (Rasoul)

House Bill 1159 would add several local government officials to the current prohibition against certain state officials from knowingly soliciting or accepting a contribution, gift, or other item with a value greater than \$50 from any bidder, offeror, or private entity who has submitted a bid or proposal pursuant to the Virginia Public Procurement Act, the Public-Private Transportation Act, or the Public-Private Education Facilities and Infrastructure Act during the bidding period. The Joint Subcommittee voted to refer the legislation to the Virginia Conflict of Interest and Ethics Advisory Council.

House Bill 1194 (James) and Senate Bill 632 (Lucas)

Identical bills House Bill 1194 and Senate Bill 632 would require the Department of Small Business and Supplier Diversity, in conjunction with the Department of General Services, the Virginia Information Technologies Agency, and the Department of Transportation, to develop a program establishing a requirement that at least 15 percent of all state purchases be made from minority-owned or women-owned businesses that are also certified as small businesses. Several individuals provided testimony in support of the bills. Lawrence Wright, who indicated that he was previously employed by the former Department of Minority Business Enterprise, asserted that the current purchasing goals are aspirational and of less value to women-owned and minority-owned businesses. Ms. Davis, of the Equipping Businesses for Success Institute, asserted that disparity studies conducted in 2004, 2010, and 2011 clearly indicated that the race-neutral and gender-neutral programs currently in use were not working. She further noted that while training regarding how to access the state's procurement system is always good for small businesses, training does not compensate for the fact that certified and capable minority-owned and women-owned businesses that do know how to access the system are still not being awarded state contracts.

Carmen Taylor, President of the Virginia State Conference of the National Association for the Advancement of Colored People, asserted that 15 percent is not a large amount and that the pursuit of fairness and equity in the state's purchasing activities was an appropriate objective. Rodney Thomas stated that Virginia has never reached its SWaM goals. He contrasted the state's program to the program used in neighboring North Carolina, which he asserted has a mandatory set aside of 23 percent. Mr. Thomas maintained that program implementation is also a problem in Virginia. Members of the Joint Subcommittee expressed concern that the 15 percent figure may be arbitrary. Ms. Brazzell responded that the disparity study completed in 2012 documented availability, defined as minority-owned or women-owned businesses that were able, willing, and capable of performing. Chris Williams added that the completed disparity studies consistently and clearly indicated disparity that the state was severely underutilizing minority-owned businesses in comparison with availability as documented by the studies, and that addressing the disparity will help establish an economic ecosystem in depressed communities. Vivian Blaze, who indicated that she had been a business owner since 2003, stated that the 15 percent figure is not high considering the discriminatory practices that have caused much more money to be lost by minority-owned and women-owned businesses over the centuries. Speaking against the bills, Andrew Sinclair asserted that the state's SWaM program needed reform and that the VPPA should not be used to advance social measures.

Discussion among the Joint Subcommittee members centered on the need to address programmatic issues related to SWaM and whether it was appropriate to recommend the establishment of the program provided by the bills without first addressing those issues.

The Joint Subcommittee took no action on the bills.

House Bill 1208 (Albo)

This legislation prohibits the consideration of discounts for early payment of invoices offered by any bidder in the determination of the lowest priced bid on any contract awarded using competitive sealed bidding. The Joint Subcommittee voted to table the legislation.

House Bill 1238 (Gilbert)

House Bill 1238 would prohibit an Invitation to Bid or Request for Proposal from containing the procuring public body's cost estimate for the work or goods that are being procured. The Joint Subcommittee voted to refer the bill to Work Group 1.

Senate Bill 616 (Alexander)

Senate Bill 616 would eliminate the Department of Small Business and Supplier Diversity and recreate the Department of Minority Business Enterprise and the Department of Business Assistance as those two departments existed prior to January 1, 2014. Several individuals provided testimony in support of the bill. Gwen Davis asserted that the focus of efforts to increase the utilization of minority-owned businesses had been blurred by the combining of the two agencies. She further noted that the recent disparity studies did not support combining the two agencies. Rodney Thomas maintained that a separate agency devoted to increasing the utilization by the state of minority-owned and women-owned businesses is needed and should be restored. Delegate Thomas Greason noted that despite the existence of a single devoted agency for several years, the disparity numbers continue to be low. Mr. Thomas replied that the problem was in the implementation of the programs. Delegate Albo suggested that it would also be appropriate for those concerned about the merger of the two agencies to request the Governor to appoint an advocate for women-owned and minority-owned businesses to ensure that the interests of such businesses were adequately supported.

Ida McPherson, Director of the Department of Small Business and Supplier Diversity, stated that in many instances, the merger resulted with the same staff performing the same functions as they did with the previous agency. She further stated that the commitment of the agency has not been diluted and cited the need for a procurement compliance division to assist in the enforcement of the state's procurement policies relative to minority-owned businesses and women-owned businesses. Mr. Wright noted that the focus of the agency must be on educating the vendor, which should be a significant part of the agency's mission. He also asserted that the agency needs the ability to enforce procurement policies. A representative of TSI Technology, an information technology company, stated that she stood as an example of a qualified minority-owned and women-owned business and that her company has been unable to secure a contract award in Virginia.

At the end of the testimony, the Joint Subcommittee voted to pass the bill by indefinitely.

Public Comment*Bruce Tyler, Baskervill*

Mr. Tyler, a principal with architectural, engineering, and design firm Baskervill, expressed concerned about the implementation of the Virginia Public Private Education Facilities and Infrastructure Act (PPEA). He asserted that the PPEA was an important statute, but that he feared that the implementation of the PPEA has not been fair and equitable. He provided copies of a chart that, he asserted, detailed a skewed procurement process. Mr. Tyler urged the Joint Subcommittee to take the time to study the PPEA. Delegate Greason suggested that Mr. Tyler discuss his concerns with staff for review at a future meeting.



Next Meeting

Delegate Gilbert indicated that the next meeting of the Joint Subcommittee will be scheduled after the last meetings of the work groups.

General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act

Delegate C. Todd Gilbert, Chair

Maria J.K. Everett, DLS Senior Attorney

Amigo Wade, DLS Senior Attorney

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dls.virginia.gov/interim_studies_procurement.html

Virginia Housing Commission

Affordable Housing, Real Estate Law, and Mortgages Work Group

May 21, 2014

The Affordable Housing, Real Estate Law, and Mortgages Work Group of the Virginia Housing Commission met on May 21, 2014, in Richmond with Delegate Danny Marshall, work group chair, presiding. The members introduced themselves and Delegate Chris Peace was introduced as a new member.

Uniform Statewide Building Code; Accessible Units (SB 63, Puller, 2014)

Elizabeth Palen, Executive Director

Ms. Palen described the content of the bill, which called for a set-aside of dwelling units for those with issues of accessibility. Senator Linda Puller currently has other items on her agenda and does not wish to pursue this topic in discussion this interim.

Examination; Initial Asbestos Worker License Applicants (HB 179, Farrell, 2014)

Delegate Peter Farrell led a discussion of the need for safeguards for employees working with asbestos as presented in HB 179 (2014). The bill has passed the Senate several times but not the House. He made a case that the Commission should consider the bill.

Tim Butera, Labor: 1151 of Reston, stated that asbestos contractors generally support the bill because it creates a level playing field among contractors and gives enforcement authority to the Board for Asbestos, Lead, and Home Inspectors.

Trisha Henshaw, Executive Director of the Virginia Board for Asbestos, Lead, and Home Inspectors, indicated that in order to fine or suspend a contractor, the Board needs a filed complaint. She said the Department of Labor and Industry also plays a role.

The bill addresses concerns of individual workers. When individuals testified in House General Laws Subcommittee 3, they felt their health was being jeopardized and didn't know how to report it.

Delegate Marshall requested that a sub-workgroup be formed with Delegate Chris Peace as the chair.

Virginia Residential Landlord and Tenant Act; Expedited Evictions for Nonremediable Breaches; Continued Disturbances of the Peace (SB 354, Edwards, 2014)

Senator John Edwards brought this bill to the Commission because there is a need in Roanoke to evict tenants that are causing havoc affecting the revitalization of downtown and hurting other commercial enterprises.

Wendy Jones, Williamson Road Property Owners' Association, said that from the commercial landlord side, help is needed regarding clarification about the parameters of self-help.

Chips Dicks advised that the original bill was drafted to the wrong section of the Code of Virginia, in the Virginia Residential Landlord and Tenant Act. There is a new trigger to have it become effective if the landlord owns three properties. He suggested there is a need to clarify what the parameters are for self-help and removal of a tenant. When a landlord changes a lock or a court evicts a tenant, if the tenant breaks back in, that is a criminal offense.

Shaun Farr and others agreed to work to modify the draft and bring it back to the work group.

Virginia Residential Landlord and Tenant Act; Retaliation by Landlord; Rebuttable Presumption (HB 820, Lopez, 2014)

Delegate Alfonso Lopez asked Christie Marra of the Poverty Law Center to speak about the bill, which concerns retaliatory eviction of a tenant. Ms. Marra began with a presentation explaining what other states are doing in this area. The overall purpose is not to create a new right but give more power to enforce the rights the tenant already has been given. The evidentiary standard for proving a landlord has acted in retaliation for a tenant complaint is a problem for tenants with week-to-week or month-to-month leases. There is a uniform act that includes a rebuttable presumption that the act was retaliatory. The act provides that a landlord may not terminate a periodic tenancy because the tenant exercised the right to take the landlord to court.

Within one year, according to the bill, there is a presumption an action was done in retaliation, which means the tenant can submit evidence. If Virginia were to adopt the Uniform Law, the landlord could then show a legitimate reason for termination of the lease. Sixteen states have adopted the Uniform Law and 19 states have not adopted the Uniform Law.

Ms. Marra stated that under current law the tenant has to prove that the landlord intended the action, but the bill says if the tenant took protected action, the burden of proof would shift.

Chip Dicks asked whether the problem is that the judge is not hearing evidence on retaliatory conduct. Ms. Marra responded that the complaint never makes it to court. Her clients are working in unhealthy conditions and don't say anything because they might be put out in either five or 30 days due to their short-term leases.

Delegate Lopez indicated that the problem addressed in the bill means a lot to his district because of the many languages spoken and interesting power dynamics. The bill is intended to make it easier to deal with a nearly impossible situation for tenants to prove the intent of a landlord.

Shaun Pharr indicated that the bill is not drawn narrowly enough and has a completely undefined subset. The bill turns the entire premise of the Virginia Residential Landlord and Tenant Act so that the presumption is that the housing provider is acting in bad faith. He made the case that this approach is overbroad.

Delegate Lopez agreed to confer with a smaller group and return with revised language on the issue of renewal of rental agreements.



Use of a Software Product That Is Used to Set Rental Rates

Delegate Rob Krupicka's constituent Maurice Barboza spoke to the issue of software that creates a rise in rent not based on the actual market rate values and not tied to improvements or length of time a person has rented the property. Many issues are involved in determining whether it is proper to raise the rental rate on the basis of calculations during a month when the market rate is at its highest.

Delegate Marshall said that if Mr. Barboza worked with Delegate Krupicka's office to create draft legislation and it is forwarded to Elizabeth Palen, the Commission might consider it at a future work group meeting.

Announcement

Elizabeth Palen noted that the Housing Commission now has a Twitter feed with pertinent housing articles as part of the Virginia Housing Commission website. Users do not need to join Twitter; articles may be accessed by clicking on the links provided.

Virginia Housing Commission

Senator Mamie Locke, Chair

Elizabeth Palen, Executive Director
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Joint Commission on Administrative Rules

June 18, 2014

The Joint Commission on Administrative Rules held its first meeting of the 2014 interim on June 18, 2014, with Senator Frank Wagner, chairman, presiding. Senator Wagner welcomed Delegates Roxann Robinson and William DeSteph as new members of the Joint Commission.

Stormwater Management Regulations (9VAC25-870 and 9VAC25-880)

Senator Wagner introduced this item, noting that the regulations impact the entire state but have an adverse impact on any area with a high water table, and welcomed all public comment.

Josh Clark, Staff Vice President, Tidewater Builders Association (TBA), indicated that the two important components of the regulations are the water quality provisions and the water quantity provisions. TBA supports the water quality provisions of the regulations but not the water quantity provisions. The impact on development in the Tidewater area is a 25-45% increase in construction costs, a reduction in developable land, and an increase in fees. Together, these result in a significant financial impact and raise a condemnation issue. In addition, there is a lack of uniformity among the localities overseeing the general permits.

Senator Wagner indicated that the 10-year, three inch rainfall that must be contained onsite is a significant problem in areas with high water tables. One effect of the stormwater management regulations is increased sprawl and another is increased cost to localities. The City of Virginia Beach is hiring 32 new employees to review plans, take surveys, etc.

Delegate DeSteph indicated that in addition to high water tables, tidal flooding is an issue for the Tidewater area and expressed concern that the model that served as the basis for the legislation contained errors. One example of the impact of the regulations is the City of Virginia Beach's arena project, with a cost of \$4.5 million under the old regulations and \$10.5 to \$12.5 million, plus the cost of more land for the best management practices, under the new regulations. Another concern is the total maximum daily loads (TMDLs) requirements.

Senator Wagner pointed out that the regulations will also affect state agencies, such as the Virginia Department of Transportation regarding the costs of new roads, as well as localities due to the costs of new schools and other public buildings and the cost of being an MS4.

Michael L. Toalson, Chief Executive Officer, Home Builders Association of Virginia (HBVA), explained that HBVA participated in the development of the regulations and worked to find a compromise between all interested groups. Two environmental engineers from the Tidewater area were part of the group that developed the regulations, and the assumption was that the best management practices would work in Tidewater. HBVA supports moving forward with the regulations as written, except perhaps for some tweaking to address the Tidewater area. In response to a question from Delegate DeSteph, Mr. Toalson stated that he did not recall that tidal flooding was considered.

David Paylor, Director, DEQ, explained that two regulatory advisory panels (RAPs) were used in the development of these regulations, and efforts were redoubled to achieve a consensus. Senator Wagner noted that the stormwater management regulatory program was transferred to DEQ from the Department of Conservation and Recreation (DCR) effective July 1, 2013.

Melanie Davenport, Director, Water Division, DEQ, reviewed the history and current status of the Virginia stormwater management program. The regulation (9VAC25-870) containing the water quantity provisions was adopted by the Soil and Water Conservation Board/DCR and became effective September 13, 2011. The regulation contains more stringent water quality and quantity requirements ("technical criteria") and is applicable statewide. However, the requirements do not apply until the new construction general permit takes effect on July 1, 2014. Projects that obtained local approval prior to July 1, 2014, have up to 10 years to build out under the old requirements. All MS4 localities must adopt stormwater management programs, but non-MS4 localities may opt in or let DEQ handle the VSMP for them. All VSMPs must be implemented by July 1, 2014, and must incorporate the more stringent technical criteria adopted in 2011.

The technical criteria are designed to protect water quality and stream habitat and to control both the pollutants associated with urban/suburban runoff and the deleterious effects of precipitation-driven high flows into streams. The federal Clean Water Act (CWA) includes runoff from construction sites as a source and requires a permit to disturb one acre or more. The TMDL is another requirement that must be enforced by the state, as the CWA requires that permits comply with TMDLs. For the Chesapeake Bay, Virginia committed to nutrient neutral development after July 1, 2014. The TMDL provides the maximum amount of pollutants allowed under the federally authorized permits.

Delegate Ware indicated that the cost to Chesterfield County is significant. Ms. Davenport stated that Chesterfield County is a Phase I jurisdiction for MS4s. DEQ has been issuing permits for Chesterfield County, and this was not burdensome until the Chesapeake Bay TMDL applied. Under this TMDL, reductions must occur, so now localities must retrofit and figure out how to reduce as required by the DEQ permit.



Delegate Howell asked how Norfolk is impacted, as he had not heard from anyone about this issue. Ms. Davenport explained that Norfolk will have requirements to meet but will have some flexibility.

Senator Wagner stated that he saw a laudable social policy to decrease sprawl in conflict with a laudable water clean-up policy, in that localities are trying to reduce sprawl but these regulations encourage sprawl. Delegate James expressed a concern that the clean water goal has a negative impact in certain areas.

Delegate DeSteph gave two specific examples of the impact of the regulations on development in Norfolk and the increase in costs. He explained his attempt to address the issue through legislation in 2014, and read the bill for the Joint Commission. He indicated that most of the interested parties agreed with the language of the bill.

Philip Abraham, Virginia Association for Commercial Real Estate (VACRE), stated that he participated in the development of the TMDLs and the construction general permit. He believes the problem rests with the Environmental Protection Agency (EPA), and with the Chesapeake Bay TMDL. VACRE supported local administration of the general permit, and that is why localities are hiring additional employees. Other goals were to reduce the requirements and costs for redevelopment activity and provide credits to offset costs. He stated that DEQ has done a good job with the program. Finally, VACRE supports considering legislation to assist Tidewater, but not an overall change to law or regulation.

Margaret “Peggy” Sanner, Virginia Assistant Director and Senior Attorney, Chesapeake Bay Foundation, stated that any tweaking of the regulations must be done very sensitively and within the current regulatory framework. In response to Senator Wagner’s concerns regarding sprawl and conflicting policies, Ms. Sanner explained that the regulations are designed to make redevelopment easier by treating redevelopment differently from new development.

Larry Land, Director of Policy Development, Virginia Association of Counties (VACo), stated that he has been very involved with stormwater management over the last 15 years. He was part of the discussion in 1991, when the General Assembly authorized localities to impose fees, as well as the discussion regarding the 2014 legislation (HB 1173)—a two-year delay was not practical, but a compromise was reached that allowed DEQ to manage permits for smaller localities.

Senator Wagner asked if there was anything DEQ or the Governor could do now. Ms. Davenport replied that in localities where DEQ is handling the general permit, DEQ can review the site-specific exception in the existing regulation.

Delegate Lingamfelter stated that the current situation was based on the best compromise and reflects the realities of an agreement with the EPA. Once a regulation is effective, it must be followed like a law. If the State Water Control Board changes the regulation, it would undo the compromise. A change in state law would also cause controversy and reopen the grand compromise. All the Joint Commission can do at this meeting is to consider legislation in the 2015 Session.

Senator Wagner agreed that legislation should be pursued in 2015, and then asked what would be the effect on the construction general permit if the state law changes, especially vis-a-vis the EPA. Ms. Davenport explained that DEQ would notify EPA of the proposed changes and request approval. Also, DEQ would change the regulation to conform to state law, using the exempt process if allowed by the legislation. Mr. Toalson commented that if EPA does not approve the change, then each applicant must apply directly for a permit instead of using the general permit.

Senator Wagner stated that the Joint Commission would take no action at this meeting.

Senator Wagner adjourned the meeting at 11:40 a.m. and stated that item 3 regarding possible legislation for the 2015 Session of the General Assembly to amend § 2.2-2014 B of the Code of Virginia would be deferred.

Meeting materials are available at <http://dls.virginia.gov/commissions/car.htm?x=mtg>.

Joint Commission on Administrative Rules

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Joint Subcommittee to Evaluate Tax Preferences

July 24, 2014

The Joint Subcommittee to Evaluate Tax Preferences held its first meeting of the 2014 interim on July 24, 2014, in Richmond with Senator Jeffrey L. McWaters, chairman, presiding. The purpose of the meeting was to review and make recommendations concerning three tax preferences: the sales tax exemptions for prescription and nonprescription drugs, the partial sales tax exemption for food, and the income tax subtraction for social security and railroad retirement income. Staff from the Division of Legislative Services and the Department of Taxation compiled reports on each of these exemptions setting forth a description of the preference, the purpose of the preference, a brief legislative history, the revenue impact of the preference, and other relevant information. A copy of each report can be found on the Joint Subcommittee website under the “Preference Reports” link.

Senator McWaters indicated that he would like the Joint Subcommittee to make recommendations regarding each preference and that appropriate motions would be to continue, expand, modify, or eliminate each preference.

Report on Sales Tax Exemptions for Prescription Drugs and Nonprescription Drugs

Four different sales and use tax exemptions address the sale of prescription and nonprescription drugs and other medical items such as wheelchairs, syringes, hearing aids, and dialysis equipment. These exemptions can be found at subdivisions 9, 10, 11, and 14 of § 58.1-609.10 of the Code of Virginia. The exemption for medicines and drugs has been in existence since the inception of the Retail Sales and Use Tax in 1966, with a goal of reducing the cost of medical necessities. The exemptions have been revised several times for clarification and expansion of items covered. Nonprescription drugs became exempt in 1998.

Of the states imposing a sales and use tax, only one state imposes the tax on prescription drugs. In contrast, 36 states impose a sales and use tax on nonprescription drugs. The Department of Taxation estimates that the exemption for prescription drugs accounts for approximately \$494 million in reduced state and local tax revenue and that the exemption for nonprescription drugs accounts for a \$35 million reduction.

After some discussion, and questions regarding the administration of the nonprescription drugs exemption, the Joint Subcommittee unanimously voted to continue these exemptions.



Report on the Partial Sales Tax Exemption for Food

Section 58.1-611.1 of the Code of Virginia provides for a reduced rate of state taxation on the sale of food of 1.5 percent, in lieu of the standard 4.3 percent state sales and use tax. Because localities also impose a local-option one percent sales tax, the effective rate of tax on food is 2.5 percent. For purposes of this reduced rate, “food” means food purchased for human consumption, but does not include prepared hot foods, food at restaurants, or food purchased through vending machines. The reduced state sales tax rate was adopted in 1999. Of the 46 states that impose a sales and use tax, Virginia is one of 13 states that impose any tax on food.

The Department of Taxation estimates that the partial sales tax exemption for food accounts for approximately \$526.7 million in reduced state and local tax revenue. Of the revenue that is collected from the sale of food, one-third is deposited into the Transportation Trust Fund; the other two-thirds is paid to localities to be used for the operation of public schools.

During discussion of the partial sales tax exemption some members of the Joint Subcommittee expressed interest in phasing out the state sales tax on food (but leaving the local-option one percent sales and use tax in place). However, there was also concern that phasing out this state tax would have a negative and undesirable revenue impact on transportation and education. It was suggested that perhaps the state tax should not be phased out or eliminated until other revenue streams were identified that could “hold harmless” transportation and education funding. The Joint Subcommittee ultimately did not make any recommendation regarding the preference, but indicated that it would be further discussed at the next meeting.

Report on the Income Tax Subtraction for Social Security and Railroad Retirement Income

For purposes of determining Virginia taxable income, subdivision C 4 of § 58.1-322 of the Code of Virginia allows a taxpayer to subtract from his federal adjusted gross income any social security or railroad retirement benefits received under federal law. A portion of such benefits is already exempt from federal taxation, based upon income. The Virginia subtraction would apply to those benefits that were not exempt from federal taxation.

Railroad retirement benefits were established under federal law in the 1930s to provide federal retirement income for railroad workers. There are two types of railroad retirement benefits: Tier I, which is akin to social security, and Tier II, which is more similar to a private pension. While the Virginia subtraction only references Tier I benefits, federal law prohibits the state taxation of either, so both are allowed to be subtracted in computed Virginia taxable income.

The Department of Taxation estimates that the revenue impact of the subtraction was \$304 million for Taxable Year 2011. The average subtraction per tax return was \$12,863, with an average reduced tax liability per return of \$700.

The Joint Subcommittee unanimously recommended to continue the subtraction.

Discussion of Next Preferences to Review

The Joint Subcommittee had decided to review tax preferences in order of revenue impact, from greatest impact to lowest. In following this plan, the sales tax exemption for nonprofit organizations and the Land Preservation Tax Credit are the next preferences slated for review. These preferences are utilized by a large number of entities and taxpayers in the Commonwealth and review will likely garner a lot of public opinion.

In an effort to maximize the receipt of public comment, the Joint Subcommittee decided to attempt to solicit public comment from all interested parties in advance of the meetings at which the Joint Subcommittee will consider the reports. This will be accomplished in two ways. Staff has established an email account dedicated solely to the receipt of written public comment: taxpreferences@dls.virginia.gov. Staff will gather the comments submitted via this site and share them with the members of the Joint Subcommittee. Additionally, staff was directed to (i) hold a staff workgroup meeting for the sole purpose of allowing interested parties to speak to the preferences and (ii) compile a summary of the comments received for the members of the Joint Subcommittee to review. Staff will make every effort to widely publicize both the email address and locations of the public comment sessions.

Joint Subcommittee to Evaluate Tax Preferences

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Joint Subcommittee to Study Staffing Levels and Employment Conditions at the Department of Corrections

June 18, 2014

The Joint Subcommittee to Study Staffing Levels and Employment Conditions at the Department of Corrections pursuant to SR 34 (2014) held its first meeting on Wednesday, June 18, 2014, in Richmond. The Joint Subcommittee elected Senator David W. Marsden and Senator Emmett W. Hanger, Jr., to serve as co-chairmen of the Joint Subcommittee.

Scope and Purpose of the Committee

Sarah Stanton, Senior Attorney, Division of Legislative Services

Ms. Stanton provided an overview of the scope and purpose of the Joint Subcommittee. She reported that Senate Resolution 34 (2014), introduced by Senator Phillip Puckett, established the Joint Subcommittee to review “the adequacy of staffing levels, employee health and safety, and turnover rates at the correctional facilities of the Commonwealth.”

Senate Resolution 34 provides that the Joint Subcommittee membership include three legislative members of the Senate Committee on Rehabilitation and Social Services, two legislative members of the Senate Committee on Rules, two nonlegislative citizen members who are representatives of an association of correctional officers or employees, and two nonlegislative citizen members who are former correctional officers or employees. The Joint Subcommittee is authorized to meet four times during the 2014 interim and must complete its work by November 30, 2014, and submit an executive summary of its findings and recommendations no later than the first day of the 2015 Regular Session.



PRESENTATION: Commonwealth's Correctional System and Staffing Levels

Paul Broughton, Director of Human Resources, Virginia Department of Corrections (DOC)

Mr. Broughton provided an overview of the Commonwealth's correctional system and staffing levels at the Commonwealth's correctional institutions. He reported that the DOC operates 42 institutions housing 30,256 offenders, seven detention and diversion centers serving 637 detainees/divertees, and 43 probation and parole districts serving 57,108 offenders.

The DOC's approved personnel level for the institutions, detention and diversion centers, probation and parole districts, three regional offices, and single central headquarters is 12,449.70 employees. As of May 31, 2014, the total number of filled positions was 11,788. Functional staffing areas in major facilities include security, treatment and programs, food services, building and trades, medical, education, and administration. Mr. Broughton provided the following demographic and employment history information about DOC employees generally and corrections officers specifically:

- Approximately 49.3% of corrections officers are black, 48.7% are white, and 1.5% are Hispanic.
- Nearly 67% of corrections officers are male and 33% are female, with officers of both sexes working at facilities for male and female offenders.
- The average age of corrections officers is 39.3 years, with 0.9% of corrections officers less than 20 years of age, 30.2% between 21 and 30 years of age, 21.9% between 31 and 40 years of age, 26.1% between 41 and 50 years of age, 17.6% between 51 and 60 years of age, 3.2% between 61 and 70 years of age, and 0.1% older than 71 years of age.
- The average length of service of corrections officers is 7.4 years, with 47.8 % of corrections officers reporting five years of service or less, 21.1% reporting six to nine years of service, 10.7% reporting 10 to 14 years of service, 13.6% reporting 15 to 19 years of service, 4.5% reporting 20 to 25 years of service, 1.6% reporting 25 to 29 years of service, and 0.6% reporting 30 or more years of service. Mr. Broughton noted that the proportion of corrections officers with fewer than five years of service has diminished over the last seven years, indicating success in retaining trained corrections officers.
- The annual turnover rate for corrections officers, based on the period between July 1, 2013, and May 31, 2014, was 16.47%, the highest turnover rate for corrections officers since the fiscal year ending June 30, 2008. The DOC personnel positions with the highest turnover rates (20% or more) in FY 2013 were nurse technician, registered nurse, psychologist, and food service supervisor. Other positions identified as difficult to fill included medical and dental service providers and trades positions. Mr. Broughton reported that corrections officer positions at some facilities were also difficult to fill.
- Two factors identified as contributing to staffing turnover are low pay and lack of pay increases. Mr. Broughton reported that between November 2007 and July 2013, DOC staff received two one-time bonuses of 3%, which did not affect base pay. In 2013, employees received a 2% raise plus compression pay of 65 percent. Currently, the average salary for corrections officers is \$33,403.

Mr. Broughton also provided information about the Healing Environment Initiative. Through the Initiative, the DOC seeks to ensure an environment that is safe and secure for staff and offenders, that fosters positive change, and in which staff feel engaged and that they are making a difference. A recent survey by the Urban Institute found strong support for the Healing Environment Initiative, with

approximately 86% of DOC staff reporting that they believe the healing environment approach is a good strategy. The survey also found that 67% of DOC employees, while acknowledging that their jobs are inherently more dangerous than other available jobs, felt safe in their positions and that only 22% of employees felt that changes made as the Initiative was implemented added a dimension of danger to their jobs.

With regard to safety, Mr. Broughton stated that a total of 1,719 safety-related incidents were reported in 2013, down from a total of 1,964 incidents reported in 2012. No serious assaults on staff, defined as assaults that result in an injury to staff that requires urgent and immediate medical treatment and restricts usual activity, were reported during 2013 compared with three reported in 2012. Mr. Broughton stated that the DOC considers the health and safety of staff paramount in pursuit of its mission, and that the DOC has implemented a health and safety management system that includes comprehensive operating procedures, full-time institutional safety specialists at major institutions, designation of collateral duty safety coordinators at smaller facilities, quarterly statewide training and regional meetings for all institutional safety specialists and safety coordinators, new employee orientation and site-specific safety and health training, Virginia Office of Safety and Health voluntary compliance assistance surveys, Office of Workers' Compensation "Snapshot" health and safety surveys, jurisdictional pressure vessel inspections, multi-causation accident investigation processes, extensive fire prevention and response programs, infectious disease control programs, and a range of certification, accreditation, and other programs to protect the health and safety of staff and offenders.

Discussion of Work Plan

Following Mr. Broughton's presentation, the Joint Subcommittee discussed its work plan for the 2014 interim. Members of the Joint Subcommittee requested that staff arrange site visits to several facilities throughout the Commonwealth, to be conducted in conjunction with the Joint Subcommittee's upcoming meetings. Members also requested that current and retired corrections officers be invited to meet with the Joint Subcommittee to provide input and information about staffing and safety at correctional facilities. In closing, Senator Marsden stated that the Joint Subcommittee should focus on creating integrated environments in facilities where staff and offenders are safe, healthy, and supported and in which staff and offenders are able to bring about positive outcomes.

Joint Subcommittee to Study Staffing Levels and Employment Conditions at the Department of Corrections

Senator David W. Marsden, Co-Chair

Senator Emmett W. Hanger, Jr., Co-Chair

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dls.virginia.gov/interim_studies_docstaffing.html

Small Business Commission

July 15, 2014

The Small Business Commission held its first meeting of the 2014 interim on July 15, 2014, in Richmond, with Senator Frank M. Ruff, Jr., chairman, presiding. The meeting began with brief



introductions by Commission members. Senator Ruff also acknowledged three members recently appointed by Governor Terry McAuliffe to replace members whose terms had expired: E. Dana Dickens, III, a realtor with William E. Wood Co.; Paul A. Miller, CEO, Miller/Wenhold Capitol Strategies, LLC; and Atif M. Qarni, a mathematics teacher with the Prince William County Public Schools. The Commission received scheduled presentations.

Administration of the Virginia Jobs Investment Program by the Virginia Economic Development Partnership Authority (VEDP)

Sandi McNinch, General Counsel

Liz Povar, Vice President, Business Expansions

Frank Strickler, Senior Project Manager

House Bill 932 and Senate Bill 492, identical legislation passed during the 2014 Regular Session, changed the administration of the Virginia Jobs Investment Program (VJIP) from the Department of Small Business and Supplier Diversity (SBSD) to the Virginia Economic Development Partnership Authority (VEDP). Ms. McNinch, Ms. Povar, and Mr. Strickler provided the Commission with a brief history of VJIP and an overview of the transition.

Ms. McNinch noted that from an overall standpoint, VJIP serves as a strong and effective workforce development tool. In Fiscal Year 2014, VJIP served 346 Virginia employers. A majority of VEDP resources are devoted to providing economic incentives as a part of the state's overall economic development strategy. About 15 to 17 percent of VEDP projects, typically the larger projects, receive discretionary incentives. About 96 percent of the projects that receive discretionary incentives receive a VJIP award. Ms. McNinch provided a brief overview of the state's roughly 50-year-old workforce development program. In 1996 the former Department of Economic Development was split into VEDP, which was assigned marketing services, and the Department of Business Assistance (DBA), which was assigned workforce and business assistance services, including VJIP.

In 2010 the Small Business Jobs Grant fund was added to VJIP. In 2014 the workforce components of VJIP were transferred to VEDP. Ms. McNinch stated that the staffing levels for VJIP have decreased from 12 operational positions with four support personnel in 2010 to five operational positions and one support person. Currently, VEDP is focused on streamlining the application process and providing excellent service to program participants. That process has been simplified to four pieces of paper; two applications, a form for the reimbursement, and a customer service questionnaire. Ms. McNinch asserted that this simplified process compared favorably with the application process used by other states, citing as an example the Texas process, which involves three binders and a large volume of paperwork. The objective is for the assigned project manager to be a single point of contact for the business.

Ms. McNinch stated that VJIP offers cash reimbursements for each new job created or for job retraining. The amount of the reimbursements is negotiated with the company based on budget analysis and the company's needs; the average amount is approximately \$850 per job. In comparison, neighboring state North Carolina does not provide cash but rather provides up to \$1,500 in vouchers. In terms of program composition, VJIP includes four traditional workforce components, each with its own qualification criteria:

- Virginia New Jobs Program: (i) creation of a minimum of 25 net new jobs for full-time employees, (ii) a capital investment of at least \$1 million, and (iii) current competition between Virginia and at least one other state or country for the location of the project in question.

- Workforce Retraining Program: (i) no less than 10 full-time employees in need of a new skill set and (ii) a capital investment of at least \$500,000 to be made within a 12-month period.
- Small Business New Jobs Program: (i) creation of a minimum of five net new jobs for full-time employees and (ii) a capital investment of at least \$100,000.
- Small Business Retraining Program: (i) involvement of no less than five full-time employees and (ii) a capital investment of at least \$50,000 to be made within a 12-month period.

To be eligible for assistance under VJIP, an applicant must be a basic sector employer paying a wage that is at least 1.35 times the federal minimum wage, or \$9.75 per hour. Ms. McNinch noted that a fifth component of VJIP, the Virginia Small Business Jobs Grant Fund, was not included in the transfer and continues to be administered by the SBSB. This component, added in 2010, aimed to assist smaller businesses. To be eligible for assistance under this component of the program, a company must (i) create at least five net new full-time positions and (ii) make a new capital investment of at least \$100,000.

Regarding the Virginia New Jobs Program, Senator Ruff asked why the criteria had been set at 25 net new jobs and a minimum capital investment of at least \$1 million. Ms. McNinch responded that thresholds have been in place since the beginning of the program and were comparable to those included in the Governor's Opportunity Fund. Senator Ruff expressed his opinion that the requirement for at least 25 new jobs seems high. Ms. McNinch replied that the Small Business New Jobs Program and the Virginia Small Business Jobs Grant Fund would pick up smaller businesses.

Delegate R. Lee Ware, Jr., asked what was the process for increasing the minimal wage threshold. Ms. McNinch stated that VEDP would collaborate with local economic development partners and that it would not be a single person's decision.

Commission member Nicole Riley asked how Virginia's criteria compare with those of surrounding states. Ms. McNinch stated that North Carolina has a tiered program for considering businesses based on size and sector, etc., while Virginia does not tier applicants. She further stated that VEDP has met with national organizations, such as the National Association of Industrial Training, to determine how other states determine the criteria and that criteria vary from state to state.

Delegate Daniel W. Marshall asked how Virginia compared with other states in terms of workforce development. Ms. McNinch replied that Georgia has an effective quick start program that is staffed by 118 employees. Alabama used a portion of its community college system's workforce development budget to establish mobile training centers housed in nine tractor trailers. These mobile training centers could be taken anywhere in the state and set up to provide customized training.

Delegate Cole asked how VJIP grants were spread across the state geographically. Ms. McNinch stated that the information could be provided by locality, region, or planning district.

Senator Ruff asked how VEDP prioritizes awards when the requests are higher than the available funding. Ms. McNinch replied that the grant amount would likely be reduced but that administrators try to manage the amounts budgeted for the programs. Senator Ruff then asked what would happen if the program is not able to meet the commitments that have been made under VJIP. Ms. McNinch replied that the agreements include provisions that the grants are subject to funds available and General Assembly appropriations. Senator Ruff asked if a trigger was used to determine when the available funding was becoming low. Ms. McNinch stated that typically the Workforce Retraining Program Fund is used as a safety valve, as it is the least used of the funds.



Ms. Povar briefed the Commission on the transition of the programs from SBSB to VEDP. She stated that a conscious effort to smooth the process is ongoing, with particular attention paid to database management. Ms. Povar noted that the VEDP Research Department maintains a list of growing industries updated weekly. She asserted that traditionally 62 to 78 percent of jobs are created by existing companies. Companies that are already located in the state know the environment and the business climate, and it is in the state's interest for them to remain here. While the Virginia Community College System (VCCS) has a significant role in preparing the state's labor force, VJIP is an economic development tool used to subsidize the training and retraining costs that a company may incur. Ms. Povar related that 50 percent of VEDP projects and 40 percent of VJIP projects are with small businesses and that the VEDP remains committed to serving such businesses. She stated that VJIP is located in the VEDP Business Expansion Department, which supports all of the agency's marketing and recruitment efforts. Ms. Povar maintained that VEDP is using the period between July and September to assess VJIP to identify improvements. This assessment will include talking to employees and customers as well as studying highly rated programs in Georgia, Louisiana, and Alabama to learn what makes them successful.

Delegate Ware asked what is the largest impediment to workforce development. Ms. Pover responded that, while the answer may vary depending on whom you ask, the main impediment is the availability of quality training to develop the required workforce in all geographic areas of the state.

Delegate Christopher T. Head commented on the need to emphasize two levels of training for the younger workforce: The first develops a certain skill set and the second involves developing life skills. Mr. Strickler responded that it is important to start early, at the K-12 level, to inform students of the importance of getting a job and being able to support themselves. He noted that the Winchester-Frederick County Economic Development Commission had developed a successful program centered on existing industry clusters that involves early interaction with school officials and students.

Overview of Skilled Worker Training in the Commonwealth

Craig Herndon, Vice Chancellor for Workforce Development, Virginia Community College System (VCCS)

Mr. Herndon began the presentation with a discussion of the five components of VCCS's Achieve 2015 initiative: access, affordability, student success, workforce, and resources. Mr. Herndon noted that in Virginia businesses of all sizes and across varying industries have difficulty finding skilled workers. He noted that filling job vacancies was much easier during the recession, but became harder as the economy rebounded and demand grew. Mr. Herndon described four challenges to meeting this demand and suggested solutions for each.

Challenge #1: Accessing high-quality regional demand data.

Mr. Herndon discussed the importance of ongoing engagement of business and industry and real-time analysis of job and skill demands in forecasting future job demand at the regional level. He noted that the top 10 occupations listed by projected demand over the next five years were not occupations that young people report interest in today.

Challenge #2: Driving interest among workforce supply to areas of regional demand.

Mr. Herndon noted that it is critical to align supply with demand. This could be done by using data on supply, demand, job salaries, and career interests to help develop informed decisions on the part of future workers. Also important are efforts to dispel the negative attitudes that persist regarding technical training. This can be achieved through working with parents and engaging businesses, parents, and school officials. The effort also involves working very closely with school guidance counselors and

using career coaches to ask students beginning in the ninth grade what they want to do in terms of career and giving them a broad range of options including occupations in manufacturing.

Challenge #3: Creating training that most closely aligns with skills demanded by the industry.

According to Mr. Herndon, data gathered from business and industry needs to be refined constantly to ensure that training follows industry standards. This includes support for “stackable” standards involving more than just getting a GED, but placing the individual in a career or on a clear career path. The training that is developed for those interested in manufacturing occupations would use state-of-the-art equipment that matches the equipment that is used in the industry to enable students to acquire skills on and mastery of the same machinery and equipment that they will be using on the job. He highlighted a program operated by Tidewater Community College that uses a tractor trailer as a mobile training facility to provide needed training.

Challenge #4: Increasing credential attainment.

Credentials, stated Mr. Herndon, are the passport into the skilled economy. Solutions that meet the ever-changing needs of business and industry must move beyond general degrees and certifications to include accepted industry certifications with specific relevance. He explained, for example, that typically the welding certification provided by the American Welding Society (AWS) is used as the accepted industry standard. However, in the Tidewater area industries are more interested in a certification that is more specific to naval welding. In looking at surrounding jurisdictions, Mr. Herndon noted that North Carolina and Maryland fund community colleges based on the number of individuals providing the training. Virginia is making an effort to fund based on outcomes by considering not just how many students are enrolled, how many teachers are employed, or how many certifications are awarded, but rather how many students completed industry-accepted certification in high-demand areas. This approach recognizes that some certifications do not hold value.

Delegate Mark L. Cole asked if grades and academic work are transportable among community colleges and what is required to transfer from one to another. Mr. Herndon replied that the VCCS uses a common course number system so that one community college in the system can easily recognize coursework from every other another community college, so no additional paperwork or filings are required to move within the system.

Senator Ruff expressed concern about the amount of time that some certification training may take to complete. He cited, for example, a welding program that can stretch over two years. Such a program may not be the best model for an unemployed person who does not have that much time. He asserted that there must be a continuing effort to shorten the time of the training period.

Overview of Skilled Worker Training

Katherine DeRosear, Director of Workforce Development, Virginia Manufacturers Association

Ms. DeRosear highlighted efforts under initiatives to close the skills gap by 2020 and close the career planning gap by 2016. She emphasized that there is a need to adopt a common way to discuss career readiness and that the establishment of the Career Readiness Certificate (CRC) program makes Virginia a pioneer in this effort.

Closing the Skills Gap by 2020

This initiative focuses on four component areas of concern. The first area, work readiness, focuses on expanding readiness credentials to all students and not just students concentrating on career and technical education (CTE). The second area, career readiness, involves expanding the National Career



Readiness Certificate attainment to 50 percent of all workforce development customers and providing a “Career Readiness Guarantee” to employers for the Virginia workforce. The third component, industry readiness, centers on several efforts to increase the number of individuals attaining industry-recognized credentials and on community colleges and private education institutions. The overall objective is to annually certify 11,000 individuals for critical skilled occupations. The fourth component, college readiness, includes expanding dual enrollment programs with community college degrees that are combined CTE and science, technology, engineering, and math (STEM) degrees. In addition, this fourth component seeks to integrate industry recognition credentials with higher education degrees.

Close the Career Planning Gap by 2016

Ms. DeRosear explained that efforts under this initiative will concentrate on (i) integrating academic and career plans as cloud-based e-Career Passports, (ii) rebuilding the image of industry occupations, and (iii) annually transitioning 200 veterans through the Military2Manufacturing program. Regarding the need to rebuild the image of industry occupations, Ms. DeRosear noted that a significant percentage of individuals between the ages of 18 and 24 have generally negative views regarding manufacturing careers. In a 2012 survey of that age group conducted by Deloitte Development LLC and the Manufacturing Institute, only 56 percent of respondents thought manufacturing jobs are clean and safe and 61 percent that manufacturing careers are interesting and rewarding. The survey also found that only 15 percent of respondents received encouragement from parents regarding manufacturing careers. Ms. DeRosear emphasized the need to educate parents and high school guidance counselors on the reality of today’s manufacturing jobs, as these adults are in the best position to influence career choices. This effort will also necessarily include increased collaboration between economic development entities and community colleges.

Ms. DeRosear also highlighted aspects of the initiative that included a website that marketed industry careers and Manufacturing Technology Camps that give students hands-on experience with applied technologies.

Status Update on General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act

Amigo Wade, Senior Attorney, Division of Legislative Services

Mr. Wade provided a brief status update on the activities of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (Special Subcommittee). The Special Subcommittee established two work groups to assist in the review of the Virginia Public Procurement Act (VPPA) by developing consensus on recommendations. The work groups comprise representatives of state and local government, higher education, and the vendor community. Work Group 1 is focused on issues related to construction and related design professionals, and Work Group 2 is focused on information technology, goods, other professional services, and nonprofessional services. Each work group has been assigned a scope of work document (SOW) consisting of an issues matrix compiled by staff in the first year of study. The membership and meeting schedules of the work groups are available at http://dls.virginia.gov/interim_studies_procurement.html.

After the briefing, Senator Ruff asked Commission members for comment. Mr. Dickens noted that a number of state organizations and entities are involved with small businesses and suggested that it would be helpful to have a spreadsheet of all of the state organizations that are involved. Mr. Miller expressed concern that access to the variety of programs offered by state entities is lacking and must be improved. He suggested improving communication to affected communities. Mr. Gordon expressed concerns about the procurement processes used by public entities that in his view adversely affect

smaller contractors and vendors. Of particular concern is the increasing number of public bodies that are using competitive negotiation, which allows consideration of factors other than price, and competitive bidding, which emphasizes the low bidder.

Small Business Commission

Senator Frank M. Ruff, Jr., Chair

Amigo Wade, DLS Senior Attorney

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Commission on Unemployment Compensation

August 14, 2014

The Unemployment Compensation Commission (UCC) met on August 14, 2014, in Richmond, with Senator John Watkins presiding.

Election of Chairman and Vice-chairman

After welcoming Delegate Riley Ingram as its newest member, the UCC reelected Senator Watkins as chairman. Delegate Lee Ware was elected to serve as the vice-chairman to fill the vacancy resulting from the retirement of Delegate Bob Purkey.

Unemployment Trust Fund and Related Issues

Sam Lupica, Chief Operating Officer and Acting Commissioner of the Virginia Employment Commission (VEC)

Mr. Lupica prefaced his remarks with a brief overview of the functions of the VEC and an introduction of key agency personnel. He also provided an overview of the unemployment compensation program in which he reminded members that effective July 6, 2014, the minimum earnings requirement increased from \$2,700 to \$3,000 and the minimum weekly benefit amount increased from \$54 to \$60.

Virginia's Unemployment Trust Fund, which is used to pay unemployment benefits to claimants, reported a balance of \$543 million on June 30, 2014. One year earlier, the balance was \$335 million. The solvency level of the Trust Fund on June 30, 2014, was 34 percent. On June 30, 2013, the solvency level was 24 percent. Both figures have been rising steadily since 2010, when the midyear balance was negative \$104 million and the solvency level was minus six percent.

Mr. Lupica reported that the solvency level is expected to continue increasing and will reach 46 percent in June 2015, 59 percent in June 2016, and 67 percent in 2017, at which time the Trust Fund's balance is scheduled to exceed \$1.12 billion. When the solvency level exceeds 50 percent, the fund builder tax (which is assessed at the rate of 0.2 percent of the first \$8,000 of each employee's wages) will be suspended.

The restoration of the Trust Fund's balance and solvency levels has resulted from a combination of reduced payments as the economy has recovered from the Great Recession and from added funding through a combination of sources, including the assessment of the fund builder tax, application of a portion of federal unemployment tax (FUTA) revenue to repay federal loans, interest on the Trust Fund



balance, and increases in state unemployment tax (SUTA) rates. Low levels of solvency of the Trust Fund automatically increase the SUTA rate. The average annual state unemployment tax per employee assessed on employers in Virginia, exclusive of the federal unemployment tax assessment but including the pool tax and fund builder tax, rose from \$103 in 2009 to \$236 in 2012 and \$234 in 2013. In 2014, the average total state tax declined to \$209 per employee, of which \$175.40 was base tax, \$17.60 was pool tax, and \$16 was fund builder tax. The average tax per employee is projected to drop to \$190 in 2015, \$186 in 2016, and \$159 in 2017. The average pool tax assessment per employee peaked in 2012 at \$42.40; in 2015, it is expected to be \$14.40.

Data provided by the VEC illustrated the SUTA rates computed or assigned to employers. An employer's tax rate may vary considerably based on such factors as whether it is a new business and its history of being charged with benefit claims paid to former employees. Of the nearly 200,000 employers in the Commonwealth, over 112,000, or nearly 57 percent, pay the minimum SUTA rate of 0.1 percent, and 17,538 employers whose rate is computed (8.8 percent) pay the maximum of 6.2 percent of the taxable wage base. An additional 3.8 percent of employers were assigned the maximum 6.2 percent rate as a result of being a foreign contractor, having a record of delinquency, or some other factor.

Claims and Payment Data

Total initial claims for unemployment benefits for the first six months of 2014 were 117,477, and annual claims for the year are projected to total 231,000. Such a total for 2014 would represent a decline of 45,000 from the 2013 total of 276,807, and would be less than half of the 485,711 initial claims filed in 2009.

Final payments of benefits in the first half of 2014 are down 13.6 percent from the same period in 2013 and down 23.9 percent from the same period in 2012. The exhaustion rate, which reflects the percentage of unemployment compensation recipients who use up all of the weeks of regular unemployment benefits for which they are eligible, was 46.3 percent in June 2014. In June 2013, the exhaustion rate was 47.9 percent.

Virginia's maximum weekly unemployment benefit continues to be \$378. The national average maximum weekly unemployment benefit in 2014 is \$424; last year, it was \$416. Virginia's maximum weekly benefit reflects a weekly benefit replacement rate of 39 percent of the state's average weekly wage; the national average is 45 percent. While Virginia's maximum weekly benefit is lower than the national average, it is third-highest among the six jurisdictions composing the area within the Fourth Circuit Court of Appeals. The average state unemployment tax per employee in Virginia of \$230 for the year ending September 30, 2013, was the lowest of the states within such six-jurisdiction region. The U.S. average for the same period was \$426.

Employment Data

The VEC reported that Virginia's unemployment rate (not seasonally adjusted) was 5.4 percent in June 2014. The corresponding rate for June 2013 was 6.0 percent. Virginia's seasonally adjusted unemployment rate for June 2014 of 5.3 percent placed the Commonwealth in a tie with South Carolina for the 17th lowest rate in the nation. The national rate for the month was 6.1 percent, with the lowest rate being 2.7 percent in North Dakota and the highest being 7.9 percent in Rhode Island.

Next Meeting

Senator Watkins advised that the next meeting of the UCC will be held in December. The meeting is expected to include an update on the status of the Trust Fund and a review of proposals for unemployment-related legislation introduced for the 2015 Session.

Commission on Unemployment Compensation

Senator John C. Watkins, Chair

Frank Munyan, DLS Senior Attorney

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Legislative Meeting Calendar: September 2014

September 8	10 a.m.	Joint Legislative Audit and Review Commission (JLARC)	Senate Room A, GAB
	10 a.m.	Virginia Criminal Sentencing Commission	Supreme Court Building
September 9	10 a.m.	Joint Subcommittee to Study Mental Health Services in the Twenty-First Century	Senate Room A, GAB
	upon adj.	Work Group 1	Senate Room A, GAB
	upon adj.	Work Group 2	3rd Floor East, GAB
	upon adj.	Work Group 3	4th Floor East, GAB
September 10	9 a.m.	Virginia State Crime Commission Domestic Violence and Sexual Assault Funding Study Work Group	Senate Room 3, The Capitol
	10 a.m.	Health Insurance Reform Commission	House Room D, GAB
	1 p.m.	Joint Subcommittee to Formulate Recommendations to Address Recurrent Flooding	House Room C, GAB
September 12	10 a.m.	Commission on the Virginia Alcohol Safety Action Program (VASAP)	6th Floor Speaker's Conference Room, GAB
		Tobacco Indemnification and Community Revitalization Commission	
	10 a.m.	Special Projects Committee	Sheraton Roanoke Hotel and Conference Center, Roanoke
	12:30 p.m.	Southwest Economic Development Committee	
	1 p.m.	Judicial Council of Virginia	Supreme Court Building
September 15	9:30 a.m.	House Appropriations	9th Floor Appropriations Room, GAB
	1:30 p.m.	Joint Commission on Technology and Science (JCOTS) Nanosatellites Advisory Committee	House Room C, GAB
	2 p.m.	Virginia Council on the Interstate Commission on Educational Opportunity for Military Children	Jefferson Conference Room, 22nd Floor, James Monroe Building
September 16	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
	10 a.m.	Virginia Commission on Youth	House Room C, GAB
	10 a.m.	Freedom of Information Advisory Council	House Room 1, The Capitol
	10 a.m.	Joint Commission on Health Care	Senate Room A, GAB
	1 p.m.	Joint Commission on Health Care Healthy Living/Health Services Subcommittee	Senate Room A, GAB
	1:30 p.m.	Freedom of Information Advisory Council	House Room C, GAB

Legislative Meeting Calendar: September 2014 (continued)

September 17	9 a.m.	Juvenile Justice Advisory Committee	Chesterfield Detention Center, Chesterfield
	9:30 a.m.	General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act Workgroup 1	House Room 1, The Capitol
	1 p.m.	Virginia Housing Commission Affordable Housing, Real Estate Law, and Mortgages Work Group	House Room C, GAB
	1 p.m.	JCOTS Identity Management Advisory Committee	3rd Floor East Conference Room, GAB
	1 p.m.	Rappahannock River Basin Commission	Graves Mountain Lodge, Syria
	1:30 p.m.	General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act Workgroup 2	House Room 1, The Capitol
	1:30 p.m.	Manufacturing Development Commission	Senate Room B, GAB
	2 p.m.	Virginia Housing Commission	Senate Room A, GAB
September 18	9 a.m.	Criminal Justice Services Board Committee on Training	House Room D, GAB
	9 a.m.	House Privileges and Elections Committee	9th Floor Appropriations Room, GAB
	9:30 a.m.	Senate Finance Committee	Senate Room B, GAB
	9:30 a.m.	State Executive Council for Comprehensive Services for At-Risk Youth and Families	3900 West Broad Street, Richmond
	11 a.m.	Criminal Justice Services Board	House Room D, GAB
	11 a.m.	Virginia Indigent Defense Commission	1604 Santa Rosa Road, Richmond
	noon	House 2014 Special Session I	House Chamber, The Capitol
	noon	Senate 2014 Special Session I	Senate Chamber, The Capitol
September 21	10 a.m.	State Executive Council for Comprehensive Services for At-Risk Youth and Families Executive Committee	1604 Santa Rosa Road, Richmond
September 23	10 a.m.	Virginia State Crime Commission	Senate Room A, GAB
	2 p.m.	Personal Privacy Caucus	House Room 3, The Capitol
September 24	10 a.m.	Commission on Civics Education	House Room C, GAB
September 29	1 p.m.	Small Business Commission	Senate Room A, GAB

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



Other Legislative Commissions and Committees

The following legislative commissions and committees 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

Joint Commission on Health Care

jchc.virginia.gov/meetings.asp

Joint Legislative Audit and Review Commission (JLARC)

jlarc.virginia.gov/meetings.shtml

Virginia Commission on Youth

vcoy.virginia.gov/meetings.asp

House Appropriations Committee

hac.virginia.gov/

Senate Finance Committee

sfc.virginia.gov/



Virginia Law Portal: A New Look for Virginia's Laws

The Division of Legislative Automated Systems (DLAS) launched the Virginia Law Portal, which collects in one place and presents in a redesigned and more easily searchable format the legal publications that constitute “Virginia law.”

The Virginia Law Portal replaces the Legislative Information System as digital host of the Code of Virginia, the Virginia Administrative Code, and the Constitution of Virginia. To these resources the newly designed portal adds Compacts, Charters, Authorities, and Uncodified Acts of Assembly.

Users can search within or across publications by keyword, phrase, subject, agency, and other selected metadata. Responsive design techniques have been employed to make portal content readable, scalable, and easily accessible on any mobile or deskbound device.

Future development of the portal will allow users to download content through FTP, web services, and user-defined reporting options. DLAS also plans to provide links to pending legislation that proposes to amend sections of the Code of Virginia.

Click [here](#) to access the Virginia Law Portal. Use the feedback tab to let DLAS know what you think.

For updates, follow Virginia Law on Twitter [@VA_Laws](#) and the Virginia Register [@varegs](#).

Complete information on meetings during the 2014 interim is available on the website of the Division of Legislative Services (<http://dls.virginia.gov/commissions.html>).

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