



October 2014 Issue

Activities of Virginia Legislative Study Commissions and Joint Subcommittees



Virginia Division of Legislative Services

Virginia Legislative Record

Volume 24 Issue 4

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.

2014 Interim Meeting Summaries

Virginia Code Commission	2	Joint Subcommittee to Evaluate Tax Preferences	11
General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act		Joint Subcommittee to Study Mental Health Services in the 21st Century	12
Work Group 1: Construction and Design Professionals	6	Manufacturing Development Commission	18
Work Group 2: Information Technology, Goods, and Other Professional Services	9	Small Business Commission	20

2014 Meeting Calendars and Resources

Legislative Meeting Calendar: November 2014	24	Other Legislative Commissions and Committees	26
Legislative Meeting Calendar: December 2014	25		

Regulation Information

The *Virginia Register of Regulations* is Virginia's official publication of proposed, final, and emergency regulations. All regulations must be filed with the Registrar of Regulations to become law. The *Virginia Register*, published every other Monday, provides a snapshot of all regulatory activity in Virginia. The current *Register* issue, as well as prior issues and additional information about the regulatory process in Virginia, is available at <http://register.dls.virginia.gov>. Contact the Division of Legislative Services at 804-786-3591 (ext. 258, 261, or 262) or follow the *Virginia Register* on Twitter @varegs for more information.

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

Visit the Virginia Law Portal (law.lis.virginia.gov) for publications that constitute "Virginia law," including the Code of Virginia, the Virginia Administrative Code, the Constitution of Virginia, Compacts, Charters, Authorities, and Uncodified Acts of Assembly. For updates, follow Virginia Law on Twitter @VA_Laws.

Virginia Code Commission

September 16, 2014

The Virginia Code Commission (Commission) met on September 16, 2014, with Senator John Edwards, chair, presiding.

2015 Code of Virginia Pricing and Replacement Volume Proposal

Brian Kennedy, Director, Government Content, LexisNexis

Mr. Kennedy explained that LexisNexis determines which volumes of the Code of Virginia to recommend to the Commission for replacement based on age and supplement size. Historically, LexisNexis recommends four to six volumes for replacement each year, and the more volumes replaced, the lower the cost of the supplement. The Commission approved Mr. Kennedy's recommendation to replace six volumes in 2015 as follows: Volumes 2 (Title 8.01), 2A (Titles 8.1-8.11), 3B (Titles 16.1-17.1), 4A (Title 19.2), 5B (Titles 29.1-32.1), and 10 (Tables). The Commission also approved a proposed price increase of 4.5%, which is based on the Producer Price Index for Book Publishing from June 2013 to June 2014, rounded to the nearest quarter.

The Commission briefly discussed the advantages and disadvantages of a larger volume versus a larger supplement and at what point a single volume should be split into two volumes. Staff pointed out that currently no titles are split into two separate volumes and noted that some of the large volumes contain a single title. The Commission asked Mr. Kennedy to analyze volume size during the annual replacement volume evaluation process and include recommendations to split volumes when they become unwieldy.

Proposed Cleanup Bill to Change "Exemplary Damages" to "Punitive Damages"

Delegate Greg Habeeb, Code Commission Member

Delegate Habeeb advised that the term "exemplary damages" and the phrase "punitive or exemplary damages" are used in several places in the Code of Virginia. He explained that the courts have determined that punitive damages and exemplary damages are the same, and it is confusing to have both terms used in the Code. Delegate Habeeb suggested that the proposed cleanup bill, which changes "exemplary damages" to "punitive damages," or a similar version be introduced at the 2015 Session of the General Assembly. Delegate Habeeb indicated that he had informally contacted the Virginia Trial Lawyers Association and the Virginia Association of Defense Attorneys regarding this proposal.

The Commission agreed to the concept of the proposed legislation and asked Delegate Habeeb to work with staff and interest groups to finalize a bill draft for presentation at a future meeting.

Report on Obsolete Laws in Titles 21, 35.1, 36, 44, 47.1, and 51.5

David May, Attorney, Division of Legislative Services (DLS), explained that DLS has implemented a new method for identifying obsolete laws to recommend to the Commission for removal from the Code of Virginia as mandated in § 30-151 of the Code of Virginia. He gave an overview of the work plan for and explained the criteria used when identifying obsolete statutes. For purposes of this project, "obsolete" is defined as follows: "A statute or provision thereof may be 'obsolete' if it has lost its efficacy without being repealed, including statutes or provisions that are outdated, outmoded, unnecessary, superseded, no longer serve a useful purpose, or apply to an object or occasion that no longer exists." Mr. May stated that Titles 21, 35.1, 36, 44, 47.1, and 51.5 were selected for review because they either had never been recodified or had not been recodified recently. DLS attorneys

specializing in a title's subject matter reviewed the entire title for obsolete sections and presented their findings and recommendations individually.

In response to a question, Mr. May explained that the definition of "obsolete" was developed by taking the best components from dictionaries, case law, and information from other states. The Commission discussed the definition and did not recommend any changes.

Mr. May stated that no obsolete provisions were found in Titles 35.1 (Hotels, Restaurants, Summer Camps, and Campgrounds) and 47.1 (Notaries and Out-of-State Commissioners).

Jessey French presented the report for Title 44, Military and Emergency Laws. Ms. French introduced Lieutenant Colonel Russell Woodlief, Virginia National Guard, and Marilyn Harris, Virginia Department of Emergency Management, who assisted in preparing the report and were available for questions.

Ms. French indicated that the recommendations under consideration would involve repealing and amending numerous sections in Title 44 as well as amending sections in other titles of the Code.

In Chapters 1 and 2 of Title 44, the sections under consideration are §§ 44-3, 44-7, 44-21, 44-24.1, 44-55 through 44-74, 44-119, 44-123, and 44-133. Also affected are §§ 2.2-4905, 8.01-327.2, 18.2-308, 46.2-827, 65.2-101, and 65.2-103. Ms. French stated that there are references throughout Title 44 to the naval militia, which has not existed since the 1930s. The Commission agreed that provisions concerning the naval militia should be repealed. There was no familiarity with the requirement of § 44-21, relating to bonds of Adjutant General and his fiscal clerks, and the Commission discussed whether the section was unnecessary as opposed to truly obsolete. Carlos Hopkins indicated he would review § 44-21 and report back to the Commission. Also, § 44-24.1, which authorizes the Adjutant General to provide health coverage for employees, appears to be obsolete since such coverage is under either the state or federal systems.

Ms. French moved on to emergency services and disaster provisions. In Chapters 3.2, 4, and 7 of Title 44, the sections under consideration are §§ 44-146.25, 44-147 through 44-151, and 44-204 through 44-207. The Commission hesitated to repeal provisions simply because they had not been used or to remove any specific power of the Governor (e.g., a law giving the Governor the right to establish certain provisions concerning air raids, even though the likelihood of an air raid is practically nonexistent). The Commission discussed whether certain provisions contained policy questions and should be updated rather than repealed.

Senator Edwards directed staff to prepare a bill, for discussion in a subsequent meeting, that repeals the provisions regarding the naval militia and other provisions that are obsolete without question; however, he directed staff to retain provisions regarding the Governor's powers, which will be reviewed by the Governor's Office and the Office of the Attorney General.

Amigo Wade presented the report for Title 36, Housing, and advised that the report includes input received from the Virginia Housing Development Authority and the Virginia Department of Housing and Community Development. The Commission approved staff recommendations to (i) amend § 36-55.64 to update a cross-reference, (ii) amend §§ 36-78 and 36-83 to delete expired language, (iii) repeal § 36-85.15 as unnecessary since severability is covered in Title 1, and (iv) amend § 36-85.17 to remove language concerning staggered terms for board members.

Sarah Stanton presented the report for Title 51.5, Persons with Disabilities. Ms. Stanton stated that much of this title was repealed two years ago as a result of government reorganization legislation, at which time the Department for Aging and Rehabilitative Services was created. Therefore, the only section



recommended for repeal is § 51.5-35.1, which states that references in the Code of Virginia to the terms “Board for Rights of the Disabled” and “Board for the Rights of Virginians with Disabilities” mean “Virginia Board for People with Disabilities.” Ms. Stanton stated that there are no references to the two obsolete boards anywhere in the Code and the section was last amended in 1992. A question was raised regarding whether a current dispute could involve either term; Ms. Stanton was asked to contact the Virginia Board for People with Disabilities to confirm that no issues concerning the two boards are outstanding. The Commission agreed that, subject to staff findings, a bill should be prepared to implement the recommendation in the report.

Scott Meacham presented the report for Title 21, Drainage, Soil Conservation, Sanitation and Public Facilities Districts. Within that title, §§ 21-116.1, 21-120, 21-139, 21-427, and 21-427.1 are under consideration; they either continue in effect or incorporate by reference various Acts of Assembly. After discussion, the Commission instructed staff to review the underlying Acts of Assembly to determine if they are truly obsolete. If they are not, it was suggested that perhaps the relevant acts should be set out in the Code of Virginia. Therefore, a decision on this report was deferred until the next meeting.

After discussing whether the various obsolete law recommendations could be consolidated into an omnibus bill, the Commission agreed that each title should be drafted in a separate bill.

Severability Provisions

Nicole Brenner, Attorney, Division of Legislative Services

Ms. Brenner explained that severability provisions should not be included in the Code of Virginia because of a Title 1 blanket severability provision that covers the entire Code. As part of the title revision process, staff identifies and suggests the repeal of severability provisions. She further explained that she was unsuccessful in repealing some severability provisions during the Title 33.1 recodification because certain interest groups successfully argued that having provisions in some places and not in others causes ambiguity, and that this inconsistency creates the false implication that chapters without severability provisions are not severable. Ms. Brenner stated that she identified severability provisions throughout the Code and drafted a proposed omnibus bill that removes the severability provisions by repealing or amending sections, as appropriate. She requested that the Commission consider introducing legislation at the 2015 Session to clean up the severability provisions throughout the Code.

In response to a question about DLS practice when a legislator requests inclusion of a severability clause, Ms. Brenner stated that the DLS attorneys are not supposed to include such provisions in bill drafts; however, she affirmed that the provisions are included if insisted upon by the requesting legislator. The Commission suggested that if a legislator insists on including a severability provision, it should not be assigned a Code section number but could be placed in a separate enactment clause as an alternative.

The Commission approved an omnibus bill draft removing the recommended severability provisions from the Code of Virginia.

Recodification of Title 23, Educational Institutions

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

Mr. Stevens and Mr. Brimmer reported on the revision of Title 23, Educational Institutions. The Commission discussed proposed Chapter 13 (Governing Boards), regarding provisions that apply generally to governing boards of public institutions of higher education. The discussion highlighted language regarding removal of a board member for failure to perform duties. The new language differs

substantively from the prior language and links removal to failure to attend meetings, as the schools favor a mechanical process and an individual approach. A member emphasized that the accrediting agencies for institutions of higher education want the board member removal process to be as objective as possible and not politicized. Mr. Stevens stated that staff would continue to work on the language in this section.

The Commission also listened to staff recommendations and discussed the proposed chapters concerning the following institutions:

- Chapter 14. Christopher Newport University
- Chapter 15. George Mason University
- Chapter 16. James Madison University
- Chapter 17. Longwood University
- Chapter 18. University of Mary Washington
- Chapter 19. Norfolk State University
- Chapter 20. Old Dominion University
- Chapter 21. Radford University
- Chapter 22. University of Virginia
- Chapter 23. Virginia Commonwealth University
- Chapter 25. Virginia Military Institute
- Chapter 26. Virginia Polytechnic Institute and State University
- Chapter 27. Virginia State University
- Chapter 28. College of William and Mary in Virginia; Richard Bland College

Most of the institutions have a common provision for corporate powers. Using the section “Corporate name; name of university” in Chapter 14 (Christopher Newport University) as an example, Mr. Stevens explained that the concept of corporate powers derives from the University of Virginia’s 1908 enabling law. Since that time, corporate powers in Title 13.1 of the Code have grown, and staff recommends that the corporate powers of institutions be limited to those of a nonstock corporation. Mr. Stevens indicated that the work group is still reviewing this issue, and the institutions are supposed to identify which corporate powers they need.

Staff made additional recommendations to repeal obsolete provisions, set out in full an act incorporated by reference, and update language throughout the proposed chapters.

2014 Virginia Administrative Code Replacement Volumes

The Commission approved West’s request to issue five volumes, instead of the four volumes allowed by contract, due mainly to the size of Title 9 (Environment). Each volume will consist of approximately 1,600 pages.

Other Business

Jane Chaffin advised the Commission that social media is now being used to provide increased visibility to the Virginia Register and rulemaking in Virginia and encouraged members with Twitter accounts to follow the Virginia Register @varegs.



Next Meeting

The Commission is scheduled to meet on Tuesday, October 21, 2014.

Virginia Code Commission

Senator John S. Edwards, Chair

Jane Chaffin, DLS Staff

804-786-3591 ext. 262

codecommission.dls.virginia.gov/

**General Laws Special Joint Subcommittee Studying
the Virginia Public Procurement Act****Work Group 1: Construction and Design Professionals**

September 17, 2014

Work Group 1, Construction and Design Professionals, of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) held its fourth meeting of the 2014 interim on Wednesday, September 17, 2014, in Richmond.

Overview and Progress Report; DGS Omnibus Draft

The meeting began with a review of the actions taken by the General Laws Special Joint Subcommittee on legislation referred by the 2014 Session of the General Assembly and a progress report on the activities and consensus items of Work Group 2. After the overview and progress report, Julie Whitlock of the Department of General Services (DGS) presented a package of changes sponsored by the agency. The package, hereinafter referred to as the omnibus draft, includes consensus language as well as suggested provisions to move the work group toward more final consensus in the areas of architectural and engineering services (A/E) term contracts, job order contracting (JOC), and cooperative procurement. Ms. Whitlock provided a brief overview of the changes as follows:

A/E term contracts:

- Prohibit price-shopping among A/E contractors on term contracts
- Preserve current A/E term limits

JOC:

- Increase JOC limits from \$2 million per term to \$5 million per term
- Increase JOC limits from \$400,000 to \$500,000 per project
- Decrease the number of renewable one-year terms for JOC from four additional terms to two additional terms
- Allow ancillary A/E services up to \$60,000 per order on JOC projects

Cooperative procurement:

- Make no changes to joint purchasing authority

- Continue to prohibit the purchase of A/E services under a cooperative procurement contract where the public body was not a party to the initial contract (“piggybacking”)
- Expand the prohibition against construction piggybacking to all contracts

In addition, Ms. Whitlock noted that the draft included miscellaneous provisions (i) clarifying that small purchase procedures may be used for construction, provided the Uniform Statewide Building Code is followed, and (ii) raising the limit on the state’s ability to procure A/E services noncompetitively from \$50,000 to \$60,000, to match the current limit for localities.

After presentation of the package, work group members provided comments. Jeff Southard, Executive Vice President, Virginia Transportation Construction Alliance, asserted that the omnibus draft did not include the exemption for certain transportation projects from JOC or the removal of all construction from cooperative procurement. He believed that consensus had been reached on both of these items. It was agreed that the exemption for transportation projects was a consensus item.

Chris Lloyd, McGuire Woods Consulting, asked if the joint procurement provision under cooperative procurement also applied to localities. Rich Sliwoski, Director, DGS, stated that the Department would pursue separate legislation regarding its statewide contract authority. The inclusion of localities, added Mr. Sliwoski, depended on the level of resistance. Steve Vermillion, CEO, Associated General Contractors of Virginia, did not support allowing localities to use statewide contracts, as suggested by Mr. Lloyd. Mr. Lloyd also noted that there should be a provision in the omnibus draft to grandfather contracts that were entered into prior to the effective date of the changes to the law. Uwe Weindel, P.E., Director, Frederick County Sanitation Authority, agreed with the prohibition on new construction under cooperative procurement, but added that the prohibition of all construction would not meet the needs of many water authorities and other utilities.

Mr. Vermillion stated that while the DGS omnibus draft provided a good starting point, a key component missing from the draft was an independent review board. Mr. Vermillion strongly suggested that the work group establish such a board at the beginning of the process and enable it to make quick decisions to avoid project delays.

Patrick Cushing, Williams Mullen, expressed support for the omnibus draft but asserted the need for more clarification that JOC may not be used to procure A/E services. Mr. Chris Stone, P.E., President, Clark Nexsen (an A/E design firm), supported the need for an independent review entity. He also offered a language change under the definition of “new capital construction” to remove the word “addition.” It was noted that the omnibus draft prohibited JOC from being used to procure A/E services alone. Michael Halvorson added that JOC should not be used solely to procure A/E services and that any A/E services acquired should be incidental to the overall contract work. William Hefty, Esq., Hefty & Wiley, P.C., pointed out the need to clarify that decisions to procure A/E term contracts cannot be based entirely on price and suggested adding the word “solely.” There was disagreement among the work group over this suggested change.

Anthony Arnold, P. E., Director of Facilities Planning and Construction, Virginia Beach Public Schools, noted that the process used by his public body for A/E term contracts involved choosing two or three professionals and then equally distributing the work among them based on expertise, without any further consideration of price. Mr. Hefty offered the following changes: (i) increasing the A/E term contract limits for localities with populations of more than 200,000 from the current \$5 million to \$10 million and (ii) prohibiting the procurement of new construction using cooperative procurement, but allowing an exception for public works projects.



It was agreed that the DGS omnibus draft would serve as the vehicle for achieving future consensus. Staff was instructed to make several changes to the draft for final review at the next meeting of the work group.

Public Procurement; Establishment of Advisory Board; Discussion

The work group discussed options for increased enforcement and oversight of the public procurement process. Amigo Wade, Division of Legislative Services, proposed several changes intended to clarify procurement processes in the following areas: (i) the choice by public bodies to use a Notice of Intent to Award or a Notice of Award, (ii) the application of the automatic stay provisions, and (iii) the administrative process for protest appeals. After considerable discussion, the work group decided not to move forward with any of the proposals.

The discussion then centered on developing appropriate oversight to ensure that the procurement process works as intended by the legislature. Mr. Hefty noted that he will not support the notion that the current system does not work. Steve Owens, Senior Assistant Attorney General, stated that an appeals entity used to exist within the DGS but that it had been discontinued. He cited that the former appeals board was not frequently used, possibly because vendors feared retaliation, and that the process was costly. Mr. Sliwoski noted that the domain of the previous appeal entity had been limited to goods and nonprofessional services. Mr. Cushing maintained the need for a level of review of certain procurement decisions, and he offered to provide data on the number of protests registered over the past five years. Elizabeth Dooley, Assistant Purchasing Agent, Arlington County, and Cecelia Stowe, Purchasing Director, Henrico County, both pointed out that not all of the protests may have involved a violation of the VPPA, but rather a misunderstanding of the process. They suggested that it might be necessary to mandate education and training. Mr. Vermilion strongly reaffirmed the need for an independent review board and offered to outline a proposed independent review entity.

Mr. Wade noted additional options for discussion, including increased roles for the State Comptroller and the State Inspector General and the establishment of a public procurement advisory council. No consensus could be reached on the first point. Regarding the option to establish an advisory council, Ms. Stowe noted that if the current Freedom of Information Act (FOIA) Council is the intended model, it is important to understand that while FOIA covers all public bodies across the state at all levels, the VPPA does not. Mr. Lloyd felt that thresholds should be considered to determine which procurement disputes would be heard by the advisory council. Mr. Weindel urged the work group not to give up on the current process, even if the final consensus is to establish an advisory body. Mr. Wade agreed to provide proposed language for an advisory entity for discussion at the work group's next meeting.

Public Comment

The work group opened the floor to receive public comment.

Michael Lockaby, Esq., County Attorney for Louisa County; Local Government Attorneys of Virginia

Mr. Lockaby stated that many localities have very limited staff and that the current VPPA was already extremely difficult for smaller localities to navigate. He submitted that the work group should not do anything to make the VPPA more complicated; rather, the focus should be on the original intent of the VPPA and its objective of providing general rules with some flexibility. Regarding oversight, Mr. Lockaby felt that there was no need for another level of state bureaucracy.

Reginald Jones, Williams Mullen

Mr. Jones noted that he worked on the original VPPA, and the intent was to create a fair and open process and to ensure the best use of taxpayer money. He supported the idea of a VPPA advisory council to provide an independent look at the process, but cautioned that it would be critical to keep the entity simple and advisory in nature.

Next Meeting

The next meeting of the work group is scheduled for October 15, 2014.

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

September 17, 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) held its fourth meeting of the 2014 interim on Wednesday, September 17, 2014, in Richmond.

Overview and Progress Report

The meeting began with a review of the actions taken by the General Laws Special Joint Subcommittee on legislation referred by the 2014 Session of the General Assembly and a progress report on the activities and consensus items of Work Group 1.

Equal Footing for Competitive Negotiation and Competitive Sealed Bidding; Publication of Notices; Discussion Draft

Maria Everett, Division of Legislative Services (DLS), presented two consensus drafts: One places competitive negotiation and competitive sealed bidding on equal footing as methods of procurement for goods and nonprofessional services; the second relates to the publication of notices of competitive negotiation. After brief discussion, it was decided that the final decision on the drafts would be made at the last meeting of the work group.

Improvements to Public Procurement Process; Discussion

The work group then turned its attention to reviewing suggested improvements to the procurement process. Amigo Wade, DLS, presented several suggested changes intended to clarify the procurement processes: (i) the choice between a Notice of Intent to Award or a Notice of Award, (ii) the application of automatic stay provisions, (iii) the “sole relief” language under the VPPA, and (iv) the clarification of the administrative process for protest appeals. Joe Damico, Deputy Director, Department of General Services (DGS), noted that it was important to hear from the vendor community regarding the status of the current process. He further noted that if a vendor has a concern about compliance with state law or procurement regulations, a possible avenue of complaint would be through the Office of the State Inspector General (OSIG).

Nicole Riley, Virginia State Director, National Federation of Independent Business, asserted that what vendors want is an independent review of the process; if that review occurs at the front end of the procurement process, there would be no need for review by OSIG. Ms. Riley further stated that vendors’ biggest concern is the lack of a remedy for their protest. Gwendolyn Davis, Chair, Equipping Businesses



for Success Institute, noted that vendors who lodged a protest were concerned that the public body would retaliate by withholding future work. Lee Brazzell, President and CEO, Transformation Consulting LLC, added that women-owned and minority-owned businesses were not being treated fairly, and disparity studies have found that such businesses fear retaliation. Eric Denby, Director of Procurement and Supplier Diversity Services, University of Virginia, noted that small, women-owned, and minority-owned (SWaM) businesses tended to participate in quick quotes on eVA and did not participate in large contracts. After discussion, the consensus of the work group was to not proceed with any of the changes listed under item (i) and to maintain the status quo.

Sole Relief Language; Discussion

The work group then moved to discuss the provisions under item (iii), regarding clarification of the sole relief language of the VPPA. Code provisions for appealing decisions regarding ineligibility, withdrawal of a bid, and responsibility clearly prescribe what the sole relief will be if the action is appealed to the court system. Section 2.2-4360, which pertains to protests of award or decisions to award, does not expressly state that its remedies are the sole relief upon appeal. The result is that the sole relief language has been interpreted to apply to the public body in the administrative appeal process, but not to the court when the action is appealed. Eugene Anderson, Director, Department of Procurement Services, Norfolk State University, and William Lindsey, Purchasing Agent, Gloucester County, asserted the need for consistency between administrative and judicial remedies. Ms. Riley, Ms. Davis, and Ms. Brazzell countered that the courts should be able to fashion a remedy appropriate to the specific facts in a given appeal. Keith Gagnon, Procurement Director, Virginia Community College System (VCCS), asserted that keeping the remedies the same would not be changing the process. No consensus could be reached on this point. Staff suggested that work group members submit specific language for consideration at the next meeting.

Public Procurement; Establishment of Advisory Board; Discussion

Discussion then focused on the options for improved oversight and enforcement of the procurement process. Ms. Davis supported the option of requiring all public bodies to have administrative review procedures and establishing an independent agency to review and enforce the VPPA. Mary Helmick, Director, Procurement Services, James Madison University, stated that all public bodies should not be required to establish an administrative appeals procedure because it would prolong the process. Mr. Anderson expressed support for the establishment of an advisory council, which would serve as a forum for stakeholders to discuss and resolve procurement issues apart from the review of specific proposals during the legislative session. Several work group members expressed support for an advisory council, with a chief issue being its jurisdiction. Mr. Gagnon suggested that in order to resolve the issues that had been raised, there may need to be both a central appeal body, which would address the specifics of the procurement process, and a separate body to focus on broader areas such as education and training. It was the consensus of the work group to have staff prepare a draft of an advisory entity for review at the next work group meeting. In addition, staff was asked to provide to the work group prior to the next meeting a copy of the enabling language for the appeal entity previously used by DGS. Mr. Damico and Micah Dalton, North Highland Consulting, added that it would be helpful to the process if work group members and interested parties provided the staff with more information regarding vendor issues and examples denoting some of the problems.

Public Comment

The work group opened the floor to receive public comment.

Michael Lockaby, Esq., County Attorney for Louisa County; Local Government Attorneys of Virginia

Mr. Lockaby stated that many localities have very limited staff and that the current VPPA was already extremely difficult for smaller localities to navigate. He submitted that the work group should not do anything to make the VPPA more complicated; rather, the focus should be on the original intent of the VPPA and its objective of providing general rules with some flexibility. Regarding oversight, Mr. Lockaby felt that there was no need for another level of state bureaucracy.

Next Meeting

The next meeting of the work group is scheduled for October 15, 2014.

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

804-786-3591 ext. 210 or 216

dls.virginia.gov/interim_studies_procurement.html

Joint Subcommittee to Evaluate Tax Preferences

October 8, 2014

The Joint Subcommittee to Evaluate Tax Preferences met on Wednesday, October 8, 2014.

The Joint Subcommittee resumed a discussion from the July meeting regarding the partial sales and use tax exemption for food. Members considered the idea of phasing out entirely the state portion of the sales and use tax. Because the revenues from the state portion of the tax support transportation and education, there was concern about finding sources of replacement revenues to hold these areas harmless. The members present at the October 8 meeting agreed that this was a topic they would like to continue to discuss but agreed to wait until a future meeting when more members were present.

Staff from the Division of Legislative Services presented a report on the sales and use tax exemption for nonprofit organizations. A copy of the in-depth report, and supporting documentation, is available on the Joint Subcommittee website. Generally, nonprofit organizations that meet certain criteria apply to the Department of Taxation for a certificate of exemption. These organizations must refile their applications periodically and must provide an audit or financial review. This system was established in 2003; prior to that, exempt organizations were listed in the Code of Virginia.

While there is no explicit purpose set forth for the exemption, many agree that it supports organizations that provide services that otherwise would need to be provided by the Commonwealth. However, staff noted that there is no uniformity as to the extent such services are provided by exempt nonprofits. For example, some entities that benefit from the exemption provide relief services in developing countries and not in the Commonwealth. There are currently more than 2,000 organizations with tax-exempt status.



Staff from the Department of Taxation (TAX) presented the revenue impact of the sales tax exemption for nonprofits. Members were interested in the growth of the revenue impact in fiscal year 2014. TAX indicated that this change was partially due to the increase in the sales tax rate that went into effect that year. They also noted that hospitals renewed their exemptions in 2013 and could have shown increases in purchases. Additionally, as the economy improved, there was likely an accompanying uptick in nonprofit giving and spending. TAX will follow up on this at a later meeting.

Members were also interested in the financial reviews submitted by the tax-exempt entities to the Department of Taxation and the review of such statements. TAX indicated that they have never had to use the results of the submitted reviews to remove an entity's tax-exempt status. When questioned further about this, TAX indicated that the review is objective, and the Department does not evaluate organizations based on any subjective factors. Furthermore, TAX indicated that if an entity received a poor financial review from a certified public accountant that demonstrated it was not eligible to continue to use the exemption, the nonprofit likely would not submit the review to the Department of Taxation and would not renew its exemption.

Another issue discussed by the members related to the exemption was the administrative burden of submitting the application and financial review for entities with little or no revenue. There was also some interest in learning more about how North Carolina administers its program, which provides sales tax refunds instead of exemptions.

Because a quorum was not present at the meeting, no recommendation was made regarding the sales tax exemption for nonprofit entities. This issue will be reconsidered at a future meeting.

Joint Subcommittee to Evaluate Tax Preferences

Senator Jeffrey L. McWaters, Chair

David Rosenberg, DLS Senior Attorney

Lisa Wallmeyer, DLS Senior Attorney

804-786-3591 ext. 215 or 223

dls.virginia.gov/commissions/tax.htm

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

September 9, 2014

The Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century (the Joint Subcommittee) met for the second time on Tuesday, September 9, 2014, in Richmond.

PRESENTATION: Mental Health Disorders and Treatment

Debra Ferguson, Ph.D., Commissioner, Department of Behavioral Health and Developmental Services

Dr. Jack Barber, Medical Director, Department of Behavioral Health and Developmental Services

Commissioner Ferguson and Dr. Barber provided an overview of common mental health disorders and treatment.

Commissioner Ferguson began by describing a 2003 report by the New Freedom Commission on Mental Health that provided information on gaps in mental health services and made concrete recommendations

for immediate improvements. The report identified three specific barriers to improving mental health services: stigma around mental illness, unfair limitations and financial requirements placed on mental health benefits in private insurance, and the fragmented mental health service delivery system. The report also identified several specific problems with the current system of mental health services, including fragmentation and gaps in services for children and adults with serious mental illness, high levels of unemployment and disability among individuals with serious mental illness, a lack of care for older adults with mental illness, and a lack of national priority for mental health and suicide prevention. Commissioner Ferguson reported that the New Freedom Commission identified six goals as the foundation for transforming mental health care in America. These were as follows:

1. Americans understand that mental health is essential to overall health.
2. Mental health care is consumer and family driven.
3. Disparities in mental health services are eliminated.
4. Early mental health screening, assessment, and referral services are common practice.
5. Excellent mental health care is delivered and research is accelerated.
6. Technology is used to access mental health care and information.

Commissioner Ferguson also stated that the report stressed recovery as the expectation and the goal of the mental health service system. Recovery refers to the process in which people are able to live, work, learn, and participate fully in their communities and to access health care, gainful employment, and adequate and affordable housing. In closing, Commissioner Ferguson stated that the report could serve as a roadmap to developing a system of mental health services for the Commonwealth. The system described by the report is grounded in best practices, is oriented to recovery, promotes access and early intervention, and emphasizes excellence in mental health.

Dr. Barber provided an overview of common mental illnesses including schizophrenia, bipolar disorder, schizoaffective disorder, depression, anxiety disorders, mental health disorders in children and adolescents, conduct disorder, and substance use disorders, and information about the treatment thereof. He noted that mental illnesses are generally characterized as irregular mood, thought, or behavior; that mental illness becomes a concern when symptoms cause frequent distress and affect one's ability to function; and that individuals with mental illness are likely to experience co-morbidities that substantially negatively impact their life expectancy. He noted that the National Institute of Mental Health estimates that 18.6 percent of adult Americans experience some form of mental illness during the course of a year and that in any single year, an estimated four percent of Americans will experience serious mental illness. Approximately one-half of individuals with mental illness are diagnosed by the age of 24.

Dr. Barber highlighted some best practices for the treatment of mental illness, including early identification and treatment; holistic assessment, treatment, and support customized to the individual; use of the right medications for symptom control and side-effect tolerance; a focus on recovery principles of hope, choice, purpose, and connection to "helpful others"; a focus on psychosocial rehabilitation; inclusion of peer support services and Wellness Recovery Action Plans; an emphasis on family involvement, support, and advocacy; prompt response to increasing symptoms; and establishing stable living arrangements. In closing, Dr. Barber emphasized that treatment is effective when it is available and tailored to the individual's needs, and that people do recover from mental illness.



PRESENTATION: Governor's Task Force on Mental Health Services and Crisis Response

The Honorable Bill Hazel, Secretary of Health and Human Resources

The Honorable Brian Moran, Secretary of Public Safety and Homeland Security

Secretary Hazel and Secretary Moran provided an overview of the Governor's Task Force on Improving Mental Health Services and Crisis Response. The task force was created on December 10, 2013, by Executive Order 68 (McDonnell), to seek and recommend solutions that will improve Virginia's mental health crisis services and help prevent crises from developing. Executive Order 12 (McAuliffe) continued the task force. The task force is composed of 42 members, including leaders in the mental health field, law enforcement, the judicial system, and the private hospital system, as well as individuals receiving mental health services and their family members. The task force is chaired by the Lieutenant Governor and co-chaired by Secretary Hazel and Secretary Moran. Several work groups and sub-work groups assisted the task force in its work. During the spring and summer of 2014, the task force met several times to review existing services and challenges in the mental health system and made recommendations, including legislative and budget proposals, for critical improvements to procedures, programs, and services.

On January 1, 2014, the task force made a number of initial recommendations. These included

- A 12-hour emergency custody order (ECO) period that includes tiered levels of notification every four hours;
- Notification of the community services board responsible for conducting the evaluation by the law-enforcement agency that executes an ECO; and
- A two-year sunset on any statutory changes to ensure the new laws are meeting the needs of the Commonwealth.

At that time, the task force also endorsed several of the Governor's proposals, including

- A 72-hour temporary detention period with a minimum of 24 hours of temporary detention prior to a commitment hearing;
- Additional funding for mental health services;
- Expanding secure assessment centers and crisis stabilization units for children and adults across the Commonwealth as the highest priority for funding;
- Expanding the use of telepsychiatry; and
- Expanding funding for crisis intervention team training for law-enforcement officers throughout the Commonwealth.

In June of 2014, the task force made several additional recommendations, including recommendations for

- Establishment of a "center of excellence" to use public and private resources to address behavioral health needs, including criminal justice, substance use disorder, housing, and employment. Each community should establish a position/committee/group to ensure best practices are actually implemented and analyze instances when programs do not work as intended;
- Investment in crisis intervention team training and assessment centers so that every community in the Commonwealth has a functional crisis intervention team program and assessment center;

- Development of a mechanism to ensure access to and use of alternative transportation providers in all communities. This may require additional funding and amendments to the Code of Virginia to give transportation providers the authority to detain individuals to be transported;
- Development of a single, consistent statewide process for data and oversight to maximize the use of telepsychiatry and video technology;
- Improvement of access to consistent, timely psychiatric services using a benchmark standard, as exists in other health care fields, and making resources available to accomplish this goal;
- Alteration of the Certificate of Public Need process to more effectively address needs for any additional psychiatric beds in some areas of the Commonwealth;
- Improvement of the service delivery system across the Commonwealth, including emergency services when a mental health crisis occurs and services to intervene early and prevent crises from developing, such as expanded crisis intervention teams, implementation of mental health first aid programs in every planning district, and improved behavioral health resources for veterans, service members, and their families and children;
- Increased flexibility in the administration of the mental health system and increased communication among participants in the mental health service system;
- Improved mental health services in jails, including ensuring all jails have readily accessible evidence-based, trauma-informed services for people with mental illness, and developing a system to notify community providers when an individual with behavioral health needs is discharged from jail, to enhance the continuity of care;
- Improved education and incentives for primary care providers and a focus on recruiting and retention of mental health service providers; and
- Improved resources for families of individuals with mental illness.

Secretary Hazel noted that the final report of the task force will be submitted to the Governor by October 1, 2014, but that the task force will continue to meet into 2015.

PRESENTATION: Mental Health Services, a National Perspective

Ted Lutterman, Senior Director of Government and Commercial Research, National Association of State Mental Health Planning Directors (NASMHPD) Research Institute

Mr. Lutterman presented information on Virginia's state mental health system, national comparisons, and trends in state mental health systems. He discussed the impact of mental illness on America, provided an overview of state mental health service systems in the United States, and provided information on state mental health expenditures and financing in the United States and the role of state psychiatric hospitals in Virginia and neighboring states.

Mr. Lutterman reported that approximately one in five Americans will have a mental health problem in any given year, yet only one-third of those individuals will receive services. The direct cost of treatment for those who do seek treatment is approximately \$147 billion nationally, each year, or approximately 6.3 percent of all health care spending. Most mental health services are publicly funded, and private insurance covers only about one percent of the costs of treatment. Approximately 50 percent of those individuals with mental health problems who did not receive services did not do so because of the high cost of mental health treatment. Individuals experiencing mental health problems are at higher risk of



suicide, premature mortality, high medical co-morbidity, unemployment, homelessness and unstable living arrangements, and involvement with the corrections system. Individuals with mental illness can also create significant burdens for family members and caregivers.

Mr. Lutterman described several models of mental health service delivery used in states throughout the country. He noted that Virginia is like many states in that the state mental health authority is part of an agency that combines mental health and developmental and substance abuse services. The Commonwealth employs a county- or city-based system in which the state mental health agency provides funds for mental health services to counties or cities, which then deliver or contract for services. Other states operate models in which the state mental health agency contracts directly with providers for services, or in which the state mental health agency provides services directly using its own staff. In 24 states, community mental health providers control admissions to state psychiatric hospitals, while in others admissions determinations are made by the courts or by medical professionals at hospitals.

In Virginia, approximately 1.4 percent of the total population receives mental health services from the publicly funded mental health system, as compared to 2.3 percent of the national population. Virginia serves more people in psychiatric inpatient settings than the national average, but also transitions more people to community-based services. Approximately 20 percent of adults who receive services are employed, as compared to the national average of 18 percent, and approximately 55 percent had some Medicaid coverage to help pay the cost of services, as compared with 63 percent nationally.

Mr. Lutterman noted that while every state has involuntary commitment laws, the process of involuntary commitment varies substantially from state to state. For example, 23 states allow temporary holds of up to 72 hours, as does Virginia, while 21 allow holds of longer duration and eight have holds of shorter duration. Most involuntary holds are not at state psychiatric hospitals but are at general hospital psychiatric beds or private psychiatric hospitals. Virginia is one of 40 states that allow mandatory outpatient commitment.

At the end of his presentation, Mr. Lutterman described trends in state mental health expenditures and financing. He noted that state mental health systems had been negatively affected by recent state budget shortfalls, and that many states had closed state hospitals and psychiatric beds in recent years. A number of states, including Virginia, have reported shortages of psychiatric inpatient beds and increased waits for state psychiatric beds. Mr. Lutterman reported that Virginia's overall spending on mental health services ranked in the middle of that of surrounding states, but that the Commonwealth's spending skewed more toward inpatient and less toward community-based services than surrounding states. The largest category of state hospital expenditures in the Commonwealth was for civil status adults (81.2 percent of total spending); however, spending on forensic clients is growing quickly.

Public Comment

Following the scheduled presentation, the Joint Subcommittee received public comment.

- Dr. Jim McCullough, a professor of psychology at Virginia Commonwealth University, noted that Virginia needs a prevention strategy and needs to shift from a reactive to a proactive system.
- Ms. Barbara Brown recommended the Joint Subcommittee consider ways to use adult foster care providers to provide safe and stable housing to individuals receiving community-based mental health services who are at risk of homelessness.

- Ms. Karen Duffy described her son's mental illness and the circumstances surrounding his death, and recommended that the Joint Subcommittee consider requiring reporting of adverse drug reactions, including suicides.
- Ms. Sonia de la Cruz described her experience with mental illness and the mental health treatment system and reminded the Joint Subcommittee that it is important to recognize that mental illness, like any other illness, requires treatment and care and can result in recovery.
- Mr. Damien Cabezas, Chief Executive Officer of Horizon Behavioral Health, the community services board serving Lynchburg, described the services provided by the community services board and noted that crisis intervention teams and assessment centers are good options for reducing the impact of mental illness on the community. He also noted that community services boards and law enforcement continue to learn to work together on issues like transportation, and that community services boards require some clarification on recent changes to the laws.
- Ms. Sandy Sale asked the Joint Subcommittee to be aware of the mental health needs of individuals in jails and to take steps to ensure the availability of services for individuals in jails.
- Ms. Bonnie Neighbor, Executive Director of VOCAL (Virginia Organization of Consumers Asserting Leadership), suggested that the Joint Subcommittee hear testimony from individuals who have been involved with and received services through the publicly funded mental health services system.
- Ms. Sherry Sweet noted that medications to treat some mental illnesses are very expensive, and that follow-up care is often difficult to obtain.

DISCUSSION: Work Groups

At the end of the meeting, Senator Deeds announced the focus and membership of the work groups:

- Crisis Intervention Work Group: Delegate Robert B. Bell, III (Work Group Chair), Senator George L. Barker, Delegate Margaret B. Ransone, and Delegate Vivian E. Watts.
- Continuum of Care Work Group: Senator Emmett W. Hanger, Jr. (Work Group Chair), Senator Janet D. Howell, Delegate T. Scott Garrett, and Delegate Luke E. Torian.
- Children and Other Special Populations Work Group: Delegate Joseph R. Yost (Work Group Chair), Senator Linda T. Puller, and Delegate Peter F. Farrell.

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

Senator R. Creigh Deeds, Chair

David Cotter, DLS Senior Attorney

Sarah Stanton, DLS Senior Attorney

804-786-3591 ext. 204 or 238

dls.virginia.gov/interim_studies_MHS.html



Manufacturing Development Commission

September 17, 2014

The Manufacturing Development Commission held its second meeting of the 2014 interim in Richmond on September 17, 2014. The Commission heard presentations about (i) new federal funding proposals for manufacturing extension partnerships, (ii) the feasibility of developing a numerical index to measure the health of Virginia's manufacturing businesses, and (iii) contracts between businesses and Virginia's public research schools for the development and commercialization of intellectual property.

GENEDGE ALLIANCE Presentation

Bill Donohue, Interim Executive Director, GENEDGE ALLIANCE

Mr. Donohue updated the Commission members regarding an opportunity for additional federal funding for manufacturing extension partnerships. GENEDGE ALLIANCE (GENEDGE) is the business name for the manufacturing extension partnership established under Virginia law as the A.L. Philpott Manufacturing Extension Partnership. GENEDGE is headquartered in Martinsville and is an affiliate of the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST). GENEDGE's employees provide general and consulting services to manufacturing, technology, and industrial businesses in the Commonwealth. GENEDGE served a total of 398 clients in fiscal years 2011-2014. Mr. Donohue stated that since 2000, GENEDGE has delivered over \$3 billion in cumulative economic impact for its clients and also has helped to create or retain 8,680 jobs.

Mr. Donohue explained that NIST is in the process of reauthorizing its funding of manufacturing extension partnerships, which could result in additional federal funds being granted to GENEDGE. NIST has selected 10 states, including Virginia, to compete for the additional federal funds under a pilot program. In their proposals, the manufacturing extension partnerships must address how they will increase the level of services provided to small companies. If selected, GENEDGE would see its annual funding from NIST increase by \$445,000, from \$1.277 million to \$1.722 million. However, as a condition of this increase, the General Assembly would be required to match the \$445,000 in additional federal funds with an additional \$445,000 of state funds to GENEDGE annually, for a minimum of three years and perhaps longer. Thus, Mr. Donohue, on behalf of GENEDGE, is requesting the Commonwealth to increase its annual appropriation to GENEDGE from \$398,788 to \$844,000 per year. With the additional moneys, GENEDGE can significantly expand the manufacturing extension partnership services it provides to Virginia businesses.

Council on Virginia's Future Presentation

Gerard Ward, Deputy Director, The Council on Virginia's Future

Mr. Ward explained the mission and operations of the Council on Virginia's Future (the Council) and discussed the feasibility of the Council developing a numerical index to measure the prosperity of Virginia's manufacturing industry. Mr. Ward stated that the Council provides a long-term focus on high-priority issues and creates an environment conducive to improved policy making. The Council is chaired by the Governor.

The Council has developed and maintains an accountability system known as Virginia Performs, which aligns state agency strategies with higher-level statewide goals, increases transparency and accountability, and provides a foundation for strategic thinking and performance-based planning and budgeting. Virginia Performs has developed a scorecard to measure the following macro subjects in Virginia: economy, education, health and family, public safety, natural resources, transportation, and

government and citizens. Virginia Performs has established a unique goal for each macro subject and tracks whether the Commonwealth's performance relative to the goal is improving, maintaining, or worsening. Virginia Performs is a tool that can be used to measure progress in achieving the highest priorities of the Commonwealth.

Virginia Performs also produces a workforce system report card that is designed to focus on the workforce metrics related to a particular industry. Virginia's manufacturing industry was the first industry selected for analysis using the workforce system report card. The metrics selected to assess Virginia's manufacturing industry were developed in collaboration with industry representatives. They are: dual enrollments in manufacturing, project-based competitive events, career and technical education, community college internship programs, state-registered apprentices, independent industry certifications, credentials and degrees, annual new hires, shared assets, and shared manufacturing curriculum programs. Some Commission members are interested in integrating these metrics into a single numerical index to evaluate the prosperity of Virginia's manufacturing industry on an annual and long-term basis.

Intellectual Property Presentations

Michael Straighttiff, Managing Director, U.Va. Innovation, and Executive Director, U.Va. Licensing & Ventures Group

Mr. Straighttiff spoke to the Commission regarding university contracts and working relationships with businesses for the development and commercialization of intellectual property. Mr. Straighttiff indicated that collaborating with industry follows naturally from UVA's Commonwealth plan, one part of which stresses innovation and dissemination. Constraints on UVA in assisting in the development and commercialization of intellectual property include the university's nonprofit status and tax-exempt financed buildings, federal laws, and state laws.

At UVA, intellectual property research typically is driven by faculty members who develop relationships with business and industry for research opportunities. However, UVA is the party that enters into the intellectual property agreement. Mr. Straighttiff stressed that a one-size-fits-all approach is not the best approach for structuring intellectual property agreements. Industry partners are diverse and have different interests. Thus, these differences must be taken into consideration in agreements for the development of intellectual property. Mr. Straighttiff estimated that UVA enters into approximately 60 commercial transactions each year for the development of intellectual property. Mr. Straighttiff mentioned that the General Assembly can help to promote innovation in Virginia's economy by passing legislation that coordinates the development of intellectual property research and provides additional salary support.

Dr. Finis Southworth, Chief Technology Officer, AREVA Inc.

Dr. Southworth also spoke about intellectual property agreements involving the business community and Virginia's public research schools. Dr. Southworth began by noting that AREVA's mission is to be the leader in safe, cost-effective clean energy technology solutions. He stated that AREVA is the number-one supplier of nuclear energy products and services in the United States and has an American workforce of 4,800 professionals, 1,800 of which are located in Lynchburg.

Dr. Southworth stated that agreements with Virginia's public research schools to develop intellectual property provide that background intellectual property is protected to the owner. For foreground intellectual property, the starting position for the research schools is that they own it. Businesses, however, take the position that they own the foreground intellectual property if they sponsor the



research. Dr. Southworth told the Commission that the business view is usually accepted and a small technology fee may be paid to the research school. He also mentioned that any patents derived from research sponsored by AREVA may be jointly held with or licensed from the research school. He emphasized that AREVA's primary relationship with Virginia's public research schools is for hiring, with technology development a secondary goal.

Dr. Southworth indicated that flexibility in structuring agreements for the development of intellectual property will allow for the protection of a business' property interest and also benefits students involved in the research. He concluded by noting that AREVA is pleased with its working relationships with Virginia's public research schools and their flexibility in structuring intellectual property agreements.

Supporting Documents

Presentations and other supporting documents may be viewed or downloaded via the Commission's website: <http://dls.virginia.gov/commissions/mdc.htm?x=mtg>.

Manufacturing Development Commission

Senator Frank Wagner, Chair

Mark Vucci, DLS Senior Attorney

804-786-3591 ext. 211

dls.virginia.gov/commissions/mdc.htm

Small Business Commission

September 29, 2014

The Small Business Commission held its second meeting of the 2014 interim on September 29, 2014, in Richmond, with Senator Frank M. Ruff, Jr., chairman, presiding. The Commission received presentations on a variety of subjects pertaining to Virginia's small business community.

Economic Gardening Program

Penny Lewandowski, Vice President, Entrepreneurship & Strategic Direction, Edward Lowe Foundation

The Edward Lowe Foundation provides assistance and support to entrepreneurs through peer learning opportunities, research services, and educational opportunities. Ms. Lewandowski stated that the Foundation has focused efforts on assisting second-stage growth companies, which are defined as privately held entities with nine to 99 employees and \$1 million–\$50 million in annual revenue. Ms. Lewandowski explained that, despite the focus on startup companies, second-stage companies have a greater effect on the economy. She noted that in Virginia between 2009 and 2013, while only 8.7 percent of companies in the state were second-stage companies, they accounted for over 34 percent of the jobs in the state and almost 35 percent of total sales. Ms. Lewandowski noted that there was a need to find a better balance in terms of government support. Currently, the emphasis is overwhelmingly on encouraging startups and recruiting businesses to come into a jurisdiction, at the expense of supporting existing growth companies. The key is to support a program of patient growth that recognizes the importance of incremental growth as opposed to large singular gains. This can be accomplished through the creation of nurturing environments for these companies. Ms. Lewandowski stated that economic gardening is a unique program for second-stage companies, providing critical and often difficult-to-find information that allows them to make informed decisions about strategic issues.

Ms. Lewandowski briefly discussed how the program works and reported on the success of economic programs established in Florida (GrowFL) and Kansas (Kansas Economic Gardening Network) as well as a pilot program in Greater Rochester, New York. Discussion then focused on the economic gardening program hosted by the Hampton Roads Partnership. Mr. Dana Dickens stated that he was involved with the program and that it was very successful. Funding for the first round of the program came exclusively from the private sector. Mr. Dickens explained that due to the success of the first round, local economic development entities assisted with funding for the second round. A total of 25 companies completed the program. Senator George Barker asked if there was any data available for the Hampton Roads program; Mr. Dickens replied that he would provide information on the first group of companies that went through the program.

Frederick County Economic Development Authority's Industry Cluster Initiative

Patrick Barker, Executive Director, and Sally Michaels, Existing Business Coordinator

Mr. Barker stated that the Industry Cluster Initiative began in 1999 and has constantly developed and evolved since then. The Initiative has three components: a business call team, community forums, and a career pathways program. The business call team consists of experienced business executives who assist in identifying industry trends and broad issues affecting businesses. The community forums bring corporate executives and business owners together to inform them of available resources and facilitate knowledge sharing. The forums are held six times per year, with participants driving the specific topics. The career pathways program connects students to careers by bringing guidance counselors and teachers together with businesses, and holding tours of factories and manufacturing plants.

Mr. Barker reported that since 2000, 46 businesses, 1,259 teachers, and 5,157 students have participated in the program. Surveys taken by students and teachers before and after each tour consistently indicate a positive impression. Delegate Daniel Marshall asked how students are chosen to participate in the program. Mr. Barker stated that participants are students taking career and technical education courses and are selected by school officials. Mr. Atif M. Qarni asked if there was any data to show how many students who participated in the program were hired by a participating business. Ms. Michaels replied that there was no reliable tracking data, but anecdotally she knew that over a dozen students had been hired. Mr. Barker asserted that a key to success is getting guidance counselors and teachers involved.

Perspective on Virginia's Workforce Development Policies

Erik Johnston, Director of Government Affairs, Virginia Association of Counties (VACo)

Mr. Johnston stated that VACo members have consistently supported the workforce development system in recent legislative programs. He emphasized that VACo members have a strong role to play and want to partner with the state, community colleges, other local and regional entities, and the private sector to improve the system. Mr. Johnston offered the following policy suggestions:

- Maintain a broad focus not only on supporting direct workforce development programs, but also on the state's partnership with localities on K-12 funding, transportation/infrastructure development, and the full array of state/local partnerships on community and economic development;
- Ensure that workforce development programs can adapt to meet the needs of the state's diverse economy and use incentives and mandates to encourage best practices at the local and regional levels; and



- Support efforts to fund, encourage, and facilitate local and regional efforts to convene and facilitate cooperation between the numerous stakeholders involved in Virginia's workforce system.

Status of House Bill 1009; Implementation of Changes to the Virginia Board of Workforce Development (VBWD)

Elizabeth Creamer, Advisor for Workforce Development, Office of the Secretary of Commerce and Trade

Ms. Creamer began with an overview of the state's workforce system, which comprises 24 federal and state-funded education, workforce, and economic development programs serving citizens ranging from middle school age to retirement age. These programs are administered by eight state agencies under three secretariats. The role of the VBWD, established by HB 1009 as a policy board, is to support the activities of the state's 15 local workforce investment boards. Ms. Creamer then described the effect of HB 1009 on the goals of the workforce system, including the establishment of baseline measurements and annual goals for dramatically increasing workforce credential attainment rates. These goals emphasize certifications, licenses, apprenticeships, and shorter-term college certificates of occupational training. In terms of governance, HB 1009 establishes a more demand-driven workforce system. The legislation authorizes the Governor to appoint a Chief Workforce Development Advisor, increases the number of private sector members on the VBWD, and implements a new staffing structure that increases opportunities for cross-agency and cross-program alignment as well as operational and resource efficiencies.

Ms. Creamer then listed other tasks that have been completed under the HB 1009 mandates:

- Establishment of a memorandum of understanding among the Secretaries of Commerce and Trade and Education and the Virginia Community College System regarding VBWD staffing;
- Anticipated hiring of a consultant to develop an operational handbook for the VBWD and to revise other governance documents;
- Integration of the Secretariat of Veterans and Defense Affairs with VBWD and workforce system activities; and
- Convening of a cross-agency work group to draft standards for one-stop operations.

Online Workforce Development Courses Offered by the Hampton Roads Educational Telecommunications Association (HRETA)

Douglas Weiss, Chief Operating Officer, WHRO Public Radio

Mr. Weiss stated that HRETA is a regional consortium of 19 school divisions in southeastern Virginia and was founded 52 years ago to promote the use of technology as an educational tool in the classroom. Annually, the organization provides over \$15 million in services to member schools through the development of year-long textbook online courses, professional development training for teachers, Ready to Learn programs for preschool education in numeracy and literacy, and many additional programs. HRETA also manages Virtual Virginia, which is the Commonwealth's Advanced Placement (AP) and world language virtual school, and eMediaVA, a digital learning repository that serves as an online learning resource. These programs serve more than 140,000 teachers and all of Virginia's students.

Mr. Weiss then provided the Commission with an overview of HRETA's SkillsOnline program. The program addresses provision of affordable, industry-specific training and certification for individuals

seeking job advancement or making the transition from the military to other careers. The program has partnered with community colleges in the Tidewater region to administer an online portal offering over 4,500 skills-based courses in 19 career sectors. A comprehensive list of 21 skills needed to enter the workplace was developed. These skills are divided into three categories: fundamental, technological, and professional. Mr. Weiss stated that HRETA is in the process of developing blended learning modules that will be made available to agencies, local workforce investment boards, employers, and schools to prepare individuals to enter the workforce. The modules will be provided at no cost to these entities, along with instructional guides, materials, and lesson plans to allow complete integration into existing lesson plans. The overall objective is for the modules to be integrated into eMediaVA, which reaches over 140,000 teachers located in all K-12 schools in the Commonwealth. The modules will also be available at no charge through SkillsOnline.org, libraries, and career centers, and they will be given to community colleges and post-secondary institutions for no cost. In terms of moving forward, HRETA has formed a panel of subject-matter and industry experts to review and update the curriculum. In addition, over \$300,000 has been raised to develop the first five modules, with the first module scheduled to be available in October 2014.

Comment Period

At the conclusion of all presentations, Senator Ruff asked the Commission members for comment. Ms. Nicole Riley reported that she had received several calls from members of the National Federation of Independent Business regarding Governor McAuliffe's Executive Order (EO) 20, which establishes a new designation within the state's current small business designation. The EO defines a microbusiness as a certified small business that has 25 or fewer employees and no more than \$3 million in average annual revenue over the three-year period prior to its certification; the EO sets aside state purchases under \$10,000 for such businesses. The Department of Small Business and Supplier Diversity (DSBSD) is required to identify those small businesses that are eligible for the microbusiness designation. Ms. Riley states that many small businesses expressed concern about the implementation of the program and potential adverse effects on current business arrangements with state agencies. She suggested that the Commission seek information from DSBSD on how the implementation is going. Delegate Alphonso Lopez stated that he was interested in knowing the number of current small businesses that are just over the thresholds set by EO 20. Delegate Mark L. Cole asserted that the government should discontinue the practice of favoring one business over another and return to standard procurement processes. Senator Ruff stated that DSBSD will be invited to the next meeting of the Commission to report on the rollout of the program.

Next Meeting

Senator Ruff stated that members will be polled for the next meeting.

Small Business Commission

Senator Frank M. Ruff, Jr., Chair

Amigo Wade, DLS Senior Attorney

804-786-3591 ext. 216

dls.virginia.gov/commissions/sbc.htm



Legislative Meeting Calendar: November 2014

November 17	9:30 a.m.	Virginia Commission on Youth	House Room C, GAB
	noon	Governor's Summit on Rural Prosperity	Hotel Roanoke and Conference Center, Roanoke
November 18	TBA	House Appropriations Committee Retreat	Martha Washington Inn, Abingdon
	7:30 a.m.	Governor's Summit on Rural Prosperity	Hotel Roanoke and Conference Center, Roanoke
	10 a.m.	Virginia Code Commission	6th Floor Speaker's Conference Room, GAB
	10 a.m.	Joint Commission on Technology and Science (JCOTS)	House Room C, GAB
	1:30 p.m.	Joint Commission on Technology and Science (JCOTS) Nanosatellites Advisory Committee	House Room D, GAB
	1:30 p.m.	Virginia Freedom of Information Advisory Council	House Room C, GAB
November 19	TBA	House Appropriations Committee Retreat	Martha Washington Inn, Abingdon
	10 a.m.	Joint Meeting of House Commerce and Labor and Senate Commerce and Labor Committees	House Room D, GAB
	10 a.m.	Joint Subcommittee to Study Staffing Levels and Employment Conditions at the Department of Corrections	Coffeewood Correctional Center, 12352 Coffeewood Drive, Mitchells
November 20	10 a.m.	State Executive Council for Comprehensive Services for At-Risk Youth and Families - Executive Committee	1604 Santa Rosa Road, Suite 137, Richmond
	11:30 a.m.	Senate Finance Annual Meeting	Stonewall Jackson Hotel and Conference Center, Staunton
November 21	8:30 a.m.	Senate Finance Annual Meeting	Stonewall Jackson Hotel and Conference Center, Staunton
November 24	10 a.m.	Joint Subcommittee to Study Recurrent Flooding	House Room D, GAB
	1 p.m.	State Board of Elections	House Room C, GAB

November 24	2:30 p.m.	General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act	House Room D, GAB
November 25	10 a.m.	Virginia Disability Commission	House Room C, GAB
	1 p.m.	Manufacturing Development Commission	Senate Room B, GAB

Legislative Meeting Calendar: December 2014

December 1	11 a.m.	Joint Commission on Technology and Science (JCOTS) Higher Education Equipment Advisory Committee	3rd Floor East Conference Room, GAB
December 2	9 a.m.	Lobbyist-in-a-Box (LIAB) New User Training Session (registration required)	Suite 660, 6th Floor, GAB
	10 a.m.	Virginia State Crime Commission	Senate Room A, GAB
	10 a.m.	Virginia-Israel Advisory Board	House Room 2, The Capitol
	noon	Virginia Commission on Youth	House Room C, GAB
	1 p.m.	Small Business Commission	Senate Room B, GAB
	1:30 p.m.	Criminal Justice System Panel	House Room D, GAB
December 3	9 a.m.	Lobbyist-in-a-Box (LIAB) Existing User Review Training Session (registration required)	Suite 660, 6th Floor, GAB
	9:30 a.m.	Chesapeake Bay Restoration Fund Advisory Committee	4th Floor East and 4th Floor West Conference Rooms, GAB
	10 a.m.	Joint Commission on Technology and Science (JCOTS)	House Room D, GAB
December 4	10:30 a.m.	Virginia Offshore Wind Development Authority	House Room 3, The Capitol
	noon	Virginia Foundation for Healthy Youth, Board of Trustees	3831 Westerre Parkway, Richmond
December 8	10 a.m.	Joint Legislative Audit and Review Commission (JLARC)	Senate Room A, GAB
	1:30 p.m.	Virginia Bicentennial of the American War of 1812 Commission	House Room D, GAB
	2 p.m.	Lobbyist-in-a-Box (LIAB) New User Training Session (registration required)	Suite 660, 6th Floor, GAB
December 9	10 a.m.	Virginia Housing Commission Affordable Housing, Real Estate Law and Mortgages Work Group	House Room C, GAB



December 9	3 p.m.	Lobbyist-in-a-Box (LIAB) Existing User Review Training Session (registration required)	Suite 660, 6th Floor, GAB
December 10	10 a.m.	Virginia Housing Commission	House Room C, GAB
	1 p.m.	Capitol Square Preservation Council	House Room 2, The Capitol
December 11	9 a.m.	Lobbyist-in-a-Box (LIAB) New User Training Session (registration required)	Suite 660, 6th Floor, GAB
December 12	4 p.m.	State Board of Elections	House Room 1, The Capitol
December 15	9 a.m.	Lobbyist-in-a-Box (LIAB) Existing User Review Training Session (registration required)	Suite 660, 6th Floor, GAB
	10 a.m.	State Water Commission	House Room C, GAB
December 17	9:30 a.m.	Joint Meeting of House Appropriations, House Finance, and Senate Finance Committees	House Room D, GAB
	1 p.m.	Joint Rules Committee	6th Floor Speaker's Conference Room, 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/

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>).

© 2014 Division of Legislative Services

Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.