



# COMMONWEALTH of VIRGINIA

Hal E. Greer  
Director

*Joint Legislative Audit and Review Commission*  
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JLARC Meeting – Minutes

September 12, 2016

## Attending

### JLARC Members:

Delegate Robert Orrock, Chairman; Delegate David B. Albo, Delegate M. Kirkland Cox, Senator Emmett Hanger, Senator Janet Howell, Delegate Chris Jones, Delegate R. Steven Landes, Delegate James P. Massie, Senator Ryan McDougle, Delegate John M. O'Bannon, Delegate Kenneth Plum, Delegate Lionell Spruill, Ms. Martha Mavredes, Ex Officio.

### JLARC Staff:

Hal Greer, Director; Nathalie Molliet-Ribet, Senior Associate Director; Justin Brown, Associate Director; Kimberly Sarte, Assistant Director; Erik Beecroft, Sarah Berday-Sacks, Jamie Bitz, Susan Bond, Drew Dickinson, Kathy DuVall, Nicole Gaffen, Nick Galvin, Maria Garnett, Mark Gribbin, Nia Harrison, Paula Lambert, Jeff Lunardi, Liana Major, Bridget Marcek, Joe McMahan, Ellen Miller, Jordan Paschal, Nathan Skreslet, Tracey Smith, Nichelle Williams, Christine Wolfe.

### Others:

Nelson Moe (Commonwealth Chief Information Officer, VITA); Eric Link, Ashley Colvin, Perry Pascaul (VITA); David Von Moll (Department of Accounts); Brett Vassey (Virginia Manufacturers Association); Jason Powell (Senate Finance Committee staff); Brian Logwood (Department of Planning and Budget); Alex Thorup (Virginia Economic Development Partnership); Heidi Abbott (Hunton & Williams); Lynn McNeal (Integrus Applied); Matt Benedetti (Matt Benedetti & Associates); Daniel Johnson (Microsoft); Gary Omoter and Michael Swink (Virginia529); Barry Faison (Virginia Retirement System); Michael Martz (Richmond Times Dispatch); Travis Fain (Daily Press); Alana Austin (NBC29 WVIR Charlottesville); Anne Marie Morgan (Virginia Public Radio).

The meeting was called to order at 10:01 a.m. by Delegate Orrock, Chairman. Delegate Orrock stated that several members were scheduled to attend a meeting in Virginia Beach, so he requested that all items requiring a quorum be acted on by 11:30 a.m. Delegate Orrock then recognized Hal Greer, JLARC staff Director, who provided the Commission with an overview of the meeting agenda and introduced Ellen Miller who presented a briefing of the *Impact of Regulations on Virginia's Manufacturing Sector*. Delegate Orrock asked about the seven regulatory changes that resulted in increased costs or decreased compliance flexibility. He asked if these were mainly federal changes recommended by the EPA or if any of them are potentially a hindrance that the General Assembly could address legislatively. Ms. Miller explained that the report includes an appendix with the

information about these regulatory changes, but said that the team can follow up using the information included in the appendix. Ms. Miller also noted that these were most likely due to a change at the federal level, not a state change. Delegate Landes asked about the financial impact of regulations on Virginia manufacturers (estimated to be between \$1 billion to \$5 billion). He asked what would manufacturers do if not for the regulations. Justin Brown explained that JLARC's 2006 manufacturing study included information about this, but that it is generally difficult for companies to know precisely what they would do in the absence of the regulations. Mr. Brown noted that the team can send the Commission information from the 2006 JLARC manufacturing report. Delegate Massie asked if the team was able to identify the costs and benefits of the federal and state manufacturing regulations. Ms. Miller stated that the economic impact estimates include information on benefits as well as costs. Delegate Orrock asked if the team looked into regulations of neighbor states that could benefit Virginia's manufacturing sector. Ms. Miller said the team can follow up about this, and noted that this was done for the 2006 JLARC manufacturing study.

At the conclusion of Ms. Miller's presentation, Delegate Orrock requested a motion to receive the report and authorize printing. A motion was made by Delegate Massie and was seconded by multiple Commission members. There being no objections, the motion was approved unanimously by the Commission.

Mr. Greer then requested the Commission to appoint members to the economic development subcommittee. Delegate Orrock stated that there have been discussions among the House members, but the Senate subcommittee members will be determined in the near future. Delegate Jones proposed that the subcommittee include three House members and two Senate members, and recommended Delegate O'Bannon, Delegate Landes, and himself as Chairman of the subcommittee. Senator Hanger indicated that although the Senate would like to have equal representation on the subcommittee, he approves of the subcommittee composition. He also stated that the Senate defers appointment of the two additional subcommittee members to a later date. There being no objections from the Commission, Delegate O'Bannon, Delegate Landes, and Delegate Jones were appointed as members of the economic development subcommittee. Delegate Orrock stated that the Senate will announce their appointments in a timely manner.

Mr. Greer then introduced Kimberly Sarte who requested Commission approval to evaluate the VA529 investment management structure. Ms. Sarte stated that JLARC has oversight of the VA529 college savings plan, including the prePAID tuition program. In July, JLARC staff reported that prePAID investments have underperformed their benchmarks. Despite this underperformance, JLARC staff found that VA529 has a well-defined investment management structure and decision-making process in place for the prepaid program, but there has been interest in whether there are more efficient and less costly ways to manage prePAID investments. Accordingly, JLARC staff could examine prePAID's investment management structure, including whether there are options to more efficiently manage the fund. Options to review could include assigning the management of investments to the Virginia Retirement System (VRS) or the Department of Treasury, both of which already have investment management structures in place. Such a review could be undertaken within JLARC's existing oversight authority. Ms. Sarte suggested that a motion from the Commission for JLARC staff to undertake such a review would be appropriate. Delegate Massie made a motion for JLARC staff to conduct the review as described by Ms. Sarte. This motion was seconded by multiple Commission members. There being no objections, the motion was approved unanimously by the Commission. Following the motion, Delegate Massie stated that he met with Mary Morris, CEO of VA529, after the July 11 Commission meeting and Ms. Morris sent him a memo that he would like for JLARC staff to share with the rest of the Commission.

Mr. Greer then provided some remarks regarding the IT disentanglement and transition process, then recognized Mark Gribbin to provide the Commission with a briefing on this topic.

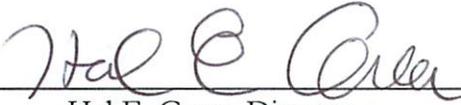
Delegate Massie asked if there is any language in the contract that allows VITA to withhold payments to Northrup Grumman when a breach of contract has occurred. Mr. Gribbin indicated that the contract does include such language. Delegate Massie asked if VITA is current on its payments to Northrup Grumman or if any payments have been withheld. Mr. Gribbin stated that some payments have been withheld. Senator McDougle asked how much has been withheld and if there are contract provisions to withhold additional payments. Mr. Gribbin explained that approximately \$800,000 has been withheld to-date related to one service dispute and, since July, an additional \$914,000 per month has been withheld for another service dispute. Mr. Gribbin further stated that while there are clear ways to withhold funds related to Northrup Grumman's day-to-day IT services, he is not certain if there is a clear mechanism for the state to withhold payments for failure to perform transition duties. Delegate Spruill asked why information requested by VITA was not provided by Northrup Grumman. Mr. Gribbin indicated that Northrup Grumman has not provided information on what it pays third-party service providers because it deems this information proprietary. Delegate Albo noted that Northrup Grumman staff were not present at the meeting and they may have their own perspective regarding the contractual dispute. He also asked if VITA is not paying Northrup Grumman, then they will not continue providing services to the Commonwealth. Delegate Orrock stated that the dispute appears to be over the terms of the contract. Mr. Gribbin indicated that there are contractual disputes related to transition duties and charges for two services, but the state has only withheld money for disputed charges. Mr. Gribbin said that Northrup Grumman has indicated it will continue to provide its contractually obligated services. Senator McDougle asked if the Attorney General's office has the legal capacity to effectively represent VITA. Mr. Gribbin said that VITA has been working with the Attorney General's office throughout the contract disputes with Northrup Grumman, and that representatives from VITA and the administration should talk to the Attorney General to determine their staffing needs going forward. Senator McDougle asked Nelson Moe to address this concern when he provides his briefing to the Commission. Delegate Orrock stated that no action was required by the Commission on this report.

Subsequently, Mr. Gribbin introduced Nelson Moe, Chief Information Officer of the Commonwealth. Prior to beginning his presentation, Mr. Moe read a statement for public record under the advice of the Attorney General's office. Mr. Moe then provided the Commission with a briefing on VITA's infrastructure services and sourcing update. Delegate Cox asked if VITA has started to address the transition planning issues identified by JLARC staff. Mr. Moe stated that VITA plans to develop transition plans for Northrup Grumman. Delegate Cox asked whether the plans would be completed by October. Mr. Moe said that VITA staff should be able to have these plans complete within the next two weeks. Senator McDougle asked if there have been any issues with the legal services provided by the Attorney General's office or if VITA has identified a need for outside counsel. Mr. Moe said that VITA has received broad and deep support from the Attorney General's office. However, if they find areas that are not covered, they will seek outside counsel, if needed, to ensure the Commonwealth's rights are protected. Senator McDougle asked about VITA's plan for contract remedies going forward. Mr. Moe explained that they have Attorney General staff on their contract team to work through the issues. Senator McDougle commented that there has been a lack of focus to make sure contract provisions are in place, and the state should be prepared to seek outside counsel, if needed. Delegate Massie commented that there are no specifics on slide 7 of the VITA presentation regarding the timeline for identifying and contracting with the Multisupplier Service Integrator, who will function as the "general contractor" that coordinates the state's future IT services. He indicated that this is one of the most important steps and something you would want to do early in the process. Mr. Moe said that he will need to come back to the Commission with this information. Ashley Colvin (VITA staff) approached the podium and stated that VITA has a general contractor in place in the form of Northrup Grumman. He said that the state's position is Northrup Grumman should be performing the general contractor duties until a new one is brought in, and VITA will work with the Attorney General's office as needed to resolve that disagreement. Delegate O'Bannon asked

Mr. Moe how confident VITA is that the Attorney General's office has competent lawyers involved, and indicated that JLARC would need to stay in the loop on this issue. Delegate Orrock stated that the Commission has a vested interest in how the disentanglement plays out, and asked JLARC staff and VITA to keep the Commission apprised of issues, particularly before things show up in the newspaper. Eric Link, Deputy Chief Information Officer (VITA), approached the podium and said that the Attorney General's office has been consulted regularly and that VITA has had direct conversations with them about the Attorney General's office ability to support VITA. He said that right now the Attorney General's office is representing VITA but that outside counsel will be used if needed. He also indicated that there is money in VITA's budget for this purpose. Delegate Landes expressed concern about the issues related to enforcing the contract and asked about the specific dialogue that VITA has had with the Attorney General's office regarding what they are doing, how much they are spending related to contract enforcement, and their understanding of whether VITA is accomplishing what they need to. He indicated that it is important to get a handle on whether the Attorney General's office is accomplishing what VITA needs. Delegate Spruill indicated that he would like to hear from Northrup Grumman on these issues. Delegate Orrock said that these issues may be subject to litigation so it is important for the Commission to be kept informed. Mr. Greer explained that JLARC staff met with Northrup Grumman to get their perspective and also had them review sections of the memo from Mark Gribbin. Mr. Greer also stated that the recent JLARC contracting study found that the Attorney General's office is often not sufficiently consulted by agencies when they develop contracts. He stated that the Governor and Attorney General need to be personally involved in ensuring that the state has the legal representation needed. Eric Link stated that VITA staff have had very open conversations with the staff of House Appropriations Committee, Senate Finance Committee, and JLARC. Delegate Jones said that he has met with VITA, Secretary Brown, and Northrup Grumman staff. He said the House has been very engaged regarding the issues with the incumbent service provider. He said that he met with Northrup Grumman over a year ago and asked them to indicate any concerns and questions they had with the overall process. He never heard back from them. Delegate Jones stated that VITA needs the best legal representation. He asked that VITA provide the Commission with an update on their budget, the status of Waves 1 and 2 of the transition process, a realistic timeframe for the transition plans, and whether any additional costs are being or are expected to be incurred. Delegate Orrock stated that no action was required by the Commission on this report.

Lastly, Mr. Greer announced that the next Commission meeting is scheduled for Tuesday, October 11, 2016, which will include presentations on the findings and recommendations from the report on water resource planning and management and the 2016 update on state spending.

There being no further business, the Commission rose at 11:20 a.m.

Approved by:   
Hal E. Greer, Director

Date: 9/22/16

Prepared by:   
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