

JLARC Meeting

September 10, 2018 – MINUTES

JLARC Members Present:

Senator Thomas K. Norment: Chairman, Delegate R. Steven Landes: Vice-Chairman, Delegate Terry L. Austin, Delegate Betsy B. Carr; Speaker M. Kirkland Cox, Senator Emmett Hanger, Delegate Charniele Herring, Senator Janet Howell, Delegate Chris Jones, Senator Ryan McDougle, Delegate Robert Orrock, Delegate Kenneth Plum, Senator Frank Ruff, Delegate Christopher Stolle, Ms. Martha Mavredes, Ex Officio.

JLARC Staff Present:

Hal Greer, Director; Justin Brown, Senior Associate Director; Tracey Smith, Associate Director; Kimberly Sarte, Associate Director; Kate Agnelli, Lauren Axselle, Sarah Berday-Sacks, Jamie Bitz, Danielle Childress, Drew Dickinson, Kathy DuVall, Nick Galvin, Maria Garnett, Elizabeth Gibbs, Mark Gribbin, Lila Kelso, Paula Lambert, Jeff Lunardi, Joe McMahon, Ellen Miller, Ellie Rigsby, Nathan Skreslet, Brittany Utz, Nichelle Williams, Christine Wolfe.

The meeting was called to order at 10:00 a.m. by Senator Thomas K. Norment: Chairman. Senator Norment recognized Hal Greer, JLARC staff Director, who provided the Commission with a brief overview of the meeting agenda, recognized Paula Lambert who is resigning from JLARC and introduced Elizabeth Gibbs, JLARC's new Business Manager. He then provided the Commission with some remarks about JLARC's review of the Department of Elections and introduced Jamie Bitz, project leader for the study.

Operations and Performance of Department of Elections

Jamie Bitz took the podium and acknowledged Christine Wolfe and Nichelle Williams who worked with him on the study. Mr. Bitz then presented the Commission with an overview of the Department of Elections study.

Delegate Landes asked about the accuracy of information and data received by the Department of Elections from other state agencies. Mr. Bitz replied that the team examined this and found that the data can contain a number of inaccuracies, including incorrect names, dates of birth, and social security numbers. He also stated that sometimes there are inaccuracies in felony conviction data, such as multiple names for one individual which may be given to the police department at the time of an arrest.

Delegate Landes then inquired as to whether DMV is following guidelines and providing information needed for the election laws. He asked if JLARC staff was able to determine if DMV is providing accurate information to ELECT. Mr. Bitz responded that there is confusion regarding statutory requirements as to what is required and what questions need to be asked during the process of updating a voter's registration. He stated that, because of this, it is difficult to determine whether DMV is complying with statutory requirements.

Delegate Landes said he hopes there is a recommendation in the report related to this because it is an area of concern.

Senator Howell asked if one of the reasons for the inaccuracy issue is because there are 133 local general registrars entering information into the system. Mr. Bitz replied that the accuracy responsibilities are at the state department level, but decisions are also made by general registrars around the state. Senator Howell asked how we can be assured there is any uniformity across the state, given that there are 133 local registrars making decisions about the registration list. Mr. Bitz said that he will address this concern later in his presentation.

Delegate Jones questioned what checks are performed and whether individuals are being asked if they are eligible to vote. He also asked about the system in place to ensure that individuals are eligible to vote, such as a cross-check of names of individuals convicted of a felony. Mr. Bitz said there is a process in place and ineligible felons are regularly caught based on data from Virginia State Police. Delegate Jones asked if ELECT receives a list and whether they run this against their database every month to identify individuals who have been convicted of a felony. Mr. Bitz replied yes, ELECT runs this list against their database and looks for updated information each month.

Delegate Landes inquired as to how localities can informally determine their precinct boundaries. Mr. Bitz replied that when new residential developments straddle a local boundary, localities get together and determine the exact location of their mutual boundary. Senator McDougle stated that he was recently told that Hanover and Louisa counties are experiencing challenges with their boundaries changing, which can have a significant impact on the people living in these localities. Delegate Orrock asked if this could be a misunderstanding among the local general registrars as to how the precincts are determined and where voters in new residential developments should be assigned. Mr. Bitz said there is none apparent, but one reason may be that some local registrars lack mapping software to assist with these decisions.

Speaker Cox pointed out that the report says ELECT has not implemented anything where funding was provided to them. He asked where ELECT should be in 2019, 2020, and 2021, as it appears that they have not done a lot to address the problems. Mr. Bitz replied that ELECT has taken steps to improve their system performance and security. He explained that ELECT is looking at their long-term goals, but have had difficulty determining what the improvements would be, which is why the report recommends providing a status update to the General Assembly.

Speaker Cox stated that it is devastating to hear that there was an “environment of open support for one party over another.” He said it sounds like good progress has been made at ELECT but that if this report had been done a year ago, there would have been aimless leadership and political bias. ELECT staff must have political integrity and be unbiased.

Senator Ruff stated that ELECT estimated the cost of a new system at \$31 million. He asked what is the range of estimated costs from other states. Mr. Bitz said some of this information is in an appendix in the report, but the cost for Virginia to rebuild the system is unclear. He said it could be more expensive depending on what would be adequate to replace the current system. In order to determine a more precise cost estimate, this would require going through a formal assessment and obtaining quotes from multiple vendors.

Senator Ruff then asked how ELECT checks whether an individual is a U.S. citizen. Mr. Bitz replied that there is a process and individuals must provide documents like a birth certificate to DMV to demonstrate they are a citizen. Senator Ruff stated that he has heard of instances where an individual was on a work visa and obtained a driver's license by signing that they were a citizen.

Senator Hanger said the Supreme Court previously ruled that an individual could be purged from a list of registered voters if they have not voted in a certain number of years. He asked if ELECT has a process to do this, as well as to determine if a voter has moved or is deceased. Mr. Bitz stated that he was not aware of such a process and this would be a good question for the ELECT Commissioner.

Senator Carr asked what authority the state has regarding the ability to conduct oversight of local officials. Mr. Bitz noted that the state currently has a fairly broad authority, and explained that there are limited provisions in the Code regarding the specific types of oversight the state may perform. He said there is a process to remove local registrars, but it is not used.

Delegate Landes noted that there are three pages of recommendations in the JLARC report, so he hopes the General Assembly will seriously look at all of these for legislative consideration.

Senator Norment asked for a description of the confidential policy advisor position at ELECT. Mr. Bitz stated that under the Code of Virginia, each agency may have one of these positions, but there is no description in statute of the position's responsibilities and ELECT does not have a job description for this position. He also said it is up to each agency to define the role of this position.

Senator Norment questioned whether other states are structured on a partisan basis where the head of the elections agency is subject to election results. Mr. Bitz explained that the team looked at other states and found that no one board structure necessarily results in better performance by an elections agency.

Delegate Jones asked what authority the confidential policy advisor is given, what are the specific duties of this individual, and what is the purpose of this position. Mr. Bitz said this individual is tasked with working with ELECT's IT system, and the Commissioner can provide more information on the position's authority and duties.

Senator Howell made a motion to receive the report and authorize printing. The motion was seconded by Carr and approved unanimously by the Commission.

Mr. Bitz then introduced Christopher E. Piper, Commissioner of the Department of Elections, who provided his remarks in response to JLARC's report on the Department of Elections.

Delegate Orrock asked the Commissioner to provide some insight regarding the function of the confidential policy advisor position. The Commissioner stated that there was a need in the agency to improve internal and external communications between IT staff and the local registrars. He said this person has been involved with these efforts since May 2018. Delegate

Orrock followed up by asking if this was not done previously. Commissioner Piper replied that this was not done as he would have liked to have seen prior to May. Delegate Orrock stated that the word confidential indicates that there is a lack of transparency. Delegate Herring asked if this position was in existence six years ago. The Commissioner replied yes, this position has existed since the early 1990s.

Senator Hanger stated that the General Assembly must have confidence in the Commissioner and in his leadership. He said that when considering the report recommendations, it will be important for the General Assembly to note that some require additional funding.

Delegate Landes asked what else ELECT is doing to depoliticize the staff in addition to having the staff sign a nonpartisan policy statement. The Commissioner stated that the code of ethics pledge is the first step, and explained that the agency's leadership acts in a nonpartisan manner and this will lead by example. He also explained that ELECT has started holding monthly staff meetings where they emphasize the focus of being nonpartisan and that the staff should strive for fair and uniform elections.

Delegate Jones stated that any changes should be made with the goal for the agency to be successful, and the changes should not depend on who is in the position now.

Update on State's IT Transition

Hal Greer took the podium and provided a few remarks regarding JLARC's oversight of VITA, then introduced Joe McMahon who presented an update on Virginia's IT transition. Following Mr. McMahon's presentation, there were no questions from the Commission.

Mr. McMahon then introduced Nelson Moe, Chief Information Officer of VITA, who provided a brief update of VITA to the Commission. After his presentation, he introduced Mr. Eric Link, Deputy CIO, who provided additional information to the Commission regarding the state's IT transition.

Senator McDougle asked which agencies have been impacted by the backlog of outstanding service tickets. Mr. Link responded that it is not one particular agency and said that VITA provided JLARC with a list of the agencies affected.

Senator McDougle then questioned where VITA is with the Tempus Nova contract, what is the plan going forward, and what is the timeline for when this will be completed. He also stated that it is critical to provide services to employees in order for them to perform their jobs, and asked if VITA will have an avenue to litigate if Tempus Nova is not providing services up to par. Mr. Link noted that they are working with Tempus Nova and they would rather not litigate. Tempus Nova is a small company, so there would most likely not be anything to recover. He added that they have been working with Google to find another provider to take over if necessary. Mr. Link said that in 6-8 weeks there would be more certainty on the course of action VITA will be taking with Tempus Nova.

Senator McDougle then said how VITA reacts to this issue will be recognized by other providers, so it is important for them to establish that the Commonwealth will not accept substandard performance. Mr. Link indicated that this message has been received.

Delegate Landes stated that the Tempus Nova contract was executed in 2016 and services did not commence until March 2018, but Tempus Nova is still not providing the services the state wants. He asked why they were selected. Mr. Link responded that they provided the most cost effective service to the Commonwealth. Del. Landes stated that this is clearly not the case and that the General Assembly members are running out of patience with VITA to provide services to agencies. Delegate Landes said the General Assembly needs know how and when Tempus Nova will address the issues, and if they can't do the job, they need to be replaced.

Delegate Jones commented that email was low hanging fruit. He said that VITA laid out a plan for this transition, and he does not understand why 24/7 customer service is not being provided. He asked what the potential savings and payoff is for the new services. He asked when the Commonwealth will start realizing savings, and will there be an increase in how much agencies are paying for messaging services. Mr. Link answered that there are no increases projected. Delegate Jones commented that he expected there would be an increase in the amount VITA is charging state agencies, because that's what has happened in the past. Mr. Link then apologized to the Commission and added that VITA was not able to get Northrup Grumman to cooperate with the transition. Delegate Jones stated that Tempus Nova had ample time to prepare for providing services going into this transition. Mr. Link said that VITA understand this and will have more information in the future. Senator Norment stated that the Commission needs to see measurable results and a plan of action, otherwise there needs to be a change. Mr. Link agreed with this statement.

Senator Hanger stated that VITA currently has a line of credit in the amount of \$165 million. He asked where VITA expects this to top out. Mr. Link deferred to a VITA finance staff member who stated about \$134 million. Senator Hanger said VITA indicated the line of credit will be down to \$75 million by 2020 and that consumer agencies will eventually have to pay to reduce the line of credit amount. Mr. Link answered that VITA will be cost neutral to agencies through fiscal year 2020. There will be savings with the new providers, but the delta between the savings and the full rate amount will be used to pay down the line of credit. By increasing the line of credit, the state was able to avoid penalties and interest on the hardware they are procuring.

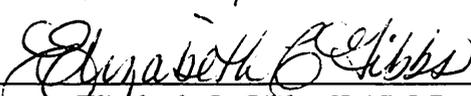
Adjournment

Mr. Greer announced that the next Commission meeting is scheduled for October 9, 2018, which will include presentations on the Department of Professional and Occupational Regulations as well as the annual state spending report.

There being no further business, the Commission rose at 11:58 a.m.

Approved by: 
Hal E. Greer, JLARC Director

Date: 9/24/18

Prepared by: 
Elizabeth C. Gibbs, JLARC Business Manager