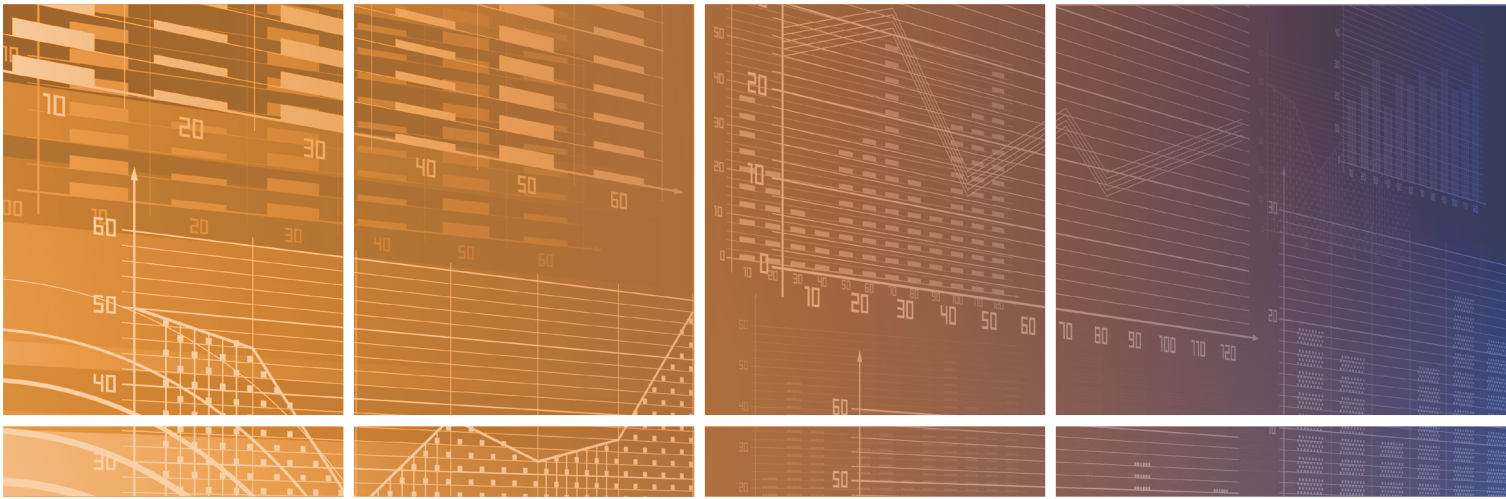


# Recommendations for Legislative Action

2019 to 2022



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Hal E. Greer, Director

### **Director**

Hal E. Greer

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## Recommendations for Legislative Action 2019 to 2022

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JLARC is the oversight agency of the Virginia General Assembly, established to evaluate the operations and performance of state agencies and programs.

When mandating a new study, the General Assembly routinely directs JLARC staff to incorporate recommendations in its reports to the Commission. Recommendations are sometimes directed to the General Assembly, when legislative action is likely to improve the efficiency or effectiveness of a program. JLARC staff also propose policy options rather than making recommendations when the action is a policy judgment best made by elected officials, evidence suggests action could potentially be beneficial, or a report finding could be addressed in multiple ways.

Before each legislative session, JLARC staff review the reports from the past four years and present a list of recommendations and policy options to Commission members, for the purpose of assisting them as they prepare legislation.

Recommendations from 2019 through 2021 are included only if they have not already been implemented through legislation.



# JUVENILE JUSTICE

## *Virginia's Juvenile Justice System, 2021*

### RECOMMENDATIONS

**Compensation for court-appointed attorneys for juveniles ►** The General Assembly may wish to consider amending § 19.2-163 of the Code of Virginia to increase the maximum compensation for court-appointed attorneys in juvenile delinquency cases. (Recommendation 1)

**Training for court-appointed counsel serving juveniles ►** The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Indigent Defense Commission (VIDC) to develop a plan to strengthen training requirements for court-appointed counsel in juvenile delinquency cases that also identifies additional staff resources needed to implement the strengthened requirements. VIDC should submit the plan to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Recommendation 2)

**New training requirements for court-appointed counsel serving juveniles ►** The General Assembly may wish to consider amending § 19.2-163.03 of the Code of Virginia to strengthen training requirements for certification of court-appointed attorneys in juvenile delinquency cases, based on the requirements proposed by the Virginia Indigent Defense Commission. (Recommendation 3)

**Ensuring timely circuit court hearings for juveniles ►** The General Assembly may wish to consider amending § 16.1-269.6 of the Code of Virginia to specify a timeframe, such as 45 calendar days, in which juvenile delinquency cases must be adjudicated in circuit court, provided that the time limitation may be extended for good cause or when a jury trial is requested. (Recommendation 4)

**Credit for time served in juvenile detention while awaiting circuit court trial ►** The General Assembly may wish to consider amending the Code of Virginia to allow juveniles who are not sentenced to an adult correctional facility to receive credit for time spent in juvenile detention while awaiting trial in circuit court. (Recommendation 5)

**Bias training for law enforcement interacting with juveniles ►** The General Assembly may wish to consider amending § 9.1-102 of the Code of Virginia to require the Department of Criminal Justice Services to amend its training standards for law enforcement to address implicit bias, cultural diversity, and protective responses specifically when interacting with juveniles. (Recommendation 6)

**Assessing community services available for youth involved with juvenile justice system**

► The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to (i) conduct a needs assessment of community-based services across the state; (ii) develop a plan for expanding such services to improve the consistency in treatment of youth across the state for similar offenses; and (iii) estimate the staffing and additional appropriations necessary. DJJ should submit the plan and estimate to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Recommendation 10)

**Evidence-based rehabilitative programming at juvenile detention centers**

► The General Assembly may wish to consider amending §16.1-284.1 of the Code of Virginia to specify that if a juvenile detention center provides post-dispositional rehabilitative programming to youth, the center shall use evidence-based programs and practices to the maximum extent practicable. (Recommendation 17)

**Training requirements for juvenile detention center staff**

► The General Assembly may wish to consider including language in the Appropriation Act directing the Board of Juvenile Justice to promulgate regulations that establish specific training requirements for front line staff of juvenile detention centers needed to effectively support youth in rehabilitative programs, including post-dispositional programs and community placement programs. (Recommendation 18)

**Assessing rehabilitative programs at juvenile detention centers**

► The General Assembly may wish to consider amending §66-3.2 of the Code of Virginia to authorize the Department of Juvenile Justice to regularly conduct quality assurance reviews of juvenile detention centers' post-dispositional rehabilitative programs and provide technical assistance as needed to ensure the centers meet statutory and regulatory requirements. (Recommendation 19)

**On-site monitoring reviews of juvenile detention centers' educational programs**

► The General Assembly may wish to consider including language in the Appropriation Act (i) directing the Virginia Department of Education (VDOE) to reinstate its onsite monitoring reviews of the educational programs at juvenile detention centers; improve its collection of student outcomes data; and report annually on the effectiveness and quality of programs for youth in detention centers to the Senate Education and Health and the House Education committees; and (ii) establishing and funding an additional staff position at VDOE to assist with these oversight responsibilities. (Recommendation 20)

**Extended school year at juvenile detention centers**

► The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education to develop a plan to implement an extended school year model that provides structured summer programming in juvenile detention centers and estimate any additional appropriations required. The plan should be submitted to the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Recommendation 21)

**Evidence-based rehabilitative treatment programs for youth in state custody ►** The General Assembly may wish to consider amending Chapter 2 of Title 66 of the Code of Virginia to require the Department of Juvenile Justice to provide rehabilitative treatment programs for youth in its custody based on the best available evidence of effectiveness at reducing the likelihood of reoffending for youth committed to secure residential settings. (Recommendation 25)

**Oversight of Community Placement Programs ►** The General Assembly may wish to consider including language in the Appropriation Act to (i) create and fund a position at the Department of Juvenile Justice to manage and oversee use of community placement programs and (ii) require management and oversight to include ongoing review of community placement programs and recidivism rates and a process to hold programs accountable for low performance. The Department of Juvenile Justice should be required to report annually to the Senate Rehabilitation and Social Services and House Health, Welfare, and Institutions committees on the performance of the community placement programs. (Recommendation 27)

**Sealing and expunging juvenile court records ►** The General Assembly may wish to consider amending § 16.1-306 of the Code of Virginia to (i) establish a process to allow records for certain less serious, non-violent felony equivalent offenses of youth adjudicated delinquent in juvenile and domestic relations district court to be automatically sealed after a period of years specified by the General Assembly up to age 29, and then subsequently expunged; (ii) determine the types of offenses eligible for sealing; and (iii) establish other necessary eligibility criteria. (Recommendation 29)

**Reducing educational staffing at juvenile detention centers ►** The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Education (VDOE) to determine the extent to which each juvenile detention center currently implements or could further implement cost-effective staffing methods. VDOE should be directed to work with the Virginia Department of Planning and Budget to determine the potential cost savings and feasibility of implementing each method and propose specific actions along with the estimated cost savings to the secretary of finance no later than June 30, 2023. (Recommendation 30)

## POLICY OPTIONS TO CONSIDER

*Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.*

**Ensuring public defenders provide quality representation to youth ►** The General Assembly could amend § 19.2-163.01 of the Code of Virginia to require the Virginia Indigent Defense Commission to evaluate the legal services provided to juveniles by public defenders on a biennial basis, to ensure youth are receiving quality representation. Along with conducting the evaluation, VIDC could be required to develop and implement a plan to address any identified gaps in the quality of legal representation provided by juvenile public defenders. (Option 1).

**Improving court data on youth legal representation ►** The General Assembly could include language in the Appropriation Act directing the Office of the Executive Secretary of the Virginia Supreme Court (OES) to ensure juvenile and domestic relations and circuit court clerks consistently record attorney type for juvenile delinquency cases in their case management systems. OES could be required to report this information annually to the Virginia Indigent Defense Commission. (Option 2)

**Creating regional juvenile public defender offices ►** The General Assembly could include language in the Appropriation Act directing the Virginia Indigent Defense Commission to develop a plan to establish a state-operated system of regional juvenile public defender offices, including the additional staffing and resources that would be required, and to submit this plan to the House Appropriations and Senate Finance and Appropriations committees. (Option 3)

**Considering time served in disposition decisions ►** The General Assembly could amend § 16.1-278.8 of the Code of Virginia to require juvenile and domestic relations district court judges to consider any time youth have spent in detention prior to their adjudication when making disposition decisions. (Option 4)

**Bias and cultural competency training for juvenile justice system attorneys and judges ►** The General Assembly could include language in the Appropriation Act directing the secretary of public safety and homeland security to convene a workgroup, including representatives from the Office of the Executive Secretary of the Virginia Supreme Court, the Virginia Indigent Defense Commission, the Department of Juvenile Justice, and the Department of Criminal Justice Services, to develop and make available an implicit bias and cultural competency training specifically tailored to the roles and responsibilities of attorneys and judges within the juvenile justice system. (Option 5)



**Improving vocational training in juvenile detention centers ►** The General Assembly could include language in the Appropriation Act directing the Virginia Department of Education to convene a workgroup that includes personnel from Virginia's juvenile detention centers, the Department of Juvenile Justice, the Department for Aging and Rehabilitative Services, the Virginia Community College System, and local workforce investment boards to assess the adequacy of current training, certification, and placement assistance services available in juvenile detention centers and identify opportunities to expand service offerings. VDOE would report the findings from the workgroup to the Senate Education and Health and the House Education committees no later than December 1, 2022. (Option 6)

**Reducing waiting period to seal records of juveniles tried in circuit court ►** The General Assembly could amend Chapter 23.2 of the Code of Virginia to reduce the waiting period to seal juvenile criminal records maintained by circuit courts for eligible offenses under current law. (Option 8)

**Automatically sealing juvenile records in circuit courts ►** The General Assembly could amend Chapter 23.2 of the Code of Virginia to automatically seal juvenile records maintained by circuit courts for eligible offenses under current law, rather than require a petition to be filed requesting the records be sealed. (Option 9)

**Encouraging regionally operated juvenile detention centers ►** The General Assembly could consider establishing a two-tiered reimbursement rate in the Appropriation Act for the construction and operation of juvenile detention centers. Juvenile detention centers that are operated regionally could receive higher reimbursement rates than those operated by a single jurisdiction. (Option 10)

**Lower funding for underused juvenile detention centers ►** The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice and the Virginia Department of Education to provide lower funding for juvenile detention centers that are consistently operating under a certain capacity, such as 50 percent, and are located within a certain distance, such as a 45-minute drive, of other facilities that are also operating under capacity. (Option 11)

**Identifying juvenile detention facilities for closure or consolidation ►** The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice (DJJ) to implement a process to identify specific juvenile detention centers that should be closed or consolidated to better align facility capacities with regional needs. DJJ could be directed to report to the General Assembly on the results of the process and specific facilities identified for closure or consolidation. (Option 12)

**Specialization of juvenile detention centers** ► The General Assembly could consider including language in the Appropriation Act directing the Department of Juvenile Justice to evaluate the costs, benefits, and feasibility of transitioning juvenile detention centers to either specialize in (i) short-term detention or (ii) longer-term rehabilitative programming. The Virginia Department of Education could be required to develop a plan to align the educational programming to meet the different needs of youth in the two types of facilities. (Option 13)

## **AFFORDABLE HOUSING**

### *Affordable Housing in Virginia, 2021*

**Statewide housing needs assessment** ► The General Assembly may wish to consider amending §36-139 of the Code of Virginia to direct the Virginia Department of Housing and Community Development to conduct a comprehensive statewide housing needs assessment at least every five years using either its own staff or a third-party expert. The statewide housing needs assessment should contain a review of housing cost burden and instability, supply and demand for affordable rental housing, and supply and demand for affordable for-sale housing. The needs assessment should contain regional or local profiles that focus on the specific housing needs of particular regions or localities. (Recommendation 1)

**Statewide housing plan** ► The General Assembly may wish to consider amending §36-139 of the Code of Virginia to direct the Virginia Department of Housing and Community Development to i) develop a statewide housing plan with measurable goals to address the state's housing needs, ii) provide annual updates to the General Assembly on progress toward meeting the goals identified in the plan, and iii) update the plan at least every five years based on changes in the state's affordable housing needs. (Recommendation 2)

**Determining resources needed to develop housing assessment and plan** ► The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Housing and Community Development (DHCD) to identify and report on the resources it may need to develop a statewide housing needs assessment, housing plan, and annual progress updates. DHCD should include a description of any new or amended third-party contracts, additional funding, and new positions that would be needed to undertake these new tasks. The report should be submitted to the chairs of the House Appropriations and Senate Finance and Appropriations committees no later than November 1, 2022. (Recommendation 3)

**Annual report on Virginia Housing's affordable housing spending** ► The General Assembly may wish to consider amending §36-55.51 of the Code of Virginia to require the Virginia Housing Development Authority to submit an annual report to the chairs of the Senate Finance and Appropriations Committee, House Appropriations Committee, and Virginia Housing Commission describing: i) Virginia Housing's annual contributions to the Resources Enabling Affordable Community Housing (REACH) program and the annual fund balance (or any future program that reinvests Virginia Housing's net earnings into affordable housing initiatives); ii) amount of REACH funds spent in the fiscal year by broad purpose; and iii) the outputs and outcomes associated with those and prior REACH expenditures, as measured through its REACH performance measures. This report should be submitted at the end of each fiscal year. (Recommendation 5)

**Reserving housing units for low income households in Virginia Housing's economically mixed projects** ► The General Assembly may wish to consider modifying §36-55.30:2 of the Code of Virginia to specify that, in economically mixed projects financed by the Virginia Housing Development Authority, at least 20 percent of units shall be reserved for low income households, and reserved units must be affordable to households earning 80 percent and below area median income. (Recommendation 9)

**Supporting community land trusts** ► The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Housing and Community Development to study options for providing additional support to community land trusts to establish additional affordable housing and develop a plan that does so. The plan should be submitted to the chairs of House Committee on General Laws, Senate Committee on General Laws and Technology, and Virginia Housing Commission. (Recommendation 12)

**Virginia Housing's interest rates on mortgage loans** ► The General Assembly may wish to consider including language in an Uncodified Act of the General Assembly (Section I Bill) directing the Virginia Housing Development Authority to conduct a financial analysis to determine whether it could offer lower interest rates than the commercial market to its single-family home loan borrowers, and report the results of the analysis to the Virginia Housing Commission, the Virginia Housing Board of Commissioners, and the Joint Legislative Audit and Review Commission by November 1, 2022. The analysis should, at a minimum, include an analysis of how much interest rates could be lowered, the monthly and annual cost savings lower interest rates could provide to Virginia Housing's borrowers, and a projection of how lower interest rates would affect the authority's future net income, net assets, and net asset parity ratio. (Recommendation 15)

**Determining how to collect locality zoning data** ► The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Housing and Community Development to contract for a study on how to collect zoning information and data from Virginia localities with population growth rates, median home sales prices, and median gross rents in the top quartile of the state. The study should include a description of the type of zoning and data information that could be collected, how such information would be used, and the resources that would be necessary to collect this data. DHCD should submit this study to the House Committee on Counties, Cities, and Towns; the Senate Local Government Committee; and the Virginia Housing Commission no later than November 1, 2022. (Recommendation 17)

**Encouraging zoning policies that encourage affordable housing** ► The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Housing and Community Development to evaluate different approaches to structuring, administering, and funding an incentive program to provide additional state funding for infrastructure improvements to localities that adopt zoning policies designed to facilitate the development of affordable housing. The report should include recommendations for implementing an incentive program and should be submitted to the House Committee on Counties, Cities, and Towns; the Senate Local Government Committee; and the Virginia Housing Commission no later than November 1, 2024. (Recommendation 18)

## **POLICY OPTIONS TO CONSIDER**

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**Preventing local restrictions on 3-D printed or modular constructed homes** ► The General Assembly could amend the Code of Virginia to prevent localities from 1) restricting 3-D printed or modular constructed homes from being built on residential land or 2) restricting the construction of 3-D printed or modular constructed homes in certain residential zones. (Option 1)

**Expansion of mandatory affordable dwelling unit ordinances** ► The General Assembly could amend §15.2-2304 of the Code of Virginia to expand the localities that have the authority to adopt mandatory affordable dwelling unit ordinances to include all localities that have population growth rates, median home sales prices, and median gross rents in the top quartile of the state, and require that the Department of Housing and Community Development update the list of qualifying localities with the release of each new decennial census. The amended statute could also provide that any locality that receives authority would not have that authority revoked if the locality is no longer in the top quartile of the state for the characteristics listed above. (Option 2)

# UNEMPLOYMENT INSURANCE

## *Operations and Performance of the Virginia Employment Commission, 2021*

### **POLICY OPTIONS TO CONSIDER**

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**State call center augmentation contracts** ► The General Assembly could include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to assess agencies' need for call center staff augmentation, ensure that contractual solutions to meet those needs are in place, and report steps taken and available solutions to the House Appropriations Committee and the Senate Finance and Appropriations Committee by December 31, 2022. (Option 1)

**Tying UI benefits levels to an economic metric** ► The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to automatically adjust unemployment insurance benefit amounts annually based on a statewide economic metric. (Option 4)

**One-time increase in UI benefits amounts** ► The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefits formula to enact a one-time increase in the maximum unemployment insurance benefit amount. (Option 5)

**UI benefits dependent allowance** ► The General Assembly could amend section § 60.2-602 of the Code of Virginia to modify the unemployment insurance benefit formula to create a dependent allowance that is tied to an economic metric or calculated as a portion of the individual's weekly benefit amount. (Option 6)

**Workgroup to review UI benefits policies** ► The General Assembly could amend section § 60.2 of the Code of Virginia to authorize the Commission on Unemployment Compensation to convene an advisory committee comprising stakeholders and subject matter experts to (1) review UI benefits, replacement ratios, and reciprocity rates; (2) identify factors that affect UI benefits and reciprocity (e.g., design of UI benefit calculations or UI eligibility criteria); (3) assess the advantages and disadvantages of potential changes to benefits; and (4) recommend to the Commission options to change benefit levels when needed. (Option 7)

**Increasing UI taxable wage base** ► The General Assembly could amend § 60.2-229 of the Code of Virginia to increase the unemployment insurance taxable wage base. (Option 8)

**Increasing minimum UI employer tax rate** ► The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the minimum base unemployment insurance tax rate for all employers, to a new rate between 0.01 percent and 0.07 percent. (Option 9)

**Increasing maximum base UI employer tax rate** ► The General Assembly could amend § 60.2-531 of the Code of Virginia to increase the maximum base unemployment insurance tax rate. (Option 10)

## **SURFACE TRANSPORTATION**

### *Transportation Infrastructure and Funding, 2021*

#### **RECOMMENDATIONS**

**Mileage-based user fees for in-state miles driven** ► The General Assembly may wish to consider amending § 46.2-773 of the Code of Virginia to clarify that program fees can be charged for all miles driven by participants or for only miles driven in Virginia, and that both options can be made available to participants. (Recommendation 2)

**Funding bridge rehabilitations** ► The General Assembly may wish to consider amending § 33.2-369 of the Code of Virginia to improve bridge safety and reduce long-term costs by allowing the State of Good Repair program to fund bridges that are in fair condition, specifically those that have a general condition rating less than or equal to 5.0. (Recommendation 4)

**Ensuring State of Good Repair program funds greatest needs** ► The General Assembly may wish to consider amending § 33.2-369 of the Code of Virginia to allow the State of Good Repair (SGR) program to fund more of the estimated bridge and pavement repair needs in construction districts by (i) eliminating the 17.5 percent cap and 5.5 percent floor on the proportion of SGR funding that a district can be allocated or (ii) raising the cap on the proportion of SGR funding that a district can be allocated to 20 percent but maintaining the 5.5 percent floor. (Recommendation 5)

**Codifying Hampton Roads Transportation Fund project criteria** ► The General Assembly may wish to consider amending § 33.2-2600 of the Code of Virginia to require that projects considered for funding through the Hampton Roads Transportation Fund be evaluated and prioritized based on objective and quantifiable benefits and costs. (Recommendation 9)

#### **POLICY OPTIONS TO CONSIDER**

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**Regional surcharges for highway use and mileage-based user fees** ► The General Assembly could establish regional surcharges in the Code of Virginia for the highway use fee and mileage-based user fee. (Option 1)

**Highway use fee for heavy, fuel-efficient vehicles** ► The General Assembly could amend § 46.2-772 et seq. and § 58.1-2701 of the Code of Virginia to assess a highway use fee on (i) fuel efficient and electric vehicles weighing from 10,000 pounds to 26,000 pounds, and (ii) electric vehicles over 26,000 pounds. Fees could be scaled to vehicle weight. (Option 2)

**Distribution of maintenance program funds** ► The General Assembly could consider amending § 33.2-319 of the Code of Virginia to modify how maintenance payment program funds are distributed to cities and towns by (i) eliminating the current funding formula and directing the CTB to develop and approve a new formula that better accounts for the different drivers of maintenance costs; (ii) eliminating the current funding formula and directing the CTB to award funds based on an assessment of pavement and bridge conditions in each locality; or (iii) directing the CTB to develop an approach for directing additional funding to localities that have a high proportion of pavements and bridges in poor condition and have relatively high indicators of fiscal stress. (Option 3)

**Additional funding for revenue sharing program** ► The General Assembly could appropriate an additional \$100 million per year in revenue sharing program funds in the FY23–24 Appropriation Act. The appropriation for FY23 could be made contingent on a FY22 surplus. (Option 5)

## **GUARDIANSHIP AND CONSERVATORSHIP**

### *Improving Virginia's Adult Guardian and Conservator System, 2021*

#### **RECOMMENDATIONS**

**Including more information on prospective guardians in court reports** ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardian ad litem reports to the court include i) the size of the prospective guardian's current guardianship caseload, ii) whether the prospective guardian employs representatives to manage day-to-day tasks of guardianship, (iii) the travel time between the prospective guardian's residence or place of business and the expected residence of the adult under consideration for guardianship, iv) whether the prospective guardian works as a professional guardian on a full-time basis, and v) whether the guardian is named as an alleged perpetrator in any substantiated Adult Protective Services complaint. (Recommendation 2)

**Suitability of prospective guardians in GAL reports ►** The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require that guardians ad litem include in their reports an assessment of suitability and propriety of all individuals interested in serving as a guardian for the adult who is the subject of the petition. (Recommendation 4)

**Periodic court review hearings for guardianship cases ►** The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require circuit courts to hold a periodic review hearing for guardianship and conservatorship cases no later than one year after appointment of the guardian and at least once every three years thereafter, unless the court determines at the time of the initial guardian appointment order, or upon completion of a review hearing, that further review hearings are unnecessary or impracticable. (Recommendation 14)

**Required guardian training ►** The General Assembly may wish to consider amending Title 64.2 of the Code of Virginia to require any individual who is named as a private guardian, and staff who perform duties on their behalf, to undergo guardianship training developed by the Department for Aging and Rehabilitative Services within four months of appointment and give local departments of social services responsibility for verifying compliance with the training requirement. (Recommendation 19)

**Private guardianship responsibilities for DARS ►** The General Assembly may wish to consider amending Title 51.1, Chapter 14, Article 6 of the Code of Virginia to grant new responsibilities to the Department for Aging and Rehabilitative Services to strengthen the accountability and quality of the private guardian system. These new responsibilities should include: providing information about Adult Protective Services complaints against prospective guardians to guardians ad litem as part of the guardianship court hearing process; providing and/or coordinating training to private guardians and local department of social services staff; facilitating additional monitoring of private guardians through independent care visits; improving guardianship data tracking and quality control; and creating and administering a private guardian complaint process. (Recommendation 24)

**Notifying individuals restricted from visiting adults under guardianship ►** The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require guardians who restrict an individual from visiting or contacting an adult under their guardianship to provide the individual, on a form provided by the Office of the Executive Secretary, with written notification that clearly outlines (i) terms of the restriction, (ii) reasons for the restriction, and (iii) how the restricted individual can challenge the restriction through the circuit court that has jurisdiction over the case. (Recommendation 27)



**Notifying local social services departments of visitation restrictions** ► The General Assembly may wish to consider amending § 64.2-2019 to require guardians to provide a copy of any notification or court order pertaining to a visitation restriction to the local department of social services that oversees the case. (Recommendation 29)

**Defining reasons guardians can impose visitation restrictions** ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to permit guardians to restrict contact with the adults they serve only in cases where such a restriction is necessary to prevent physical, emotional, or mental harm or protect their finances. (Recommendation 30)

**Changes in circumstances or conditions of adults under guardianship** ► The General Assembly may wish to consider amending § 64.2-2019 of the Code of Virginia to require the guardian to notify designated contacts, as specified by the court, of certain changes in the condition or circumstances of an adult under guardianship, including a change to the adult's primary residence, a temporary change in living location, admission to a hospital or hospice care, and death, as well as provide them with a copy of the annual guardianship report each year at the time it is submitted to the local department of social services. (Recommendation 31)

**Prohibiting guardians from "self-dealing"** ► The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to (i) define self-dealing, at a minimum, to include using the estate of an adult under guardianship or conservatorship to complete a sale or transaction with the guardian or conservator, their spouse, agent, attorney, or business with which they have a financial interest; (ii) prohibit self-dealing by a guardian or conservator unless court approval is first obtained or the sale or transaction was entered into before the guardian or conservator was appointed; and (iii) make voidable by the court any sale or transaction that constitutes self-dealing. (Recommendation 32)

**Expanding public guardianship program** ► The General Assembly may wish to consider including additional funding in the Appropriation Act to pay for 700 new slots in the public guardianship program, which would allow the Department for Aging and Rehabilitative Services to eliminate the current waitlist. (Recommendation 34)

**Assessing demand for public guardianship** ► The General Assembly may wish to consider including one-time funding in the Appropriation Act for the Department for Aging and Rehabilitative Services (DARS) to hire a third party to study the need for expanding the capacity of the state's public guardianship program in total and by region; to assess the actual cost of providing expanded public guardianship services (personnel, overhead, etc.); and to assess the additional cost of providing equal funding to all provider organizations for the same types of public guardianship slots. DARS should submit the findings to the chairs of the House Appropriations and Senate Finance and Appropriations committees by October 1, 2023. (Recommendation 35)

**Requiring conservator training** ► The General Assembly may wish to consider amending § 64.2-2021 of the Code of Virginia to require conservators to complete state-provided training within four months of their court appointment, and consider amending Title 64.2, Chapter 12 of the Code of Virginia, to assign commissioners of accounts responsibility for verifying compliance with training requirements for conservators under their supervision. (Recommendation 38)

**Ensuring accuracy of initial inventory of adults under conservatorship** ► The General Assembly may wish to consider amending Title 64.2, Chapter 12 of the Code of Virginia to require conservators to (i) notify family members and other interested parties, who are specified in the initial petition for conservatorship, that an initial inventory of assets will be submitted, and (ii) provide copies of the initial inventory to notified parties, if requested, and inform these parties that they may raise any concerns about the accuracy and completeness of the inventory with the commissioner of accounts overseeing the conservator. (Recommendation 39)

**Including adults' assets and income on guardian ad litem reports** ► The General Assembly may wish to consider amending § 64.2-2003 of the Code of Virginia to require guardians ad litem to include in their report to the court all assets and income of adults under consideration for guardianship that they identify when determining the amount of surety on a conservator's bond. (Recommendation 40)

**Including adults' assets and income in court orders** ► The General Assembly may wish to consider amending § 64.2-2009 of the Code of Virginia to require the court order appointing a conservator to include a list of the financial resources of the adult being placed under conservatorship to the extent known as identified in the petition for conservatorship and the guardian ad litem report. (Recommendation 41)

## **ECONOMIC DEVELOPMENT INCENTIVES**

### *Science and Technology Incentives, 2022*

#### **RECOMMENDATIONS**

**Prioritizing R&D tax credits for small companies** ► The General Assembly may wish to consider prioritizing Virginia's research and development tax credits for smaller companies by amending §§ 58.1-439.12:08 and 58.1-439.12:11 of the Code of Virginia to either (i) reallocate a portion of the Major Research and Development Tax Credit to the Research and Development Expenses Tax Credit cap or (ii) combine the two credits and give smaller companies priority for awards. (Recommendation 1)

**Step-rate reimbursement for major R&D tax credit** ► The General Assembly may wish to consider amending § 58.1-439.12:11 of the Code of Virginia to adopt a step-rate reimbursement structure for the Major Research and Development Tax Credit. (Recommendation 2)

**Cap for major R&D tax credit** ► The General Assembly may wish to consider amending § 58.1-439.12:11 of the Code of Virginia to adopt an annual company-level cap for the Major Research and Development Tax Credit. (Recommendation 3)

**Incentivizing R&D partnerships with higher education institutions** ► The General Assembly may wish to consider amending § 58.1-439.12:11 of the Code of Virginia to prioritize research conducted with Virginia higher education institutions for the Major Research and Development Tax Credit by providing a higher company level cap for awards for such research. (Recommendation 4)

**Eliminating angel investor tax credit** ► The General Assembly may wish to consider eliminating the Qualified Equity and Subordinated Debt Investments Tax Credit by repealing § 58.1-339.4 of the Code of Virginia. (Recommendation 5)

**Not renewing long-term capital gains and venture capital subtractions** ► The General Assembly may wish to consider not renewing the investment periods for the (i) long-term capital gains subtraction, which ended June 30, 2020, and (ii) venture capital subtraction, which will end December 31, 2023. (Recommendation 6)

**Eliminating Zero G Zero income tax subtractions** ► The General Assembly may wish to consider amending §§ 58.1-322 and 58.1-402 of the Code of Virginia to eliminate the Zero G Zero Tax income tax subtractions after the current contract to resupply the International Space Station expires. (Recommendation 7)

**Additional information in Virginia Commercial Space Flight Authority annual report** ► The General Assembly may wish to consider amending § 2.2-2213 of the Code of Virginia to require the Virginia Commercial Space Flight Authority to include in its annual report a summary of (i) its six-year strategic plan, (ii) how available state funds have been spent to achieve the strategic plan goals to date, and (iii) the extent to which the strategic plan goals have been achieved to date. (Recommendation 8)

### ***Trade and Transportation Incentives, 2021***

**Eliminating railroad rolling stock exemption** ► The General Assembly may wish to consider eliminating the railroad rolling stock exemption. (Recommendation 1)

**Restricting eligibility for aircraft parts, engines, and supplies exemption ►** If the General Assembly extends the expiration of the aircraft parts, engines, and supplies exemption, it may wish to consider amending § 58.1-609.10 of the Code of Virginia to restrict eligibility of the exemption to certified Federal Aviation Administration repair facilities in the state or maintenance, repair, and overhaul facilities that employ a minimum number of workers. (Recommendation 2)

**Targeting port incentives to export cargo ►** The General Assembly may wish to consider amending sections §§ 58.1-439.12:06, 58.1-439.12:10, and 62.1-132.3:2 of the Code of Virginia to better target the International Trade Facility Tax Credit, Port Volume Increase Tax Credit, and Port of Virginia Economic and Infrastructure Development Grant, respectively, to export cargo. (Recommendation 4)

**Converting port tax credit to a grant ►** The General Assembly may wish to consider amending § 58.1-439.12:10 of the Code of Virginia to convert the Virginia Port Volume Increase Tax Credit to a grant to increase its usability and to better target it to companies in geographic regions and industries less likely to use Virginia ports. (Recommendation 6)

**Incentivizing job creation with International Trade Facility Tax Credit ►** The General Assembly may wish to consider amending § 58.1-439.12:06 of the Code of Virginia to increase the value of the International Trade Facility Tax Credit for job creation. (Recommendation 7)

## **POLICY OPTION**

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**Eliminating airline common carrier exemption ►** The General Assembly could consider eliminating the airline common carrier exemption (Option 1).

## ***Infrastructure and Regional Incentives, 2020***

## **RECOMMENDATIONS**

**Real Property Investment Grant eligibility ►** If the General Assembly decides to maintain the Real Property Investment Grant, it may wish to consider amending § 59.1-548 of the Code of Virginia to restrict awards to projects in higher multiplier, export-base industries or to projects that would contribute to community revitalization. (Recommendation 4)

**Road access grant program administration** ► The General Assembly may wish to consider amending § 33.2-1509 of the Code of Virginia to remove the requirement for the Virginia Economic Development Partnership to consult with the Department of Small Business and Supplier Diversity to determine if projects seeking an award from the Economic Development Access Program are basic employers. (Recommendation 16)

## **POLICY OPTIONS**

**Eliminating the Real Property Investment Grant** ► The General Assembly could consider eliminating the Real Property Investment Grant by repealing § 59.1-548 of the Code of Virginia. (Option 1)

**Criteria for recapturing road and rail access program grant awards** ► The General Assembly could consider amending the Code of Virginia to require that job creation performance be one of the factors considered to determine if grant awards from the Economic Development Access Program and Rail Industrial Access Program should be recaptured. (Option 3)

## *Data Center and Manufacturing Incentives, 2019*

## **RECOMMENDATIONS**

**Data center work group** ► The General Assembly may wish to consider including language in the Appropriation Act directing the Secretary of Finance to convene a work group consisting of the Secretaries of Transportation, Commerce and Trade, and Administration; the staff directors of the House Appropriations Committee and Senate Finance Committee, or their designee; and other relevant agency stakeholders to conduct a data center industry study to examine actions that could be taken to maintain the state's competitive position to attract data centers and examine whether the opportunity exists to reduce the level of the exemption without adversely affecting industry growth. (Recommendation 2)

**Alignment of custom grants with targets and plans** ► The General Assembly may wish to consider amending § 30-312 of the Code of Virginia to require that information on how custom grants align with state and regional target industries and strategic economic development plans be included in the annual report of the Major Employment and Investment Project Approval Commission. (Recommendation 5)

**Eliminating green jobs and energy tax credits** ► The General Assembly may wish to consider eliminating the Green Job Creation Tax Credit and the Biodiesel and Green Diesel Fuel Producers Tax Credit. (Recommendation 8)

## POLICY OPTION

**Pollution control equipment exemption** ► The General Assembly could amend § 58.1-609.3 or § 58.1-3660 of the Code of Virginia to clarify that the equipment or facility does not need to be constructed before certification can be granted for purposes of claiming the Pollution Control Equipment and Facilities Sales Tax Exemption. (Option 1)

*Note: The 2020 General Assembly (HB 1173) implemented this option for pollution control equipment used in a locality's water, storm-water, wastewater, or solid waste management facilities, but the law does not apply to other pollution control equipment.*

## CHILDREN'S SERVICES ACT

### *Children's Services Act and Private Special Education Day School Costs, 2020*

## RECOMMENDATIONS

**Funding services to prevent more restrictive school placements** ► The General Assembly may wish to consider amending §2.2-5211 and §2.2-5212 of the Code of Virginia to allow the use of state funds currently reserved for children requiring placement in a private special education day school for services delivered to students with disabilities in public schools if the public school's individualized education program team has determined that the services may prevent a more restrictive placement. (Recommendation 4)

**Transferring private special education day school funding to VDOE** ► The General Assembly may wish to consider including language in the Appropriation Act, and amending the Code of Virginia as appropriate, to direct the transfer of funds currently reserved for children requiring an educational placement in a private special education day school or residential facility to the Virginia Department of Education (VDOE) effective July 1, 2022. The language should also direct the VDOE to develop a detailed plan to administer this funding that (i) funds services for students with the most severe disabilities who are at-risk of or in an out-of-school placement; (ii) ensures that funds are equally accessible to all school divisions; and (iii) minimizes the fiscal impact of the new funding policy on localities. VDOE could be required to submit its plan and recommendations to the House Appropriations and Senate Finance and Appropriations committees for approval by November 1, 2021. (Recommendation 5)

**Referring children to the local CSA program** ► The General Assembly may wish to consider amending §22.1-217 of the Code of Virginia to require the Virginia Department of Education (VDOE) to direct that individualized education program (IEP) teams (i) identify any children with disabilities who may need additional services outside of the school setting and (ii) refer them to the local family assessment and planning team. (Recommendation 6)

**Expanding CSA program to serve more youth ►** The General Assembly may wish to consider amending the Code of Virginia to (i) require all local CSA programs to serve children who meet criteria established by the Office of Children’s Services and the State Executive Council for the “non-mandated” eligibility category, (ii) require that services for these children be paid for with both state CSA funds set aside each year by the State Executive Council from the CSA pool of funds and local government matching funds, and (iii) maintain the provision that makes these funds non-sum sufficient. (Recommendation 11)

**Grant fund to address gaps in children’s services ►** The General Assembly may wish to consider including language in the Appropriation Act directing the State Executive Council (SEC) to form a committee composed of selected SEC members, State and Local Advisory Team members, and Office of Children’s Services staff to assess the feasibility and efficacy of initiating an SEC-administered competitive grant fund to fill gaps in children’s services and report its findings by January 1, 2022 to the chairs of the House Appropriations and Senate Finance and Appropriations committees. (Recommendation 12)

## **MARIJUANA LEGALIZATION**

### ***Key Considerations for Marijuana Legalization, 2020***

*Many recommendations related to legalizing marijuana were implemented by the 2021 General Assembly, including those related to creating a regulated market for commercial sales. The legislation establishing a regulated market for commercial marijuana sales was not re-enacted by the 2022 General Assembly, rendering these recommendations unimplemented again. Given the unusual circumstance and to limit confusion, no recommendations from the 2020 JLARC report are shown here. Please contact JLARC staff for information about these recommendations.*

## **K–12 EDUCATION**

### ***Operations and Performance of the Virginia Department of Education, 2020***

#### **RECOMMENDATION**

**Support for teacher recruitment and retention ►** The General Assembly may wish to consider amending § 22.1-305.2 of the Code of Virginia to direct the Advisory Board on Teacher Education and Licensure to advise the Board of Education on policies related to helping school divisions more effectively recruit and retain licensed teachers. (Recommendation 15)

# ASSISTANCE FOR SMALL AND MINORITY-OWNED BUSINESSES

## *Operations and Performance of the Department of Small Business and Supplier Diversity, 2020*

### **POLICY OPTIONS – VIRGINIA’S SMALL BUSINESS DEFINITION**

*Note: JLARC staff reviewed and analyzed several options for the General Assembly to consider if it wants to change Virginia’s small business definition. The options are listed below and detailed in Chapter 5 of the report.*

- ▶ The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition to businesses that have no more than 250 employees and gross receipts of no more than \$10 million. (Option 5)
- ▶ The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition by reducing the number of employees and gross receipts that a business may have to qualify as a small business. (Option 6)
- ▶ The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for each industry, with thresholds for number of employees or gross receipts, or both, that are based on the size characteristics of Virginia businesses in that industry. (Option 7)
- ▶ The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed that is set at 50 percent of the federal small business definition for each industry. (Option 8)
- ▶ The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for groupings of industries based on size and types of goods and services state agencies purchase. (Option 9)

### **POLICY OPTION**

**Workgroup to review procurement preferences and small business definition** ▶ The General Assembly could consider authorizing in the Appropriation Act an executive branch workgroup to consider whether and how to adjust the (i) state’s procurement preferences for businesses (including women and minority ownership if the disparity study concludes doing so may be permissible), and (ii) state’s definition of small business. The workgroup could be required to submit proposed legislative changes to the House General Laws Committee, Senate General Laws and Technology Committee, and Small Business Commission by November 1, 2021. (Option 10)



# WORKERS' COMPENSATION AND DISEASE PRESUMPTIONS

*Virginia's Workers' Compensation System and Disease Presumptions, 2019*

## RECOMMENDATIONS

**Timeliness of insurers' compensability decisions ►** The General Assembly may wish to consider including language in the Appropriation Act to direct the Virginia Workers' Compensation Commission to report annually on (i) the extent to which workers' compensation insurers, including those employers who are self-insured, are making compensability determinations and notifying workers of their decisions in a timely manner after receiving notice of work-related injuries and diseases and (ii) actions taken by VWC to ensure the timeliness of these decisions. The first report should be submitted by VWC to the House Appropriations and Senate Finance committees no later than June 30, 2022. (Recommendation 8)

**Right to dispute insurers' denial of workers' compensation benefits ►** The General Assembly may wish to consider amending the Code of Virginia to require workers' compensation insurers, including those employers who are self-insured, to include a notice in any letter denying workers' compensation benefits that the injured worker has a right to dispute the claim denial through the Virginia Workers' Compensation Commission (VWC). The notice should indicate (i) VWC's neutral role within the workers' compensation system to adjudicate disputed claims; (ii) the need to file a claim for benefits with VWC within the applicable statute of limitations; and (iii) contact information for VWC. (Recommendation 13)

**Making cumulative trauma compensable ►** The General Assembly may wish to consider amending Title 65.2 of the Code of Virginia to make cumulative trauma injuries compensable under the Workers' Compensation Act. (Recommendation 16)

**Comparing medical fees with Medicare reimbursement rates ►** The General Assembly may wish to consider amending § 65.2-605.2 of the Code of Virginia to authorize and direct the Virginia Workers' Compensation Commission (VWC) to include in its existing biennial reviews of Virginia's workers' compensation medical costs a comparison of Virginia's medical fees to Medicare reimbursement rates for the same services in Virginia. (Recommendation 17)

**Scientific review of proposed disease presumptions ►** The General Assembly may wish to consider amending Title 65.2 of the Code of Virginia to establish a process for reviewing the scientific research on proposed new presumptions or modifications to existing presumptions under the Virginia’s Workers’ Compensation Act prior to legislative action, with consideration given to (i) the strength of the association between the occupation and the disease and the relevant hazards to which workers in the occupation are exposed and (ii) the relevance, quality, and quantity of the literature and data available to determine the strength of evidence. (Recommendation 19)

**Disease presumption eligibility ►** The General Assembly may wish to consider amending § 65.2-402 of the Code of Virginia to clarify that, for the purposes of establishing the presumptions, (i) a total or partial disability may be demonstrated through wage loss, lost work time, or medical evidence and that (ii) workers seeking only medical benefits may demonstrate a total or partial disability solely through medical evidence. (Recommendation 21)

## **POLICY OPTION**

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**Sunset date for certain disease presumptions ►** The General Assembly could consider amending § 65.2-402 of the Code of Virginia to specify that the presumptions for breast, colon, ovarian, and pancreatic cancers covered by the statute shall not apply to workers’ compensation claims submitted after June 30, 2030. Prior to June 30, 2030, the General Assembly could direct an examination of the latest national research on the association between firefighting and these cancers. (Option 3)

# **LOCAL AND REGIONAL JAILS**

## ***State Oversight of Local and Regional Jails, 2019***

### **RECOMMENDATION**

**Transferring inspection staff ►** The General Assembly may wish to consider including language in the Appropriation Act transferring current Department of Corrections jail inspection staff positions—and the funding to employ them—to the Board of Corrections. (Recommendation 8)

# OFFICE OF THE STATE INSPECTOR GENERAL

## *Operations and Performance of the Office of the State Inspector General, 2019*

### RECOMMENDATION

**Behavioral health oversight** ► The General Assembly may wish to consider including language in the Appropriation Act to direct the Office of the State Inspector General (OSIG) to develop and implement a plan to conduct system-level oversight of the quality of care and safety across Department of Behavioral Health and Developmental Services facilities and community-based providers. The plan should set forth the primary oversight activities that OSIG plans to undertake, as well as the number of additional staff positions and types of expertise necessary to carry out these activities. OSIG should submit the plan to the House Appropriations and Health, Welfare and Institutions Committees, and the Senate Finance and Education and Health Committees no later than June 30, 2020. (Recommendation 11)

### POLICY OPTION

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**Future JLARC review of audit program** ► The General Assembly could direct staff with the Joint Legislative Audit and Review Commission to conduct a follow-up review of the Office of the State Inspector General performance audit program after FY24 to determine whether the scaled-back program has been successful. (Option 1)

# STATE LEGAL SERVICES

## *Operations and Performance of the Office of the Attorney General, 2019*

### RECOMMENDATION

**Dedicated client services position** ► The General Assembly may wish to consider including funding and language in the Appropriation Act directing the Office of the Attorney General to create a permanent, full-time director of client services position. (Recommendation 5)

# GAMING REGULATIONS

## *Gaming in the Commonwealth, 2019*

### RECOMMENDATIONS

**Evaluating gambling prevention and treatment efforts ►** The General Assembly may wish to consider including in any legislation authorizing additional forms of gaming a requirement that the Department of Behavioral Health and Developmental Services contract with a university or other expert to conduct an ongoing evaluation of problem gambling in Virginia and the effectiveness of the state's prevention and treatment efforts. (Recommendation 3)

**Competitive selection process for casino licensing ►** The General Assembly may wish to consider including a requirement in any casino authorizing legislation that casino licenses will be awarded through a competitive selection process. (Recommendation 6)

**Evaluation committee for casino proposals ►** The General Assembly may wish to consider including a provision in any casino authorizing legislation that establishes a committee to evaluate and select proposals for the operation and development of casinos, and which comprises individuals with business, finance, and operations experience and who represent both the statewide and local perspectives. (Recommendation 7)

**Independent consultant to review casino proposals ►** The General Assembly may wish to consider including a requirement in any casino authorizing legislation that an independent consultant, hired by the state, assess the accuracy and reasonableness of the projected financial, economic, and other benefits included in casino development proposals prior to selecting a winning proposal. (Recommendation 8)

# WILDLIFE CONSERVATION AND ENFORCEMENT

## *Operations and Performance of the Department of Game and Inland Fisheries, 2019*

### RECOMMENDATION

**Board of Game and Inland Fisheries membership ►** The General Assembly may wish to consider amending §29.1-102.A of the Code of Virginia to require that at least one member of the Board of Game and Inland Fisheries be a current or former senior law enforcement official. (Recommendation 10)

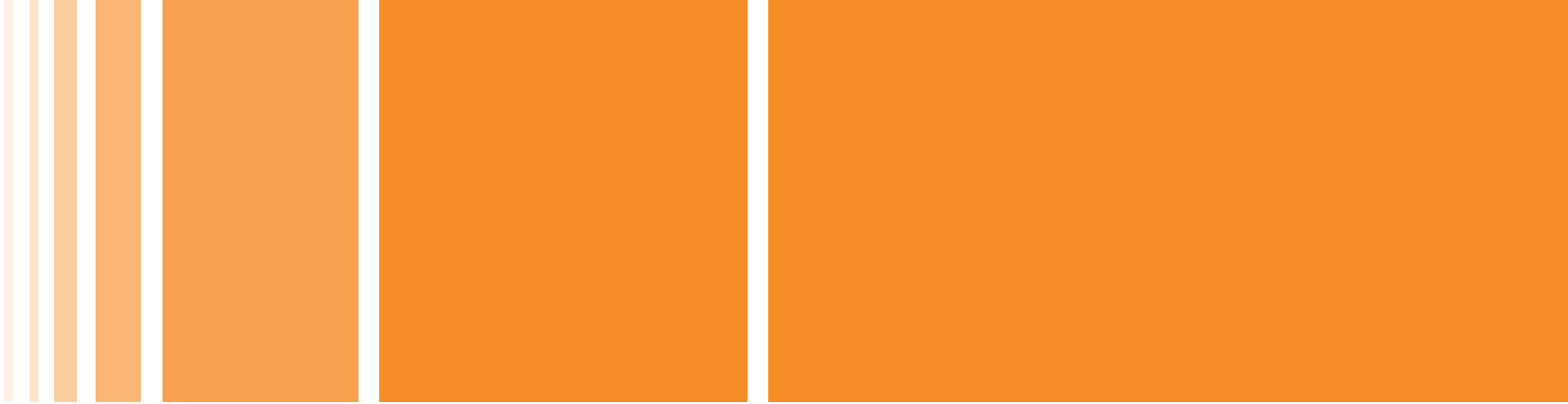
## POLICY OPTIONS

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**Boat registration fees** ► The General Assembly could include language in the Appropriation Act granting the Board of Game and Inland Fisheries temporary authority to increase boat registration fees by more than the \$5 every three years specified in §29.1-701.1 of the Code of Virginia. (Option 2)

**Fees for exempt hunters and anglers** ► The General Assembly could amend §29.1-301 of the Code of Virginia to authorize the Board of Game and Inland Fisheries to charge exempt hunters and anglers a nominal registration fee of several dollars, thereby allowing Virginia to claim forgone federal revenue. (Option 4)





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